Feedback on the CED’s "Draft guiding principles for the search of the disappeared".

29 January 2019

The International Committee of the Red Cross (ICRC) presents its compliments to the Committee of Enforced Disappearance (CED) and thanks it for the work achieved on the “Draft guiding principles for the search for disappeared persons” (hereafter “Guiding Principles”). The ICRC is keen to contribute to the debate on The Missing[[1]](#footnote-1) by sharing its experience in the field and expertise.

The ICRC supports the CED initiative in formulating these guiding principles as elements to design sound guidance regarding the search for victims of enforced disappeared and encourages authorities when adopting search policies, laws and regulatory frameworks to take them into account. Based on ICRC experience and practice, we would like to make further suggestions on what the CED calls:

1) disappeared persons, and 2) the search for and locate disappeared persons.

Firstly as general recommendation, while the general title refers to “disappeared persons”, it then refers to the Convention on Enforced Disappearance. Does the term “disappeared persons” refer to “victims of an enforced disappearance” in line with the Convention or does it refer to disappeared persons more generally?

Furthermore, assuming that the scope of the document is enforced disappearance in line with the Committee’s mandate, we consider that it could be useful to mention in the document that although this is the scope of the Guiding Principles, they may also be useful for other cases of missing persons.

In this vein the CED pays attention to interventions in personal domains, namely the relatives of disappeared people and argues that they are an important component of a comprehensive strategy of search. Moreover the CED highlights the importance of psycho-social support. The CED cannot be more true. In the specific case of missing persons, including the victims of enforced disappearance, one of the most pressing needs expressed by the relatives of missing persons is for an individualized response concerning the fate and whereabouts of the missing person. The process leading to delivering individualized responses is often difficult and always takes time. In the meantime, the families of missing are living in ambiguity over the loss of their loved one, suffer from it and have little outlet to deal with the pain. Psycho-social support programs – not to be confounded with psychological counselling which might be necessary for a small number of families more profoundly traumatized by their loss – can help family members in different ways to cope with their situation. Coupled with other measures to make the families’ live more livable – such as helping families economically or supporting them to overcome administrative hurdles – this support is an extremely useful tool to help families find strength to move forward, thus contributing to the process of closure and the rebuilding of social fabrics. Such processes also allow the families to express their own needs and contribute to finding tailored solutions that respond to their individual situation.

Secondly, in relation to the purpose of the search and investigation, the ICRC considers that a humanitarian approach seeks to clarify the fate and whereabouts and to inform families. The humanitarian approach should work in complementarity with the judicial one.

Finally, the ICRC wishes to stress its commitment to supporting the CED work. It will continue to follow them closely at the Human Rights Council and the United Nations General Assembly. The ICRC is available to discuss these matters further with States or groups of States, and stands ready to contribute to future efforts on this issue.

Please find below our written comments and proposals related to the relevant principles. Kindly note that given the word count, the comments are purposely straight forward. Additional proposals and comments are also inserted in the body of the CED document.

**TEXT**

**Comments start**

**Draft guiding principles for the search for disappeared persons**

**Paragraph 1**

Does the term “disappeared persons” refer to “victims of an enforced disappearance” in line with the Convention or does it refer to disappeared persons more generally?

COMMENTS ON THE ANNEX

Guiding principles for the search for disappeared persons

**Introduction**

Paragraph 1

When referring to “the other applicable international legal instruments”, it would be good to have more details on what these other instruments are. Also, given that there are also pertinent obligations stemming from customary international law it would be important to also include this here.

Paragraph 2

Linked to comment under para 1, it would be important to also include relevant obligations stemming from customary international law.

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

Our question is why only “public policy”? What about laws and regulatory frameworks? Perhaps we could re-phrase as follows: “policy, legal and regulatory frameworks”. The effective resolution of cases should be addressed as well, including related to the deceased (new outstanding cases of unidentified bodies). Our proposal of wording is embedded in the text in track mode change format).

Finally, a last suggestion, is to specify what the public policy is for i.e. “…to effectively resolve and prevent disappearances.” This could be added to the title of principle 2

Paragraph 3

The reference to the families of the disappeared as victims impacted by the disappearance appears for the first time in this paragraph, with the wording “close to them”. Given that the principles place the victims at the center, we suggest from the start to replace the wording “close to them” by “families”.

