

Handout for the group exercise for participants

Module 7: The guiding principles for the search for disappeared persons

WORKING GROUP 1

Please appoint a rapporteur.

Identify and briefly present the main requirements concerning victims' participation in the search as set out in the guiding principles by answering the following questions:

Who do we mean by “victims”? What is the role of victims in the search process? How can it be ensured? What is a differential approach to the search and what does it concretely entail?

You have 30 minutes to prepare your arguments. Thereafter, the rapporteur will have 5 minutes to present them in plenary.

Guiding principles for the search for disappeared persons

Principle 2. The search should respect human dignity

1. Respect for the dignity of victims should be a guiding principle at every stage of the search for the disappeared person.
2. During the search process, 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 be trained to conduct their work using a differential approach. They should be aware 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, including 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. Where necessary, they should take steps to uphold the dignity of victims against defamatory attacks.
4. The body or 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, with respect at all times for the fact that they are the mortal remains of a person, and not objects. The return should also involve the means and procedures needed to ensure a dignified burial consistent with the wishes and cultural customs of the families and their communities. When necessary, and if family members so wish, States should cover the cost of transferring the body or remains to the place chosen by the family members for burial, even if the transfer is to or from another country.

Principle 4. The search should follow a differential approach

1. The search for persons in situations of vulnerability requires special procedures, experience and knowledge that meet their particular needs. A differential approach should also be adopted in supporting persons who participate in the search, such as family members and other persons close to the disappeared person. Such an approach should also be taken into account in the identification and handover of disappeared persons who are found.
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 their extreme vulnerability. Officials should respect the principle of the best interests of the child at all stages of the search. Where there is doubt as to the individual's age, it should be assumed that he or she is a child.
3. In cases involving adolescent girls and women who have disappeared or are involved in the search, all stages of the search should be conducted with a gender perspective and staff, including female staff, who have received proper training.
4. In cases involving disappeared persons or persons participating in the search 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. An effective search should involve the provision of translators of the languages of the communities and bicultural interpreters.

5. In cases involving disappeared persons or persons participating in the search who are members of the lesbian, gay, bisexual, transgender and intersex community, have disabilities or are older persons, the bodies responsible for the search should take account of their particular needs.

Principle 5. The search should respect the right to participation

1. Victims, their legal representatives, counsel or any person authorized by them, and any person, association or organization with a legitimate interest have the right to take part in the search. This right should be protected and guaranteed at all stages of the search process, without prejudice to the measures taken to preserve the integrity and effectiveness of the criminal investigation or the search itself. The persons mentioned above should have access to information on the action taken and on the progress and results of the search and the investigation. Their input, experiences, alternative suggestions, questions and doubts should be taken into account at all stages of the search, as contributions to increasing the effectiveness of the search, and should not be subjected to formalities that hold them up. The refusal of the above-mentioned persons to exercise their right to participate should in no way be used by the authorities as a reason not to initiate or advance in the search.

2. Ensuring access to information includes an obligation to provide adequate guidance to victims concerning their rights and the mechanisms for the protection of those rights. It also includes the duty to provide regular and occasional information on the measures adopted to find the disappeared persons and investigate their disappearance, and on any obstacles that may impede the progress of the search. Victims should be informed and consulted before the authorities pass their information on to the media. The officials in charge of the search should be trained on protection with a differential approach and how to communicate compassionately and respectfully with the family members and other persons involved in the search and should be aware of and sensitive to the potential impact of participating in the search on the physical and mental health of victims.

Principle 14. The search should be carried out safely

1. During the search process, the competent authorities should ensure the protection of the victims at all times, regardless of the level of involvement that they choose to have in the search. Persons who give testimony, statements or support in the course of the search and/or investigation should benefit from specific protection measures that take account of the particular needs in each case. All protection measures should take account of the specific and individual characteristics of the persons requiring protection.

2. States should provide financial support to the victims 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 physical and mental health that persons and communities may face throughout the search process, such as those stemming from the discovery of the fate of a family member or from frustration at not uncovering any information. Whenever such a risk is identified, from the beginning of the search and even after the disappeared person has been handed over, the competent authorities should offer comprehensive support to the victims and to all persons involved in the search. All protection measures should respect the beneficiaries' right to privacy. Such measures require the prior consent of beneficiaries and are subject to review at their request. The State should allow and facilitate non-State protection measures.

4. States should ensure inter-agency coordination among the entities responsible for protection measures.

Handout for the group exercise for participants

Module 7: The guiding principles for the search for disappeared persons

WORKING GROUP 2

Please appoint a rapporteur.

Identify and briefly present the main requirements concerning the authorities/institutions involved in the search as set out in the guiding principles by answering the following questions:

Which are the main authorities/institutions involved in the search process? What are the challenges that they have to face to ensure cooperation among them? In your experience is there a particular tension between the search and criminal investigations? If so, how can it be addressed?

