



**Executive Summary on the
International Expert Working Meeting**

The Search for Missing Persons, including Victims of Enforced Disappearance

3-4 September 2019, Jordan

**swiss
peace**



Funded by the
European Union



ICRC

**M MISSING
PERSONS**
A GLOBAL RESPONSE

This report was written by Gabriella Citroni with the support of swisspeace's team of organizers and commissioned by swisspeace in the framework of the European Union-funded project entitled Increasing Accountability and Preventing Enforced Disappearances and Extrajudicial Killings in Mexico, Nepal, the Gambia and Beyond.

The report provides a summary of the workshop The Search for Missing Persons, including Victims of Enforced Disappearance. The views expressed in it are those of the participants concerned and do not necessarily reflect the views of the organizations they represent.

Foreword

Each year, tens of thousands of people go missing,¹ some of them as victims of enforced disappearance.² They disappear in situations of armed conflict, other situations of violence that fall below the threshold of armed conflict (hereafter, armed violence), disasters, and along perilous migratory routes. Clarifying their fate and whereabouts, whether alive or deceased, is a critical need for missing persons, their families, as well as societies as a whole. The right of families to know the fate and whereabouts of missing persons is recognized in international humanitarian law and in international human rights law. In cases of enforced disappearance, international human rights law sets out the right to know the truth, both individual and collective, which includes the circumstances of the enforced disappearance, the progress and results of the investigation and the fate and whereabouts of the disappeared person.³ Moreover, the search for missing persons, including victims of enforced disappearance, is an important measure for dealing with the past or for transitional justice processes in which societies try to come to terms with a history marked by gross violations of international human rights law and serious violations of international humanitarian law.

Clarifying the fate and whereabouts of missing persons is an undertaking pursued by a variety of actors ranging from State authorities, international organizations, non-governmental organizations (NGOs), to family and other civil society associations.

Effective search procedures are crucial to find persons alive, locate and clarify the fate of those who have died, and prevent others from going missing. Today, a wealth of experiences in conducting the search for missing persons exists. Moreover, a considerable body of law, encompassing soft law instruments, treaties and customary law, has been developed and sets out obligations relevant to the search. National and international jurisprudence have further spelled out such obligations.

In order to explore how the search is conducted in practice and discuss the related subtopics and dilemmas with representatives of all the sectors involved in search processes, the International Committee of the Red Cross (ICRC) and swisspeace jointly organized the International Expert Meeting in Amman from 3 to 4 September 2019. This report explains the background and objectives of the meeting, summarizes the main discussions and provides an overview of the key findings and potential follow-up measures.

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¹ In this report, the term “missing” carries the broad meaning applied by the ICRC. It includes anyone whose whereabouts are unknown to their relatives and/or who, on the basis of reliable information, has been reported missing in connection with an international or non-international armed conflict, another situation of violence, a disaster, or any situation that may require action by a neutral and independent body. Missing persons can include victims of enforced disappearance and other crimes.

² In this report, pursuant to Art. 2 of the International Convention for the Protection of All Persons from Enforced Disappearance (ICPED), “enforced disappearance” is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law. Pursuant to Art. 3 of the ICPED, persons or groups of persons acting without the authorization, support or acquiescence of the State can commit acts that are tantamount to enforced disappearance.

³ Throughout the report, the expressions “missing” and “disappeared” are used. Unless otherwise specified, they both refer to “missing persons, including victims of enforced disappearances”.



ICRC

Participants in the expert meeting held at the Dead Sea, Jordan on 3–4 September 2019

I. Background

The International Expert Working Meeting “The Search for Missing Persons, including Victims of Enforced Disappearance” was held on 3 and 4 September 2019 by the Dead Sea in Jordan. The meeting was co-organized by swisspeace and the Missing Persons Project of the International Committee of the Red Cross (the ICRC). It brought together 61 representatives of family associations; of NGOs from Africa, the Americas, Asia and Europe; international organizations, government institutions and national search mechanisms; former and newly appointed members of the Committee on Enforced Disappearances (CED); and independent experts.

