

Report

Coordinating the Search and Criminal Investigations concerning Disappeared Persons

International Expert Working Meeting
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This report was written by Gabriella Citroni with the support of swisspeace's team of organizers and commissioned by swisspeace in the framework of the European Union-funded project entitled Increasing Accountability and Preventing Enforced Disappearances and Extrajudicial Killings in Mexico, Nepal, the Gambia and Beyond.

The report provides a summary of the discussions held at the International Expert Working Meeting entitled Coordinating the Search and Criminal Investigations concerning Disappeared Persons, which swisspeace organized in Basel, Switzerland on 27 and 28 February 2020. The views expressed in it are those of the participants concerned and do not necessarily reflect the views of the organizations they represent.

About swisspeace's work on the search for disappeared persons

swisspeace is a practice-oriented peace research institute combining operational work with academic research. The Dealing with the Past Program supports governmental and non-governmental actors in the design, implementation, monitoring and evaluation of Dealing with the Past¹ and transitional justice activities. swisspeace provides a wide range of training opportunities and contributes to the research-policy nexus through research projects, conferences, publications and teaching. The institute supports a number of transitional justice mechanisms, in particular with regard to information and record management, access to archives, databases, use of archives for transitional justice, participation, memorialization and outreach. As the search for disappeared persons is a crucial aspect of Dealing with the Past activities, swisspeace works to link up research, policy and practice.²

Since 2019, swisspeace conducts two projects related to the search for disappeared persons: in a multidisciplinary [research project](#) funded by the Swiss Network for International Studies, we look at search practices in El Salvador and Colombia and assess how the involvement of family members relates to longer-term reconciliation and trust in institutions.³

In the framework of a project funded by the European Union (EU) and entitled [Increasing Accountability and Preventing Enforced Disappearances and Extrajudicial Killings in Mexico, Nepal, the Gambia and Beyond](#), swisspeace supported the Committee on Enforced Disappearances in the process of conducting public consultations, finalizing and disseminating the [Guiding Principles for the Search for Disappeared Persons](#),⁴ all with a view to improving existing practices in the search for disappeared persons. In order to introduce the Guiding Principles to a wider range of experts and to increase their practical relevance, swisspeace, together with the Missing Persons Project of the International Committee of the Red Cross (ICRC), organized the [International Expert Working Meeting on the Search for Missing Persons, including Victims of Enforced Disappearance](#),⁵ in Jordan in September 2019. As a follow-up to the meeting, swisspeace focuses its activities on exploring the links and the coordination between the search and criminal investigations concerning disappeared persons. This report forms part of these activities.

¹ Dealing with the Past refers to the processes that address the rights of victims and societies as a whole to truth, justice, reparation and guarantees of non-recurrence in the aftermath of grave human rights violations, breaches of international humanitarian law and related grave forms of corruption that facilitated these crimes; Guiding Principles for Safe Havens for Archives at Risk: https://www.ica.org/sites/default/files/guiding_principles_for_safe_havens_for_archives_at_risk_copyright_creative_commons_cc_by_nc_4.0_ica.pdf (accessed 25 May 2020).

² For more information about the Dealing with the Past Program: <https://www.swisspeace.ch/topics/dealing-with-the-past/> (accessed 17 June 2020).

³ For more information about the multidisciplinary research project: <https://www.swisspeace.ch/projects/research-project/connecting-legal-and-psychosocial-aspects-in-the-search-for-victims-of-enforced-disappearance-in-colombia-and-el-salvador> (accessed 17 June 2020).

⁴ The text of Guiding Principles in the six UN official languages and in German is available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CED/C/7&Lang=en (accessed 16 June 2020).

⁵ Find more information about the project and download the report of the International Expert Working Meeting here: <https://www.swisspeace.ch/projects/other-project/increasing-accountability-and-preventing-enforced-disappearances-and-extrajudicial-killings-in-mexico-nepal-the-gambia-and-beyond> (accessed on 17 June 2020).