In the same paragraph, we suggest reference to ***mental health*** *and psychosocial* care and support (given that these services should be provided by the State as part of the “reparations”, and would naturally fall within Ministry of Health responsibilities, it is important to use the globally used term “mental health” when referring to these type of services.

**Principle 3: The search should be immediate**

Suggest an additional provision under this principle, in which any decision to delay or cancel the search of a disappeared person should be satisfactorily justified and documented. The family should be consulted accordingly (suggestion embedded in the text in track mode change format)

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

The understanding of the wording “**strategic approach”** may lead to confusion, and might differs from a country to another (thus there is a risk to impact the translation and meaning in different languages). Moreover, the paragraphs under this principle 4, describe and detail well the different actions to be taken. So we propose to replace the wording “strategic approach” by the wording **“comprehensive**” in the title.

Paragraph 2: in line with the above comment, and for clarification, we think that ending with “integrated fashion” it is vague, unless qualified accordingly. Our recommendation is to add a sentence related the means required, for instance: **quote** “(...) *an integrated fashion, including with all the necessary means and procedures required for finding the person searched*” **end of quote** (suggestion embedded in the text).

Paragraph 4: we recommend to add **“the appropriate forensic expertise and methods”** in the search and to resolve cases of disappeared persons (proposal inserted)

Paragraph 5: same as above (proposal inserted)

**Principle 5: The search should be exhaustive**

As a general comment, we recommend that the purpose of the search should be clarified, including what we understand about the search earlier in the document.

Paragraph 2: The issue of providing information to criminal investigations can be more nuanced. In this respect we recommend to clarify the whole sentence in order to ensure distinction between criminal investigation and the search of the missing person. In addition, we advise to seize the opportunity of this Draft principles document (which are based on best practices, for instances assessments of the needs of the families carried out in various contexts), to underline that the main needs of the families is to find the missing persons. It is important that the search and the criminal investigation are complementary processes. In this sense as earlier recommended, two distinct approaches to the missing – one mechanism ensuring an adequate humanitarian response for all missing persons; and one mechanism – responding to justice-related needs. As for the exchange of information between the 2 mechanisms it would be important to clarify the process of information sharing envisaged.

Regarding cooperation among actors in the same paragraph, does it refer to State bodies only? If so, this should be clarified. If not, a reference would need to be added to limits based on mandates of respective organizations.

Finally we suggested few editing of some sentences (inserted in the text).

Paragraph 3:please refer to our comment and recommendation above. ICRC recommendation is to establish two separate entities. So in line with our previous recommendation, the process of clarifying fate and whereabouts of missing persons and providing an individualized answer to their families is the main need of the families. There is a complementarity of this humanitarian approach with the juridical one.

**Principle 6. The search should be effective**

Paragraph 2, Paragraph 4 and Paragraph 6 (b): recommend to add data protection policy and compliance as part of the requirements to undertake search activities.

Paragraph 8: proposal of language inserted in the text

**Principle 7: The search should be informed**

This title is misleading because a search cannot “be informed”. Alternative proposed title: **Information about the search should be complete, thorough and properly recorded and stored.**

**Principle 8. The search should be coordinated**

Paragraphs 3 and 4**: comment and language proposals inserted**

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

Paragraph 2**: proposals/comments inserted**

**Principles 11, 12, 13, 14, 15: comments and proposals of editing are inserted as per reviewer proposal**

**Comments end**

1. ICRC uses the wording “missing persons” when referring to all victims of disappearance, including victims of enforced disappearance. For ICRC it is understood that a missing person is one “whose whereabouts are unknown to his/her relatives and/or who, on the basis of reliable information, has been reported missing in accordance with national legislation in connection with an international or non-international armed conflict, a situation of internal violence or disturbances, natural catastrophes or any other situation that may require the intervention of a competent State authority (See ICRC, “Guiding principles/model law on the missing”, The Domestic Implementation of International Humanitarian Law: A Manual, Annex IV ) [↑](#footnote-ref-1)