

EXHUMATION OF MASS GRAVES, OBLIGATIONS OF GOVERNMENTS AND PROCEDURES

Mass graves have, unfortunately, become an integral feature of the landscape in countries with repressive regimes or ethnic conflicts. Latin America is dotted with mass graves and a great deal of expertise has been developed with regard to their excavation as well as the recovery of information from a thorough examination of skeletal remains. A recent example is the excavation of the mass graves of Kurds.

The United Nations (UN) and international human rights organisations, particularly the UN Working Group on Disappearances, have also developed means of dealing with the excavation of mass graves and in bringing home to perpetrators their misdeeds.

This process has also laid down clearly defined obligations on the governments of countries where such mass graves are discovered.

The following extractions from the **Annex to Resolution 1989/65 of the UN Economic and Social Council** entitled "**Principles on the effective prevention and investigation of extra-legal, arbitrary and summary executions,**" clearly indicate what a government should be doing in terms of its international obligations:

9. There shall be a thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions... Government shall maintain investigative offices to undertake such inquiries. The purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible and any pattern or practice which may have brought about that death...
10. The investigative authority shall have the power to obtain all the information necessary to the inquiry. Those persons conducting the investigation shall have at their disposal all the necessary budgetary and technical resources for effective investigation. They shall also have the authority to oblige officials allegedly involved in such executions to appear and testify... The same shall apply to any witness. To this end, they shall be entitled to issue summons to witnesses, including the officials allegedly involved, and to demand the production of evidence.

11. In cases where the established investigative procedures are inadequate because of lack of expertise or impartiality,... government shall pursue investigations through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any such institution, agency or person that may be the subject of the inquiry. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under these Principles.

The only action taken so far by the Sri Lankan government on the discovery of mass graves at Suriyakanda, asking the CID to conduct an investigation, falls far short of these principles which member states of the UN are obliged to respect.

The problems associated with the present state of affairs, to which the opposition politicians, their lawyers, the police and even the magistrate himself have contributed can best be brought out by reference to the **Manual on the effective prevention and investigation of extra-legal, arbitrary and summary executions** issued by the UN in 1991. This includes a model protocol for disinterment and analysis of skeletal remains. Quoted below are extracts from this **protocol**:

This proposed model protocol for the disinterment and analysis of skeletal remains includes a comprehensive checklist of the steps in a basic forensic examination. The objectives of an anthropological investigation are the same as those of a medicolegal investigation of a recently deceased person. The anthropologist must collect information that will establish the identity of the deceased, the time and place of death, the cause of death and the manner or mode of death (homicide, suicide, accident or natural). The approach of the anthropologist differs, however, because of the nature of the material to be examined...

The questions addressed by the anthropologist differ from those pursued in a typical autopsy. The anthropological investigation invests more time and attention to basic questions such as the following:



- (a) Are the remains human?
- (b) Do they represent a single individual or several?
- (c) What was the decedent's sex, race, stature, body weight, handedness and physique?
- (d) Are there any skeletal traits or anomalies that could serve to positively identify the decedent?

The time, cause and manner of death are also addressed by the anthropologist, but the margin of error is usually greater than that which can be achieved by an autopsy shortly after death.

This model protocol may be of use in many diverse situations. Its application may be affected, however, by poor conditions, inadequate financial resources or lack of time. Variation from the protocol may be inevitable or even preferable in some cases. It is suggested, however, that any major deviations, with the supporting reasons, should be noted in the final report.

Proposed Model Skeletal Analysis Protocol for Scene Investigation:

A burial recovery should be handled with the same exacting care given to a crime-scene search. Efforts should be coordinated between the principal investigator and the consulting physical anthropologist or archaeologist. Human remains are frequently exhumed by law enforcement officers or cemetery workers unskilled in the techniques of forensic anthropology. Valuable information may be lost in this manner and false information is sometimes generated. Disinterment by untrained persons should be prohibited. The consulting anthropologist should be present to conduct or supervise the disinterment. Specific problems and procedures accompany the excavation of each type of burial. The amount of information obtained from the excavation depends on knowledge of the burial situation and judgement based on experience. The final report should include a rationale for the excavation procedure.

