

THE ICMP PARIS PRINCIPLES

Annotated

At the PARIS PEACE FORUM on 12 November 2018, the International Commission on Missing Persons (ICMP) revisited the ICMP *Declaration on the Role of the State in Addressing the Issue of Persons Missing as a Consequence of Armed Conflict and Human Rights Abuse* with a view to promoting the application of the Declaration's principles universally and in all circumstances where persons go missing or disappear, including disasters, organized crime, irregular migration and other causes. The eight "Paris Principles" reflect and advance an emerging global consensus on how to address the issue of persons going missing.

1. State responsibility

States bear a responsibility for ensuring lasting peace, reconciliation and social cohesion – resolving the fate of missing and disappeared persons, and protecting persons against disappearance, is an integral element in securing this objective.

In recent decades, there has been a shift in how the missing persons issue is addressed. In particular, law-based institutional approaches, the use of modern forensic methods and advanced data processing systems have made it possible to locate missing persons with a level of effectiveness that was not possible before. However, despite the progress now being made, there are still insufficient standards relating to the responsibility of States to address this issue in all its aspects.

The obligation to conduct comprehensive and effective investigations of human rights abuses lies with the State, regardless of who committed violations and abuses (State or non-State actors). Failure to investigate the fate and whereabouts of missing persons in an effective way, including the circumstances of their disappearance, can constitute a continuing breach of fundamental human rights of both the missing persons and their family members.

2. Substantive rights

The right to dignity and to life, the right not to be subjected to torture or degrading treatment, the right to a family life and to privacy, and the right to recognition as a person before the law – are all invoked when a person goes missing or is a victim of enforced disappearance.

The situation of persons going missing can involve multiple human rights abuses in respect of the persons themselves and in respect of the family of the missing. Regarding the missing person, abuses frequently include violations of the right to security and liberty, as well as the dignity of the person; the right to life; the right not to be subjected to torture or degrading treatment or punishment; the right to a family life and the right to recognition as a person before the law.

In the absence of effective and official investigations, disappearances concurrently represent grave abuses of the rights of relatives and others, including violations of due process, the prohibition of torture, inhuman and degrading treatment, and violation of the right to a

family life and the right to recognition as a person before the law. These rights are enshrined in international human rights instruments such as the International Covenant on Civil and Political Rights (ICCPR), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention on the Rights of the Child, and in regional instruments such as the European Convention on Human Rights (ECHR) and the American Convention on Human Rights.

In addition, certain missing persons cases are classified as a separate offence by international instruments. The International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) provides a definition of enforced disappearance in cases involving State actors. The Statute of the International Criminal Court provides for the crime of enforced disappearance as a crime against humanity. These legal instruments enshrine States' obligations to conduct effective investigations regarding missing persons. The right to life in particular rests on the procedural guarantee that abuses will be officially investigated irrespective of whether such abuses are considered attributable to actions or omissions by the State.

3. Capacities

Investigations are credible only if they are capable of establishing the facts – adequate capacities cannot be ensured ad hoc or through philanthropy: they require official and sustained efforts and permanent provisions.

According to the European Court of Human Rights (ECtHR), and also under the jurisprudence of the Inter-American Court of Human Rights, an effective investigation must be official, transparent, independent, impartial, and capable of establishing the circumstances in a given case. The ECtHR has also made it clear that “the procedural obligation to investigate under Article 2 [ECHR] where there has been an unlawful or suspicious death is triggered by, in most cases, the discovery of the body or the occurrence of death. Where disappearances in life-threatening circumstances are concerned, the procedural obligation to investigate can hardly come to an end on discovery of the body or the presumption of death; this merely casts light on one aspect of the fate of the missing person. An obligation to account for the disappearance and death, and to identify and prosecute any perpetrator of unlawful acts in that connection, will generally remain.” [Varnava and others v Turkey, Grand Chamber, 2009]

4. Cooperation

The issue of missing persons does not respect borders: it has an international dimension – cooperation between States and with international institutions is an indispensable element in effective measures to account for the missing.

Effective investigations on the issue of the missing cannot be carried out in isolation, but require cooperation between authorities, and with international organizations, that exchange information on the missing to uphold the rights of victims. Cooperation is effective if it secures the participation and gains the trust of the families of the missing. Key human rights related to the participation of families include the rights to freedom of expression and association.

Families of the missing must be able to report their missing persons and share personal information necessary to an effective investigation, domestically and across borders. The

right to share information with whomever a person may choose is inherent in the rights to freedom of expression and association, Articles 19 and 22 of the ICCPR. Article 19 of the ICCPR, in particular, States that the right to freedom of expression shall include the “freedom to seek, receive and impart information” also across borders. According to the Human Rights Committee’s (HRC) General Comment 34, Article 19 protects all forms of expression and the means of their dissemination. Also, the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms stipulates the right to access and to communicate with international bodies.