You have 30 minutes to prepare your arguments. Thereafter, the rapporteur will have 5 minutes to present them in plenary.

Guiding principles for the search for disappeared persons

Principle 12. 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 coordinated 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, as a migrant, refugee or victim of trafficking in persons, the authorities responsible for the search should use all available national and international cooperation mechanisms and, when necessary, establish such mechanisms.
4. States should take the necessary measures to guarantee the transfer of the knowledge and technology needed for search processes, including those of national and international organizations specialized in searching for disappeared persons and identifying human remains. Their experiences should be drawn on in the establishment of search entities, the definition of their procedures and the ongoing training of their staff.

Principle 13. The search and the criminal investigation should be interrelated

1. The search for the disappeared person and the criminal investigation of the persons responsible for the disappearance should be mutually reinforcing. The comprehensive search process for disappeared persons should be initiated and conducted with the same effectiveness as the criminal investigation.
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 them 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 regularly and without delay. 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 process 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. 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 or the declaration of absence by reason 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 15. The search should be independent and impartial

1. The entities responsible for the search should be independent and autonomous and should perform all their duties in compliance with the principle of due process. All staff, including administrative and support staff, should demonstrate independence, impartiality, professional competence and the capacity to carry out their work using a differential approach, sensitivity and moral integrity.

2. Under no circumstances may the entities responsible for the search be hierarchically subordinated to any institution, agency or person that may be involved in cases of enforced disappearance.

3. No person suspected of having participated in an enforced disappearance should participate or be in a position to influence the course of the search. When such suspicions fall on a person working for an institution responsible for or cooperating in the search, he or she should be relieved of his or her search duties immediately.

4. States should 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.

Principle 16. The search should be governed by public protocols

1. Search protocols are an important tool in ensuring the effectiveness and transparency of the search. They should allow for oversight of the search by the competent authorities, victims and all persons with a legitimate interest in it. These protocols should be public.

2. Innovation and creativity may sometimes be required to ensure a quick and efficient search, which may result in changes to existing protocols. Innovations should be reasoned and transparent.

3. Search protocols should be revised and updated periodically or whenever necessary, in order to incorporate lessons learnt, innovations and good practice that had not initially been envisaged. Any updates or revisions to the protocols should be reasoned and transparent.

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

Handout for the group exercise for participants

Module 7: The guiding principles for the search for disappeared persons

WORKING GROUP 3

Please appoint a rapporteur.

Identify and briefly present the main requirements concerning public policies on the search as set out in the guiding principles by answering the following questions:

What are the key issues that public policies concerning the search should cover? How can it be ensured in practice that the search is governed by a public policy?

You have 30 minutes to prepare your arguments. Thereafter, the Rapporteur will have 5 minutes to present them in plenary.

Guiding principles for the search for disappeared persons

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

The search should be conducted under the presumption that the disappeared person is alive, regardless of the circumstances of the disappearance, the date on which the disappearance began and when the search is launched.

Principle 3. The search should be governed by a public policy

1. The search should be conducted as part of a comprehensive public policy on disappearances, particularly in contexts where disappearances are frequent or on a mass scale. In addition to the search, the objectives of the comprehensive policy should be the prevention of enforced disappearances, the clarification of earlier disappearances, the appropriate punishment of perpetrators and the adoption of measures for the protection of victims, among other measures to ensure non-repetition of enforced disappearances.

2. The public policy on enforced disappearances should adopt a differential approach, as mentioned in principle 4, in all its operational programmes and projects and not only in respect of vulnerable persons or victims.

3. The specific public policy on searches should be built on the basis of States' obligations to search for, locate, release, identify and return the remains, as appropriate, of all disappeared persons. It should take into account the analysis of the various forms and criminal patterns of disappearances in the country.

4. The public policy should be comprehensive, clear, transparent, visible and consistent. It should promote cooperation and collaboration among all State bodies and also with other States and international agencies. It should be translated into appropriate legislative, administrative and budgetary measures and educational policies and other relevant sectoral policies.

5. All stages and aspects of the public search policy should be designed and implemented with the participation of victims and all persons and civil society organizations with experience and a willingness to cooperate in the design and/or implementation of the policy.

6. A key aim of the public search policy should be to protect and provide comprehensive support to the victims. It should include psychosocial care and support for the victims and measures that prevent their revictimization or secondary victimization. This public policy should include measures to ensure respect for victims and to prevent and punish any form of stigmatization against them.

Principle 8. The search should be conducted on the basis of a comprehensive strategy

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 based on objective and verifiable criteria.

2. Hypotheses on the disappearance of a person should be based on all available information, including that provided by the relatives or complainants, and the use of scientific and technical criteria; they should not be based on preconceptions regarding the individual circumstances and characteristics of the disappeared person.

