

MISSING MIGRANTS AND THEIR FAMILIES

THE ICRC'S RECOMMENDATIONS
TO POLICY-MAKERS



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INTRODUCTION

Every day around the world, an alarming number of migrants¹ go missing, either in transit, or in destination countries. This policy paper outlines a set of key recommendations for policy-makers, which are based on the broad experience of the International Committee of the Red Cross (ICRC) and its work on behalf of missing persons and their families, including people who go missing in the context of migration.

Migrants disappear in a variety of circumstances. For instance, they go missing when they are not able to establish contact with their families, even though they may be alive. Migrants go missing when they are detained without access to means of communication, or when they or their families choose not to seek assistance to stay in touch, for fear it may lead to deportation. Migrants also go missing when they perish during dangerous journeys over land or sea, or even in their country of destination. Their remains may never be found, or properly documented or identified if they are found.²

For every missing migrant, there is a family living in uncertainty – not knowing if their relative is dead or alive. Many families spare no effort, or expense, in trying to find information about their missing relative. The search itself can also cause significant suffering, especially if families are actively pursuing a variety of leads simultaneously. Alongside the emotional turmoil linked to the disappearance and to the search, missing migrants' families can face numerous practical challenges that are directly linked to the absence of their relative. They often struggle to access social benefits, sell or manage property or inheritance, remarry, or exercise parental rights. This impacts on any effort families may make to resume their lives and find their place again in the community, all the while seeking answers about the fate of their missing relative. Ultimately, it also impacts on their dignity – adding yet another dimension to the already heavy humanitarian toll of migration.

The experience of the ICRC and National Red Cross and Red Crescent Societies shows that the suffering caused by migrants going missing can be significantly reduced by focusing on three humanitarian priorities: minimizing the risk of migrants going missing; supporting families searching for their missing relatives; and treating the dead and their families with dignity. These are all practicable actions that can be implemented with the requisite political will, investment and international cooperation between States and relevant organizations.

¹ The ICRC, like the other components of the International Red Cross and Crescent Movement, uses a deliberately broad description of “migrants” to include 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. We seek to ensure that all migrants, including refugees and asylum seekers, receive the protection to which they are entitled under international and domestic law, but we adopted an inclusive description to reflect our operational practice and emphasize that all migrants are protected under several bodies of law.

² According to the International Organization for Migration, between 2014 and mid-2017, more than 22,000 migrants have died, or gone missing in countries of transit and destination, along migratory routes across the world. These are only the reported cases. See “Missing Migrants Project”, International Organization for Migration, available at: <http://missingmigrants.iom.int/latest-global-figures>

THE ICRC CALLS ON STATES TO DO THREE THINGS:

Prevent migrants from going missing:

- Recognize that migration policies and laws can have an impact on the risk of migrants going missing, and regularly review them to reduce this risk and to ensure they are in line with international legal obligations.
- Enable migrants and their families to establish, restore, or maintain contact along migratory routes and at destination, if they wish to do so, including in places of detention.

Facilitate the search for and identification of missing migrants:

- Standardize the collection of information about missing migrants and dead bodies at national and transnational levels, and establish clear pathways for data to be collected, accessed and shared for the sole humanitarian purposes of clarifying the fate and whereabouts of missing migrants and informing their families, in accordance with internationally accepted data-protection and forensic standards.
- Ensure that the remains of dead migrants are handled with dignity and take all possible measures to facilitate their immediate, or future identification.

Address the specific needs of families of missing migrants:

- Support families of missing migrants throughout the search and identification process.
- Ensure that families of missing migrants are able to exercise their rights and access existing services and other support to meet their specific needs, including by clarifying the legal status of a missing migrant.

HOW THE ICRC CAN HELP:

The ICRC stands ready to assist authorities and other relevant entities in their own efforts to prevent disappearances, clarify the fate and whereabouts of missing migrants and assist their families, in line with relevant international rules and standards.

More specifically, it can provide support and technical advice to help them in their efforts to:

- enhance their technical capacity, tools, standards, normative frameworks and procedures for preventing disappearances, searching for missing migrants, collecting and processing information about them, ensuring the dignified management of the dead and, where possible, their identification, and assessing and addressing the needs of missing migrants' families;
- enable migrants to restore, or maintain contact with their families throughout migratory routes, in particular by working together with the global network of National Red Cross and Red Crescent Societies;
- exchange and learn from good practice in preventing migrants from going missing, clarifying the fate and whereabouts of missing migrants and responding to the specific needs of their families;
- identify contextual risks, gaps and possible solutions for preventing and responding to situations in which migrants go missing;
- forge links with authorities, other relevant entities and families of missing migrants in other countries in order to develop a coordinated, effective and sustainable response at transnational level.

SUMMARY OF RECOMMENDATIONS:

Prevent migrants from going missing:

Recommendation 1 – migration policies: Authorities in countries of transit and destination should regularly review the impact of their migration-related policies and laws and ensure that these do not raise, or create the risk of migrants going missing. States must respect the principle of *non-refoulement*, in line with their obligations under international law. They should also ensure that individuals in need of international protection can seek asylum without having to take unsafe migration routes.

Recommendation 2 – rescue and assistance: Authorities in countries of transit and destination should establish, enable and support humanitarian rescue activities if migrants are in distress and in areas where there is a known risk that migrants might die and/or go missing. Collective action may be needed in situations where capacity for search, rescue and assistance is insufficient.

Recommendation 3 – access to means of communication along the route: Authorities in countries of origin, transit and destination should facilitate, in accordance with internationally accepted data-protection standards, means of communication for migrants and their access to organizations that may be providing assistance with family contacts – in particular, National Red Cross and Red Crescent Societies.

