

EAAF RECOMMENDATIONS

Based on our experiences working as forensic anthropologists for Truth Commissions, Special Commissions of Inquiry and national and international Tribunals, we would like to put forward a number of recommendations.

We believe that the effectiveness of institutional bodies that are set up for fixed time periods would be improved by establishing the following:

1. Improve the Relationship between Families of Victims and Forensic Teams.

We strongly recommend direct contact between forensic teams and the relatives of victims. In many cases involving human rights violations, particularly political disappearances, the relatives of the victims have been badly treated by officials who often deny the very fact of the disappearance of their loved ones. It is important to reestablish the link of trust and respect.

1.1 Facilitate the Right to Truth of Families of Victims.

Forensic investigators should assist victims' families (1) in having access to sites where investigations are being carried out; (2) by providing basic information before, during and after forensic work is done, informing them of the many possible outcomes of any given mission (i.e., if it will be possible or not to locate remains or identify them), taking into account their expectations; (3) in having their concerns, doubts, questions and objections taken into account; and, (4) by promoting mechanisms that provide them with the results of forensic investigations, following international recommendations and forensic protocols.

1.2 Approval for Exhumations and Respect for Cultural and Religious Funeral Rites:

When there isn't a legal constraint, and when the identities of the bodies to be exhumed are known, the approval of families should be requested. EAAF's experience in different countries, involving diverse cultures, religions and political situations, has shown us that exhumations and reburial ceremonies relating to human rights violations have a strong healing effect on families of victims and communities. However, in some situations, exhumations are not wanted or they must be performed while taking into account such issues as relatives' cultural and religious practices with regard to the dead and reburial ceremonies.

If these issues are not taken into account before embarking on forensic investigation, the work may fail and produce more pain and suffering for those whom we are trying to assist.

There are often non-conflicting ways to respect the victims' families' decision in the extreme case of their total opposition to exhumation. From a legal standpoint, this is often possible as (1) most Tribunals and Commissions will order forensic work in a very selected number of cases; and (2) to prove a massacre, for example, not all bodies need to be found and examined. From historical and documentation standpoints, we can often still provide an estimation of the non-exhumed individuals.

3. Create Mechanisms to Continue the Recovery and Identification Process Beyond a Commission's or Tribunal's Mandate.

The time in which a Truth Commission or Tribunal operates tends to be very short in comparison with the time necessary for exhumations and identifications of victims in a given conflict. Twenty-five years after the peak of the repression in Argentina, EAAF is still working on the search for the disappeared. Similarly, the work in Chile

and Guatemala will continue for years. Most Commissions do not set up mechanisms or include in their recommendations specific ways to continue their work after their investigations come to an end. The forensic work sometimes continues, with difficulties and interruptions; sometimes it ends with the Commission. However, locating and identifying the victims is a right of their families, and an obligation of the parties involved in a conflict. It is also an essential minimum step in the process of reparation, one that helps a society to deal with its tragic past. We encourage Commissions to provide specific guidelines in their final recommendations in order to continue the process of finding and identifying the victims of human rights violations after their initial work is done.

4. Whenever Possible, Improve Contacts between the Forensic Experts and the Local Judiciaries, Prosecutors, Judges, and Lawyers.

Giving presentations to local judiciaries and lawyers, with basic information about how the forensic sciences, mainly forensic anthropology and archaeology, can contribute to judiciary investigations. This also provides a valuable opportunity to discuss the way evidence is handled in a particular country, discuss cases done in other parts of the world, as well as specific local ones, and understand the concerns of the legal community.

5. Whenever possible, train and promote local teams and local forensic experts.

The role of international forensic teams, we believe, should include not only specific forensic work but also working with, training and promoting local teams and local forensic experts.

In countries where massive human rights violations occurred and forensic work is needed, it is vital to reinforce existing forensic units or help to train new local teams. This is essential for a variety of reasons:

- a. in most of these countries, the forensic work of identifying victims of violations takes decades; international teams will usually spend only a limited amount of time during each mission, and only for a few years; a national team can dedicate themselves full-time to this work.
- b. In many of the countries where we work, forensic sciences are little developed or almost non-existent, and in most of them, the use of archaeological and anthropological techniques is unheard of. The use of physical evidence in court is, in general, limited and most testimony is oral. Therefore, by reinforcing or creating a national forensic team or forensic professionals who can address this problem, there is usually a general improvement in criminal procedures and as a result, in the rule of law.
- c. National teams may serve the families of the victims and their communities in more effective ways: as experts that speak the language, are from the same or a similar culture, have often lived through similar experiences; and often have a strong commitment to improving the rule of law in their countries.

At the same time, in addition to national governmental or judiciary forensic experts, it is also important to have independent experts; sometimes individuals involved in medical legal systems have been complicit or unable to act independently within previous regimes.