Table of contents

1	Background	1
2	The Issue of Coordination between the Search and Criminal Investigations concerning Disappeared Persons	2
2.1	Different Experiences of Coordination	2
2.2	Main Challenges to Ensure Coordination	5
2.3	Good Practices and Potential Solutions to Address the Challenges	6
3	Main Findings and Follow-up	7
3.1	Pre-conditions to Address Challenges and Enhance Coordination	7
3.2	Recommendations to Ensure Effective Coordination	8
3.3	Potential Follow-up Activities and Next Steps	8

1 Background

The International Expert Working Meeting “Coordinating the Search and Criminal Investigations concerning Disappeared Persons”⁶ took place on 27 and 28 February 2020 in Basel, Switzerland. The meeting was organized by swisspeace and convened 22 experts and practitioners from around the world, which represent the different actors engaged in search processes and criminal investigations on enforced disappearances at the local and international levels. Representatives of the following institutions attended the meeting: Act for the Disappeared (Lebanon), Asociación Pro-Búsqueda (El Salvador), Centro de Estudios de Derecho, Justicia y Sociedad, Dejusticia (Colombia), Syrian Center for Media and Freedom of Expression, Independent Commission for the Location of Victims' Remains (Ireland), National Search Commission (Mexico), Office on Missing Persons (OMP) (Sri Lanka), Truth, Reconciliation and Reparations Commission (The Gambia), UN Committee on Enforced Disappearances (CED), UN Working Group on Enforced or Involuntary Disappearances (WGEID), ICRC, International Commission on Missing Persons (ICMP), Swiss Federal Department of Foreign Affairs (FDFA) and swisspeace.

The meeting in Basel was convened to follow-up on the discussions and conclusions that had emerged at a previous International Expert Working Meeting,⁷ co-organized by swisspeace and the Missing Persons Project of the ICRC, held in Jordan on 3 and 4 September 2019 on the subject of the search for missing persons, including victims of enforced disappearance. That meeting revolved around the [Guiding Principles for the Search for Disappeared Persons](#) (the Guiding Principles) adopted by the CED on 16 April 2019. On that occasion, participants agreed that the relationship and coordination between the search and criminal investigations needed further analysis and clarification, with the aim to identify existing challenges, shared characteristics, good practices and lessons learned. In view of the importance of the issue, swisspeace decided to focus its activities on this subject and convened the meeting in Basel with three main objectives:

1. Analyze where tensions between the search and criminal investigations on enforced disappearance lie in practice;
2. determine how the coordination between the two can be enhanced in practice; and
3. reflect on possibilities to establish a process to jointly develop further guidance on the subject.

During the first day of the meeting, three panels were held in plenary, respectively addressing how the coordination between search mechanisms and criminal investigations functions in practice, the main challenges encountered in coordination and how such challenges can be addressed. Each panel was followed by a general discussion. On the second day of the meeting, two sessions were held in plenary with the aim to identify pre-conditions (also called enablers) to address the challenges and enhance coordination, and to detect the main elements to design a process to address the issues. A third session directed at the identification of basic recommendations to respond to the identified challenges was conducted in two separate groups, who then shared the results in plenary. This was followed by a final discussion on next steps and the way forward.

⁶ In this report, the expression “disappeared persons” is used to reflect the language of the Guiding Principles, thus being broader than “victims of enforced disappearance”. In this regard, pursuant to Art. 2 of the International Convention for the Protection of All Persons from Enforced Disappearance (ICPED), “enforced disappearance” is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law. Pursuant to Art. 3 of the ICPED, persons or groups of persons acting without the authorization, support or acquiescence of the State can commit acts that are tantamount to enforced disappearance, and pursuant to Art. 24, para. 1, of the ICPED, “victim” means the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance.

⁷ Find more information about the project and download the report of the International Expert Working Meeting here: <https://www.swisspeace.ch/projects/other-project/increasing-accountability-and-preventing-enforced-disappearances-and-extrajudicial-killings-in-mexico-nepal-the-gambia-and-beyond> (accessed on 17 June 2020).

This report aims at capturing the tenor of the discussions, at summarizing the substantive exchanges among the participants and at presenting the main conclusions and the next steps discussed.

2 The Issue of Coordination between the Search and Criminal Investigations concerning Disappeared Persons

The [International Convention on the Protection of All Persons from Enforced Disappearance](#) (ICPED) enshrines the obligations to search for disappeared persons and to conduct investigations directed at identifying those responsible for the crime at stake, prosecute and, where appropriate, sanction them (Arts. 12, 15, and 24, para. 3, ICPED). Based on the ICPED, Guiding Principle 13 establishes that the search should be interrelated with the criminal investigation and that they should be mutually reinforcing.

However, in practice, coordination between the search and criminal investigations may prove difficult and tensions or even conflicts can emerge. The potential frictions can be exacerbated because a plurality of stakeholders is involved in the processes and *ad hoc* mechanisms can be set up besides already existing authorities, thus making coordination more complex and, at the same time, indispensable. Lack of coordination and fragmentation result in unacceptable delays in establishing the fate and whereabouts of the disappeared person and in the pursuit of justice.

