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Committee on Enforced Disappearances**Draft guiding principles for the search for disappeared persons**

1. Since the entry into force of the International Convention for the Protection of All Persons from Enforced Disappearance (The Convention), on 23 December 2010, hundreds of requests from persons in States parties to the Convention were submitted to the Committee, triggering art. 30 of the Convention, as a matter of emergency, in order to seek and find a disappeared person (“Urgent actions”). These requests and the following exchanges of information with the competent authorities of the State parties and the authors of the requests allowed the Committee a deep insight into the normative framework, the necessary resources and capabilities of the institutions and persons responsible for the search as well as the limits and deficiencies in the existing procedures that direct the search for the disappeared persons.
2. In view of this accumulated experience, the Committee, from its 10th session onwards, started to study good practices and gaps in a more systematic way and dedicated several thematic discussions to the topic, with participation of experts in the field. Some Committee members also participated in international expert meetings on searching for the disappeared in Berlin and in Bogota in 2017 and 2018, respectively.
3. At its fourteenth session, the Committee decided to request the Committee’s rapporteurs in charge of the study to continue considering the issue of the obligation under the Convention to search for and locate disappeared persons and to prepare guidelines on such an obligation. In accordance with the decision of the Committee to translate draft documents (A/71/56, para. 19), it also decided to have a draft ready in the working languages of the Committee for consideration at its fifteenth session with a view to discuss and adopt it in the plenary (§.14.g. A/73/56).
4. Accordingly, at its 15th session, the Committee discussed a draft document prepared by the rapporteurs in close consultation with several international experts. After a general discussion, the Committee revised and approved at first lecture these “Draft guiding principles for the search for disappeared persons”. These guiding principles consist of a compilation of good practices. State parties can rely on them for the enactment of their laws and regulations and the design of their policies for the search of disappeared persons.
5. The Committee decided the dissemination of the revised draft in order to open consultations with all stakeholders, seeking their contributions before 25 January 2019. This invitation was addressed to States Parties, National Human Rights Institutions, civil society organisations, academic experts and, not least, family members of disappeared persons and their associations. The Committee, according to article 28 of the Convention, also decided to consult the concerned entities, in particular the Working Group on Enforced or Involuntary Disappearances. The Committee requested the rapporteurs to analyse all these contributions and to present a consolidated draft in due time in order to consider the guiding principles at its 16th session, in April 2019.
6. The Committee welcomes the ongoing study of the Working Group on Enforced or Involuntary Disappearances on standards and public policies for an effective investigation of enforced disappearance. The Committee, along with the Working Group on Enforced or

Involuntary Disappearances (see, A/HRC/39/46, §.79), considers that the draft standards of the Working Group and these draft guiding principles are complementary in nature.

Annex

Guiding principles for the search for disappeared persons

Introduction

1. These principles are based on the International Convention for the Protection of All Persons from Enforced Disappearance and other applicable international instruments and on the experiences of many countries. They serve as guidelines for the consolidation of good practices in searching effectively for disappeared persons. They also affirm the key role that victims play in the search for disappeared persons, as provided for under the Convention

2. The guiding principles for the search for disappeared persons set out/contained in the present document identify mechanisms, modalities, procedures and methods to support the implementation of existing legal obligations under the International Convention for the Protection of All Persons from Enforced Disappearance and other applicable international instruments.

Principle 1. The search for a disappeared person should be conducted under the presumption that he or she is alive

In the absence of irrefutable evidence of the death of the disappeared person, the search should always be conducted under the presumption that the disappeared person is alive, regardless of the circumstances of the disappearance and of when the search is launched.

Principle 2. The search should be governed by a public policy

1. The main purpose of a public policy on enforced disappearance should be prevention. It should be based on an analysis of the chief modalities and patterns of enforced disappearances in the country.

2. The public policy should be clear, visible, consistent and comprehensive. It should be translated into concrete legislative and administrative measures, and education policies.

3. A key aim of the public policy should be to protect and provide comprehensive support to the victims and those close to them. To this end, the public policy should include psychosocial care and support for the victims and measures that ensure non-repetition and prevent the secondary victimization of family members and relatives.

4. The public policy should promote cooperation and collaboration among all State bodies in searching for disappeared persons.

Principle 3. The search should be immediate

1. As soon as there is knowledge of a disappearance, or when there are reasonable grounds to believe that a person has been subjected to enforced disappearance, the competent authorities should begin the search immediately and expeditiously.