Recommendation 4 – communication and visits in detention: Authorities in countries of transit and destination are urged to detain migrants only as a measure of last resort. Authorities must ensure that all detained migrants are duly registered and held in recognized facilities, and that they can exercise their right to remain in contact with their families, if they wish to do so. This may include access to means of communication, family visits, visits by the ICRC as a neutral intermediary, or by community or spiritual leaders and local organizations who can help detainees re-establish and maintain contact with families.

Recommendation 5 – consular notification: Authorities must inform detained migrants of their right to communicate with their consular or diplomatic authorities. If requested to do so by the detained migrant, authorities must inform the relevant diplomatic or consular authorities, without delay, of their detention.

Facilitate the search for and identification of missing migrants:

Recommendation 6 – standardizing data collection: Authorities in countries of origin, transit and destination should standardize the collection of information from missing migrants' families for the sole humanitarian purpose of searching for and identifying the missing person, in accordance with internationally accepted data-protection and privacy standards.

Recommendation 7 – clear search pathways: Authorities in countries of origin, transit and destination, as well as regional organizations, should agree on clear pathways to be followed when searching for and identifying missing migrants within and between countries. The standardization and any management of personal information about migrants or their families must be carried out in accordance with internationally accepted data-protection and privacy standards.

Recommendation 8 – forensic capacity at national level: Authorities in countries of transit and destination should improve forensic capacity and standards and centralize forensic data at national level, in line with internationally accepted standards in forensic practice and data protection.

Recommendation 9 – coordination of forensic activities at transnational level: Authorities in countries of origin, transit and destination, as well as regional organizations, should set out clear principles for the exchange of forensic data and establish effective coordination channels among relevant authorities and entities in countries of origin, transit and destination. These actions must be in line with internationally accepted standards in data protection.

Recommendation 10 – burials and grieving: Authorities and communities in countries of transit and destination should ensure that the mortal remains of migrants are buried with due consideration for the probable faith and customs of the person, and that the body is still traceable after burial. Authorities should also consider the establishment of a humanitarian visa allowing families of dead migrants to visit the burial site and pay their respects, as well as facilitating or supporting the repatriation of remains, where feasible.

Address the specific needs of families of missing migrants:

Recommendation 11 – support to families during the search: Authorities and any other relevant entities (including forensic specialists) should ensure that protocols for the search and identification of missing migrants and dead bodies limit, as much as possible, any further suffering for families. Those who interact directly with families should do so with sensitivity throughout the search and identification process.

Recommendation 12 – needs of families: Authorities in countries of origin, transit and destination should ensure that programmes designed to support migrants take into account the specific needs and challenges that families of missing migrants face.

Recommendation 13 – access to services and exercise of rights: Authorities in countries of origin and countries where relatives of missing migrants reside should lift any specific administrative and legal barriers that families of missing migrants may face in the exercise of their rights, or in accessing existing services and benefits, including by clarifying the legal status of a “missing person” in the national legal framework, or ensuring that the existing legal framework on missing persons covers the situation of families of missing migrants.

THE ICRC'S ROLE AND EXPERTISE ON MISSING PERSONS AND THEIR FAMILIES

The ICRC has decades of expertise with respect to missing persons and their families. This stems from its mandate under the Geneva Conventions of 1949 and their Additional Protocols, and under the Statutes of the International Red Cross and Red Crescent Movement. The ICRC understands missing persons as individuals whose whereabouts are unknown to their relatives and/or who, on the basis of reliable information, have been reported missing as a result of armed conflict, other situations of violence, natural disaster, or other humanitarian crises, and people who go missing in the context of migration.

In its broader response to the plight of missing persons and their families, including migrants, the ICRC carries out four main roles. We help governments establish normative frameworks and mechanisms to prevent people from going missing. We work with them to clarify the fate and whereabouts of those who do go missing. We also work with families of missing persons and with communities, authorities and services to address the wide range of needs experienced by families as a consequence of their loss. And we seek to ensure, through bilateral and confidential dialogue, that States and parties to armed conflicts fulfil their relevant obligations in terms of the protection to which people are entitled under international law.³

Our Family Links Network responds to requests from family members and is composed of the ICRC's Central Tracing Agency and the tracing services of ICRC delegations and the 190 National Red Cross and Red Crescent Societies. This global network collects information about people who have gone missing, with the humanitarian purpose of restoring contact between family members. The Family Links Network cooperates across borders and applies the same principles and methods in every country.

With respect to missing migrants, the ICRC, together with National Red Cross and Red Crescent Societies, works with authorities, communities, migrants and families to prevent families from becoming separated along migratory routes, help migrants and their families maintain or restore contact, and facilitate communication between migrants' families and relevant authorities, or other bodies, in order to search for and identify migrants who have gone missing. The ICRC also works to improve the collection, centralization and management of data about missing migrants at national and transnational levels. This includes enhancing the capacity of forensic services to recover, document, identify and ensure the traceability of the remains of dead migrants, in line with internationally accepted standards, including those related to data protection.

³ The Geneva Conventions of 1949 and their Additional Protocols, which are applicable in situations of armed conflict, contain legal obligations for States and parties to the conflict in terms of both preventing individuals from going missing and their response in the event that they do. In discharging these obligations, parties to conflict are to be prompted mainly by families' right to know the fate of their relatives, and they must provide families with any information they have in this respect. International human rights law also recognizes the right to know the fate of a missing relative, and the correlative obligation of public authorities to carry out an effective investigation into the circumstances surrounding a disappearance. This is linked, in particular, to the protection of the right to life, the prohibition of torture and other forms of cruel, inhuman or degrading treatment, and the right to family life. In the case of enforced disappearances, States must also take appropriate measures to uphold the right of victims to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the person who has disappeared. For more information, please refer to the ICRC Factsheet *Missing persons and their families* – available at: <https://www.icrc.org/en/document/missing-persons-and-their-families-factsheet>



Sana'a, Yemen (2012). An ICRC delegate meets Somali nationals to distribute a list of names of their missing compatriots and collect possible new information.