2.1 Different Experiences of Coordination

With the aim to explore existing options for the coordination and interrelation between the search and criminal investigations concerning disappeared persons, six different experiences were presented: Mexico, Colombia, Sri Lanka, the Gambia and Northern Ireland.

In **Mexico**, the search and criminal investigations concerning disappeared persons are entrusted to different mechanisms. A [National Search Commission](#) was established in 2018, with the mandate to search for “any person missing as the result of a crime” (hence including, but not limited to, victims of enforced disappearance). The mandate of the Commission is especially broad because it encompasses cases of enforced disappearance that commenced in the 1960s as well as ongoing and new disappearances (currently, the Commission is searching for more than 61,000 persons). The **temporal breadth of the mandate and the number of cases** are *per se* huge challenges for the Commission. The **federal structure of Mexico adds a considerable layer of complexity** to the coordination between the authorities: Besides the National Search Commission, there are 33 state search commissions and with regard to the criminal investigations, besides the [National General Attorney's Office](#), there are 33 state Attorney's Offices across the country. Coordination is even more difficult due to the **tensions generated because of imprecise mandates** that leave doubts about which mechanism is in charge of which task. **Information sharing among the different mechanisms concerned and with families** of disappeared persons has also proved to be challenging. The described situation, along with the high rate of impunity, undermine **families' trust** vis-à-vis authorities and eventually jeopardize both the search and criminal investigations.

In the past years, **Colombia** has developed different institutional scenarios to deal with the issue of disappeared persons, ranging from entrusting the search and criminal investigations to the same authority (i.e. the Prosecutor's Office) to establishing different mechanisms and separating the tasks. In 2000, the National Search Commission for the Disappeared was created to strengthen the coordination of the different institutions involved in the search. Today, special units within the [National Prosecutor's Office](#) carry out criminal investigations on enforced disappearances and another special unit within the same institution carries out search activities for some cases. In addition, since 2016, based on the Peace Agreement between the government and the Revolutionary Armed Forces of Colombia (FARC), the search regarding cases of disappearances in relation to the armed conflict is entrusted to an independent and dedicated [Unit for the Search for Persons Presumed Disappeared in the context and by reason of the](#)

[armed conflict](#) (end of the 1950s –2016). Also since 2016 and based on the Peace Agreement, the Special Jurisdiction for Peace can conduct criminal investigations on conflict-related enforced disappearances and is performing exhumations. The Unit for the Search is mandated to perform its tasks “in a humanitarian and extra-judicial perspective”. Accordingly, **information provided to, or collected by, the Unit for the Search is confidential and is not shared with the authorities in charge of criminal investigations**. On the contrary, the Unit can access relevant information for the search from the Prosecutor’s Office and the Special Jurisdiction for Peace. The strict separation of tasks is not devoid of frictions. Moreover, while the Unit for the Search is competent solely on disappearances occurred during the armed conflict (until 1st December 2016), the Prosecutor’s Office is in charge for persons allegedly disappeared before the armed conflict as well as after the signature of the Peace Agreement. **The multiplicity of actors involved has been the source of confusion**, especially for victims’ families. Currently, the Unit for the Search is implementing strategies to coordinate its mandate with the Prosecutor’s Office as well as with the Special Jurisdiction for Peace. There are legal and logistic mechanisms in place that enable the Unit for the Search to access information. It is coordinating actions in specific cases and published a National Plan for the Search that involves all actors responsible for search actions.