5. Procedural rights

Rights have meaning only if violations and abuses are investigated. Persons who go missing or are victims of enforced disappearance are entitled to protection under the law; relatives and others close to a missing or disappeared person have the right to an effective investigation.

No missing persons investigation or processing of relevant data can take place without protecting the families of the missing against infringements of their dignity and privacy. Ensuring family’s rights during investigations is a precondition to securing their participation. Many of the key principles of data protection in the missing persons context can be given effect through practical measures, in particular through their incorporation in data processing systems that are comprehensive, suitable for international cooperation and secure. A comprehensive system integrates all data processing requirements on the issue of the missing.

The right to privacy is enshrined in the Universal Declaration of Human Rights (Article 12) and regional instruments, such as the ECHR (Article 8). The right to privacy clearly includes the right to be left alone, but it does not end there: it includes the right of persons to control their data. Other relevant international and regional instruments, including the Arab Charter on Human Rights and the ICCPR guarantee an individual’s right to privacy (Articles 17). In its General Comment 16 on Article 17 (Right to privacy) of the ICCPR, the HRC stated that every individual should be able to ascertain which public authorities or private individuals or bodies control or may control his or her data files.

6. Truth

The right to the truth means that the circumstances of disappearances are made known – including establishing cause and manner of death in cases where the missing person is deceased.

Missing persons processes must be capable, through reliable and feasible means, of establishing the facts that have led to a person having gone missing, including the person’s death. There is a very clear value to DNA analysis as a primary means of human identification. Identifications based on fingerprints require among other things that post-mortem fingerprints can still be taken, and that ante-mortem reference prints exist and can be located. The same applies to the use of dental records, which also tend generally to be available only for older people in more developed countries. The advantage of using DNA is that all victims and their relatives have it. There are also limitations to DNA identifications. There can be legal limitations, where the protection of sensitive personal data is not guaranteed, for instance. There may also be institutional limitations in the case of the lack of

a clear mandate for one institution to maintain central data processing capability or central records on missing persons, or where magistrates lack the human resource capacities for issuing death certificates. There may also be financial constraints. Many State entities operate on annual budgets, and DNA-led processes currently cost more in the short term than non-scientific approaches, which tend to incur similar costs only in the longer term.

Creating international resources, such as ICMP, has reduced the financial burden on authorities confronted with large numbers of missing persons. It has also enabled research and development to reduce cost overall. For instance, the need to obtain several DNA references samples from close relatives is a significant short-term cost factor. Therefore, reducing the need to obtain multiple references from close relatives also reduces cost. In addition, if methods that reduce the need for multiple close relatives to provide reference sample also reduce the volume of genetic material from post-mortem samples that is required, then the affordability of DNA-led processes will be greatly improved even in the short term. Using the new method of Massively Parallel Sequencing, for instance, ICMP was recently able to issue DNA match reports on three siblings identified by kinship matching only to first cousin references.

7. Justice

Criminal activity is behind the vast majority of disappearances – the justice system must lead efforts to investigate disappearances and prosecute those responsible.

The United Nations Human Rights Council (UNHRC) has stated that the international community should, “endeavor to recognize the right of victims of gross violations of human rights, and their families, and society as a whole to know the truth to the fullest extent practicable.” Those whose human rights have been violated are entitled to all possible information regarding the circumstances of human rights abuses. In addition to the right to the truth, the right to justice must be ensured.

The justice system, including courts, prosecutors, law enforcement and related institutions, constitutes the most comprehensive investigative resource in any country. Working with and through justice and related institutions represents the strongest possible commitment to dealing with the past in a non-discriminatory, law-based manner, and contributes directly to building the credibility of these institutions.

8. Rule-of-law

Rule-of-law failures are a cause and a consequence of persons going missing or disappearing – all measures to address the issue must uphold and advance the rule-of-law.

Persons go missing as a result of arbitrariness and lawlessness in many parts of the world, and failure to investigate their whereabouts and the circumstance of their disappearance further erodes the rule-of-law. Reinstating the rule-of-law must begin with those most affected by past abuse and lawlessness, in particular with families of the missing. Their participation in developing fairer institutions critically advances the public trust. Missing persons processes that are consistent with international human rights norms ensure participatory decision-making, legal certainty and avoidance of arbitrariness, bring answers to families of the missing, and result in more justice for society at large.