2. The competent authorities should launch and conduct the search for the disappeared person on their own initiative, even when no formal complaint or request has been made.

3. Domestic legislation and the competent authorities should guarantee that the start of the investigative activities to search for and locate disappeared persons is not delayed by any length of time, even hours, such that the activities in question are undertaken immediately.

4. Where doubts arise about the occurrence of a disappearance, the search should nevertheless begin immediately. All available evidence required to investigate the possibility of a disappearance and protect the life of the disappeared person should be preserved.

Principle 4. The search should be carried out with a strategic approach

1. At the start of the search, all reasonable hypotheses concerning the person's disappearance should be explored. A hypothesis may be rejected only when it cannot be supported.
2. The competent authorities should design a comprehensive search strategy in which the activities to be performed are determined in an integrated fashion.
3. Without prejudice to their obligation to take appropriate measures to search for and locate disappeared persons on their own initiative, the competent authorities should use all the information supplied by family members and accusers. A lack of information from family members or accusers cannot be invoked to justify a failure to launch activities to search for and locate the disappeared person or a decision to suspend, halt or shelve investigations.
4. Use should be made of the competent authority's professional expertise in general and of its accumulated knowledge of activities to search for and locate disappeared persons.
5. The search and the investigation should be compatible with a contextual analysis. When the disappearance is part of a pattern, contextual analyses should help to clarify the motives and modus operandi of the perpetrators. Contextual analyses should be carried out independently within the competent authority, in accordance with scientific criteria and not based solely on information gathered from investigations into individual cases. Contextual analyses should not be used as a pretext for dismissing out of hand investigative or search hypotheses that are not, prima facie, consistent with them.

Principle 5. The search should be exhaustive

1. The search for the disappeared person and the criminal investigation of the persons responsible for the disappearance should be mutually reinforcing. The criminal investigation should not take away from the urgency of investigating the fate and whereabouts of the disappeared person using appropriate staff and equipment.
2. When the search is conducted by non-judicial authorities independent of those that make up the justice system, mechanisms and procedures should be established to ensure cooperation, coordination and an exchange of information between these authorities and the ones responsible for carrying out the criminal investigation, in order to guarantee that the progress and results achieved on both sides feed into one another. The competencies of both sets of authorities should be clearly defined by law, so as to prevent them from overlapping and interfering with one another and ensure that they can be complementary. The existence of mechanisms and procedures for searches by administrative, non-judicial and other bodies cannot be invoked as an obstacle to the pursuit of criminal investigations or as an alternative to them.
3. If responsibility for the search lies with specialized departments or units of the bodies in charge of the criminal investigation (public prosecutor's offices, attorney general's offices or criminal courts), the same level of attention should be devoted to the search as to the criminal investigation. Neither one should have priority over the other. The information obtained from the investigation into the crime of enforced disappearance should be used efficiently and expeditiously in the search for the disappeared person and vice versa. The distribution of trained professionals should reflect the fact that the search and the investigation require equal attention.
4. The completion of the criminal investigation, along with any conviction or acquittal of the persons accused of having committed an offence of enforced disappearance, should not constitute an obstacle to the continuation of search activities or be invoked to justify their suspension. These activities should be pursued until it has been possible to determine with certainty the circumstances of the disappearance and the fate and whereabouts of the disappeared person.

Principle 6. The search should be effective

1. Each State in which cases of enforced disappearance occur or acts comparable to enforced disappearance are committed by non-State groups should have competent institutions with the capacity to search for disappeared persons.
2. The authorities responsible for the search should have an administrative structure and a budget that enable them to undertake the search activities with the required technical capacity, security and confidentiality. When necessary, they should be able to turn to specialized international bodies.
3. The authorities with the competence to undertake search activities should have the necessary powers to access locations when necessary and coordinate with all other national, regional and local bodies whose cooperation is required to ensure an effective and expeditious search. The authorities responsible for the search should have unrestricted access, and the power to conduct unannounced visits, to all places where the disappeared person may be, including military and police facilities.
4. The authorities responsible for the search should have unrestricted access to all information, documents and databases, including national security databases, that they consider necessary to search for and locate disappeared persons.
5. Those responsible for the search should have the necessary financial and technical resources to undertake the search activities, along with the personal capacity and the logistical, technical and scientific support required to travel to places that need to be visited. When necessary, and if requested, they should be afforded adequate protection.
6. The bodies in charge of the search should have the necessary human and professional resources, with adequate professional training and up-to-date logistical, technical and scientific resources. These resources should be drawn from all relevant scientific disciplines to ensure an effective and exhaustive search. This principle applies both to immediate searches, when it is known that a person has been disappeared, and searches conducted as part of investigations of mass or clandestine graves.
7. The protection and analysis of the information gathered at the crime scene from the outset should be prioritized, as should the collection of all data that may help to locate the disappeared person and clarify his or her fate, such as telephone communications, video recordings and other available evidence. The failure to collect these data, or their loss or destruction, should be viewed as serious misconduct by the officials responsible.
8. States should establish genetic databanks and consultation systems that make it possible to obtain results quickly during the search. In establishing these databanks, it should be ensured that:
 - (a) The administering authority of the genetic databank has an appropriate legal framework affiliated to the authority responsible for the search;
 - (b) Procedures for the gathering of DNA samples require the prior and informed consent of the potential donors of the samples and the confidentiality of the victims, and ensure that the samples will be used exclusively to identify and locate the disappeared person;
 - (c) The personal information contained in these databases and the chain of custody are duly protected and technically preserved until the disappeared person has been located and fully identified.