The event revolved around the *Guiding Principles for the Search for Disappeared Persons* (the Guiding Principles)⁴ adopted by the CED on 16 April 2019 and aimed at: (i) determining to what extent the Guiding Principles could be used as a model for the search for missing persons beyond cases of enforced disappearance; and (ii) analyzing how the Guiding Principles could be implemented in practice, whether some of the provisions already correspond to current operational practices and how they could improve the latter.

⁴ The text of Guiding Principles in the six UN official languages and in German is available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CED/C/7&Lang=en (accessed 11 June 2020).

II. Key Findings and Potential Action Points

This executive summary illustrates the key findings and the potential action points identified with regard to the six thematic areas analyzed during the meeting. The discussion points which emerged in each of the thematic areas are reflected in detail in the *integral version of the report*.⁵

A. Role and Participation of Victims, Including Families

Under this thematic area, participants discussed who could be considered right holders and sources of information in the search process, including victims,⁶ their legal representatives, counsel or any person authorized by them, and any person, association or organization with a legitimate interest.⁷ Other subjects included the protection and provision of assistance and other forms of support to families and other actors taking part in the search,⁸ and the right of victims, including families, to take part at all stages of the search process,⁹ as well as to have access to information,¹⁰ noting the specific challenges experienced by families of missing migrants in this regard.¹¹

It was concluded that **participation of families** should be guaranteed as far as possible throughout the search process.

POTENTIAL FUTURE ACTION POINTS INCLUDE:

1. Clarification of key concepts such as “family” and “family participation”.
2. Collection and sharing of good practices on participatory search processes, which could be carried out at future round tables.

B. The Search as a Process that Requires Coordination and Strategy

Under this theme, discussions focused on the need to design comprehensive search strategies taking into account the specificities of the search context and the persons being sought (e.g. children);¹² the need to guarantee a participatory approach when implementing such strategies;¹³ the critical importance of effective institutional and legal underpinnings for search processes,¹⁴ including centralized coordination and arrangements for effective, safe and secure exchange of information between institutions and, where appropriate, across borders;¹⁵ and the importance of search protocols that ensure independent oversight.¹⁶

⁵ Find out more about the project and download the full report here: <https://www.swisspeace.ch/activities/research/push-to-improve-search-for-missing-people-at-dead-sea-meeting> (accessed 18 June 2020).

⁶ Pursuant to Art. 24, para. 2, of the ICPED, “victim means the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance”. Pursuant to Art. 18, para. 1, access to core information on persons deprived of liberty must be granted to “any person with a legitimate interest [...], such as relatives of the person deprived of liberty, their representatives or their counsel”.

⁷ Guiding Principles 2.2, 5.1 and 8.5.

⁸ Guiding Principles 2.3, 3.6 and 14.

⁹ Guiding Principles 5 and 8.3.

¹⁰ Guiding Principle 5.2.

¹¹ Guiding Principle 9.4.

¹² Guiding Principle 8 (with regard to children in particular 8.8).

¹³ Guiding Principle 3.5.

¹⁴ Guiding Principle 10.

¹⁵ Guiding Principles 12 and 14.4.

¹⁶ Guiding Principle 16.1.



The prerequisites for the effective cooperation of all the actors involved in the search process are **political will, financial, human and technical resources, and capacity-building**. The adoption of **adequate security measures** and the establishment of **trust** among the different actors are also crucial.

The **context** in which the search is carried out **matters** and this must warrant a **degree of flexibility** in the determination of the mechanisms in charge of the search process and in the **design of their mandate and a common strategy**.

Transparency and accountability are essential to ensure an effective search process and should be guaranteed in all circumstances.

POTENTIAL FUTURE ACTION POINTS INCLUDE:

- 1.** Capacity-building activities on coordination and strategy design directed at the different actors involved in the search process.
- 2.** Context-specific studies on how to ensure successful coordination among the different actors concerned.
- 3.** Collecting and sharing good practices and lessons learned on the subject of coordination.

