

WHERE ARE THEY?

International standards for the search for
forcibly disappeared persons

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International human rights bodies have characterised enforced disappearance as a continuous violation that remains unabated until the fate or whereabouts of a person are known. While important progress has been made since the 1970s in clarifying the scope of the duty to investigate and punish those responsible for committing the crime of enforced disappearance, advancements have been less dramatic in the search for victims. Statistics from the United Nations Working Group on Enforced or Involuntary Disappearances for 1980–2017 show that in 56,363 cases of enforced disappearance reported across 112 States, the fate or whereabouts of 45,120 victims remains unknown.

The International Convention for the Protection of All Persons from Enforced Disappearance is clear that it is the State's responsibility to continue with the investigation until the fate of the disappeared person is established. However, in most countries where enforced disappearances have occurred or occur, investigations (if any) still primarily focus on identifying perpetrators. This phenomenon has imposed a huge burden on the relatives of victims, who are left to lead the search for their loved ones. As such, there is a growing demand from both civil society and governmental institutions for a clear set of international guidelines for the search for forcibly disappeared persons.

Considering the diverse context in which disappearances occur, and in the face of increasingly sophisticated networks of interests and perpetrators, it is crucial that the search for victims goes hand-in-hand with the identification of those responsible, and that there is mutual feedback between the two elements of the investigation. The International Bar Association's Human Rights Institute's (IBAHRI) new report *¿Dónde Están? Estándares internacionales*

para la búsqueda de personas desaparecidas forzadamente (Where are they? International standards for the search for forcibly disappeared persons) contributes to global efforts, including by the UN Committee on Enforced Disappearances, to support States in the search for victims of enforced disappearance.

Where are they? International standards for the search for forcibly disappeared persons found that three specialised bodies – the UN Committee on Enforced Disappearances, the Inter-American Court of Human Rights and the UN Working Group on Enforced or Involuntary Disappearances – have developed an important body of principles and specific obligations under which a search for the disappeared should be conducted. However, though the work of these three mechanisms constitutes a solid foundation for the development of clearer and more specific guidelines on the search for victims of enforced disappearances, efforts have not been systematic or detailed. There is also greater emphasis by the three bodies on the identification, prosecution and punishment of those responsible for the crime (though these organisations have recognised that the search for victims interrelates with different rights, including the rights to justice, truth, reparations and guarantees of non-repetition). Therefore, authors of the IBAHRI study focused on systematising the content and identifying gaps in the reports and decisions of these three bodies, as well as following up with a clear set of recommendations.

The report has been written in Spanish, given the contribution of the region to normative developments on enforced disappearances, as well as to the current challenges faced by this practice in many of its countries. This Executive Summary, written in English, gives an overview of the report and its key findings.

Executive summary



Where are they? explains that the following aspects have been clearly outlined as State obligations:

- A. Distinguish, complement and connect the investigation of the crime with the search for the disappeared person.
- B. Search for the disappeared person, under the presumption that the person is alive until there is evidence to the contrary, following these principles:
 - continue the search until determining the fate of the disappeared person;
 - conduct the search with due diligence, which implies that authorities should, among other things:
 - » start the search *ex officio* and take immediate action as the passing of time requires additional and different efforts;
 - » guarantee the effectiveness of *habeas corpus* as a judicial search mechanism;
 - » adopt and properly implement national plans and search protocols;
 - » develop a rigorous plan for the search that ensures its strategic realisation, adapting

- and considering the context and the modalities of the disappearances;
- » create records of forcibly disappeared persons and statistical information that is disaggregated and reliable;
- » coordinate and cooperate with all the authorities involved (including international cooperation) in both dimensions of the investigation;
- » ensure the independence, impartiality, technical capacity, professionalism and autonomy of the bodies in charge of the search, including the need for confidentiality and due process;
- » create specialised institutions for the search;
- » provide the necessary authority for the search, including sufficient human, technical and financial resources;
- » investigate and punish those who hinder the search for missing persons;
- » ensure access to public information and files; and
- » comply with the decisions of the Inter-American Court and the recommendations and interventions of the UN Committee on Enforced Disappearances and the UN Working Group on Enforced or Involuntary Disappearances.