Also **Sri Lanka** created a, permanent, **independent *ad hoc* mechanism** to search for missing persons: the [Office on Missing Persons \(OMP\)](#).⁸ The OMP has a mandate regarding persons that went missing in the course of or, consequent to or in connection with, the conflict that took place in the North and Eastern Provinces or its aftermath; in connection with civil or political unrest; or as a result of an enforced disappearance as defined in the ICPED.⁹ The OMP’s mandate is not limited to a particular time period or a geographical part of the country. The OMP has a mandate to clarify the circumstances in which persons went missing and establish their fate; identify avenues of redress; protect the interests of the missing and their relatives and make recommendations to ensure non-recurrence. Under its investigative powers, the OMP has the authority to procure and receive statements; summon any person present or residing in Sri Lanka to provide a statement, produce a document or any other thing in their possession; admit into evidence any statement or material that might be inadmissible in a civil or criminal proceeding; accept confidential information or information in camera; and accept information on the condition of confidentiality.¹⁰ The OMP also has the power to request the assistance of any state institution; search any places of detention; make an application for a search warrant to a magistrate to enable a police officer or a an officer of the OMP to conduct a search in any premises.¹¹ Furthermore, the OMP has the authority to apply for an order of a magistrate having territorial jurisdiction, for a court order to carry out an excavation or exhumation, or to act as an observer at such an excavation or exhumation. However, it does not have the authority to carry out exhumations or excavations, which are conducted under the supervision of a magistrate with the assistance of judicial medical officers and police.¹² As part of the measures to deal with the past, the previous government committed to create a special judicial mechanism.¹³ However, this mechanism has not yet been established. Currently, the police holds the primary responsibility to conduct criminal investigations, including on related enforced disappearance; the Attorney-General’s Department is responsible for the prosecution of cases; the Magistrate’s Courts is in charge of conducting inquiries into human remains; and the High Court issues indictments and conducts criminal trials. In principle, **the findings of the OMP do not generate criminal or civil liability**.¹⁴ Further, the OMP is not bound by rules of evidence applicable in criminal investigations and judicial proceedings.¹⁵

There are certain areas where tensions among authorities may arise, namely the possibility to receive statements under the condition of confidentiality by the OMP; its competence to search places of detention and retain documents or objects; and its power to apply to a magistrate for a search warrant.

⁸ Office on Missing Persons (Establishment, Administration and Discharge of Functions) Act, No. 14 of 2016. (OMP Act).

⁹ OMP Act, section 27.

¹⁰ OMP Act, section 12(c)(i)-(v)

¹¹ OMP Act, section 12(e),

¹² See Code of Criminal Procedure Act, No. 15 of 1979 (as amended), section 370, 371, 373. (Code of Criminal Procedure Act).

¹³ See Human Rights Council, 30/1, Promoting Reconciliation, Accountability and Human Rights in Sri Lanka, (14 October 2015), UN Doc. A/HRC/RES/30/1, operative para. 6.

¹⁴ OMP Act, section 13(2).

¹⁵ OMP Act, section 12(c)(iii).

With regard to the OMP's power to search places of detention, the minister assigned the subject of justice, has the authority to make guidelines for the OMP.¹⁶ The former (i.e. confidentiality of statements obtained; searching places of detention and retaining documents or objects; and lodging applications for search warrants) is essential to effectively perform the search for disappeared persons, but these are currently also grey areas in the mandate of the OMP, where tensions arise with the other authorities involved, and especially those in charge of criminal investigations.

The OMP Act provides for two measures for coordination between the search and criminal investigations. Where it appears to the OMP that an offence has occurred, it may, after consultation with the relatives as it deems fit, considering the best interests of the victims, relatives and society, report the same to the relevant law enforcement or prosecuting authority.¹⁷ A report by the OMP to a law enforcement authority shall include the persons' civil status (such as the name, age and gender of the missing person, the date, place or districts in which the missing person was last seen).¹⁸ Under the Criminal Procedure Code, certain crimes such as murder and homicide must be reported.¹⁹ Law enforcement agencies have the authority to request assistance from the OMP. However, the OMP's obligation to do so can be limited, where the OMP deems that the information requested is confidential.²⁰

In **the Gambia**, a [Truth, Reconciliation and Reparations Commission](#) was established in 2017, with the mandate to elucidate and provide redress to victims of gross human rights violations (including enforced disappearance) perpetrated from July 1994 to January 2017 (cases falling outside this time-span are referred to the police). With regard to the victims of enforced disappearance, the Commission is mandated to establish their fate and whereabouts. The Commission is also expected to identify persons, authorities and institutions linked with the perpetration of the gross human rights violations. However, the Commission does not carry out criminal investigations as such. A plethora of other institutions are also involved – to different extents – in the search and criminal investigations, namely the police, the army, intelligence services and the National Human Rights Commission. Fire and rescue are somewhat engaged in the search process. The Commission has the power to request reports, records, documents or information from any source, including governmental authorities and, if necessary, to compel the production of the said information. **Cooperation among all stakeholders**, along with **trust and public support**, are essential to ensure that the Commission obtains meaningful results. Everyone that has information on the whereabouts of the disappeared individuals should be compelled to provide information. If they refuse or choose not to cooperate, they can probably be served a subpoena. In a criminal proceeding, a panel of investigations is formed with the institution concerned and the police is asked to lead the investigations.

