

# **MINIMUM STANDARDS FROM THE PSYCHOSOCIAL PERSPECTIVE FOR THE SEARCH PROCESS OF MISSING MIGRANTS**



**Discussion tables in Central America and Mexico.**

**2016 - 2019**

## **CREDIT**

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## PRESENTATION

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The disappearance of migrants is an invisible situation to society and to the states. In many cases the extreme situation is the loss of life, or the loss of communication between family members due to many different situations: imprisonment, physical or mental health conditions, being the victim of trafficking networks or prostitution, among others.

The disappearance of migrants has a psychosocial impact on the families of missing persons, who face uncertainty about the whereabouts and situation of their loved ones. The priority of families is to quickly find their families alive. It affects all spheres of people's lives, such as individual, family, work, community, political, relational, among others. It reaches the direct victims, their families, organizations and social processes in which they participate.

The families of missing migrants undertake the search for their loved ones without having any clarity as to which state institution should take charge of the investigation. Another factor is the lack of denouncements. They do not report or do not report out of fear, resulting in an under-registration of missing migrants.

There are no search routes in life or death, there are no unified registration bases and there is weak inter-institutional coordination. Family members report that their States do not exhaust all the means of effective search, and found several obstacles in the search process of missing migrants. They also request that every effort be made to locate missing migrants, regardless of the time, place and context in which the disappearance occurred. This requires the activation of transnational search mechanisms that are adapted to the reality of the regional migration phenomenon.

Since 2012, the Community Studies and Psychosocial Action Team have been carrying out training, counseling, organization, and coordination with networks and psychosocial support for families of missing migrants.

ECAP, together with regional actors from Mexico and Central America who support search processes and accompany access to truth and justice, have known and shared the situations experienced by families in their daily struggle and search.

Given the breadth and importance of the search process and investigating missing migrants, as well as the urgent and prioritized need to define criteria under which minimum conditions of good practices are established, it is essential to have spaces for dialogue, discussion and reflection from the psychosocial perspective for the search processes for Missing Migrants.

That is why ECAP encouraged and promoted a process that would highlight these experiences, analyze them and seek alternative solutions. A consensus process was carried out to implement minimum actions and to address the specific needs of the victims up to the processes of searching for Missing Migrants.

Committees, family associations, civil society organizations and state officials from Mexico, Guatemala, El Salvador, Honduras and Nicaragua have participated in the creation of the *Minimum Standards from a Psychosocial Perspective for the Search Processes for Missing Migrants*. All this work has been coordinated with the International Committee of the Red Cross, with its support for the development of all the actions undertaken.

Between 2016-2017, work was done in each country to recognize the specific problems and needs faced by family members and, on that basis, to establish dialogue tables with representatives of family members, associations or organizations that support or accompany these processes and state officials with the aim of finding minimum standards to be implemented in the search for Missing Migrants.

In November 2017, a validation day was held for the document that included all the contributions from the workshops. Representatives from all participating sectors from all four countries participated in the event. In 2018, they were enriched by a review from the perspective of International Human Rights Law and International Humanitarian Law.

The result of this consensus are minimum standards that contain a series of basic concepts, guiding principles for ethical and good practices; and standards for: 1 - Denouncing the disappearance and/or application search; 2 - Search for missing migrants; 3 - Access to justice and truth; 4 - Localization-identification of missing migrants; 5 - Dignified notification; 6 - Repatriation of the human remains; 7 - Return of migrants; 8 - Right to a comprehensive reparation; and 9 - Differentiated approaches.

Each rule explains its content, including a set of recommendations for good practices, as well as obligations for states under International Human Rights Law and International Humanitarian Law corresponding to the norm.

The purpose of this document, which compiles the *Minimum standards, from the psychosocial perspective for the search processes for missing migrants*, is to propose a working instrument for all the actors involved, especially for authorities or public officials, social organizations that accompany them; at the same time, it is hoped that it will be an enforceability tool for the families of missing migrants and their organizations in Mexico and Central America.