3. With the participation of victims and their organizations – if they so wish – the authorities responsible for the search should design a comprehensive strategy for all stages of the search process in which the activities to be performed are determined in an integrated fashion, through all necessary and appropriate means and procedures for the identification, release or exhumation of the disappeared person or establishment of the person’s identity. The comprehensive search strategy should include an action plan and a timeline and should be evaluated periodically.
4. The competent authorities should make use of appropriate forensic methods and their professional experience and accumulated knowledge in searching for and locating disappeared persons. They may also request the cooperation of persons with specialist and technical knowledge, forensic experts and other scientists, and civil society organizations to come up with hypotheses for the disappearance, design the comprehensive strategy and conduct search activities.
5. Without prejudice to their obligation to take appropriate measures to search for and locate disappeared persons on their own initiative, the competent authorities should consider all information provided by victims or complainants and make use of the experience of victims and their organizations that have carried out search activities.
6. The comprehensive search strategy should take into account the contextual analysis. Contextual analyses can be used to determine patterns, clarify the motives and modus operandi of perpetrators, profile disappeared persons and establish regional particularities that explain disappearances. The competent authority should carry out contextual analyses independently, 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.
7. When carrying out contextual analyses and designing comprehensive search strategies, the entities in charge of search processes should pay special attention if the disappeared person is a human rights defender or social activist.
8. The comprehensive search strategy for newborn and very young children should take into account the fact that their identity documents may have been altered and that they may have been taken from their families, given a false identity and handed over to a children’s institution or another family for adoption. These children and adolescents, who may by now be adults, should be searched for, identified and have their identity restored.

Principle 9. The search should take into account the particular vulnerability of migrants

1. Given the particular vulnerability of persons who cross international borders on a regular or occasional basis, especially unaccompanied children, the States concerned should take specific coordinated measures to prevent disappearances in that context. States should pay attention to the risks of enforced disappearance, which increase as a result of migration, especially in contexts of trafficking in persons, sexual slavery and forced labour.
2. States that send and receive migrants and refugees should adopt specific search mechanisms that take account of the difficulties associated with migration situations. They should offer guarantees and safe conditions to persons who can give testimony about enforced disappearances linked to migration.
3. The States concerned should develop cooperation agreements and establish competent authorities to allow for effective coordination in the search for disappeared persons at each stage of migration. Cooperation between search authorities in countries of origin, transit and destination should ensure the rapid and secure exchange of information and documentation that may help to locate disappeared persons in the country of transit or destination. In full compliance with international standards on

non-refoulement, States should ensure that the registration of migrants at border controls involves the individual examination of all applications for entry so as to allow for an effective search in the event of a person's disappearance.

4. Specific instruments are required to ensure the effective participation in search processes, from their countries of residence, of family members and persons close to persons subjected to disappearance on migration routes. Their knowledge and that of organizations with experience in supporting migrants should be included in the design of strategies and measures for the search for disappeared migrants.

5. States should adopt policies for the protection of victims of enforced disappearance at all stages of migration in order to avoid their revictimization, in particular when the victims are women and/or unaccompanied minors.

Handout for the group exercise for participants

Module 7: The Guiding Principles for the Search for Disappeared Persons (Guiding Principles)

WORKING GROUP 4

Please appoint a Rapporteur.

Come up with and briefly present main points on the requirements concerning the **collection and management of data and information in the search** as set out in the Guiding Principles by answering the following questions:

What are the key data and information (including DNA) that must be collected to ensure the effectiveness of the search process? Who can have access to those data and information and under which conditions? How can the right to privacy be ‘balanced’ with access to information?

You have 30 minutes to prepare your arguments. Thereafter, the Rapporteur will have 5 minutes to present them in plenary.

Guiding principles for the search for disappeared persons

Principle 10. The search should be organized efficiently

4. The authorities responsible for the search should have unrestricted access to all information, documents, databases, including national security databases, registers and records of the security, military and police forces and private institutions that they consider necessary to search for and locate disappeared persons. Where necessary, they should have the power to intervene to ensure the preservation of documents relevant to the search.

Principle 11. The search should use information in an appropriate manner

1. The authorities responsible for the search should take decisions on the basis of all the information and documentation available and/or collected. Information on the search should be recorded in a complete, thorough and appropriate manner.

2. States should establish registers and databases on disappeared persons that cover the entire national territory and that allow for disaggregation of such factors as the authority entering the data; the dates on which a person was reported missing, found alive, his or her body was exhumed, his or her remains were identified or handed over; and investigations to establish whether it was an enforced disappearance and the reason for the disappearance. These registers and databases should be continuously updated.

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. The experience gained during the search processes should also be recorded, analysed and preserved.

4. Registers and databases should be maintained even after the search has ended, when the person has been located, identified and placed under the protection of the law or when his or her remains have been handed over or identity restored. The information and documentation related to completed search processes should be preserved in archives to which the search authorities should have access.