East Aceh, Indonesia (2015). The ICRC and the Indonesian Red Cross Society help migrants at Bayeun Shelter call their family to let them know that they are alive and safe.

I. PREVENTING MIGRANTS FROM GOING MISSING

Recognize that migration policies and laws can have an impact on the risk of migrants going missing and regularly review them to reduce this risk and to ensure they are in line with international legal obligations.

The likelihood of migrants going missing is inevitably high when they are compelled to take a dangerous route. Migration policies that aim to prevent people from reaching a territory lead migrants to use irregular means of travel and entry, effectively. These irregular pathways of migration typically adapt and change as new border-control measures are put in place. Many of these pathways run through countries experiencing armed conflict, or other types of violence, as well as hostile environments, such as seas, deserts and other remote areas, where migrants are isolated and may face life-threatening situations. Access to emergency assistance (medical, food, water) and humanitarian search-and-rescue missions along unsafe routes can not only reduce the risk of migrants falling into danger, or losing their lives but also prevent them from going missing.

The likelihood of migrants going missing is also high if they are compelled to stay in hiding in countries of transit and destination, for fear of being arrested, detained, or deported. When people enter or remain irregularly in a country they tend to stay “off-grid”. Not only do they have limited access to basic services and assistance they may also fear asking for help to establish contact with their families, if they do not have their own means of communication. In situations where migrants are detained, there may also be a risk of them going missing – for instance, if they are not properly registered and do not have the possibility of contacting their families and/or notifying consular authorities, if they wish to do so (see below, under “Detained migrants”).

It is important to understand that the risk of migrants going missing can also be an unintended consequence of migration policies. Hence why it is important that States assess the humanitarian consequences of their policies and review them regularly.

Migrants can also disappear as a result of a failure to respect the principle of *non-refoulement*, as contained in relevant treaty and customary international law. The ICRC recognizes the sovereign prerogative of States to regulate the presence of foreigners in their country and to decide on the criteria for admission and expulsion of non-nationals, including those in an irregular situation. But this prerogative is not absolute, and international law limits it in a number of ways. Preventing people from accessing a territory, or returning them to another country can have grave, or fatal consequences. This recognition underpins the principle of *non-refoulement*, which prohibits returns to a country where there are substantial grounds to believe that a migrant would be in danger of being subjected to violations of certain fundamental rights – for instance, enforced disappearance,⁴ or arbitrary deprivation of life. Protection from these risks is particularly important in preventing migrants from going missing.

Recommendation 1 – migration policies: Authorities in countries of transit and destination should regularly review the impact of their migration-related policies and laws and ensure that these do not raise, or create a risk of migrants going missing. States must respect the principle of *non-refoulement*, in line with their obligations under international law. They should also ensure that individuals in need of international protection can seek asylum without having to take unsafe migration routes.

Recommendation 2 – rescue and assistance: Authorities in countries of transit and destination should establish, enable and support humanitarian rescue activities if migrants are in distress and in areas where there is a known risk that migrants might die and/or go missing. Collective action may be needed in situations where capacity for search, rescue and assistance is insufficient.

⁴ Article 24 of the 2006 International Convention for the Protection of all Persons from Enforced Disappearance contains specific provisions for States Parties relating to the principle of *non-refoulement* and the prevention of enforced disappearances.

Enable migrants and their families to establish, restore, or maintain contact along migratory routes and at destination, if they wish to do so, including in places of detention.

MAINTAINING CONTACT ALONG MIGRATORY ROUTES AND AT DESTINATION

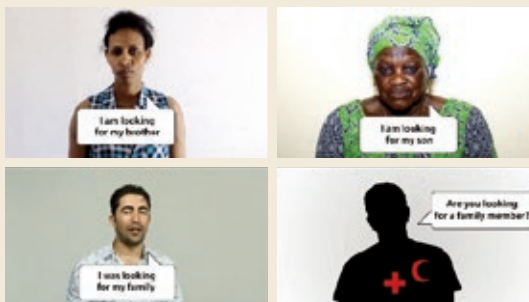
When migrants are able to maintain contact with a relative or a friend, if they so wish, they can remain accounted for and do not go missing. Maintaining contact with their families can be challenging, however, especially if they do not have personal means of communication. Migrants may be constantly on the move and lack information on ways to communicate with their relatives. In many situations, migrants may be reluctant to seek assistance, for fear of being reported to immigration officials, or other law-enforcement authorities in countries of transit or destination.

Information-exchange platforms can also help restore contact between migrants and their families by enabling them to look for each other proactively. They require a broad network of organizations that can collect, centralize and match information, where possible. With such platforms and processes, the importance of respecting the confidentiality of people's personal information in line with internationally accepted data-protection and privacy standards is paramount. Data-protection and other risks must be properly analysed, therefore.

Example: The “Trace the Face” platform

The “Trace the Face” platform was launched in 2013 by National Red Cross Societies in Europe, with the support of the ICRC. “Trace the Face” offers people looking for their relatives the opportunity to have their picture published on a dedicated online platform, or on Red Cross posters in various countries

in Europe, in adherence to a common Code of Conduct on data protection.⁵ This initiative helps both migrants and their families search for each other proactively and restore contact. Red Cross and Red Crescent offices in 34 countries around Europe and beyond currently participate in this initiative.⁶



Recommendation 3 – access to means of communication along the route: Authorities in countries of origin, transit and destination should facilitate, in accordance with internationally accepted data-protection standards, means of communication for migrants and their access to organizations that may be providing assistance with family contacts – in particular, National Red Cross and Red Crescent Societies.