In **Northern Ireland**, in 1999, the [Independent Commission for the Location of Victims' Remains](#) (also called "Commission for the Disappeared") was established pursuant to the Good Friday Agreement (1998), with the mandate to clarify the fate and whereabouts of 16 people who were forcibly disappeared and murdered by the paramilitaries during the conflict (also known as "the Troubles", 1968-1998). To do so, the Commission grants **strict confidentiality to those providing information** and **does not share it with prosecutorial authorities**. Information, as well as evidence collected, are regarded as "**legally privileged**" and **cannot be passed on to other agencies or used in a court of law**. Hence, the Commission's mandate is entirely humanitarian. The Commission maintains links with police forces, security services, the military and governments. Both the United Kingdom and Ireland enacted parallel legislation to enable the Commission to discharge its mandate. The Commission is funded by both governments and reports to them annually. To date, the Commission has successfully resolved 13 cases. To maintain regular contact with the families of the disappeared, the Commission appointed a Family Liaison Officer and relies on a civil society organization (i.e. [Widows Against Violence Empower – WAVE Trauma Centre](#)) to provide broader support to families.

¹⁶ OMP Act, section, 12(f)

¹⁷ OMP Act, section 12(h)(i).

¹⁸ *Ibid.*

¹⁹ Code of Criminal Procedure Act, section 21.

²⁰ OMP Act, section 15.

2.2 Main Challenges to Ensure Coordination

Participants acknowledged that certain circumstances, including the passing of time, the different contexts in which disappearances take place, and the scope of the latter in the country concerned, may influence the nature and extent of the challenges in the coordination between the search and criminal investigations.

Notwithstanding the differences and nuances that the said circumstances may entail, there are two cross-cutting elements that were unanimously recognized as **both pre-conditions and challenges** to ensure the coordination between the search and criminal investigations, namely (a) genuine **political will**, and (b) adequate **human, financial and technical resources**.

Beyond these two factors, the following common challenges were identified:

- **different logic underlying** the search and criminal investigations respectively may generate frictions when performing certain tasks (e.g. exhumations, collection of evidence and testimonies), because, on the one hand, the main aim is to establish the fate and whereabouts of the disappeared and, on the other, to identify those involved in the perpetration of a crime and the procedure followed. Priorities and applicable standards (especially with regard to the standard of proof and the chain of custody) may vary accordingly;
- lack of **sufficiently clear and/or overlapping mandates of the mechanisms involved in the search and in criminal investigations**, often leading to tensions;
- **weakness of the respective mandates**, that undermine the independence and effectiveness of the mechanisms concerned;
- absence of **clear rules with regard to the different actors' power to access information** (including access to archives) held by other stakeholders and the means to ensure a **regular exchange and sharing of the said information** between the institutions and **with families of disappeared persons**, while striking a balance with **confidentiality requirements and requests**;
- **absence of a comprehensive strategy** to coordinate the search and criminal investigations;
- **scarcity of, and practical obstacles encountered during, on-site investigations** that are actually crucial for both purposes and therefore make it difficult to design a coordinated strategy;
- difficulties in **preserving evidence and information**, especially in view of the passing of time;
- difficulty of guaranteeing **security** to all those involved both in the search and in criminal investigations;
- difficulties in **determining when and under which circumstances the search may come to an end**. For instance, as a consequence of criminal investigations coming to an end for procedural reasons that do not apply to the search, **managing the families' expectations** becomes an additional challenge;
- struggle of the mechanisms involved in the search and in criminal investigations to **gain – and maintain – the trust of the different stakeholders** involved, and especially of the families of the disappeared. This happens in particular when either the authorities in charge of the criminal investigation or institutions mandated to search for the disappeared persons have a bad record, which reflects on the credibility in the eyes of civil society and families of disappeared persons of all mechanisms involved, further jeopardizing the cooperation between those concerned;
- difficulties to strike a balance between the possibility to **guarantee certain benefits to those who provide information, including perpetrators**, and the imperative to **avoid impunity** or blanket amnesties;
- practical difficulties encountered in **ensuring the adequate involvement of civil society associations and families throughout the process, without leaving the burden** (in terms of the search, collection of information, lodgment of complaints and provision of psycho-social support) **exclusively on them**; and
- challenges are posed also by the fact that the search is de facto performed by actors different from the state in some countries, including family associations, which does not relieve the respective states from their international obligations (both in terms of search and criminal investigations).