C. The Search Needs to be Guided by Policies and Laws

Topics discussed under this theme included the need for search processes to be anchored in a comprehensive public policy;¹⁷ the pre-conditions to enable competent mechanisms to conduct the search safely and effectively, including financial, human and technical resources;¹⁸ the relationship and potential tensions between the search and criminal investigations;¹⁹ and the necessary guarantees to ensure the independence and impartiality of the mechanisms conducting the search.²⁰

Genuine **political will** and **adequate financial, human and technical resources** are indispensable prerequisites for the adoption of effective public policies and laws on the search.

Families must be **enabled to participate in the design, adoption, implementation and evaluation of public policies and laws on the search.**

POTENTIAL FUTURE ACTION POINTS INCLUDE:

1. Research and analysis of the relationship between a purely humanitarian search and criminal investigations (and the drafting of technical standards and guidance).
2. Determining and sharing good practices on the effective organization of the search.
3. Dissemination of the Guiding Principles and other existing relevant instruments and awareness raising at the international level.

D. Differential Approach²¹ within Search Processes

The application of a differential approach within search processes refers to the need to take into account the specific circumstances of the disappeared person and his or her family members, detecting instances of potential discrimination and bearing them in mind when designing and performing a search. Under this theme, the specific measures to be adopted when searching for missing persons in situations of vulnerability (including children, adolescent girls, women, indigenous peoples, members of the lesbian, gay, bisexual, transgender and intersex community, persons with disabilities and older persons)²² were discussed, with special attention paid to the very challenging situation of migrants.²³

The proper application of a differential approach requires **political will, sensitivity, knowledge and adequate human, technical and financial resources**. A degree of flexibility must be maintained to **adapt the implementation of the differential approach to the context concerned**.

The differential approach must **not be misinterpreted or abused so that it triggers instances of discrimination**.

¹⁷ Guiding Principle 3.

¹⁸ Guiding Principles 10 and 16.

¹⁹ Guiding Principle 13.

²⁰ Guiding Principle 15.

²¹ The notion of “differential approach” has a double meaning: on the one hand, it is a method of analysis. It aims to make visible discrimination faced by persons or groups regarded as “different” by a majority or a hegemonic group. On the other hand, it is a guide for action. The analysis is used to raise attention and ensure fundamental rights are upheld.

²² Guiding Principles 4 and 8.8.

²³ Guiding Principle 9.



Mohammad Jawad Alhamzah/ICRC

In the application of the differential approach, instances of **intersectional discrimination**²⁴ must be duly taken into account and dealt with, through a **multidisciplinary approach and methodology**.

POTENTIAL FUTURE ACTION POINTS INCLUDE:

1. Awareness-raising and capacity-building activities on the proper application of a differential approach within search processes directed at all the different actors concerned (including NGOs, government authorities, international organizations, families and other civil society organizations).

E. Search Must be Informed: Access to Data, Right to Privacy, DNA and Information Management

This theme covered the creation, collection, storage, preservation, management, archiving, and use of documents, data and information needed to ensure the effectiveness of search processes. An important aspect of the discussion was the balance between access to information and the right to privacy.²⁵

Effective and proper information management **needs adequate human and financial resources**.

²⁴ "Intersectional discrimination" means discrimination taking place on the basis of several grounds or characteristics or identities, which interact with each other so as to be inseparable.

²⁵ Guiding Principles 10.4 and 11.



Pawel Krzysiek/ICRC

Different actors (e.g. States, NGOs, international organizations, families and civil society associations) are involved in the creation, collection, management and preservation of information, data and records related to search processes.

When designing the mandate of **search mechanisms**, it is crucial to **ensure** that the mechanisms in charge of the search **are entrusted with powers similar to those of judicial bodies, including unrestricted access** to all information, documents and data that they consider necessary to search for missing persons.

