

Draft Principles on Stakeholder Interaction with Families of Missing Migrants

Call for comments

The ICRC Missing Persons Project, launched in 2018, is currently developing a set of guiding principles on interaction with families of missing migrants.

We invite all interested parties to submit their written comments on these guiding principles.

All submissions:

- should be submitted electronically to this email address: missingpersonsproject@icrc.org
- should have, in the subject line of the email: Principles on Stakeholder Interaction with Families of Missing Migrants – comments
- should be in a single document of no more than two pages, and indicate exactly which paragraphs the comments pertain to
- must be in English, French, Spanish, Arabic or Russian.

Deadline

- Comments must be submitted by 31 October 2020.

About the ICRC Missing Persons Project ([leaflet](#) and [video](#))

The Central Tracing Agency of the International Committee of the Red Cross (ICRC) has a longstanding mandate and 150 years of operational experience in tracing missing persons and reconnecting separated families. Convinced that a worldwide joining of forces is required to improve the global response to the tragedy of missing persons and their relatives, the ICRC launched the Missing Persons Project in 2018. In partnership with other actors, this initiative seeks to bring together experts, family representatives and other key stakeholders from around the world in order to build consensus on best practices, promote existing technical standards and develop new ones, where needed.

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ICRC Missing Persons Project

Preamble

This document presents a set of principles to guide stakeholders in their interactions with families of missing migrants.^{1,2} A missing migrant is understood here as any person whose family are unaware of their fate or whereabouts as a result of their having sought to migrate. The term ‘missing migrant’ thus includes persons both living and dead. The principles aim to inform interaction between families and a broad range of stakeholders including states and their various organs, international and non-government organisations, and civil society actors such as associations of families of the missing. It assumes that families are at the centre of actions to address their needs, as the primary actors, supported by others. This includes all elements of how stakeholders engage with families and how families can most effectively participate in the process of gathering, analysing and sharing information to determine the fate and whereabouts of missing migrants, and in addressing their other needs.

The principles are driven by the need to address the many impacts on families of the missing, including the devastating uncertainty of not knowing the fate of a loved one. Having a missing relative can have significant effects on well-being, with emotional, psychological, material, cultural and social impacts, that can overwhelm capacities to cope. It should be noted that experience working with families of those missing in other contexts – notably in armed conflict - can inform engagement with families of missing migrants. Addressing the issue of persons missing in migration is however complicated by the fact that families are often separated by barriers of distance, language and culture from countries where their loved ones went missing and as a result from those with information that can aid them. In many cases, families themselves are migrants, often with a precarious status in their country of residence.

The principles encapsulate best practice, representing technical approaches to addressing the broad needs of families of missing migrants. They are also consistent with relevant international legal standards and states’ human rights obligations. As such, they should be incorporated by all actors into their practice to the greatest possible extent and notwithstanding limitations in terms of available resources. The principles can also support advocacy with states and awareness raising more broadly. The principles contain practical approaches to the implementation of objective 8 of the Global Compact on Migration which commits the 164 states who have adopted it to “establish coordinated

¹ There is no universally accepted definition of a “migrant” under international law. the ICRC considers migrants to be all people who leave or flee their home to seek safety or better prospects, and who may be in distress and need protection or humanitarian assistance. Migrants may be workers, students and/or foreigners deemed irregular by public authorities. They can also be refugees, asylum seekers and/or stateless persons.

² More generally, a missing person is a person whose whereabouts are unknown to his/her relatives and/or who, on the basis of reliable information, has been reported missing in accordance with the 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. (ICRC Guiding Principles / Model Law on the Missing: <https://www.icrc.org/en/document/guiding-principles-model-law-missing-model-law>)

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international efforts on missing migrants”.³

At the core of the principles is the understanding that families have a need to know the fate and whereabouts of the missing with corresponding rights under International Humanitarian Law (the “right to know”) and under International Human Rights Law (the “right to truth”). Of equal importance is the principle of ‘do no harm’ which requires actors to endeavour not to cause further damage and suffering as a result of their actions and that should guide all interactions with families.

In a separate, longer, document, the principles are accompanied by examples showing how they have been operationalised in a range of contexts.

The Principles

1. Families and their expertise must be central to all efforts

Those working with the issue of missing migrants must position the expertise, experience and knowledge of families at the centre of any inquiry. Situating families as the principal actors on the issue while ensuring their safety and well-being should therefore be central to all efforts to address families’ needs. This should include, but not be limited to, efforts to ensure the active participation of families in the design and implementation of all measures related to the search, and the broader response to their needs. This demands supporting families to understand often highly technical processes, and ensuring they have access to all relevant information – including physical access to gravesites, where possible – during the search. Where others lead the search, families should be able to share information with, and receive information from them. Families should also have the right not to participate, if they so desire.