Additional, somewhat more context-related challenges include:

- **federal structure** of the state where the search and criminal investigations take place;

- **ongoing armed conflict** leading to obstacles (ranging from security issues to the actual absence of authorities) that make it almost impossible to achieve any meaningful results – both in terms of the search and criminal investigations and all the more in the coordination between the two;
- need to conduct the search and criminal investigations **across borders**, when disappearances take place in a **transnational context** (e.g. migration), which leads to specific difficulties; and
- difficulties arising in **dealing with the past settings**, in which the political context may foster the temptation to undertake an **ill-conceived “pick and choose” approach**, pursuant to which either the search or criminal investigations should allegedly be sacrificed. In this regard, contexts in which giving up on accountability of perpetrators was instrumental to establishing the fate and whereabouts of the disappeared persons were mentioned. However, it was also underlined that while the adoption of a prioritization strategy, where the search may precede criminal investigations and prosecutions, is in line with international human rights law, accountability cannot be neglected to establish the whereabouts and vice versa.

Participants also referred to the **role of international organizations and mechanisms** dealing, pursuant to their respective mandates, with the issue of missing persons and victims of enforced disappearance (e.g. CED, WGEID, commissions of inquiry, international criminal tribunals, the ICRC and the ICMP). On the one hand, it was pointed out that **coordination among them and with domestic authorities** may be an additional hurdle and **families and civil society organizations may be confused** about who does what. On the other hand, it was emphasized that certain organizations have mandates that only allow them to implement activities related to search or criminal investigations.

2.3 [Good Practices and Potential Solutions to Address the Challenges](#)

Participants referred to examples of good practices in ensuring coordination between the search and criminal investigations. Where many different actors are involved, coordination can be facilitated through a **comprehensive mapping** of the institutions concerned and the **clear determination of the respective roles and mandates**. It is crucial to ensure the greatest level of **publicity to, and dissemination of**, this information. By these means, **trust and participation of families and civil society organizations** increase and **accountability** of the institutions concerned can be pursued. A **supervisory** body (also in charge of facilitating coordination) could also play a relevant role in this regard. In general, the fact that the mandate of the mechanisms concerned has a **sound legal basis** is regarded as a guarantee to enhance their coordination and overall effectiveness.

Where coordination between the search and criminal investigations successfully worked, **adequate and extensive capacity building** for all those involved, their **specialization**, as well as a robust **investment in technical means** and capacities proved essential. Without genuine **political will** and without ensuring **long-term adequate financial, human and technical resources**, neither the search nor the criminal investigations can be successful.

Potential measures to address the challenges for coordination include:

- **precise definition of the mandates** of the different actors, institutions and mechanisms involved – at the domestic level and internationally –, as well as of the **envisaged channels of cooperation and interaction**, and ensuring that this information **is transparent and easily accessible**. In this domain, **capacity building** and **awareness raising** play a crucial role;
- ensure that the authorities in charge of the search and criminal investigations enjoy a high degree of **credibility** and that, **if they fail to deliver, they will be held accountable**. The enhanced credibility of all the institutions concerned is also instrumental to favor their coordination, because they are not going to be affected by the respective lack of credibility. For this purpose, the identification of **indicators** is desirable, as well as the **obligation to issue regular reports** and the appointment of a body with **supervisory functions** (that may also facilitate coordination);
- establishment of **up-to-date registers of disappeared persons**, the creation of **forensic databases**, and the design of **comprehensive search and investigative plans or strategies**;
- guarantee that **multidisciplinary teams** are involved both in the search and in criminal investigations, and that, to the extent possible, their composition enables the **proactive participation and involvement throughout the process of families and civil society organizations**. Multidisciplinary is conducive to an enhanced cooperation, because the different profiles within the

- teams allow them to bear in mind the logics underlying the search and criminal investigations and to smoothen potential frictions;
- establishment of **regular channels of communication** among the different actors involved and with families of disappeared persons, in order to ensure coordination, provide a space for sharing information and clarifying existing problems and, where appropriate, addressing them;
 - ensure that the functioning of mechanisms in charge of the search and criminal investigations is **not characterized by an excess of bureaucracy**, which worsens the families' ordeal and may result in instances of re-traumatization, because the lack of coordination implies the duplication of procedures and undergoing similar – often painful and traumatizing – processes (e.g. filling questionnaires) several times, while this could be avoided;
 - creation of a **minimum data set** that can be shared among the different actors involved in the search and criminal investigations and, to the extent possible, ensuring **interoperability** among databases, precisely to prevent instances of overlapping and to avoid relatives of disappeared persons having to answer to the same questions multiple times;
 - **involvement of families** of disappeared persons throughout the process (design, implementation, decision-making about search strategies, and evaluation) must be ensured; and
 - **reaffirmation** of the fact that, pursuant to international law, both the search and criminal investigations concerning disappearances are **legal obligations** and making sure that this is duly **reflected in domestic legislation and jurisprudence**, thus facilitating coordination pursuant to this consideration whenever conflicts or frictions may arise.