POTENTIAL FUTURE ACTION POINTS INCLUDE:

- 1.** Further study on how to ensure that all actors concerned uphold information management good practices.
- 2.** The development of a separate document to provide clearer practical indications on the information flow in the search process, including creation, access to and management of, information and its subsequent storage, disposal or use (identification of good practices and lessons learned on these matters is also desirable).
- 3.** Capacity-building activities such as workshops on information management for the different actors involved in the search process, including on the right to privacy and data protection; the 'do no harm' approach and responsibilities of information collectors; archival and record-keeping standards; use of information for different purposes (search and criminal investigations).
- 4.** The facilitation of a process towards greater exchange of information and databases' interoperability to enhance the exchange of information between the actors involved in the search at the international and national levels.

F. Immediacy and Continuity of the Search and the Presumption that the Victim is Alive

Under this theme, discussions revolved around the crucial importance of beginning the search for disappeared persons without delay and the measures to be adopted to ensure such immediacy,²⁶ as well as the practical implications of the ongoing nature of the obligation to search for disappeared persons.²⁷

Whether the search for disappeared persons should always be conducted under the presumption of life was the subject of lengthy discussions and diverging views. Participants emphasized that **the word “presumption”** contained in Guiding Principle 1 **should not be interpreted in strictly legal terms, but rather as the primary objective of the search process, allowing for a margin of discretion, depending on the circumstances.**

The **primary objective of the search process must be to find the person alive.**

The **immediacy** of the search is of essence and it could be useful to **better determine the practical implications and the concrete measures to be taken** to ensure such immediacy, as well as the **consequences of the passing of time on the process**, in particular with regard to the **collection of testimonies, the preservation of evidence and documents, and the continuing provision of security measures and other forms of support** to all those involved throughout the search process.

POTENTIAL FUTURE ACTION POINTS INCLUDE:

1. The collection and dissemination of good practices and capacity-building activities on the immediacy and continuity of the search in different contexts and as implemented by the actors concerned.

²⁶ Guiding Principle 6.

²⁷ Guiding Principle 7.



Fragkiska Megaloudi/ICRC

III. Main Conclusions and the Way Forward

1. Noting that the **search for disappeared persons constitutes a vital need for the victims and their families and a state's obligation**, participants **welcomed the Guiding Principles as a milestone and acknowledged their usefulness**.
2. Participants called for additional study to ensure the effectiveness of the search process irrespective of the underlying circumstances, concurring in that the **compilation of good practices and the development of more concrete indications** on how to design and perform the search process, bearing in mind the **different underlying circumstances** and the **multiple actors** involved, would be desirable.
3. Participants held that, being based on the obligations enshrined in the ICPED, the Guiding Principles were mainly directed at states. However, their application might be especially difficult in certain contexts, such as in failed states or, more generally, where states lack the capacities and resources to implement them. In these settings, the **participation of other actors in the search for missing persons** became all the more important. Hence, much of the **content of the Guiding Principles** should be taken into account by the other actors that are actively involved in the search process too, including NGOs, international organizations, and family and civil society associations. In this vein, the Guiding Principles must be regarded as a reference tool for practitioners in general, and they need to be **promoted and disseminated**. **Training and capacity-building** are equally desirable.

4. Participants identified the following as the main areas in which **capacity-building** was needed: coordination among the different actors involved in the search process and the design of an effective search strategy; the application of the “do no harm” principle and the differential approach throughout the search process; information management, record keeping and the application of international archival standards; and the immediacy of the search.
5. The subjects on which the collection and dissemination of **good practices and lessons learned** were deemed particularly useful were: family participation; coordination among the different actors involved in the search process and design of an effective search strategy; the design and adoption of public policies and laws; information management; and the immediacy of the search.
6. Participants agreed that the **relationship between the search and criminal investigations should be further explored and determined** and result in the **elaboration of technical standards or guidance on the subject**.
7. Finally, the drafting of **documents of a more “operational nature” (e.g. protocols)** that provide indications on how to concretely implement certain principles, was suggested with regard to the following matters: coordination among the different actors involved in the search process; the relationship between the right to privacy, access to information and data protection; the use of information for different purposes; data collection, analysis, storage and management; the application of the differential approach; the immediacy of the search; the provision of protection measures and other forms of support to all those involved in the search process.
8. As a follow-up to the event, the **ICRC** is in the process of analyzing and developing **practical guidance** on a number of issues, including **family participation** and the **immediacy of the search**.
9. **swisspeace** emphasized the importance to ensure awareness-raising and capacity-building to improve search processes. swisspeace announced that it would reflect on the design of **follow-up activities** with regard to some of the themes discussed together with the ICRC and the CED, such as the **relationship between the search and criminal investigations**, building upon its experience in the area of archives and dealing with the past, its research on civil society engagement in the search and in accompanying multi-stakeholder processes.

