



Nicosia, Cyprus
25 January 2019

Contribution on the draft Guiding Principles for the Search for the Disappeared persons

'Truth Now' was founded in 2007 by a group of Cypriot lawyers, concerned with the humanitarian issue of the fate of missing persons in Cyprus, ever since the inter-communal troubles between the two larger communities of Cyprus from 1963 onwards as well as during the Turkish invasion of 1974 (<http://www.truthnowcyprus.org/index.php/en/>).

The organisation is also an active member of the International Coalition Against Enforced Disappearances (ICAED) and the Euro-Mediterranean Federation Against Enforced Disappearances (FEMED) and advocates for the ratification of the International Convention for the Protection of All Persons from Enforced Disappearances by the Republic of Cyprus and has been following closely the works of the Committee on Enforced Disappearances (CED). In this context, we hereby provide below our comments and suggestions on the draft Guiding Principles for the Search for Disappeared Persons.

(a) General comments

We are pleased to observe that this is a very comprehensive document. In fact, it is very positive that the majority of the concerns of the families of the disappeared and the society have been identified and relevant guidelines have been provided to this effect.

We expect that these shall effectively guide States and relevant authorities as well as other independent and/or international bodies. In particular we are concerned with the fact that in Cyprus, the primary body entitled with the search of the missing persons is the Committee on Missing Persons in Cyprus (CMP) established under the auspices of the UN and we strongly believe that the latter is also bound by these guidelines.

Our expectation would be that they are interpreted as having a binding effect since they essentially provide the States with clarifications as to their existing obligations. Additionally, we strongly wish that CED would use these guidelines at the monitoring of the States.

Finally, as a general comment we would like to emphasize that no political considerations could be used as justification for failures in the search of the disappeared.

Truth Now NGO

The Chanteclair House · 2 Sophoulis Street · 9th (Top) Floor · 1096 Nicosia · Cyprus · www.truthnowcyprus.org
Postal Address: P O Box 21645 · 1511 Nicosia · Tel: +357 22676060 · Fax: +00357 22676061 · Email: info@ldlaw.com.cy

(b) Comments to specific principles

Principle 1 – The search for a disappeared person should be conducted under the presumption that he or she is alive

The said principle and in particular the requirement for “irrefutable evidence” is in line with the request of the relatives and/or implied by their reactions. It is empirically observed that relatives cannot come to closure in the absence of irrefutable evidence of death.

Relatives should also be fully informed of the circumstances of the disappearance and death.

Principle 2 – The search should be governed by a public policy

We strongly support the need for the design and implementation of a comprehensive public policy on the matter. However, we would also like to raise the following issues:

- (a) Would the public policy cover bodies established under the auspices of an international organization, like the UN?
- (b) We agree that public policy is essential, but we are concerned of the fact that it is sometimes incomplete, or completely unavailable if the State is complicit to the disappearance, or due to political considerations.
- (c) Practical issues could also arise, as in the Cyprus case, where there is the division of the island and the lack of effective cooperation between the organs having effective control at each side.

In relation to Principle 2 -paragraph 2:

We confirm that there is indeed a pattern of lack of transparency for the justification of which the confidentiality issue is often invoked, sometimes as an incentive given to witnesses or victims giving information. More guidance on this would be greatly appreciated.

In relation to Principle 2 -paragraph 4:

We suggest the following amendment, because one indeed observes a lack of institutional and in any event effective cooperation between the different organs of the state, such as, in the case of Cyprus, the Attorney General, the Police or the Commissioner for the Humanitarian Issues. Recently, positive measures have been taken such as the creation of a centralized system of information. All the relevant authorities used to have different archives (if any) and incomplete, and files with different content at each respective authority.

“4. The public policy should ~~promote~~ensure cooperation and collaboration among all State bodies in searching for disappeared persons.”

Principle 3 – The search should be immediate

In relation to Principle 3 -paragraph 4:

We suggest the following addition

“4. Where doubts arise about the occurrence of a disappearance, the search should nevertheless begin immediately. All available evidence required to investigate the possibility of a disappearance and protect the life of the disappeared person should be preserved and be immediately accessible to the relatives of the disappeared.”

Principle 5 – The search should be exhaustive

In relation to Principle 5 -paragraph 2:

We suggest the following addition to ensure that the authorities which are responsible for the criminal investigation will not be informed at the end of the search.

“2. When the search is conducted by non-judicial authorities independent of those that make up the justice system, mechanisms and procedures should be established to ensure cooperation, coordination and an exchange of information between these authorities and the ones responsible for carrying out the criminal investigation, without delay, in order to guarantee that the progress and results achieved on both sides feed into one another. The competencies of both sets of authorities should be clearly defined by law, so as to prevent them from overlapping and interfering with one another and ensure that they can be complementary. The existence of mechanisms and procedures for searches by administrative, non-judicial and other bodies cannot be invoked as an obstacle to the pursuit of criminal investigations or as an alternative to them”.