3 Main Findings and Follow-up

After having identified the main challenges for the coordination between the search and criminal investigations, as well as potential solutions, participants identified pre-conditions needed in order to address the challenges. They subsequently formulated concrete recommendations on the subject matter. Finally, they brainstormed on potential follow-up activities and next steps.

3.1 Pre-conditions to Address Challenges and Enhance Coordination

Participants agreed that in order to adequately address the challenges and enhance the coordination between the search and criminal investigations concerning disappearances, the following pre-conditions (also referred to as enablers) must be taken into account:

- **thorough assessment of the context**, that allows “tailoring” the measures undertaken so that they respond to the **real needs** (which therefore shall also be duly identified) and reflect the specific circumstances of the situation/case/country concerned. This is seen as pivotal to ensuring coordination between search and criminal investigation, that may indeed vary and adapt to the context concerned and the relevant needs;
- **participation of the families of disappeared persons** throughout the process concerned (including the design, implementation, decision-making and evaluation), as well as of **civil society organizations**. Indeed, equal participation in the search and in criminal investigations is expected to eventually facilitate coordination between the two;
- ensure that the institutions concerned have a **sound legal basis** for their mandate, so that they are not dependent on political changes, although the existence of a **genuine political will** remains crucial to ensure the success of the process. These aspects are crucial to ensure the functioning of separate institutions, as well as their effective cooperation; and
- **adequate capacity-building (both technical and psycho-social)** for those involved in the search and criminal investigations, to ensure that they acquire the **practical skills** needed and understand the **sensitivity** required, especially when dealing with families of the disappeared, fully seizing the imperative need for cooperation and acting accordingly.

3.2 [Recommendations to Ensure Effective Coordination](#)

Based on the previous discussions and the identified pre-conditions to address the challenges concerned, participants developed the following recommendations to ensure effective coordination between the search and criminal investigations concerning disappeared persons:

- conduct a **thorough mapping of the existing institutions** and stakeholders that are involved in the process;
- ensure that the different institutions concerned **meet on a regular basis** to discuss challenges and to enhance their cooperation (if needed, **round-tables on specific cases** can be envisaged);
- guarantee the greatest level of **transparency** in the relationship and interplay among different authorities, putting in place **indicators and mechanisms** to ensure **accountability**;
- **set forth clear rules on the confidentiality that can be granted to those who provide relevant information** (both for the search and criminal investigations); the **use** that can be made of such information; the ensuing **consequences**; and the potential access to **benefits for those who provide information** as well the powers in terms of **witness protection**. This should be accompanied by the establishment of **safe channels** to provide information;
- **set forth clear rules on information and data sharing among different actors and the corresponding limitations** as well as the **extent of interoperability** among databases;
- translate the previous two entries and regulate the relevant issues through the conclusion of **memoranda of understanding**;
- **clarify the details of the mandates and powers** entrusted to the mechanisms concerned, especially with regard to **exhumations**, the power to issue **search warrants**, the **seizure of evidence**, and the setting up of **confidential databases** (e.g. to facilitate the collection of information from whistle-blowers or witnesses who, for different reasons, are not willing to be associated to any criminal investigation);
- guarantee that the **search** for disappeared persons **commences without delay**, entrusting to the authority/ies concerned the relevant powers; and
- ensure that even if the **perpetrator/s** of an enforced disappearance is/are **identified**, this is **not** used as an excuse to **put an end to the search**, and, vice versa, if the **fate and whereabouts** of a disappeared person are **established**, this is **not enough** to put an **end to criminal investigations**.