We appreciate the contributions of all the participants, their ideas and experiences because they nourish this proposal and support the efforts of families in the search for Missing Migrants.

We are grateful to the International Committee of the Red Cross for facilitating dialogue with the various actors in the Mexico and Central America region through its effective dialogue and technical and financial contributions.

## PARTICIPANTS

	Comité – Familiares	Sociedad civil-Organismos Internacionales	Instituciones de Estado
Honduras	<p>Comité de Familiares de Migrantes de El Progreso - COFAMIPROH</p> <p>Comité Prados</p> <p>Comité de Choluteca</p> <p>Comité de Familiares del Centro de Honduras. COFAMICEN</p> <p>Comité de Tegucigalpa Amor y Fe</p> <p>Comité de Guadalupe</p>	<p>Foro Nacional para las Migraciones en Honduras</p> <p>Cruz Roja Hondureña</p> <p>Pastoral de Movilidad Humana.</p> <p>UNCOMIDE (red de psicólogos <i>ad honorem</i>)</p> <p>Comité Internacional de la Cruz Roja</p> <p>Equipo de Estudios Comunitarios y Acción Psicosocial - ECAP</p>	<p>Dirección de Medicina Forense</p> <p>Registro Nacional de las Personas</p> <p>Secretaría de Relaciones exteriores.</p> <p>Dirección de Protección y Oficina de Atención a Migrantes Retornados</p>
Nicaragua	<p>Familiares de migrantes desaparecidos con el apoyo del Servicio Jesuita a Migrantes - SJM</p>	<p>Servicio Jesuita con Migrantes de Nicaragua</p> <p>Comité Internacional de la Cruz Roja – Oficial delegada de Guatemala</p> <p>Cruz Roja de Nicaragua</p> <p>ECAP</p>	<p>Instituto de Medicina Forense</p>
Guatemala	<p>Asociación de Familiares de Migrantes Desaparecidos de Guatemala - AFAMIDEG</p>	<p>Mesa Nacional para la Migraciones de Guatemala - MENAMIG</p> <p>Comité Internacional de la Cruz Roja - CICR</p> <p>Fundación Myrna Mack</p> <p>Fundación de Antropología Forense de Guatemala - FAFG.</p> <p>Fundación para la Justicia y el Estado Democrático de Derecho- FJEDD</p> <p>Equipo de Estudios Comunitarios y Acción Psicosocial - ECAP</p>	<p>PDH- Defensoría de Población Desplazada y Migrantes</p> <p>Ministerio de Relaciones Exteriores – MINEX</p> <p>Ministerio Público: DCAV (Departamento de Atención a Víctimas).</p> <p>UEAI (unidad Especializada en Asuntos Internacionales y</p> <p>Agregaduría Legal en México, de la SAIC (Secretaría de Asuntos Internacionales)</p>

México	<p>Caminos, Centro de Acompañamiento a Migrantes A.C.</p> <p>“Junaxko` tantik” Familias Unidas de Chiapas Buscando a Nuestros Migrantes</p> <p>Uniendo Cristales – Red Enlaces Nacionales</p>	<p>Scalabrinianos Misión con Migrantes y Refugiados</p> <p>Casa del Migrante Saltillo</p> <p>Voces Mesoamericanas Acción con Pueblos Migrantes</p> <p>Fundación para la Justicia y el Estado Democrático de Derecho</p> <p>Comité Internacional de la Cruz Roja México</p> <p>ECAP</p>	<p>Unidad de Investigación de Delitos para Personas Migrantes</p> <p>Comisión Nacional de los Derechos Humanos</p> <p>1ra.Visitaduría (Províctima)</p> <p>5ta.Visitaduría (Atención a migrantes)</p>
El Salvador	<p>Comité de Familiares de Migrantes Fallecidos y Desaparecidos - COFAMIDE</p>	<p>Colectiva Feminista para el Desarrollo Local</p> <p>Probúsqueda</p> <p>Asociación Salvadoreña de Derechos Humanos</p> <p>Fundación para la Justicia y Estado Democrático de Derecho</p> <p>Fundación Cristosal</p> <p>Médicos del Mundo - España y Francia</p> <p>Alzare</p> <p>Comisión de Justicia y Paz</p> <p>Caritas El Salvador</p> <p>Instituto de Derechos Humanos de la UCA</p> <p>Comité Internacional de la Cruz Roja - CICR</p> <p>Equipo de Estudios Comunitarios y Acción Psicosocial - ECAP</p>	<p>CONMIGRANTES</p> <p>INTERPOL</p> <p>Procuraduría del Defensor de los Derechos Humanos.</p> <p>Ministerio de Salud</p> <p>Dirección General de Derechos Humanos del Ministerio de Relaciones Exteriores</p> <p>Instituto Salvadoreño para el Desarrollo de Niñez y Adolescencia</p> <p>Consejo Nacional de la Niñez y Adolescencia.</p> <p>Instituto de Medicina Legal</p> <p>Antropología Forense de Medicina Legal</p>

