

**Written Submission: Draft guiding principles for the search for disappeared persons on UN Committee on Enforced Disappearance**

Asia Justice and Rights (AJAR) submits these written contributions on the Draft Guiding Principles for the Search for Disappeared Persons.[[1]](#footnote-1)

1. **Background**

These contributions are submitted based on the practical experience of AJAR in promoting accountability for the “Stolen Children of Timor-Leste,” who were forcibly removed to Indonesia during the 1975-1999 conflict in Timor-Leste.[[2]](#footnote-2)

In 2008, the government of Indonesia and Timor-Leste established the Commission for Truth and Friendship (CTF), the first and only bilateral commission in the world to date. It was tasked with strengthening peace and friendship between the two countries by revealing the conclusive truth about the nature, scope, and causes of the violence committed in Timor-Leste in 1999. The CTF made significant findings about gross violations of human rights, crimes against humanity, and institutional responsibility and issued important recommendations, including a recommendation to establish a commission on disappeared persons.

The CTF concurred with findings reached by a prior truth commission in Timor-Leste, the Commission for Reception, Truth, and Reconciliation in Timor-Leste (CAVR), that thousands of East Timorese children, now adults, were forcibly transferred to Indonesia. In its recommendation for a commission for disappeared persons, the CTF recommended that both countries take action to identify the whereabouts of children separated from their families and notify their families in Timor-Leste.

There has been no significant progress on this recommendation. Therefore, since 2013, AJAR, in conjunction with a civil society-formed working group, has led the search for the Stolen Children of Timor-Leste. The searching process for the Stolen Children is slightly unique from other cases of disappearance since it covers two countries. During the process, civil society in both countries work together to search for disappeared persons in Indonesia and their family members in Timor-Leste. The working group also engages with the national human rights institutions and government in each country. Given the exceptional process and experience associated with the search for the Stolen Children, AJAR is positioned to provide an important perspective on the search for disappeared person and a unique contribution to the Draft Guiding Principles for the Search for Disappeared Persons.

For further detail concerning AJAR’s search for the Stolen Children, including some of the lessons learned from AJAR’s initiatives, see Section III.

1. **Comments and Proposed Text for the Draft Principles**

**Principle 2, paragraph 1**

*Comment:*

We propose to add “context” in the paragraph to ensure consideration of cultural, geographical, historical, and logistical aspects of enforced disappearances.

*Proposed text:*

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| 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, **contexts**, and patterns of enforced disappearances in the country. |

**Principle 2, paragraph 4**

*Comment:*

We note that as a matter public policy, the process should be open to public participation and collaboration, such as with academic experts and civil society organizations. This should also apply in the process of formulating public policy.

*Proposed text:*

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

**Principle 2, additional paragraph #1**

*Comment:*

A key lesson learned from the case of the Stolen Children of Timor-Leste is that cases can span two (or more) different countries. In the case of the Stolen Children, the victims are in Indonesia, while the families are in Timor-Leste. For this reason, the public policy should provide for a coordinating mechanism or otherwise provide for coordination to ensure an effective search.

*Proposed text:*

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| **#1 If the enforced disappearances or acts comparable to enforced disappearance occur in or involve multiple states, the public policy should provide for a coordinating mechanism or otherwise provide for coordination to ensure an effective search for the disappeared persons.** |

**Principle 5, paragraph 2**

*Comment:*

We note that the use of “can be” inthe 2nd sentence is not accurate in this context. We propose that the judicial and non-judicial processes be complementary.

*Proposed text:*

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 **are** 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.

**Principle 6, paragraph 2**

*Comment:*

We are concerned about the ambiguity of the “turn to” phrase in 2nd sentence. Is this intended to refer to the process of seeking support from international bodies or to the assigning of all or a portion of their mandates to international bodies? We advise using of another phrase that more accurately defines of the scope of the potential relationship with international bodies.

**Principle 6, paragraph 4**

*Comment:*

Based on AJAR’s experience with the Stolen Children Timor-Leste, this will present challenges if the searching authorities involve more than one State party. We advise introducing language to take into account disappearances that involve more than one State Party and provide a process for the transfer of information (rather than direct access to information) to an ensure an effective search.

**Principle 6, paragraph 8**

*Comment:*

We suggest also allowing for a third party to administer the database (or a back-up database) where the searching bodies consist of more than one State party

**Principle 6, additional paragraph #1**

*Comment:*

As noted above, a key lesson from AJAR’s work with the Stolen Children Timor-Leste is that a searches jurisdiction can span two or more countries. Based on this experience, we suggest Principle 6 be revised to better reflect the cooperation needed for an effective search.

*Proposed text:*

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| **#1 If the enforced disappearances or the acts comparable to enforced disappearance occur in or involve multiple states, the implicated State parties should establish a coordinating mechanism or otherwise provide for coordination to ensure an effective search for the disappeared persons.** |

**Principle 7, paragraph 3**

*Comment:*

The searches should be conducted by legitimate or formal search bodies. This recommendation is based on AJAR’s experience where if a particular search body is created with a limited mandate, the search is passed onto another authorized search body.