2. Understand and consider cultural context

Any approach to families of the missing should consider local cultural understandings. These may include cultural and religious aspects of mourning, grief and funeral customs, norms around ambiguous roles in society when someone is missing (e.g. as wife or widow) or stigmatisation. In practice, the best approach is to ensure that interactions with families involve persons from the same cultural context and, ideally, members of other affected families.

3. Define family broadly

The definition of family should be flexible, in line with cultural and contextual variations and take into account prolonged emotional dependency and mutual acceptance of relationships. As such, it should not be limited to a purely biological (rather than social) concept. All children treated as a part of the family, regardless of legal status, should be acknowledged as family members. As migrants are often separated from their families for extended periods of time but have developed social bonds with co-travellers, the important role of the latter, albeit not as family members, should be recognised both in terms of reporting disappearance and in providing information to aid the search and identification. Special attention should be paid to dealing with divided families who may hold conflicting views or have different needs.

4. Seek to identify families of missing and dead

In order for families to be engaged and to participate in processes to address their needs, they first

³ Global Compact for Safe, Orderly and Regular Migration, July 2018: https://refugeesmigrants.un.org/sites/default/files/180711_final_draft_0.pdf

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need to be identified. Particularly for states, that have legal obligations to search and investigate, but also for civil society seeking to work with and for families, accessing families and notifying them wherever possible should be a priority. States and others working with families should begin the process of the search not only when an unidentified living person or body is found but be proactive in collecting data from families missing loved ones for the purpose of the search and subject to appropriate data and privacy protections.

5. Seek the trust of families as an essential foundation for work with the missing

All actors seeking to engage with families of missing migrants should do so on the basis that families have trust in them and see such trust as a prerequisite to their engagement.

6. Assist families to claim their rights

The relationship between families of missing migrants and actors seeking to assist in addressing their needs can be understood in terms of the family members as rights holders: many of the needs they express can be addressed by guaranteeing their rights. As such, all actors should seek to ensure that families are aware of their rights and provide assistance in their claiming them.

7. Respect the understanding of the family regarding the fate of the missing

Those engaging with families should always seek to understand and respect families' perceptions of the fate of the missing, wherever possible.

8. Ensure informed consent around all engagement with families

As an integral element of the 'do no harm' approach that these principles enshrine, free, informed and specific consent should be sought from the families for any engagement with them, beyond initial contact. This consent should be understood as a process, not an event, based on trust and transparency. Many of the issues around consent can be addressed by maximising *participation* of families. For children, informed consent should be addressed in accordance with the child's capacity and maturity. Procedures should be adapted to enable the child to fully participate at all stages of the process in accordance with their identified best interests, wishes and feelings.

9. Protect personal data and ensure its legitimate use

The protection of personal data is an integral part of protecting the life, integrity and dignity of the families. The processing⁴ of personal data should respect data protection principles, such as fairness and lawfulness which require a lawful basis for processing operations and that a person's data is only handled in ways they would reasonably expect.

When data is collected from families, informed consent must be given. This encompasses the principle of transparency, which requires that at least a minimum amount of information on how data will be processed is shared with the family member when data is collected. As missing persons cannot provide free and informed consent to the collection and use of their personal data, public interest or vital interest will need to be relied on. Information about any child and their identity should be subject to additional protective measures where information and data is gathered, stored and shared.

⁴ Processing refers to the collection, storage, sharing and use data.

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Other principles related to the purpose limitation of data, minimization, storage limitation, security and accountability equally need to be respected.

10. Protect families

Families of missing migrants may be subject to particular threats and need protection from them. Guaranteeing their security is an obligation of the state in which they live and can be additionally supported by other actors. Interactions with families should respect and support their own protection strategies and should be based on a contextual analysis. This should consider that family members themselves may be migrants and that their legal status in their country of residence may be irregular

11. A mental health and psychosocially informed approach: reduce the risk of harm and minimize stigmatization

Those working with families should be sensitised to the psychological and psychosocial consequences of having a family member missing since many family members experience severe psychological distress. The uncertainty over the fate of the loved one, and its economic and social consequences, constitute a risk factor for poor mental health and psychosocial difficulties. As such:

- any response to families' needs should seek to support their search efforts as a primary aim.
- when the psychological distress is acute and intense referrals to specialized mental health services sensitised to their particular needs should be provided where available. In contexts where such services are unavailable, there capacities should be created.
- interveners should be aware of social impacts, such as stigmatization, and ensure that intervention serves to minimize them.
- particular attention should be given to ensuring a mental health and psychosocially informed approach from the moment of exhumation until notification of identification and return of remains to families. At such times dedicated processes should be in place to support families.