## BASE CONCEPTS

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<p><b>PSYCHOSOCIAL PERSPECTIVE</b></p>	<p>Psychosocial means the understanding of the behaviors, attitudes, emotions and thoughts of individuals or groups, taking into account their historical, social and ideological environment to explain them. From there, psychosocial effects are the ways in which a phenomenon, in this case the disappearance of migrants, affects relationships, ways of acting, and ways of understanding and incorporating the surrounding reality by individuals, groups or communities.</p> <p>A comprehensive methodological approach applies which places the person at the center of the processes, taking into account their historical, cultural and political development in order to understand, describe and accompany the processes developed for care during the search.</p> <p>Actions at the individual, family, community and social levels should be taken into account and developed by all the institutions, teams and professionals involved to ensure the restorative nature of these processes, both for direct or indirect victims and for society as a whole.</p> <p>Such a perspective is not the exclusive competence of specific teams of mental health professionals or community work, but which is understood as an axis that must impregnate each and every one of the actions of the different teams or professionals from each of the disciplines involved (forensic specialists, lawyers, anthropologists, psychologists, social workers, doctors, dentists, criminal lawyer, among others).</p>
<p><b>PSYCHOSOCIAL WORK</b></p>	<p>Psychosocial work is defined as individual, family, community and social support processes aimed at preventing, addressing and approaching the consequences of the impact of enforced disappearance, arbitrary or extrajudicial executions and other serious human rights violations. These processes promote well-being, social and emotional support for victims, and help restore their integrity, strengthening their dignity and stimulating the development of their actions in the search for truth, justice and comprehensive reparation processes.</p> <p>Psychosocial work also considers the reconstruction of social support networks that have been destroyed as a result of these violations.</p>



<b>ENFORCED MIGRATION:</b>	A person who, because of the conditions of poverty, violence and lack of attention from the state, decides to leave their country in search of better conditions for the development of their life and that of their family.
<b>INTERNAL MIGRATION:</b>	Person moving from one region to another within the territorial boundaries of the same country in search of work sources, and improving living conditions that they do not find in their community.
<b>ENFORCED DISPLACEMENT</b>	A person or group of persons who, because of an act of violence or a violation of their human rights, must leave their community or habitual place of residence, moving within the country in which they live or, ultimately, outside the country in which they live.
<b>ENFORCED DISAPPEARANCE</b>	<p>Enforced disappearance shall mean the arrest, detention, abduction or any other form of deprivation of liberty by state agents or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to recognize such deprivation of liberty or the concealment of the fate or whereabouts of the missing person, thereby depriving him or her of the protection of the law.</p> <p>Even in cases where the responsibility for these disappearances, kidnappings and/or murders is of non-state groups, the state's obligation to seek, clarify and punish those responsible for these disappearances persists. These are the obligations of States deriving from international law, the International Human Rights Law (IHRL) and International Humanitarian Law, including customary rules incorporate obligations <i>erga omnes</i> and <i>ius cogens</i>.</p>
<b>INVOLUNTARY DISAPPEARANCE</b>	It occurs for reasons unrelated to the person and occurs in circumstances such as mental illness, getting lost or circumstances that make it impossible to locate them in their usual community or one where they are presumed to be.
<b>ARBITRARY, EXTRAJUDICIAL OR SUMMARY EXECUTIONS</b>	<p>They occur when a person or group of persons is killed without complying with the obligations of prevention and protection of the human right to life. Such situations may arise from the use of force, weapons, or conditions of inhumane detention.</p> <p>Those who may commit this offence are state officials or employees, as well as person or persons acting with the authorization, support or acquiescence of the same state.</p>
<b>SECRET DETENTION</b>	It occurs when a person is in an official place of detention, but for reasons of disciplinary punishment or administrative isolation, they are prevented from communicating with their relatives or close persons, making it difficult to determine their whereabouts or actual location.