Principle 7. The search should be informed

1. States should establish registers of, and databanks on, disappeared persons which cover the entire national territory and that make clear the authority that enters the information, the date on which a person was reported missing, the date on which they were found alive or their remains were identified and the investigations that were conducted to establish whether an enforced disappearance occurred and the reason for the disappearance. These registers and databanks should be continuously updated.
2. The authorities responsible for the search should use all the information and documentation available and/or collected. They should have full knowledge of the databanks

and other relevant registers to search for, locate and identify disappeared persons. They should also have full access to the information contained in dossiers, files and other registers, including military registers and files, when necessary.

3. Relevant data gathered during a search should be entered diligently and promptly into the register of disappeared persons so that they are available for other searches.

Principle 8. The search should be coordinated

1. The search should be centralized under, or coordinated by, a competent body that ensures effective coordination with all the other entities whose cooperation is needed for the search to be effective, exhaustive and prompt.

2. Under no circumstances should decentralized bodies (whether they be federal, autonomous, municipal or of another nature) in a country act as a barrier to an effective search. States should guarantee, in their legislation and through administrative or other regulations, that the search is in line with these guiding principles across all bodies and at all levels of the State.

3. When there are indications that a disappeared person may be in a foreign country, the search should have recourse to all available cooperation mechanisms.

4. The experience of national and international organizations specialized in searching for disappeared persons and identifying human remains should be drawn on systematically in the procedures and training of the entities that conduct the search.

Principle 9. The search should be independent

1. The entity responsible for the search should be independent, autonomous and staffed by persons who offer guarantees of accredited impartiality, professional competence, independence and moral integrity. Under no circumstances may the entity responsible for the search be hierarchically subordinated to any institution, agency or person that may be involved in cases of enforced disappearance.

2. States shall take the necessary measures to ensure that, in the performance of its duties, the entity responsible for the search is free from influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.

3. No person suspected of having participated in a crime of enforced disappearance should be in a position to influence the course of an investigation or search. When such suspicions fall on a person working for an institution that is overseeing or cooperating in the search, he or she should be suspended immediately.

Principle 10. The search should be governed by the principle of transparency

1. Search protocols are an important tool, both in terms of ensuring the effectiveness of a search and in its oversight by competent authorities, family members and persons with a legitimate interest in it. Accordingly, these protocols should be public and widely disseminated.

2. If, in special cases, it appears to be in the interests of the effectiveness of a search to pursue an avenue or undertake an activity that is different to that indicated in the protocol, the corresponding decision should be justified and documented.

3. Search protocols should be revised and updated periodically or whenever necessary, in order to incorporate, in the search, activities whose usefulness has been demonstrated and that had not initially been envisaged. Any updates or revisions to the protocols shall be justified and documented.

4. Compliance with the protocols and other rules governing the search should be monitored effectively by independent bodies.

Principle 11. The search is a continuing obligation

1. The search for a disappeared person should continue until his or her fate and/or whereabouts have been determined with certainty.