Additionally, in relation to the last sentence please clarify whether this should be interpreted as prohibiting any provision and/or arrangement that would impede the criminal investigation? How about examples where immunity is granted in exchange for information?

Principle 6 – The search should be effective

In relation to Principle 6 -paragraphs 3 and 4:

We suggest their amendment by way of replacing the word “should” with the word “must”.

We consider the suggested amendment necessary further to our experience in Cyprus, where the lack of access in the military areas and/or facilities and the lack of a clear and explicit mandate to the relevant mechanism (CMP) to have access, have caused considerable delays.

Principle 7 – The search should be informed

In our experience, relatives have frequently expressed their frustration with the lack of information on the progress of the investigation or the data held by the Government on a given case. Therefore, we would hereby like to suggest the following:

The amendment of paragraph 1 as follows:

“1. States should immediately establish registers of, and databanks on, disappeared persons which cover the entire national territory and that make clear the authority that enters the information, the date on which a person was reported missing, the date on which they were found alive or their remains were identified and the investigations that were conducted to establish whether an enforced disappearance occurred and the reason for the disappearance. These registers and databanks should be continuously updated and the registers should be publicly accessible.”

We understand that databanks may contain sensitive information and thus they should be accessible, at a minimum to the relatives concerned and with regard to the information specific to their case.

Principle 8 – The search should be coordinated

In relation to principle 8 -paragraph 3

We suggest the following amendment:

“3. When there are indications that a disappeared person may be in a foreign country, the search should have recourse to all available domestic and international cooperation mechanisms.”

Principle 9 – The search should be independent

In relation to principle 9 -paragraph 2:

It is important to create a mechanism responsible for monitoring the independency of such entities. And a relevant complaint should be capable of being submitted by an individual or a civil society organization. Such responsibility could be assumed by CED under its existing procedures.

In relation to principle 9 -paragraph 3:

We suggest the following amendment

“3. No person suspected of having participated in a crime of enforced disappearance or having ulterior political incentives, should be in a position to influence the course of an investigation or search. When such suspicions fall on a person working for an institution that is overseeing or cooperating in the search, he or she should be suspended immediately”-;

Additionally, clarifications and/or guidelines should be provided for the procedures that could lead to the suspension referred therein. This becomes particularly complicated when the competent entity is an international one, not subject to the authority of the State.

Principle 13 – The search should be protected

We believe that this is an especially important principle and we welcome the reference to implementation of protection measures to those ‘giving testimony or statements’, which we understand to include equally eye witnesses and those passing on information they have received from elsewhere.

With regard to paragraph 1 and 3 we suggest the following amendments:

“1. During the search, the protection of the family members and relatives should be ensured by the competent authorities at all times, regardless of the level of involvement that the family members and relatives choose to have in the search. Persons who, in the course of the search and/or investigation, give testimony or statements should benefit from specific protection measures and relevant legislation should be provided to this effect.”

...

3. The officials responsible for the search should take into account the risks to mental health that persons who search for disappeared relatives may face, such as those stemming from the discovery of the fate of a family member or from frustration at not uncovering any information. During the search for, and location, recovery, identification and handover of, the disappeared person, the authority in charge of the search shall offer psychosocial support ~~to the family members~~ or guarantee that it may be provided by other entities, to the family members, to witnesses (if necessary) as well as to the staff of the authorities working on the matter. Psychological support should also be offered after the handover of the disappeared person to help the family at the stage of closure.

We strongly believe that a framework (which makes the process of giving testimony for the purposes of the investigation more secure, comfortable and less mentally burdensome for those giving testimony) may encourage persons to offer any information they may have.

Principle 14 – The search should be conducted using a differential approach

In the same context as indicated above, we suggest the following amendments in relation to paragraphs 4 and 5.

“4. In cases involving disappeared persons who are members of indigenous peoples or other ethnic or cultural groups, there is a need to consider and respect specific cultural patterns when dealing with the disappearance or death of a member of the community, which may require the use of different search rules or careful selection of the members of the entities responsible for the search to ensure trust by the families of the disappeared. An effective search should involve the provision of

translators of the languages of the affected groups and bicultural interpreters of their cultural patterns, whose knowledge may be a prerequisite for an effective search.

5. Differential approaches should be adopted with regard to both strategies and the care afforded to persons who participate in the search, such as family members and other persons close to the disappeared person, [as well as those giving testimony, where appropriate.](#)

Principle 15 – The search should guarantee respect for human dignity

We suggest the following amendment to paragraph 2:

“2. During the search and investigation, the dignity of the victims requires that they should be recognized as particularly vulnerable, at-risk individuals and as rights holders who should be protected and who possess important knowledge that may contribute to the effectiveness of the search. Public officials should [be trained](#) and act with the awareness that they are working to guarantee the rights of the victims and should put all their work at the service of victims.”

Additionally, we suggest the addition of the following Principle.

Principle 16 – The search should be archived.

[The search should be documented/archived and preserved in the national archives of the State and be as far as possible accessible.](#)