<b>CASUALTY</b>	A person whose physical, social and psychological integrity is affected by an act of violence or violation of human rights. This includes, where appropriate, family members or dependants who have immediate contact with the direct victim and persons harmed when intervening to assist a victim in danger or to prevent victimization.
<b>MISSING MIGRANTS</b>	People with whom all communication has been lost during transit through a country other than their own, and their location is completely unknown. A person is considered missing when no information on their location is available and all communication has been lost.
<b>ACTORS IN THE SEARCH PROCESS</b>	State authorities and institutions, international organizations, Civil society organizations, committees and associations of migrants relatives whose interests, actions and mandate are related to the protection of the person, care, identification and search of migrants.
<b>STANDARD</b>	The rule shall mean any rule to be followed or to which the conduct, tasks or activities carried out in the framework of the processes to which this consensus is directed must be adjusted.
<b>DENOUNCEMENT</b>	It is the oral or written communication made by a person, group of persons or any organization, committee or association, before any state authority, entity or institution, concerning the absolute lack of communication detention or disappearance of a person who has migrated and his or her whereabouts are unknown.
<b>SEARCH REQUEST</b>	It should be understood in two environments: <ul style="list-style-type: none"> <li>a) Internal: This is the formal requirement of the state authorities that have received the denouncement for competent public officials or employees to conduct the search processes in accordance with their protocols and guidelines.</li> <li>b) External: this is the formal request made by the state of origin of the person considered missing, and through other states, by consular or diplomatic means, ensures they activate the search mechanisms in their territory and determine whether the person is there.</li> </ul>
<b>PERSONAL IDENTIFICATION</b>	From the point of view of registration, personal identification shall be understood as a document issued by a public officer or employee authorized for this purpose, which is used to determine that the person exists and is subject to rights and obligations by their state of birth.
<b>FORENSIC IDENTIFICATION</b>	Forensic identification means recognizing whether a questioned individual, corpse or other human being is the person they are supposed to be or is sought for, based on unique traits. It is a comparative, systematic and orderly

	<p>process that involves all available information such as: the history of disappearance or death, the data from the preliminary investigation (context, place and date of discovery, circumstances, testimonies, among others), the <i>antemortem</i> information (physical, medical, dental, fingerprint, genetic etc.) and the <i>post-mortem</i> information (the result of the forensic analysis of the remains).</p> <p>This process can be applied to human remains or to living persons in case of identity corroboration.<sup>1</sup></p>
<b>REPATRIATION OF PERSONS</b>	<p>It means when a person is returned to his or her homeland or country of origin. In immigration law, the term repatriation of deceased persons when the person has died, and their remains are returned to their country has been constructed.</p>
<b>GOOD PRACTICES</b>	<p>Recommendations of good practices shall mean proposals to make the rules operational according to the competence or powers of the subjects, considering the specific work contexts.</p> <p>In the same way, all procedures and actions that contribute to the inclusion and repair of victims in the development of the search processes, forensic investigation, repatriation and repatriation of deceased persons will constitute good practices.</p>
<b>Right to information on consular assistance:</b>	<p>The right of nationals from the state of origin of the person reported as missing, to request and obtain information from the competent authorities of the state where the disappearance is presumed to have occurred, direct information or through Consular mechanisms, or institutions and procedures for reporting and how to begin a search process.</p>
<b>Right to consular notification</b>	<p>The right of every person, upon being found or rescued in the state in which the disappearance was reported, will proceed to:</p> <p>(a) consular notification to their country of origin for the purpose of informing their family; and;</p> <p>(b) the right to have any communication addressed to the consular post transmitted without delay.</p>
<b>Right to consular assistance</b>	<p>The right of families or persons reported missing to obtain assistance from their consulate in the country where the disappearance is presumed to have taken place or where the person has been found.</p>