12. Create a well-defined point of contact with which families can engage

Countries of origin, transit and destination and other actors involved in the search for missing migrants should ensure that families are able to report that a relative is missing and provide or obtain relevant information using simple and accessible procedures, whose security and confidentiality they trust. Given that multiple agencies will often be involved in managing relevant information, including across various geographical jurisdictions, relevant actors – and in particular states - should seek to designate well-defined points of contact to which families can report.

Such focal points should also facilitate transnational access to families of missing migrants through consular access or similar, and/or engagement with NGOs and IOs in states of migrant origin, transit and destination. Where this is not possible, the role of informal networks in such states as well as diaspora communities as conduits for information should be considered.

13. Understand and address families' needs

Beyond the clarification of the fate of the missing, families of missing migrants often have a broad range of other needs including those that are legal, administrative, economic, medical and psychosocial. Notwithstanding their specific mandate, any agency interacting with families of missing migrants should seek a comprehensive understanding of a family's needs. Where actors are unable

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to address specific needs themselves referrals to those with the required capacity should be sought. A part of the assessment of family needs is to determine the frequency and basis of contact.

14. Maximise sharing of information with families

The quality and quantity of information shared with the family is crucial in both effectively addressing needs of families and in managing their expectations around the process. As such states and any other actors seeking to address families' needs should seek to share the greatest quantity and highest quality of information with them, in a timely manner and in a language they understand.

15. Develop Protocols to ensure appropriate sharing of information regarding notification of an identification

Professionals should be trained to thoroughly explain the contents of multi-disciplinary identification reports to the relatives of the deceased, especially when the information to be delivered concerns forensic matters. The message should be conveyed in a language they understand, in a clear and empathetic manner, and in protected and safe spaces, and in person wherever possible. A copy of the report identifying the missing migrant should also be provided to the family in their language. Multi-disciplinary teams – including forensic experts, for example, as well as psychological and legal experts – to perform this task are highly desirable.

16. Respect the principle of non-discrimination by providing the same opportunities to all families

Families of missing migrants should be treated equally, without distinction of any kind, such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, sexual orientation, ethnic or social origin, or disability.

17. Design optimal and protective interactions that account for the different needs of family members

Family members will exhibit different needs dependent upon a range of factors, such as gender, age, economic status, legal status and disability – among others, as will indigenous peoples and members of ethnic or cultural groups and members of the lesbian, gay, bisexual, transgender and intersex community. Any engagement with such family members may require specific approaches, experience and knowledge to both be effective and avoid inflicting harm or discriminating .. There is also a need for consideration of the intersectional nature of vulnerabilities, discrimination and disadvantage that can affect engagement with such family members and challenge their effective participation.

- Special attention should be paid to the gender dependence of both the harms of having a missing relative and resulting needs. Interactions should therefore be conducted with a gender perspective and by staff, notably female staff, who have received proper training. Given that most of the missing are men, economic vulnerability and legal uncertainty are key issues faced by female family members.
- The best interests of any child under 18 with a missing parent or other caregiver must be a primary consideration in the provision of services or support to them both individually and to their family, whether or not the child is with their family unit or unaccompanied. In so doing, a child's wishes in all matters concerning their interests must be considered and taken into account, using ways appropriate to their age and maturity. Where a child remains unaccompanied following the disappearance of a relative , this may require the appointment

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of a legal guardian, reunification with other family members or provision of alternative care arrangements or, as well as adapted support, such as specialist psychosocial support, to be provided before and alongside any tracing work.

18. Ensure appropriate skills in those dealing with families and provide for multi-disciplinary teams

All those engaging with family members should receive training to equip them to assess and address their needs, and guidelines to ensure proper and prompt aid. In addition to the need to know the fate of the missing, families may have other urgent needs, and all actors interacting with them should be aware of how to ensure such needs are met. Such actors should also possess the skills to ensure that all engagement is framed by a 'do no harm' approach.

19. Support, and engage with, families' organisations as an important route to participation

Family Associations represent a particular and beneficial way for families to participate by serving as a trusted intermediary between them and other actors (including states), at home and abroad. Such Associations can support information exchange in both directions and function as a trusted focal point for families to come together and offer solidarity and mutual support. In contexts where such associations do not or cannot exist, other groups, including civil society, migrants' associations, religious organisations and other networks may be best placed to provide solidarity, support and advocacy for families.