⁵ The *Family Links Network Code of Conduct on Data Protection* (2015) is a reference document that sets out the minimum principles, commitments and procedures that members of the International Red Cross and Red Crescent Movement must integrate into their own standard procedures relating to the processing of personal data within the Family Links Network, in addition to complying with relevant national legislation. The Code of Conduct seeks to comply with the world's most stringent data-protection standards. It is available at: <https://www.icrc.org/en/document/rfl-code-conduct>

⁶ For more information, visit: www.tracetheface.org

DETAINED MIGRANTS

Many States try to control and contain irregular migration by adopting restrictive migration policies. These include the systematic use of detention, whether administrative or criminal. Migrants held in detention in countries of transit or destination may effectively become unaccounted for – go missing – in a variety of circumstances. For instance:

- when they are not in a recognized place of detention and duly registered;
- when they do not have access to means of communication, or are unable to establish contact with the outside world, including family members or consular authorities, if they wish to do so;
- when family or friends are unable to visit them in detention because they are themselves detained, or fear being detained or deported if they approach authorities. Families and friends may also not have the required personal identification documents to access the detention facility. In these situations, other entities can play a crucial role in helping restore family contacts. The ICRC visits detained migrants in both criminal and dedicated immigration detention facilities in countries of transit and destination, and seeks to guarantee that they are able to maintain contact with the outside world, if they wish to do so.

There are situations where – because of fears for their protection, privacy concerns, or other reasons – detained migrants may not *want* to disclose their location, or establish contact with a family member, or their consular authorities. For instance, a migrant may want to shield relatives in the country of origin from the risk of intimidation or retaliation, if the migrant left his or her country to avoid persecution, or a violation of certain fundamental rights, as protected under the principle of *non-refoulement*, or if he or she faced other forms of personal threat not necessarily covered under this principle, such as gang violence. Detained migrants may, in some contexts, want to shield their relatives from the risk of extortion by those detaining them.

For these reasons, communication with families should always be offered *as an option* to detained migrants. The informed consent of the detained migrant must be sought before sharing their location, or facilitating contact with a family member on their behalf.⁷ Notifying diplomatic or consular authorities is one of the basic procedural safeguards available to those detained in a foreign country, where consular relations exist. Because of the possible risks and protection considerations outlined above, it is important that any consular notification be made only at the request of the detained migrant.⁸

Recommendation 4 – communication and visits in detention: Authorities in countries of transit and destination are urged to detain migrants only as a measure of last resort. Authorities must **ensure that all detained migrants are duly registered and held in recognized facilities, and that they can exercise their right to remain in contact with their families, if they wish to do so.** This may include access to means of communication, family visits, visits by the ICRC, or by community or spiritual leaders and local organizations who can help detainees re-establish and maintain contact with their families.

Recommendation 5 – consular notification: Authorities must inform detained migrants of their right to communicate with their consular or diplomatic authorities. If requested to do so by the detained migrant, authorities must inform the relevant diplomatic or consular authorities, without delay, of their detention.

⁷ If the detained person is a child, parents or persons in charge of his or her care should be informed about the detention and regular contacts with the family maintained. Any derogation from this should be exceptional and exercised only in accordance with the child's best interests and taking into account the views of the child, in accordance with international law. See, in particular, Article 17, International Convention for the Protection of All Persons from Enforced Disappearance; Articles 12 and 37, Convention on the Rights of the Child.

⁸ See "ICRC policy on immigration detention", available at: <https://www.icrc.org/en/document/migrant-detainees-icrc-policy>



II. SEARCHING FOR AND IDENTIFYING MISSING MIGRANTS

Standardize the collection of information about missing migrants and dead bodies at national and transnational levels, and establish clear pathways so that data is collected, accessed and exchanged for the sole humanitarian purpose of clarifying the fate and whereabouts of missing migrants and informing their families, in accordance with internationally accepted data-protection and forensic standards.

To clarify the fate and whereabouts of missing persons, information is often first collected from their families. Families may be able to give details about the circumstances of the disappearance and the last-known location, or contact. They will also be able to describe and recognize general physical features, distinctive physical marks, articles the person may be carrying, and even provide biological reference samples for identification, in the event their missing relative has died. Information gathered from families is then cross-checked against information obtained from a variety of places where the missing person may be, or may have been. This search can involve visiting refugee camps, places of detention and hospitals, as well as morgues or cemeteries.

There is no presumption of death in the search for a missing person, although the possibility that the person is dead and remains unidentified is real. Forensic activities can therefore play a central role in the search. These involve the collection of *ante-mortem* and *post-mortem* data, including: documenting physical identification marks and any articles found on the body; collecting biological reference samples and fingerprints; and marking the remains and recording all information – including the place of burial – so that the body is traceable in the event of a future identification opportunity. All forensic activities that involve the collection and use of personal data should be carried out in accordance with applicable laws and bearing in mind internationally accepted forensic and data-protection standards.

HUMANITARIAN PURPOSE, DATA PROTECTION AND STANDARDIZATION

It is essential that safe and efficient humanitarian conduits are set up to collect information from families of missing migrants and unidentified dead bodies, centralize it and exchange it. The three key aspects of this endeavour are: humanitarian purpose, data protection and standardization.

Humanitarian purpose reflects the strict distinction that should be made at all times between records intended to facilitate the search for a missing migrant (including the possible identification of the body, if the person has died) and records intended for the purposes of border control and law enforcement. It is fundamental that any exchange of information collected from families of missing migrants be made solely for the humanitarian purpose of clarifying the fate and whereabouts of their missing relative. Families will be reluctant to share information if they fear it could expose their relatives, or themselves, to the risk of detention, or deportation.