<sup>1</sup> ALAF (2016). Latin American Guide of Good Practices for the Application in Forensic Anthropology. 42.

<b>Right to consular communication</b>	The right of families to communicate freely with consular offices in their countries in order to obtain information and/or follow up on their complaints.
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## BASIC PRINCIPLES

<b>VICTIMS AS SUBJECT OF RIGHTS</b>	All actions taken in cases of enforced disappearances, arbitrary or extrajudicial executions and forensic investigations should promote the ethical and legal recognition of victims and their families as subjects of rights, encouraging their informed participation during all stages of the process. In addition, all the entities involved must provide the necessary elements to ensure that the processes in such cases are directed towards the clarification of the truth, the search for justice and are restorative for individuals, their families, their communities and society.
<b>COMPREHENSIVE CARE</b>	It is aimed at incorporating and coordinating actions carried out by the different actors involved in the search process. This approach should determine the type of support that is necessary for each case, as well as the formation of multidisciplinary teams that address each of the factors.
<b>ACTION WITHOUT DAMAGE</b>	<p>Criteria used to analyze and evaluate the impact of the actions to be carried out based on the needs of the case and victims, prioritizing the principle of non-victimization, informed consent and continuous communication of the various actors with the victims.</p> <p>All the actions carried out in cases of enforced disappearances, arbitrary executions and extra-judicial, and forensic investigations should provide the necessary elements for this type of process to be for reparation as a whole for individuals, relatives, communities and society promoting resilience and coping mechanisms that respect the emotions, thoughts, and experiences of the people and rebuild their life projects on the individual, family, community and social levels.</p>
<b>GOOD PRACTICES</b>	Identification of previous processes and experiences that have produced satisfactory results, the implementation of which ensures that the needs of the victims are met and progress in the search processes.
<b>A DIFFERENTIAL APPROACH</b>	All actions to be carried out in cases of enforced disappearances, arbitrary, extrajudicial or summary executions and in forensic investigations should take into account the particularities, expectations and needs of the population with whom they work, including its social, political, economic, historical and cultural context. Likewise, their characteristics of gender, age, ethnicity, language or spirituality, sexual choice, forms of organization and traditional justice systems, as well as other differentiating personal social circumstances.
<b>EQUALITY AND NON-DISCRIMINATION</b>	All actions to be taken in cases of enforced disappearance, arbitrary, extrajudicial or summary executions and forensic investigations must be carried out without any exclusion, distinction, restriction or preference based on ideology, gender,

	race, color, lineage or national or ethnic origin which has the object or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal basis, of the victims human rights.
<b>DUE DILIGENCE</b>	The principle by which the state immediately makes necessary resources available to thoroughly proceed with the mechanisms and procedures that allow us to develop the search of the person effectively, acting informally, and communicating appropriately to the complainant or to the society.