Missing persons

A global response

Hundreds of thousands of people are missing around the world as a result of armed conflict, violence, migration and natural disasters. Some go missing in action, others are forcibly disappeared, and thousands lose contact with their loved ones as they flee fighting or seek a better life elsewhere. Disappearance is a global problem that has devastating, often long-lasting consequences for families, communities and entire societies.

The ICRC's Central Tracing Agency has been tracing missing persons and reconnecting separated families for more than 150 years. Convinced that more needs to be done, the ICRC launched the Missing Persons Global Response Project in 2018. In partnership with other actors, this initiative seeks to bring together experts, family representatives and other stakeholders from around the world to build consensus around best practices and to promote technical standards – developing new ones, where needed.

The workshop in Jordan was the third of five gatherings planned for 2019. Each workshop is intended to focus on a different aspect or subgroup of the issue, and together, by the end of the four-year project, will contribute to developing better-informed practices and technical standards for those working to find missing persons around the world.

About swisspeace's work on the search for disappeared persons

swisspeace is a practice-oriented peace research institute combining operational work with academic research. The Dealing with the Past Program supports governmental and non-governmental actors in the design, implementation, monitoring and evaluation of Dealing with the Past²⁸ (DwP) and transitional justice activities. swisspeace provides a wide range of training opportunities and contributes to the research-policy nexus through research projects, conferences, publications and teaching. The institute supports a number of transitional justice mechanisms, in particular with regard to information and record management, access to archives, databases, use of archives for transitional justice,²⁹ participation, memorialization and outreach. As the search for victims of enforced disappearance is a crucial aspect of Dealing with the Past activities, swisspeace works to link up research, policy and practice.

Since 2019, swisspeace has been involved in two projects related to the search for disappeared persons: in a *multidisciplinary research project funded by the Swiss Network for International Studies*, they looked at search practices in El Salvador and Colombia and assessed how the involvement of family members relates to longer-term reconciliation and trust in institutions.³⁰ In a EU-funded project entitled Increasing Accountability and Preventing Enforced Disappearances and Extrajudicial Killings in Mexico, Nepal, the Gambia and Beyond, swisspeace supported the Committee on Enforced Disappearances in the process of public consultations, finalization and dissemination of the Guiding Principles for the Search for Disappeared Persons, all with a view to improving existing practices in the search for disappeared persons. In order to introduce the Guiding Principles to a wider range of experts and to increase their practical relevance, swisspeace, together with the ICRC, organized the International Expert Working Meeting on the Search for Missing Persons, including Victims of Enforced Disappearance, in Jordan in September 2019. As a follow-up to the meeting, swisspeace will focus its activities on exploring the links and the coordination between the search and criminal investigations concerning disappeared persons.

²⁸ Dealing with the Past refers to the processes that address the rights of victims and societies as a whole to truth, justice, reparation and guarantees of non-recurrence in the aftermath of grave human rights violations, breaches of international humanitarian law and related grave forms of corruption that facilitated these crimes; Guiding Principles for Safe Havens for Archives at Risk: https://www.ica.org/sites/default/files/guiding_principles_for_safe_havens_for_archives_at_risk_copyright_creative_commons_cc_by_nc_4.0_ica.pdf (all links accessed 10 February 2020).

²⁹ For more information on the Archives and Dealing with the Past Project: <http://archivesproject.swisspeace.ch/>.

³⁰ For more information: <https://www.swisspeace.ch/projects/research-project/connecting-legal-and-psychosocial-aspects-in-the-search-for-victims-of-enforced-disappearance-in-colombia-and-el-salvador>.

Missing Persons A Global Response

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