The following procedure should be followed during disinterment:

- (a) Record the date, location, starting and finishing times of the disinterment, and the names of all workers;
- (b) Record the information in narrative form, supplemented by sketches and photographs;
- (c) Photograph the work area from the same perspective before work begins and after it ends every day to document any disturbance not related to the official procedure;

- (d) In some cases, it is necessary to first locate the grave within a given area. There are numerous methods of locating graves, depending on the age of the grave:

- (i) An experienced archaeologist may recognize clues such as changes in surface contour and variation in local vegetation;
- (ii) A metal probe can be used to locate the less compact soil characteristics of grave fill;
- (iii) The area to be explored can be cleared and the top soil scraped away with a flat shovel. Graves appear darker than the surrounding ground because the darker topsoil has mixed with the lighter subsoil in the grave fill. Sometimes a light spraying of the surface with water may enhance a grave's outline;

- (e) Classify the burial as follows:

- (i) Individual or commingled. A grave may contain the remains of one person buried alone, or it may contain the commingled remains of two or more persons buried either at the same time or over a period of time;
- (ii) Isolated or adjacent. An isolated grave is separate from other graves and can be excavated without concern about encroaching upon another grave. Adjacent graves, such as in a crowded cemetery, require a different excavation technique because the wall of one grave is also the wall of another grave;
- (iii) Primary or secondary. A primary grave is the grave in which the deceased is first placed. If the remains are then removed and reburied, the grave is considered to be secondary;
- (iv) Undisturbed or disturbed. An undisturbed burial is unchanged (except by natural processes) since the time of primary burial. A disturbed burial is one that has been altered by human intervention after the time of primary burial. All secondary burials are considered to be disturbed; archaeological methods can be used to detect a disturbance in a primary burial;

- (f) Assign an unambiguous number to the burial. If an adequate numbering system is not already in effect, the anthropologist should devise a system;

- (g) Establish a datum point, then block and map the burial site using an appropriate-sized grid and standard archaeological techniques. In some cases, it may be adequate simply to measure the depth of the grave from the surface to the skull and from the surface to the feet. Associated



material can then be recorded in terms of their position relative to the skeleton;

- (h) Remove the overburden of earth, screening the dirt for associated materials. Record the level (depth and relative co-ordinates) of any such findings. The type of burial, especially whether primary or secondary, influences the care and attention that needs to be given to this step. Associated materials located at a secondary burial site are unlikely to reveal the circumstances of the primary burial but may provide information on events that have occurred after that burial;
- (i) Search for items such as bullets or jewellery, for which a metal detector can be useful, particularly in the levels immediately above and below the level of the remains;
- (j) Circumscribe the body when the level of the burial is located, and, when possible, open the burial pit to a minimum of 30 cm on all sides of the body;
- (k) Pedestal the burial by digging on all sides to the lowest level of the body (approximately 30 cm). Also pedestal any associated artifacts;
- (l) Expose the remains with the use of a soft brush or whisk broom. Do not use a brush on fabric, as it may destroy fibre evidence. Examine the soil found around the skull for hair. Place this soil in a bag for laboratory study. Patience is invaluable at this time. The remains may be fragile, and interrelationships of elements are important and may be easily disrupted. Damage can seriously reduce the amount of information available for analysis;
- (m) Photograph and map the remains *in situ*. All photographs should include an identification number, the date, a scale and an indication of magnetic north;
 - (i) First photograph the entire burial, then focus on significant details so that their relation to the whole can be easily visualized;
 - (ii) Anything that seems unusual or remarkable should be photographed at close range. Careful attention should be given to evidence

of trauma or pathological change, either recent or healed;

- (iii) Photograph and map all associated materials (clothes, hair, coffin, artifacts, bullets, casings etc.). The map should include a rough sketch of the skeleton as well as any associated materials;
- (n) Before displacing anything, measure the individual:
 - (i) Measure the total length of the remains and record the terminal points of the measurement, e.g., apex to plantar surface of calcaneus. This is not a stature measurement);
 - (ii) If the skeleton is so fragile that it may break when lifted, measure as much as possible before removing it from the ground;
- (o) Remove all elements and place them in bags or boxes, taking care to avoid damage. Number, date and initial every container;
- (p) Excavate and screen the level of soil immediately under the burial. A level of "sterile" (artifact-free) soil should be located before ceasing excavation and beginning to backfill.

This is indeed a far cry from what happened at Suriyakanda with its eager excavators and fertiliser bags filled with bones.

The protocol then goes on to set out in detail the laboratory procedures to be followed in analysing the skeletal remains.

We have set these out in some detail because we are certain that Suriyakanda will not be the last mass grave to be uncovered in Sri Lanka, and we had better be prepared for meaningful exhumations that will yield sufficient evidence to bring home their crimes to the perpetrators.

Nevertheless, even with all these infirmities, the call for a full and independent investigation of Suriyakanda must not be allowed to die out. To permit the government to push Suriyakanda into the limbo of forgotten things is to permit them to repeat the same atrocities in the future. **P**