Data protection reflects the fundamental right to privacy of both missing migrants and their families, and enhances individual protection. Individuals have a right to know how the information they provide to authorities and others will be used, and who will have access to it, in order to assess the risks and provide or withhold their informed consent to the collection and use of their information. Legal frameworks and policies concerning data protection vary from country to country but policy-makers should strive to achieve internationally accepted data-protection and privacy standards.⁹ These include, for instance, the International Standards on the Protection of Personal Data and Privacy,

⁹ The ICRC has adopted its own rules on data protection, which are in line with internationally recognized standards for protecting personal data: ICRC, *Rules on Data Protection*, January 2016, available at: <https://www.icrc.org/en/document/data-protection> In addition, the *Family Links Network Code of Conduct on Data Protection* (2015) governs the processing of personal data within the Family Links Network of the International Red Cross and Red Crescent Movement. It is available at: <https://www.icrc.org/en/document/rfl-code-conduct>

which are contained in the so-called ‘Madrid Resolution’¹⁰ (see Annex 1 for more information on the principles set out in the Resolution), and those provided for in the Council of Europe 1981 Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.

Standardization refers to the importance of harmonizing the tools, methods and pathways used in the collection of information from missing migrants’ families at national and transnational levels, as well as from the dead bodies of people who may have been migrants. Standardization ensures that data can be used and cross-checked effectively in the search for missing migrants, including for the identification of human remains in the event of death. It also ensures that families of missing migrants know where to go if they are trying to find a missing relative and that they can stay abreast of the status of the search, especially when it involves other entities.

INFORMATION COLLECTED FROM FAMILIES

Standardization of data collection: Various entities and organizations collect information from families of missing migrants in different countries. Generally, each one uses its own reporting formats, standards and protocols, with the result that the type of information gathered varies greatly and is not necessarily accessible to all those involved in the search. This can make it difficult to cross-check information, and families are often obliged to repeat the same information to different entities. The lack of standardized data collection that adheres to proper data-protection and privacy standards also means that families may not know exactly how the information they provide is going to be used throughout the search. As a result, they may be reluctant to share information, for fear it might not be used solely for the humanitarian purpose of clarifying the fate of their missing relatives and that it could expose their relatives, or themselves, to the risk of detention, or deportation.

Recommendation 6 – standardizing data collection: Authorities in countries of origin, transit and destination should **standardize the collection of information from missing migrants’ families for the sole humanitarian purpose of searching for and identifying the missing person, in accordance with internationally accepted data-protection and privacy standards.**

Clarification and coordination of search pathways: Many different entities and organizations may be (or need to be) involved in the search for missing migrants. Information collected from families looking for missing migrants can only be used effectively if there are clear humanitarian search pathways for this information to follow, at national and transnational levels. This is important not only for the sake of efficiency but also for families. Without clear search pathways families of missing migrants face a constantly turning kaleidoscope of possible scenarios, entities and options from across various countries and regions. This makes it even harder for them to cope with the uncertainties of the search. The lack of clear and efficient search pathways can also make families of missing migrants vulnerable to extortion by individuals claiming to have information about their missing relative. Clear and coordinated search pathways enable families to follow the search process more easily and reduce the risk of further harm, by ensuring that families do not have to give their testimony repeatedly to different entities.

¹⁰ International Standards on the Protection of Personal Data and Privacy (The Madrid Resolution), ICDPPCRD 3 (5 November 2009), available at: <https://icdppc.org/document-archive/adopted-resolutions/>. The standards were formulated by the data-protection authorities of more than 50 States, under the coordination of the Spanish Data Protection Agency (AEPD). Although the approved resolution is not directly binding at an international level, the standards indicate international minimum standards that guarantee the effective protection of privacy at an international level.



Northern Greece (2016). A migrant waits to file a request with the Hellenic Red Cross tracing service to search for a missing relative.

Example: Building humanitarian conduits to facilitate the search for missing migrants in Honduras and Mexico

The ICRC has been supporting a process to develop standard reporting forms and search pathways for missing persons, including migrants, in Honduras and Mexico. During training conducted by the ICRC with Honduran forensic authorities and civil-society organizations in 2015, it became apparent that several different formats were being used to collect information. In response, a standard reporting format was developed in a joint effort involving, among others, the migration, forensic, law enforcement and judicial authorities in Honduras, the migration and consular authorities in Mexico, and civil-society organizations. In 2016, work focused on mapping search pathways for missing migrants. Three types of pathway were identified:

1. Via the authorities (police, judiciary, or Ministry of Foreign Affairs and consulates);
2. Via “The Border Project” (*Proyecto Frontera*) – an initiative jointly managed by Honduran authorities, the Argentine Forensic Anthropology Team and family representatives whereby data from missing persons are matched to unidentified remains found in the countries where they went missing;
3. Via civil-society networks, where they lead transnational searches.

Agreements are now being drawn up on a clear search pathway for missing migrants that reflects the involvement of each of these bodies in the various steps of the process.

Recommendation 7 – clear search pathways: Authorities in countries of origin, transit and destination, as well as regional organizations, should agree on clear pathways to be followed when searching for and identifying missing migrants within and between countries. The standardization and any management of personal information about migrants or their families must be carried out in accordance with internationally accepted data-protection and privacy standards.

INFORMATION COLLECTED FROM THE BODIES OF DEAD MIGRANTS

Forensic activities in the field of migration are greater in scale and complexity than in other contexts. This is due, in particular, to the number and geographical dispersion of organizations that can become involved in the management and identification of dead migrants; to varying levels of forensic capacity; and to the diversity of institutions involved in the field of forensics.

Forensic capacity and standards: In the ICRC’s experience, there are contexts where forensic capacity is good in urban centers but poor in peripheral, or rural areas, where dead migrants are often found. Consequently, the initial information collected from the body may be inadequate, or insufficient, and the entire process of identification and traceability can be affected as a result. Another challenge is the lack of centralization of forensic data. In some situations, efforts are made to collect information from bodies, but the information is not centralized. This makes it difficult to use in further efforts to identify a person and ensure the traceability of their remains. Two things are critical to improve forensic capacity at national level. First, clear protocols must be formally set up for the management and centralization of information on unidentified bodies. Second, forensic capacity and standards must be brought up to the same level of quality in all parts of each country.