6. Whenever Possible, Maintain Contact with Local Human Rights Organizations.

At the time of the occurrence of massive human rights violations in a given country, the judiciary normally loses much of its capacity to fairly investigate crimes committed by the state or by armed parties in a civil conflict. On the other hand, Truth Commissions are usually created in transitional moments, at the end of civil conflicts, wars, state terrorism, etc. Thus, local non-governmental organizations (NGOs) often fill part of that gap. At times, at great risk to their members, they form a bridge between the investigative body and the witnesses, survivors and

relatives of victims. Even in democratic transitional moments, witnesses and relatives of the victims will frequently feel more comfortable releasing information to a local NGO or giving testimonies before a court of law or national or international Commissions of inquiry with the support or mediation of an NGO. Truth Commission investigators usually rely on the work of NGOs as a starting point for their investigations and, by extension, to related forensic aspects.

7. Improve Access to DNA Analysis.

Informing relatives of a “disappeared” person that the remains being analyzed do not correspond to their loved one is very difficult. However, it is equally difficult to tell them that we are uncertain whether these remains match their loved ones or not, and that, since we have no way to resolve this doubt, the remains must be placed once again in a box to be stored.

Traditional forensic anthropological techniques are limited where sufficient ante-mortem information cannot be obtained. This was often the situation until the early 1990s, when it became possible to recover DNA from skeletal remains. Genetic testing quickly became a key tool in human right investigations.

However, DNA analysis is still very expensive and time consuming. EAAF depends on the generous pro bono work of laboratories in the US, Canada and the United Kingdom, and more recently in Argentina, but they can only accommodate a limited number of cases. Every year, EAAF has several dozen unresolved cases due to a lack of DNA analysis.

As a partial remedy to this problem in Argentina, EAAF began to collect three blood samples from each relative of a disappeared person who visited our Buenos Aires office from 1998 onward. We are creating a **genetic blood bank** from these samples, which is being used to conduct genetic analyses to help us make identifications. The blood bank will also enable identifications in the future as more gravesites are discovered, whether or not all relatives are present or alive. This approach will become important in many projects, for example, in our on-going project in Zimbabwe, where HIV is affecting 25% of the adult population.

8. Protect Possible Killing and Burial Sites.

Whenever possible, it is important to protect possible killing and burial sites if they are not being investigated at the time of discovery. In this way, they will be available to families of victims and investigators working in future investigations.

9. Preserve Crucial Evidence and Forensic Reports for Possible On-Going and Future Investigations and Prosecutions.

Uncovering evidence of human rights crimes does not necessarily mean that justice is immediately achieved. Many human rights violations are investigated but remain unprosecuted, mostly due to amnesty laws, limiting the role forensic evidence can play in judicial processes.

However, as new mechanisms are developed in the field of international criminal law, and old cases are brought back to trial (in Chile and Argentina, for example), it is important that vital evidence and reports be preserved in order to be used in future trials, as needed.

10. Create Witness and Informers Protection Programs.

On each Commission or Tribunal, there is usually a core group of ten to fifteen or fewer key witnesses to major incidents. Often these individuals need protection, including eventual safe emigration to another country. In most cases, this type of Commission has no mechanism for dealing with witness safety. An *ad hoc* measure may eventually be enacted, depending upon the Commission’s specific mandate, how it is interpreted, and the flexibility of the

international, national, and regional bodies that may assist in this process. Though setting up a Witness Protection Program is clearly a complicated issue, we think it is extremely important to include some sort of mechanism from the planning phase as a matter of course.

11. Provide Counseling or Psychological Support for Persons who Testify and for Families and Friends of Victims Before, During, and After Exhumations.

These are all clearly very difficult and painful moments involving complicated and unusual processes of mourning, at the individual, community and national levels. Community and/or individual counseling have already been developed by local NGOs in places such as Guatemala and Zimbabwe. We believe that contracting a local or regional NGO that is already familiar with the culture, language, religion and individual situations of the victims will offer extremely valuable benefits to the families and communities involved. Local organizations usually also have a firsthand understanding of the political climates arising from conflicts. Finally, providing counseling through a local or regional NGO can also lead to a more effective reparations stage in the resolution of a conflict.

12. Counseling or Psychological Support for Staff Members who Receive Testimonies for such Commissions and Forensic Personnel.

Sometimes the overwhelming weight of the testimonies of witnesses, victims and their families can produce conflicting feelings of exhaustion, guilt, and depression in the researchers who are on Truth Commissions investigating atrocities. In some instances, international investigative missions have provided psychological support, but this is still the exception. Counseling may prove especially helpful when these Commissions extend their work to a year or more, as they often do.

13. Promote the Incorporation of International Forensic Protocols for Human Rights Investigations into Domestic Criminal Procedures.

The promotion of the incorporation of international forensic protocols for human rights investigations into domestic criminal procedures is essential. This will ensure that scientific tools and mechanisms developed for human rights investigations will have a more long-term effect. Along these lines, the United Nations has produced several documents relating to forensic science and human rights. The most important of these documents are: the “UN Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions – 1991;” and “Guidelines for the Conduct of UN Inquiries into Allegations of Massacres – 1995.”

CONCLUSION

When we initially started our work eighteen years ago, we needed to distance ourselves from legal-medical systems and other governmental institutions that had lost credibility during often lengthy periods of human rights violations. We worked outside these organizations, incorporating new scientific tools for human rights investigations. In order to have a long-term effect, and taking advantage of increased interest in international criminal law and domestic incorporation of it, we are now working towards incorporating international protocols for human rights work into domestic criminal procedures. In a way, then, in the past two decades we have come around full circle.