5. Search authorities should make appropriate use of other registers and databases containing information on births, adoptions, deaths, migration and immigration, inter alia, that may be relevant to the search for, location and identification of disappeared persons. States should take the necessary measures to ensure that the authorities responsible for the search have access to the information contained in the registers and databases of other countries.

6. The collection, protection and analysis of all data and all information obtained that may help to locate the disappeared person and clarify his or her fate, such as telephone communications and video recordings, should be a priority from the outset. The failure to collect these data, or their loss or destruction, should be viewed as serious misconduct by the officials responsible.

7. States should establish databases with elements relevant to the search, including genetic databanks and consultation systems that make it possible to obtain results quickly. These databases should be designed using an interdisciplinary approach and aim to be mutually compatible. In establishing genetic databanks, it should be ensured that:

(a) The administering authority of the genetic databank has an appropriate legal framework that guarantees the operation of the database based on purely professional criteria, regardless of the institution to which it is affiliated;

(b) The personal information, including medical or genetic data, collected and/or transmitted as part of the search for a disappeared person may not be used or disclosed for purposes other than the search, without prejudice to their use in criminal proceedings relating to a crime of enforced disappearance or in the exercise of the right to obtain reparation. The collection, processing, use and storage of personal information, including medical and genetic data, shall not infringe or have the effect of infringing the human rights, fundamental freedoms or human dignity of an individual.

(c) The personal information contained in these databases and the chain of custody are duly protected and technically preserved.

8. States should ensure that the management of databases and registers of disappeared persons respects the privacy of victims and the confidentiality of information.

Handout for the group exercise for participants

Module 7: The guiding principles for the search for disappeared persons

WORKING GROUP 5

Please appoint a rapporteur.

Identify and briefly present the main requirements concerning the start and end of the search, its effectiveness and other factors as set out in the guiding principles by answering the following questions:

When should the search start and end? How is it possible to ensure the effectiveness of the search and that adequate security measures are adopted for all those involved in the process?

You have 30 minutes to prepare your arguments. Thereafter, the rapporteur will have 5 minutes to present them in plenary.

Guiding principles for the search for disappeared persons

Principle 6. The search should begin without delay

1. As soon as the competent authorities become aware, by any means, or have indications that a person has been subjected to disappearance, they should begin the search immediately and expeditiously. Where necessary, search activities should include visits to the relevant sites.
2. The authorities responsible for the search 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 activities to search for and locate disappeared persons is not subject to any waiting period, not even of hours, such that the activities in question are undertaken immediately. A lack of information from family members or complainants cannot be invoked to justify a failure to immediately launch activities to search for and locate the disappeared person.
4. Where doubts arise about the occurrence of an involuntary 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 and protected.

Principle 7. 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 shall also be ensured if the disappeared person is found deprived of liberty in a lawful detention centre.
3. If the disappeared person is found dead, the search may be considered as completed when the person has been fully identified in accordance with international standards and handed over to his or her family members or relatives in a dignified manner. When only partial remains have been found and identified, any decision to continue 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 discontinue the search should be taken in a transparent manner and requires the prior and informed consent of the family members.
4. If the disappeared person has not been found and there is credible evidence beyond a reasonable doubt of his or her fate or whereabouts, the search may be suspended when it is not physically possible to recover the person and once all obtainable information has been exhaustively analysed and all possible scenarios investigated. This decision should be taken in a transparent manner and requires the prior and informed consent of the family members or persons close to 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 result in the search or criminal investigation being closed.

Principle 10. The search should be organized efficiently

1. Each State in which cases of enforced disappearance occur or disappearances are committed by persons or groups acting without the authorization, support or acquiescence of the State should have competent institutions with the capacity to search for disappeared persons.
2. The authorities responsible for the search should have the legal capacity, necessary financial and technical resources, administrative structure and budget to enable them to promptly undertake the search activities with the required technical capacity, security and confidentiality. They should also have the necessary professional staff, with appropriate technical and personal skills, including training on protection following a differential approach, and with up-to-date logistical, technical and scientific resources, from all relevant disciplines, to ensure an effective and exhaustive search. They should have the capacity to travel to the places that need to be visited. When necessary, and if requested, they should be afforded adequate protection.
3. The authorities with the competence to carry out search activities should have unrestricted access, and full powers to conduct unannounced visits, to all places where the disappeared persons may be, including military and police facilities and private premises. Where necessary, they should have the power to intervene to ensure the preservation of sites relevant to the search.
4. The authorities responsible for the search should have unrestricted access to all information, documents, databases, including national security databases, registers and records of the security, military and police forces and private institutions that they consider necessary to search for and locate disappeared persons. Where necessary, they should have the power to intervene to ensure the preservation of documents relevant to the search.