## MINIMUM STANDARDS AND RECOMMENDATIONS FOR GOOD PRACTICES

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### RULE 1 DENOUNCING THE DISAPPEARANCE AND/OR SEARCH REQUEST

**Adequate mechanisms should be created to enable the state institutions system to effectively collect, analyze and follow up on the request for a search or complaint on the disappearance of migrants, at the regional level.**

**Recommendations:**

- 1) Before a complaint or knowledge of the disappearance of a migrant, the States shall act expeditiously, taking into account that the first hours following the disappearance are crucial to find the person with life, through the immediate implementation, without any delay, of the urgent search mechanisms.
- 2) States should jointly build an institutional regional search route, ensuring coordination among states.
- 3) In each country, establish a single complaint route, including the definition of the competencies and scope of each instance, the reference systems, mechanisms for inter-institutional coordination and coordinated follow-up with other state institutions. In Federal States, all necessary measures should be taken to federalize the allegations and the search process, in this way, avoiding federalization as an obstacle to the victims complaints and demands.
- 4) States should exhaust all possible efforts to disseminate information on reports of disappearance, requests and search routes, nationally and regionally, and their mechanisms, ensuring that it reaches families, organizations, officials and the public at large in all the countries concerned in an understandable manner. Civil society can contribute to this information dissemination and accompaniment.
- 5) Create standard procedures, homologated index cards for collecting enough data for the search and the later identification of the living or *post mortem* location; also, the records and bases shared for national and regional information gathering, to ensure a homologation of the processes.
- 6) The institutions involved in receiving complaints or search requests should have an integrated case registration and sharing system, free access to state instances related to the search, to the family involved and to the delegates who are authorized by it.
- 7) The public institutions involved with the complaint or search requests should develop conditions so the officers in charge who receive the complaints or search requests are

provided with training from a psychosocial perspective, Human Rights, gender focus and on the context relating to the field of forced migration, to guide their actions to dignified treatment, avoiding the re - victimization and the blaming of family members.

- 8) Create emergency funds to meet the immediate expenses of the families, derived from the search.
- 9) The person filing the complaint or search request should be given all the necessary facilities according to their language, age, and origin, to ensure that they proceed immediately and the same is dealt with promptly and efficiently.
- 10) Complainants should be provided with the necessary facilities to provide follow-up to the complaint or search request filed and receive relevant, concise and specific information on the status, the actions taken and the referral route, on the state entities who are committed and of the civil society organizations that provide support in these types of cases.
- 11) The authorities responsible for the status must identify specific needs and have a referral system to provide crisis intervention, psychological care, social and economic support, legal advice and medical care, from the first moment of the complaint or search request in suitable spaces, according to what each case requires.
- 12) Families have the right to define who can accompany them in the various processes they have to deal with, related to the complaint or search application processes.

**Obligations under International Human Rights Law and  
International Humanitarian Law**

Access to the complaint and effective rights protection is not merely a formal fact, that is, it is not sufficient for there to be rules governing it. Administrative or executive authorities should ensure that accessible mechanisms are in place for the receipt, processing and resolution of complaints, ensuring the participation of multidisciplinary teams.

The documentation and effective investigation of any complaint about the disappearance of a person is a state obligation that must be developed under the principle of official, complete and timely. In addition, they must be channeled by a pre-established authority that guarantees competence, independence, impartiality and objectivity.

**Reference:**

Duty to adopt provisions of domestic law, Article 2 of the American Convention on Human Rights; articles I, XI and XII of the Inter-American Convention on Forced Disappearances; Article 12 of the International Convention for the Protection of all persons from Enforced Disappearance.



## **RULE 2 SEARCH FOR MISSING MIGRANTS**

**States should exhaust all means of effective search, without requiring prior judicial complaint, and avoid any hindrance to the search process for Missing Migrants. To that end, a maximum effort must be made to locate missing migrants, regardless of the time, place and context in which the disappearance occurred, activating the necessary mechanisms for transnational searches when necessary.**

**The participation and inclusion of family members and their representatives in the search processes for Missing Migrants should be promoted and facilitated, contributing to informed decision-making before technical and legal processes that compromise their rights to truth, justice, memory and comprehensive reparation. States must ensure that the search for missing migrants is done under conditions of safety and dignity for their families. Such security shall also apply to all information, including personal and confidential information, which, throughout the process, is obtained through any evidence means.**