Example: Strengthening the capacity of forensic pathology services in South Africa

South Africa is a major destination country for immigration in Africa. Authorities at Forensic Pathology Service (FPS) Facilities are routinely confronted with unidentified bodies presumed to be those of migrants. In 2017, in partnership with the ICRC, the Johannesburg Forensic Pathology Service established a dedicated human identification room to conduct ancillary identification examinations and compile improved documentation of unidentified bodies. Standard Operating Procedures were drafted to improve the management and traceability of unidentified bodies and associated data. These were supplemented by forensic identification training for forensic support staff, who will be using standardized identification pro-forma documentation for data collection. They will provide high-quality data to the existing national central South African Police Service (SAPS) repository for Missing Persons and Unidentified Bodies. This national database is maintained by highly qualified SAPS officers from the SAPS Victim Identification Center. They deliver scientific forensic identification support to stakeholders, such as SAPS and the FPS, solely for humanitarian purposes.

Recommendation 8 – forensic capacity at national level: Authorities in countries of transit and destination should improve forensic capacity and standards and centralize forensic data at national level, in line with internationally accepted standards in forensic practice and data protection.

Coordination at transnational level: Among the biggest challenges encountered by the ICRC in its forensic activities in the field of migration is the lack, at regional level, of centralized and accessible databases containing information on all unidentified bodies, including those of migrants. The information available is often partial and diffuse. This makes the identification of dead migrants difficult and inefficient, and leaves many individuals unaccounted for.

This problem is compounded by the lack of formal protocols between countries for matching data collected from dead bodies and *ante-mortem* data collected from families. Some countries have strict rules limiting the transfer and storage of DNA samples overseas. This can be a major obstacle for the identification of dead bodies in the context of migration because *ante-mortem* and *post-mortem* data are usually located in different countries. Rules on what data are admissible for the identification of a dead body might also vary. Forensic data collected in one country may not be valid for the identification of a dead body in another country, and so a death certificate may not be issued. For families, this means they may not be able to find the answer they need, or clarify their legal situation (see below, Section C).

Example: Concerted efforts to recover and identify the remains of migrants in the Mediterranean

In 2007, the Italian authorities established a register containing information about missing persons, or unidentified dead bodies found or recovered in its territory. This initiative was followed by the nomination of Extraordinary Commissioner Vittorio Piscitelli, whose mandate was to organize the centralization of all data on missing persons and unidentified bodies in Italy, including data on migrants who went missing, or died on the migratory route to Italy. The ICRC, the Italian Red Cross and the Commissioner for Missing Persons signed a tripartite agreement in January 2017 to facilitate the exchange of information about missing persons and unidentified bodies as a result of ships carrying migrants going down in the Mediterranean Sea. The agreement aims to support the Italian authorities' identification efforts for humanitarian purposes. The LABANOF Institute (Laboratorio di Antropologia e Odontologia Forense) at the University of Milan, which also has an agreement with the Commissioner, hosts an ICRC database, which contains *ante-mortem* and *post-mortem* data from a number of shipwrecks in the Mediterranean. LABANOF oversees a forensic operation involving forensic scientists from 20 Italian universities to identify the remains of nearly 700 bodies recovered from a shipwreck on 18 April 2015.

In Greece, the ICRC mission in Athens has, in a number of cases, been able to support the relevant authorities in the process of positively identifying the human remains of migrants. This has been done with the support of ICRC delegations and National Societies in countries of origin, transit and destination. We have facilitated the transfer of ante-mortem data and biological reference-sample profiles from countries of origin to the forensic authorities in Greece, in accordance with applicable legal frameworks and data-protection rules. Legal channels for the transmission of information on the missing person were able to be identified thanks to cooperation between embassies, foreign ministries, Interpol, forensic authorities, ICRC delegations and the families concerned. All of this has made it easier for the families of missing migrants to find answers, despite the complexity of the procedures involved.

Recommendation 9 – coordination of forensic activities at transnational level: Authorities in countries of origin, transit and destination, as well as regional organizations, should set out clear principles for the exchange of forensic data and establish effective coordination channels among relevant authorities and entities in countries of origin, transit and destination. These actions must be in line with internationally accepted standards in data protection.

Ensure that the remains of dead migrants are handled with dignity and all possible measures are taken to facilitate their immediate or future identification.

The challenge underlying the management of unidentified bodies goes beyond technical and practical considerations. Authorities do not always fully recognize the humanitarian need to respect the dignity of the dead and document the remains of a migrant properly, in a way that provides answers to the bereaved family.

Dignified burial and traceability of remains fulfil important humanitarian functions. They restore the dignity of the dead – whether identified or not – and ensure they are not forgotten, by leaving the possibility of identification open. A burial site is also important in helping the family cope with its grief. This is especially true if a body is identified but not repatriated, which is the case for many dead migrants.

Recommendation 10 – burials and grieving: Authorities and communities in countries of transit and destination should ensure that the mortal remains of migrants are buried with due consideration for the probable faith and customs of the person, and that the body is still traceable after burial. Authorities should also consider the establishment of a humanitarian visa allowing families of dead migrants to visit the burial site and pay their respects, as well as facilitating or supporting the repatriation of remains, where feasible.

