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To the United Nations Committee on Forced Disappearances

In reference: Draft guiding principles for the search for disappeared persons

From: Trudy Huskamp Peterson, Certified Archivist

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The development of Guiding Principles for the Search for Disappeared Persons is an important initiative. I have two general comments and several ones specific to a Principle.

**General comments**

Manage the records. Records are a critical resource in the search for the disappeared. The Guiding Principles should insist that the records of the investigation must be managed competently from the start of the investigation to the disposition of the records when a case is closed. This is particularly important if the investigating authority is a temporary body rather than a regular part of the government or if it is faced with thousands of cases (for example, the Commission of Investigation on Enforced Disappeared Persons, established in Nepal in 2014, by 1 September 2018 had received over 3,000 complaints of which 1,333 people are still missing). The investigating authority should have a robust records management system both to handle the evidence it obtains on a case and to provide evidence of the work done by the authority with regard to the search. The authority should have a records schedule that states clearly what will happen to the records when a case is closed (whether by return of the disappeared person, retrieval of remains, or administrative procedure) and state which archives will receive the records of the authority, including both administrative and case-related records. The public has a right to know what will happen to the records, both the persons who are searching for disappeared relatives and provided information provided to the investigating authority and those who want to know how the authority carried out its mandate.

Specify the importance of business information. The language of the Guiding Principles is implicitly state-focused, yet experience shows that records of non-government entities, particularly businesses, have pertinent information. For example:

\*In December 2018 court in Argentina convicted two former executives of a local Ford Motor Company plant of involvement in the 1976 kidnapping and torture of 24 workers employed by Ford at their factory on the outskirts of Buenos Aires during the 1976-83 military dictatorship. Among their acts, the men were accused of providing photographs, home addresses and other personal data of the victims to agents of the dictatorship so they could be abducted.

\*Also in December 2018, a Brazilian appeals court upheld the 2015 ruling against the Swiss agribusiness company Syngenta for the 2007 murder by Syngenta’s contract security firm of a member of a rural workers group that was protesting at Syngenta’s genetically modified food experiment site.

\*After Colombia in August 2018 charged 13 former executives of United Fruit (Chiquita) company with using death squads to kill persons interfering with the work of its plantations, a nongovernmental organization in Washington, DC, published profiles of the 13 men “drawing on available public sources and a 48,000 page trove of the company’s internal records gained through [a] successful Freedom of Information Act lawsuit.”

The language of the Guiding Principles needs to be revised to acknowledge the importance of evidence in non-government entities, particularly businesses; a reference to the UN Guiding Principles on Business and Human Rights also might be added.

**Comments relating to a specific Principle**

Principle 3, Item 4. “All available evidence required to investigate the possibility of a disappearance and protect the life of the disappeared person should be preserved.” This sentence should be a separate item in Principle 3. As stated, the word “preserved” is insufficient to ensure that relevant materials are not destroyed. It should also require the competent authority to send notice to all entities believed to hold relevant information; the notice should contain all essential information to enable the recipient to identify the evidence at issue. The notice should instruct the recipient not to destroy materials in any format, whether paper, audiovisual, electronic, DNA or databases, and it should require the entity to acknowledge receipt of the notice. This procedure should be followed both with government bodies and with private sector entities such as private security firms, corporate bodies and persons of interest.

Principle 6, Item 2. The authority not only should have an administrative structure for search activities, but the authority should have a robust records management system, as stated above, and the staff should include a records professional experienced in handling sensitive information.

Principle 6, Item 2. “When necessary, they should be able to turn to specialized international bodies.” They should be permitted also to seek assistance from competent domestic private sector entities and foreign governments. If the authority believes that the security of its premises could be compromised, the authority should be empowered to place a security copy in an archives serving as an official safe haven for archives at risk (for further information, see the 2018 “Guiding Principles for Safe Havens for Archives at Risk” available through the International Council on Archives).

Principle 6, Item 8. The paragraph does not specify what happens to the “personal information contained in these [genetic] databases” after the person is located. The authority should state clearly what will happen to the DNA records when a case is closed, whether by destruction of the genetic material or transfer with the closed case to the appropriate archives.

Principle 7. As with 6.8 above, this paragraph should state what will happen to the records when a search is completed. A register and/or databank along with any other case materials should be transferred to an appropriate archives when the case is completed and linked cases are also closed. The authority should continue to have access to the records as needed in the archives, should additional information on a closed case become available.

Principle 8. The Principle discusses information in a foreign country, but it does not address the need for information held in non-government entities, particularly in corporations and their corporate headquarters which may be in a foreign country.

Principle 14, Item 2. The Item should note the special considerations in working on cases of babies taken from incarcerated mothers and given to other families to raise. And the final sentence, “When disappeared children and adolescents are found and returned home, officials should respect the principle of the best interest of the child,” is contradictory. It may mean that prior to returning the child to a family he or she has never known, the authority will weigh whether such return is in the best interest of the child, but as it reads the weighing is only after return, not before.

Principle 15, Item 4. Return of remains to family members is relatively straightforward when immediate family members are still alive. But as time passes, this becomes more complicated. For instance, which grand-niece or grand-nephew can speak for the family? The authority should be encouraged to obtain instructions from families as to their wishes when three or four generations or a number of decades has passed, such as returning remains to a community or burial in a specific cemetery.