2. If the disappeared person is found alive, the search may be considered as completed only when the person is again under the protection of the law; such protection must also be guaranteed if the disappeared person is found deprived of his or her liberty in a legal detention facility.
3. If the disappeared person is found dead, the search shall be considered as completed when his or her remains have been fully identified and handed over to his or her family members or relatives in a dignified manner. When the identification of remains is partial, any decision to discontinue the search to locate and identify the missing remains should take into account the actual chances of identifying more remains and the needs expressed by the family members in the context of their cultural norms concerning funerals. Any decision to continue the search requires the prior and informed consent of the family members.
4. If the disappeared person is not found, but there is credible evidence beyond a reasonable doubt of his or her fate or whereabouts, the search may be ended when it is not physically possible to recover the person or his or her remains and once all obtainable information has been exhaustively analysed and all possible scenarios investigated. This decision requires the prior and informed consent of the family members or relatives of the disappeared person. A witness statement, uncorroborated accounts or an affidavit cannot be viewed as sufficient proof of death for ending the search.
5. Under no circumstances should ending the search for a disappeared person serve as grounds for suspending or concluding the investigation into the crime of enforced disappearance.

Principle 12. The search should be participatory

1. The active and informed participation of the disappeared person's family members, relatives, legal representatives, counsel or any person authorized by them, and any other person with a legitimate interest should be guaranteed and protected at all stages of the search, without prejudice to the measures adopted to preserve the integrity and effectiveness of the criminal investigation or the search. The persons mentioned above should have access to information on the action taken and the progress and results of the search and the investigation. Their contributions, doubts, questions and alternative suggestions should be taken into account at all stages of the search and the investigation, as inputs to make the search more effective, without subjecting them to formalities that hinder them.
2. Access to information includes an obligation to provide adequate guidance to the family members and relatives on their rights and how to exercise them, along with regular information on the measures adopted to find the disappeared persons and investigate their disappearance. The officials responsible for the search should be trained to communicate compassionately and respectfully with the family members and other persons involved in the search.

Principle 13. The search should be protected

1. During the search, the protection of the family members and relatives should be ensured by the competent authorities at all times, regardless of the level of involvement that the family members and relatives choose to have in the search. Persons who, in the course of the search and/or investigation, give testimony or statements should benefit from specific protection measures.
2. States should provide financial support to the family members and relatives who search for a disappeared person, bearing in mind the harm caused to the household income by the disappearance of a family member and the additional costs incurred during the search, such as transport, accommodation and loss of working hours, among others.
3. The officials responsible for the search should take into account the risks to mental health that persons who search for disappeared relatives may face, such as those stemming from the discovery of the fate of a family member or from frustration at not uncovering any information. During the search for, and location, recovery, identification and handover of, the disappeared person, the authority in charge of the search shall offer psychosocial support to the family members or guarantee that it may be provided by other entities.

Principle 14. The search should be conducted using a differential approach

1. The search for persons in an especially vulnerable situation requires special procedures, experience and knowledge, together with complementary mechanisms to ensure the participation of such persons.
2. The entities responsible for the search should pay special attention to cases involving disappeared children and adolescents, and develop and carry out search actions and plans that take into account the extreme vulnerability of disappeared children and adolescents and their family members. When disappeared children and adolescents are found and returned home, officials should respect the principle of the best interests of the child.
3. In cases involving disappeared adolescent and adult women, all stages of the search and investigation should be conducted with a gender perspective. There is also a need for staff, including female staff, who have received gender-responsive training.
4. In cases involving disappeared persons who are members of indigenous peoples or other ethnic or cultural groups, there is a need to consider and respect specific cultural patterns when dealing with the disappearance or death of a member of the community, which may require the use of different search rules. An effective search should involve the provision of translators of the languages of the affected groups and bicultural interpreters of their cultural patterns, whose knowledge may be a prerequisite for an effective search.
5. Differential approaches should be adopted with regard to both search strategies and the care afforded to persons who participate in the search, such as family members and other persons close to the disappeared person.

Principle 15. The search should guarantee respect for human dignity

1. Respect for the dignity of victims should be the guiding principle at every stage of the search for the disappeared person.
 2. During the search and investigation, the dignity of the victims requires that they should be recognized as particularly vulnerable, at-risk individuals and as rights holders who should be protected and who possess important knowledge that may contribute to the effectiveness of the search. Public officials should act with the awareness that they are working to guarantee the rights of the victims and should put all their work at the service of victims.
 3. The authorities have a duty to ensure that the victims, in particular family members, are not subject to stigmatization and other moral ill-treatment or slurs that undermine their dignity, reputation or good name as people, or those of their disappeared loved one.
 4. The remains of a disappeared person should be handed over to the family members under decent conditions, in accordance with the cultural norms and customs of the victims and with respect at all times for the fact that they are the mortal remains of a person, and not objects. The return of remains should also involve the means and procedures needed to ensure a dignified burial consistent with the cultural customs of the families who receive them.
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