*Proposed text:*

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| 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 searches by that body or other authorized search bodies. |

**Principle 7, additional paragraph #1**

*Comment:*

The search should take into account the victim families’ right to be informed and to consent to the use.

*Proposed text:*

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| **#1. The right of the victim’s family to be informed should be take into account when using the information and documentation available and/or collected. When possible, the consent of the victim’s family should be sought and obtained prior to the use of the information and documentation available and/or collected.** |

**Principle 8, paragraph 1**

*Comment:*

We note that the use of “all other entities” is too general. We advise explicitly providing for the involvement of civil society organizations and any national human rights institutions.

*Proposed text:*

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| **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. The search must allow for the involvement of civil society organizations and national human rights institutions.** |

**Principle 8, paragraph 3**

*Comment:*

While this paragraph takes into account the circumstance where a disappeared person is located in a foreign country and specifically states that “the search should have recourse to all available cooperation mechanisms,” our experience with the Stolen Children of Timor-Leste demonstrates this is not enough.

As stated in the general comments above, we advise requiring all State parties involved in or implicated by a disappearance to support a search body capable of working in or coordinating with all State parties. This would include coordination between national search bodies and ensure a shared similar aim.

**Principle 9, paragraph 1**

*Comment:*

In this paragraph, the entity responsible for the search should be able to include not only government officials but also experts, representatives of civil society organizations, and survivors.

*Proposed text:*

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| **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. The staff may include government officials, experts, representatives of civil society organizations, and survivors.** |

**Principle 10, paragraph 4**

*Comment:*

As the authorized search body is already an independent body, the monitoring should be from civil society or a wider audience. We consider that the use of another independent body would be redundant (though still possible).

*Proposed text:*

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| **4. Compliance with the protocols and other rules governing the search should be monitored by civil society and persons with a legitimate interest in the search process. Independent bodies may also be utilized for monitoring.** |

**Principle 10, additional paragraph #1**

*Comment:*

The principle of transparency must not be limited to the search protocol, but also apply to the process of searching, staff appraisal, the regular sharing of the information to the public, and any audits of the search body’s work.

*Proposed text:*

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| **#1 The principle of transparency is not limited to the search protocol but also applies to the process of searching, staff appraisal, the regular sharing of information to the public, and any audits of the search body’s work.** |

**Principle 11, paragraph 2 and additional paragraph #1 #2 #3**

*Comment:*

In the case of the Stolen Children of Timor-Leste, the victims are generally living when found. When reunifying the victim with his/her family, the decades of separation have often had significant implications. Based on this experience, AJAR advises taking into account in the Guiding Principle the issues that may arise from the separation of affected groups for substantial periods of time

In the case of the Stolen Children, a number of implications have been observed. First, a number of the victims have been expected to fulfill customary obligations and pay for traditional ceremonies to facilitate their return to their families in Timor-Leste. In some cases, an expensive ceremony had to be performed because the name of the person, assumed to be dead, was already inscribed on a gravestone. In two cases, the Indonesian family that took care of the child also expected to be paid compensation.

We propose including language to ensure that State parties can arrange the reunification of the victims with their families in the most comfortable way possible. This includes the state’s responsibility to carry immediate reparation, appointing special staff for accompaniment of the affected groups to ensure psychosocial care and support, and providing language interpreters and bicultural interpreters of cultural patterns, whose knowledge may be a prerequisite for an effective search.

We note that in **Principle 15, paragraph 3,** there is already guidance to ensure the prevention of stigmatization and other ill-treatment. This also should be applied in the process of reunification.

Another implication of the decades-long separation in the case of the Stolen Children stems from the fact that most of the children upon arriving in Indonesia, were forced to take the religion of their adopted families. They attended religious institutions, were educated as Muslims, were forced to adopt the Muslim faith, and/or added a Muslim name to their Timorese name. In many instances, after more than a decade, they have formed their own family. Some have their own children, yet they remain stripped of their right to self-determination (i.e. to choose the citizenship and/or access their families).

Accordingly, State parties have a duty to ensure that victims can exercise their right to self-determination regarding their citizenship. They also should provide special status for the victims and their families who wish to visit each other, recognizing that victims who have different citizenship may wish to maintain it, particularly if they and their children reside in a different country.

*Proposed text:*

**#1 State parties and the authorized search bodies have a duty to ensure reunification of the victims with their families in the most comfortable way possible.**

**#2 State parties have a duty to conduct immediate reparation, appointing special staff to accompany the affected groups to ensure psychosocial care and support and providing language interpreters and bicultural interpreters of cultural patterns, whose knowledge may be a prerequisite for an effective search.**

**#3 State parties and the authorized search bodies have a duty to ensure that victims can exercise their right to self-determination regarding citizenship. They also should provide special status, if necessary, for the victims and their families who wish to visit each other recognizing that victims who have different citizenship may wish to maintain it, particularly if they and their children reside in a different country.**

**Principle 12, paragraph 1**

*Comment:*

We would like to ensure that any person, civil society organization, with a legitimate interest,include in the process.