Example: Improving cemetery management of migrants' graves in Lesvos, Greece

After Evros, in the north of Greece, Lesvos has the highest number of graves of dead migrants. Many of them are unidentified. The Orthodox cemetery Agios Panteleimonas (Saint Panteleimon) contains migrant graves dating back to 2007. Currently, 85 migrants are buried there in a designated section for migrants. A large majority of the graves had no headstones, no proper boundary marking, and bones were exposed as the layers of soil eroded over time. The ICRC assisted in the reconstruction and preservation of the graves by working together with the municipality, the local funeral director, the caretaker of the cemetery, church charity institutions, the Registry office, a forensic pathologist and local volunteers, and by analysing photos of the burials over time. The local funeral director, with the assistance of the ICRC, has now placed headstones with inscriptions on the individual graves, created an outline for each grave and documented the exact location of each burial. This ensures the traceability of migrants' remains, once positively identified. Preservation and documentation of the graves will increase traceability of unidentified migrants in the future and will allow families to locate and visit the grave to mourn their loved ones. The ICRC is continuing to look into whether DNA samples have been taken from all those who have been buried but not identified. We are also working with the relevant departments of the Ministry of the Interior to strengthen the national burial regulations for unidentified bodies in the future.

Evros, Greece (2016). All unidentified human remains, including those of migrants, should be buried in a dignified manner.





San Salvador, El Salvador (2014). An ICRC employee speaks to a family member of a missing migrant during a support meeting.

III. ADDRESSING THE NEEDS OF FAMILIES OF MISSING MIGRANTS

Support families of missing migrants throughout the search and identification process.

The search process is always difficult for families of missing persons, even when there are clear protocols and procedures governing the search. Families may experience further suffering when they visit morgues, or are confronted with photographs of dead bodies without having been properly prepared, or provided with support. Similarly, collecting information, or biological reference samples from relatives, which may serve to identify the missing relative in the event of death, may cause additional pain to families and needs to be explained with sensitivity.

The experience of a missing person's relative might be particularly traumatic if they were there at the time the person went missing, as can be the case, for instance, when family members are migrating together. Migrants who are looking for a missing relative in those circumstances can be haunted by their own experience and may feel guilty for not having been able to prevent what happened, or for having survived (if it emerges that the relative they were looking for has died). More broadly, some families may feel they are not doing enough to search for the missing person, or they may feel guilty if they want to put an end to the uncertainty, even if it means learning that their relative is dead.



State of Guanajuato, Mexico (2010). A migrant victim of a train derailment searches for information about his brother, who was with him when the accident happened.

Recommendation 11 – support to families during the search: Authorities and any other relevant entities (including forensic services) should ensure that protocols for the search and identification of missing migrants and dead bodies limit, as much as possible, any further suffering for families. Those who interact directly with families should do so with sensitivity throughout the search and identification process.

Ensure that families of missing migrants are able to exercise their rights and access existing services and other support to meet their specific needs, including by clarifying the legal status of a missing migrant.

The families of missing persons, including of migrants, live in a permanent state of anguish, regardless of the circumstances in which their relatives have gone missing. They do not give up hope of finding answers about the fate and whereabouts of their missing relative. They must live with the uncertainty of not knowing if he or she is alive or dead. This type of loss is described as an “ambiguous loss”¹¹ and can sometimes lead to psychosocial and psychological problems.

Relatives of missing migrants are not all in their countries of origin. Many are also migrants themselves. Being outside their country of origin may aggravate their vulnerabilities. They may be deprived of their usual sources of emotional support in unfamiliar surroundings. They may also face particular challenges trying to resume their lives if the person who went missing was an actual, or potential breadwinner, or someone they otherwise relied upon along their migration path, or in their daily life at destination.

Families of missing persons, including of migrants, also often face administrative, legal and economic challenges directly linked to the fact that their relative is missing, especially if there is no specific recognition of the legal status of a missing person in the country in which they are residing. The disappearance may affect relatives’ entitlement to property, inheritance, the right to enter a new union, parental rights and social-welfare rights. Often, families cannot benefit from social safety nets, such as school-fee reductions and tax benefits and allowances, which come into play only when the relative is confirmed dead by a death certificate. A person whose relative is missing will presume that he or she is alive unless there is proof to the contrary. For the family, accepting that a relative is dead without definite proof means giving up. Seeking, or accepting a death certificate for a missing relative may feel like they are “killing” their loved one. A way to address this challenge is to recognize a legal status of “missing person” in national legislation, which would enable families to acquire a certificate or declaration of absence that allows them to exercise their rights and access benefits while the fate of their missing relative is being clarified.¹² The ICRC’s legal factsheet, *Guiding Principles/Model Law on the missing and their families*,¹³ and proposed model certificate of absence¹⁴ can be useful in this regard.

It is critical that authorities develop their awareness of the specific vulnerabilities caused and obstacles created by the absence of a relative, and that they facilitate access to services and information that can help families address their needs.¹⁵

Recommendation 12 – needs of families: Authorities in countries of origin, transit and destination should ensure that programmes designed to support migrants take into account the specific needs and challenges that families of missing migrants face.

Recommendation 13 – access to services and exercise of rights: Authorities in countries of origin and countries where relatives of missing migrants reside should lift any specific administrative and legal barriers that families of missing migrants may face in the exercise of their rights, or in accessing existing services and benefits, including by clarifying the legal status of a “missing person” in the national legal framework, or ensuring that the existing legal framework on missing persons covers the situation of families of missing migrants.

¹¹ Boss, P., *Ambiguous Loss*, Harvard University Press, 1999.

¹² In the event the person is found alive, the certificate of absence should be annulled and the legal status of the person and his or her rights fully re-instituted.