- guarantee that the search is conducted respecting the principles of equality and non-discrimination via a differentiated approach, including gender; and
 - adopt appropriate answers according to the results of the search.
- C. Develop and continue with the search despite difficulties in identifying, judging and/or punishing those responsible, and continue even after the punishment of those responsible, which may require the removal of amnesty laws as obstacles to the search.
 - D. Ensure the participation and protection of victims, as well as other persons involved in the process, considering the following duties:
 - provide access to information and allow participation of family members in the search;
 - consult with families and family associations to develop public search policies;
 - assist the family during the search; and
 - prevent and avoid actions that may re-victimise the relatives.
 - E. Locate, exhume, protect, identify and preserve the remains of victims, following the strategic development of plans that respond to the principle of due diligence, and consider the creation and updating of genetic data banks.

The report then lists prominent gaps in the current developments, including, among others:

- A. The precise conceptualisation of the right of the disappeared person to be sought, as well as the State's duty to search, and the relation of this right and duty to others, such as justice, truth, reparation, memory and guarantees of non-repetition.
- B. The ambiguous determination of whether the duty to search is an obligation of means or an obligation of result.
- C. The determination of the specific content of the State's obligation to determine the fate of the disappeared person and/or their whereabouts.
- D. The indeterminacy of the degree of certainty necessary for the identification of remains of a disappeared person and emphasis on the use of DNA as the preferred method of identification.
- E. The legal, investigative and scientific principles and techniques that must be used to interpret, apply and develop the legal



norms and best practices that make such norms operational in the process of the search, forensic investigation, identification and dignified delivery of remains in cases of enforced disappearance.

Finally, the report presents a list of recommendations aimed at contributing to the official search for the disappeared:

1. The Inter-American Court should deepen its jurisprudence on the search for persons who have been forcibly disappeared, through:
 - the use of its power to order evidentiary measures *ex officio* in order to gather more precise and detailed information on search policies and actions, as well as to approach specific experts for their opinion;
 - the development of the specific content of the duty to search with due diligence; and
 - the strict supervision of the orders related to the search for forcibly disappeared persons.
2. The UN Committee on Enforced Disappearances should continue to develop standards on searches and procedures to encourage and monitor the way in which States conduct those searches, through:
 - prompt adoption and wide dissemination of the ‘Guiding Principles for the Search for Disappeared Persons’;
 - providing more visibility and centrality around the search for disappeared persons in the process of reviewing the periodic reports from the States parties to the Convention, including:

- » drafting a list of issues to the States emphasising questions related to the search;
 - » asking detailed questions in the context of the interactive dialogue; and
 - » drafting specific and concrete references to the duty to search in the Committee’s concluding observations.
3. The Working Group on Enforced or Involuntary Disappearances should strengthen its work in the search for missing persons with actions aimed at:
 - continuously strengthen the mechanism of urgent actions, their follow-up and the systematisation of experiences.
 3. The Working Group on Enforced or Involuntary Disappearances should strengthen its work in the search for missing persons with actions aimed at:
 - systematising and widely disseminating information derived from the cases, as well as identifying best practices and the shortcomings of search activities carried out by States;
 - raising awareness and deepening the analysis of the search policies for disappeared persons during its visits and reports on countries; and
 - adopting a greater number of general allegations related to the search duty.

To download the full report, *¿Dónde Están? Estándares internacionales para la búsqueda de personas desaparecidas forzadamente*, visit: tinyurl.com/IBAHRIWherearethey

Considering the diverse context in which disappearances occur, and in the face of increasingly sophisticated networks of interests and perpetrators, it is crucial that the search for victims goes hand-in-hand with the identification of those responsible, and that there is mutual feedback between the two elements of the investigation. The International Bar Association's Human Rights Institute's new report, *Where are they? International standards for the search for forcibly disappeared persons*, contributes to global efforts, including by the UN Committee on Enforced Disappearances, to support States in the search for victims of enforced disappearance.



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