*Proposed text:*

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| **1. The active and informed participation of the disappeared person’s family members, relatives, legal representatives, counsel or any person authorized by them, civil society organization, 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.** |

**Principle 14**

*Comment:*

We note that the vulnerable group that is not included in this principle is the people with disabilities include those who have long-term physical, mental, intellectual or sensory impairments, which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

There should be the special assistance tailored to their needs and fulfill their rights as the disability group.

1. **Case study: The Stolen Children of Timor-Leste[[3]](#footnote-3)**

During 1975-1999 conflict in Timor-Leste, many Timorese children were taken and brought to Indonesia by Indonesian military, religious, and charitable organizations. The CAVR later estimated about several thousand Timorese children were forcibly removed to Indonesia during the conflict period. The commission found that “the widespread practice of removing children displayed a mindset that by taking control of Timor-Leste’s territory, Indonesia also gained unfettered control over its children. ABRI members and other individuals with power in Timor-Leste felt that they were entitled to take an East Timorese child home without their parents’ permission.”

Since 2013, AJAR has led initiatives to search for the Stolen Children of Timor-Leste who have been separated from their families. Many of their families, having not heard from their loved ones for decades, prepared graves for them, assuming them dead. Still, the families pray every day to hear the stolen child’s whereabouts, whether alive or dead.

The searching process for the Stolen Children is distinct from that for other disappearances since it spans two countries. Below we highlight seven unique aspects of our search process:

1. Cooperation between two countries

As the Stolen Children are in Indonesia and their families are in Timor-Leste, the search process involves both countries. Because searching takes place in one jurisdiction and reunification in another, various formal administrative processes and procedures are implicated. Accordingly, collaboration and cooperation of both governments, as well as civil society, is critical.

1. Active role of civil society

CSOs have led the search for stolen children now located in Indonesia and their families in Timor-Leste. AJAR and the working group, which consists of civil society representatives from both countries, have identified more than 100 stolen children across Indonesia.

1. Role of national human rights institutions

The national human rights institutions in Indonesia and Timor-Leste (Komnas HAM and PDHJ) are the search and reunification process. Komnas HAM and PDHJ have each signed formal MOUs regarding their cooperation and support of civil society’s search process. They play a significant role in facilitating communication with other state institutions and have provided formal letters for administrative purposes.

1. Survivors’ role in the search process

When searching, we rely on a ‘snowball effect’. Initial information about new survivors often comes from survivors who previously participated in a reunion. They are often well connected to the Timorese community in the area and know or can gather information about other stolen children’s whereabouts. Survivors often also have memories with key information that can be used to locate both their own families in Timor-Leste and other stolen children in Indonesia.

1. Acknowledgement

The CTF recommended the government of Indonesia officially acknowledge the gross human rights violations committed through expressions of regret and apology for the suffering caused by the violence before and during 1999. So far, the government has not issued any formal acknowledgement or apology. However, since 2016, the Indonesian government through the Ministry of Foreign Affairs has supported the reunion process (although without acknowledging the children as victims or stolen children and instead characterizing them as separated children “saved” by Indonesia from conflict areas). The Timor-Leste government also has supported the search process through support by the President’s Office, the Ministry of Social Solidarity, and the Centro Nacional Chega.

1. Verification of the stolen children

As soon as a stolen child is identified, we conduct a verification process by documenting his/her story and checking it with the story from their family. The verification process in Timor-Leste can also involve people and institutions surrounding the family, including official and church institutions. Preserved and new photos are also used to facilitate verification. Once a story and any photos are confirmed compatible, we tried to connect the stolen child with his/her family through a phone call.

1. Post-identification and reunion

After completing the search and verification components of the process, we facilitate a reunification. The stolen child spends approximately 10 days with his/her family. To date, we have facilitated reunions for 67 of the 111 stolen children we have located and verified. The majority of the stolen children who have been documented have had a difficult life and are still struggling with trauma. A challenge for the reunification effort is that some of those displaced now identify with a different culture, tradition, and religion than their families of origin. Therefore, the reunion cannot be viewed as the end goal. Both governments still have to set up holistic reparations for the affected individuals to rebuild their lives.

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***About Asia Justice And Rights (AJAR)***

*AJAR is a regional human rights organization based in Jakarta. AJAR works to increase the capacity of local and national organization in the fight against entrenched impunity and to contribute to building cultures based on accountability, justice and a willingness to learn from the root causes of mass human rights violations in Asia Pacific region.*

[*www.asia-ajar.org*](http://www.asia-ajar.org)

1. Committee on Enforced Disappearances, CED/C/15/2 [↑](#footnote-ref-1)
2. See: Report of the Working Group on Enforced or Involuntary Disappearances, Mission to Timor Leste, A/HRC/19/58/Add.1 <https://www2.ohchr.org/english/bodies/hrcouncil/docs/19session/A.HRC.19.58.Add.1_English.pdf>

   [↑](#footnote-ref-2)
3. See: AJAR Brief Report Long Journey Home <https://asia-ajar.org/2016/08/long-journey-home-stolen-children-timor-leste/> [↑](#footnote-ref-3)