¹³ ICRC, *Guiding Principles/Model Law on the Missing*, Geneva, 2009 – available at: <https://www.icrc.org/en/document/guiding-principles-model-law-missing-model-law>

¹⁴ Based on the model available in *Missing Persons: A Handbook for Parliamentarians*, ICRC/IPU, Geneva, 2009 – available at: <https://www.icrc.org/en/publication/1117-missing-persons-handbook-parliamentarians>

¹⁵ For more information on the specific needs of families of missing persons and ways to address them, see ICRC, *Accompanying the Families of Missing Persons – A Practical Handbook*, 2013 – available at: <https://www.icrc.org/en/publication/4110-accompanying-families-missing-persons-practical-handbook>

Example: support to the families of missing migrants in Senegal

Following a survey in 2012–2013 of the needs of families of missing migrants in some of the most affected regions of Senegal, the ICRC and the Senegalese Red Cross (SRC) set up a project in 2015 intended to help families cope with the absence of their loved ones. By June 2017, almost 200 relatives of missing migrants – including children – had participated in a multidisciplinary programme to respond to the variety of needs of families. It included mental-health and psychosocial group activities, commemorative events, literacy classes and vocational training. Under the programme, families were also able to benefit, when needed, from micro-credits to start income-generating activities. At the same time, the ICRC worked with the relevant authorities to inform beneficiaries of the legal and administrative procedures put in place by the Senegalese government to address their needs. Throughout the programme, we endeavour to focus the attention of governmental authorities on the specific humanitarian needs of migrants and their families.

Colibantang village, Senegal (2016). A mother whose son went missing while trying to reach Europe by boat.



CONCLUSION

By implementing these 13 recommendations States will be able to build important humanitarian safeguards to prevent people from going missing and respond to the growing problem of missing migrants and the needs of their families, in line with their international obligations. These safeguards can be integrated into States' migration policies at national, regional and transregional levels. The recommendations underscore the importance of adhering to internationally accepted data-protection standards when handling personal information of migrants and their families, which enhances their protection and respects the fundamental right to privacy.

Preventing migrants from going missing requires the adoption and implementation of migration policies that do not drive people to undertake risky journeys, or stay in hiding in countries of transit and destination. It also requires acknowledgment that some irregular and unsafe migration pathways will always exist, so humanitarian measures need to be in place along these routes to mitigate the risk that migrants might go missing, and to respond, if they do.

It is a complex endeavour to prevent migrants from going missing along migratory routes, to search for them and to identify them. But it is also a humanitarian imperative. Thousands of family members will otherwise be unable to resume their lives, which adds yet another dimension to migration's already heavy humanitarian toll. Efforts must be made to recover and document the remains of dead migrants, or else we will continue to see unmarked or anonymous graves in countries of transit and destination around the world, where thousands of individuals lie, anonymous and deprived of their identity and dignity.

The ICRC stands ready to support and advise the relevant authorities, services and entities – including donors and regional organizations – in the development of normative frameworks and mechanisms, as well as effective humanitarian policies and practical measures at national and transnational levels, to address the issue of missing migrants and to assist families living with the uncertainty of not knowing the fate and whereabouts of their loved ones.

ANNEX – DATA PROTECTION

The internationally accepted data-protection principles, rights and obligations that are set out in the Madrid Resolution can be summarized as follows:

- **The principle of lawfulness and fairness** – Personal data must be fairly processed, respecting the applicable national legislation, as well as the rights and freedoms of individuals, in conformity with the purposes and principles of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. In particular, any processing of personal data that gives rise to unlawful, or arbitrary discrimination against the data subject shall be deemed unfair.
- **General principle of legitimacy** – As a general rule, personal data may only be processed after obtaining the free, unambiguous and informed consent of the data subject, or if there is a legitimate basis for doing so. Simple, fast and efficient procedures must be in place to allow data subjects to withdraw their consent at any time.
- **Purpose specification principle** – The processing of personal data should be limited to the fulfilment of the specific, explicit and legitimate purposes of the responsible person. Any processing that is non-compatible with the purposes for which personal data were collected should not be carried out, unless the unambiguous consent of the data subject has been provided.
- **Proportionality principle** – The processing of personal data should be limited to that which is adequate, relevant and not excessive in relation to the purposes set out in the previous section. In particular, reasonable efforts should be made to limit the processed personal data to the minimum necessary.
- **Data quality principle** – At all times, the processor must ensure that personal data are accurate, as well as sufficient and kept up to date in such a way as to fulfil the purposes for which they are processed. The period of retention of the processed personal data must be limited to the minimum necessary. Thus, when personal data are no longer necessary to fulfil the purposes which legitimized their processing, they must be deleted, or rendered anonymous.
- **Openness principle** – The processing of personal data must be transparent. Data subjects must be provided with, as a minimum, information about the identity of the processor, the intended purpose of processing, the recipients to whom their personal data will be disclosed and how they may exercise their data-subject rights, as well as any further information necessary to guarantee fair processing of such personal data.
- **Accountability principle** – The principles of accountability and liability must be implemented, even if the processing operations are carried out by service providers on behalf of the controller, and the necessary internal mechanisms must be in place to demonstrate observance of these to both data subjects and the data-protection supervisory authorities in the exercise of their powers.




In addition, the **data subject enjoys a set of rights** that include access, rectification and deletion, as well as the right to object to the processing of personal data where there is a legitimate reason related to his/her specific personal situation. Obligations include **security measures** to protect the personal data being processed, a **duty of confidentiality regarding the personal data**, which must be respected by the processor and all those involved at any stage in which personal data are processed, and which continues to apply, even after the relationship with the data subject has ended. States should also take **proactive measures**, including compliance with applicable privacy laws. Requirements must also be met for the legal collection, preservation, use, revelation, or erasure of personal data, such as, for example, the obtaining in advance the free, unequivocal and **informed consent** of the person providing the data.

The ICRC helps people around the world affected by armed conflict and other situations of violence, doing everything it can to protect their dignity and relieve their suffering, often with its Red Cross and Red Crescent partners. The organization also seeks to prevent hardship by promoting and strengthening humanitarian law and championing universal humanitarian principles.



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