### **Recommendations**

- 1) The states of Central America and Mexico must establish a national and transnational search mechanism for Missing Migrants, which would generate public policies and budgetary allocations for the effective search for missing persons, contemplating two search routes: 1. Immediate search on the assumption that the person is alive (detention centers, administrative detention centers, hospital centers, rehabilitation centers, places of trafficking and sexual and labor exploitation, among others) and 2. Search under the presumption that the person died (morgues, hospitals, mass graves, clandestine graves, among others). Clearly establishing the type of information required for each of the search routes.
- 2) The national and transnational search mechanism for Missing Migrants should be guided by the legislative, humanitarian, judicial and scientific framework to ensure its implementation, functioning and sustainability.
- 3) The national and transnational mechanism for the search for missing migrants should consider the phases of information collection, locating and delimiting the search places, recovery, scientific research, identification and delivery of remains, when they are not found alive, ensuring that the family members are able to carry out the corresponding private or public ceremonies in conditions of dignity according to their culture and beliefs. In this regard, States should ensure that there are no unmarked burials of individuals in

mass graves or cremations, which can affect subsequent search and research and impact on the cultural values of families.

- 4) The institutions of the state, according to their competence, have the responsibility for the search processes, and this should be carried out coordinately in Central America and Mexico.
- 5) States must achieve the integration of transnational mechanisms, such as the integration of a consular network as an entity for transnational monitoring and the implementation of search processes, by sharing information and coordinated decision-making expeditiously and effectively. Consular networks should establish joint cooperation agreements and partnerships with civil society and transnational or local search organizations.
- 6) States and all the actors involved will promote and facilitate the participation of relatives in the search processes for missing migrants, to this end a family search plan must be put in place to ensure that every effort has been made to locate them, both because of the subsequent difficulties that can be caused to carry out adequate identification processes, and because of the damage that could be caused in terms of both emotional and violation of family rights.
- 7) A national and transnational mechanism for the search for Missing Migrants and its related programs should be designed on the basis of joint and coordinated action among victims' organizations, civil society, government entities, national justice agencies, intergovernmental bodies and academic and professional bodies, both public and private. The organizations from civil society, should channel their complaints or the information they have about missing migrants to the competent bodies intended for such purposes, either at the national or transnational level through the mechanisms provided for in the national and transnational legal framework. Family members or their representatives must report at the request of the state when missing migrants have appeared or re-established contact with their families.
- 8) In the event that family members have appointed legal representatives, forensic and psychosocial experts, their participation in all investigations into the whereabouts of missing migrants shall be guaranteed, recognition by the state of the legal representation delegated by family members to civil society organizations or individuals.
- 9) Families and their representatives have the right to participate actively in the search processes, and states should develop strategies for the necessary resources to ensure such information and transfers to facilitate the presence of family members, when necessary.
- 10) States must communicate and disseminate the route or strategy to be implemented for the search to the families and organizations that accompany them. The units and institutions in charge of the search must ensure communication processes and access to

information for family members (individual and/or collective), doing reports, and/or direct communication, on the proceedings, findings and possible indications

- 11) The forensic processes must respond at all times to transnational good practices protocols, for example: Minnesota Protocol<sup>2</sup>; ICRC Recommendations on missing persons and their families<sup>3</sup>; Principles relating to effective prevention and investigation of extrajudicial , arbitrary or summary executions attached to Resolution 1989/65 of the Economic and Social Council of the United Nations<sup>4</sup>; Istanbul Protocol<sup>5</sup>, among others.

### **Obligations under International Human Rights Law and**

#### **International Humanitarian Law**

- a) One of the effective measures for search practices and methods standardization for the identification of missing persons is for states in the region or subregions to adopt International Human rights instruments, establishing regulations and protocols in accordance with them. In turn, inter-regional dialogue among the search authorities with the participation of the victims.
- b) It is essential for the state to observe the creation of legislative or administrative rules to ensure procedures accessible to everyone, as well as mechanisms to ensure their participation.