3.3 [Potential Follow-up Activities and Next Steps](#)

Based on a session in which several of the organizations represented during the meeting presented their activities related to the subject matter of the meeting,²¹ participants identified and discussed potential follow-up activities, including:

- **submission to the WGEID** of a relevant **paragraph on the subject matter** of the meeting in view of its forthcoming thematic report on standards and public policies for effective investigations on enforced disappearance;
- **design a future joint process** on the subject of coordination between the search and criminal investigations, ensuing from the meeting in Basel. Based on the experience of conducting a multi-stakeholder process to develop the [Guiding Principles on Safe Havens for Archives at Risk](#), which was presented by the FDFA²², it was determined that it would be crucial to determine a precise subject where further analysis is needed and to involve in the process a group of truly committed participants;
- enhance the study and **exchange around the situation in the Middle East and North African region**, through the establishment of a **dedicated working group**, that takes into account specificities of this context and explores how to retain the lessons learned from Latin America and

²¹ The CED mentioned further promotion of the Guiding Principles; the WGEID mentioned its thematic report on standards and public policies for effective investigations on enforced disappearances, which is expected to be published in September 2020; and the ICRC presented its [Missing Persons Project](#) that includes an online platform for a community of practice; the ICMP focused on state responsibility for investigating missing persons cases, referencing the ICMP's [Paris Principles](#).

²² <http://archivesproject.swisspeace.ch/news/current-singleview/article/new-publication-guiding-principles-for-safe-havens-for-archives-at-risk-a-commentary/> (accessed 25 May 2020).

- elsewhere (where this has been the subject of more studies). This activity could be promoted, among others, during an event that the WGEID plans to hold in Lebanon later in 2020;
- study the possibility to **systematize the urgent actions issued by the CED**, summarizing the main findings concerning coordination between the search and criminal investigations, without jeopardizing the confidentiality of the said actions;
 - further **analyze the extent of, as well as applicable limitations to, information and data sharing among authorities** involved in the search and criminal investigations concerning disappearances;
 - explore **how to operationalize existing guidelines**, since participants stressed that existing documents cover a wide variety of subjects;
 - carry out **case studies to better identify good practices** that can be retained when operationalizing the existing principles on coordination between the search and criminal investigations. It was underlined that it would be desirable to ensure that the cases studied concern different models of cooperation (e.g. where one institution is in charge of both the search and criminal investigations, as well as where the functions are entrusted to two or more separate mechanisms). Moreover, some participants expressed that it would be desirable to undertake a broader study, which aims at analyzing all the existing experiences worldwide with regard to the coordination between the search and criminal investigations concerning disappearances;
 - continue with the **dissemination and promotion of the Guiding Principles**;
 - develop **practical guidelines on what questions and issues to consider when a new search/investigation mechanism is established**;
 - promote **information exchange through the Missing Persons Online Community**²³, an online platform for practitioners put in place by the ICRC;
 - **promote the interoperability of global databases on missing persons, such as those of the ICMP**, to advance justice, while fully ensuring the rights of data subjects, and
 - contribute to a process which search units in Mexico and South America envisage to launch in the next months to request an **advisory opinion by the Inter-American Court of Human Rights** on coordination between the search and criminal investigations and the protection of information.

Many of the participants, including the organizers, expressed personal as well as institutional interest and openness to continue the exchange on this subject matter, to be informed on the next steps, as well as to contribute to potential further collaborative activities. In terms of way forward, swisspeace committed to share the **present report** of the meeting with all participants and to make it public on its website, as well as on the ICRC Missing Persons Online Community.

In the framework of the project, which allowed to organize this meeting, swisspeace will now carry out **two country case studies on the subject matter** and hold an **outreach event** in Geneva at the end of 2020. In coordination and exchange with the respective organizations and institutions concerned, swisspeace is currently exploring what other follow-up activities discussed during the meeting and mentioned in this report can be prioritized and fundraised for.

²³ Those interested to join the Missing Persons Online Community can send a request to missingpersonsproject@icrc.org.

About swisspeace

swisspeace is a practice-oriented peace research institute. It analyses the causes of violent conflicts and develops strategies for their peaceful transformation. swisspeace aims to contribute to the improvement of conflict prevention and conflict transformation by producing innovative research, shaping discourses on international peace policy, developing and applying new peacebuilding tools and methodologies, supporting and advising other peace actors, as well as by providing and facilitating spaces for analysis, discussion, critical reflection and learning.

swisspeace is an associated Institute of the University of Basel and member of the Swiss Academy of Humanities and Social Sciences. Its most important partners and clients are the Swiss Federal Department of Foreign Affairs, the State Secretariat for Education, Research and Innovation, international organizations, think tanks and NGOs.

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