#### **Reference:**

Cooperation among states, Article 15 International Convention for the protection of all persons from Enforced Disappearance; Principle number three on recommended Principles and Guidelines on Human Rights at Transnational Borders.

<sup>2</sup>Minnesota protocol. UN Manual for the effective prevention and investigation of summary, extrajudicial, arbitrary or legal executions. U.N. Doc. E/ST/CSDHA/.12, 1991.

<sup>3</sup>"TheMissing": Action to resolve the problems of missing persons as a result of armed conflict or internal violence and to assist their families, ICRC/TheMissing/02.2003/EN/10.

<sup>4</sup>Economic and Social Council resolution 1989/65, annex.

<sup>5</sup>Istanbul Protocol. Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. U.N. 1999.

### **RULE 3 ACCESS TO JUSTICE AND TRUTH**

States should promote the full clarification of the facts that led to the disappearance of migrants. They must adopt both national and international measures (legislative, administrative, judicial and of any other nature) to help enforce the individual and collective rights for justice; therefore, leading to the punishment of those responsible. As well as facilitate the conditions for the recreation of historical memory from the victims, as part of the dignification process and to guarantee non-repetition.

During the justice and knowledge of the truth process, relatives of missing migrants, their representatives, and their companions must have access to information about the process, and the means of investigation implemented.

#### **Recommendations:**

- 1) The right of relatives to know the truth about what happened to missing migrants, and to know their current whereabouts, must be the central focus of the work of all actors involved in the search and forensic investigation processes. This is a comprehensive part of the right to the truth and creates restoration opportunities for the altered life projects and human rights protection.
- 2) The missing persons search processes, forensic investigations, and identifications should contribute to the clarification of the facts, the recognition of the suffering of the victims, and to determine the perpetrators' and participants' responsibilities to pave the way for justice.
- 3) Criminal proceedings due to missing migrants should include the identification of the perpetrators and the corresponding criminal penalties, to determine the whereabouts of the victim, and in the event of death, to determine the causes of such death, as well as the clarification of the circumstances regarding the manner, time, and place in which the events occurred.
- 4) Institutions involved in the search and criminal investigation shall assess the information provided by relatives in the investigation process, without implying that the burden of investigation falls on the relatives.
- 5) Establish cooperation agreements between States to facilitate access to information and documentation in search and investigation processes at regional level. Each State must approve and harmonize their legislative and regulatory procedures to achieve transnational search and investigation protocols.
- 6) States should harmonize their laws so that the search and investigation of the events occurred to missing migrants continue as long as the status of disappearance exists.

- 7) States must recognize relatives of missing migrants as victims too, as well as their rights related to this condition according to international regulation.
- 8) Families must be guaranteed the full exercise of all their civil and political rights without implying to declare or promote the recognition of the death of the missing migrant before there is irrefutable and verifiable evidence of the occurrence of the event. Likewise, protect the rights and interests of the missing migrant through the declaration of absence due to disappearance.
- 9) States should promote participation of relatives in truth and justice processes by ensuring their safety, the safety of the witnesses and of the organizations involved in the process. In cases where it is necessary, the States should grant protective measures to families who are at risk due to the denouncement of the disappearance of a migrant.
- 10) The finding of the whereabouts of the victim and, in the event of death, the dignified delivery of the victim's remains to the relatives, as well as culturally accepted burial rites, should be basic goals of the criminal investigation and other judicial, administrative, forensic, or any other type of procedure.
- 11) States have the obligation to provide a response to families, to search for the victims, and to establish their fate and whereabouts. This obligation includes all cases, even those in which relatives were unable to denounce due to fear, threats, presence of the perpetrators, or those in which no forensic investigation is possible, or those of public knowledge which the authorities must investigate ex officio.
- 12) States should allow and facilitate access to information on the investigation process for families and their representatives, by creating communication channels with authorities and providing families with resources to give follow up on the process.
- 13) The States have the obligation to continue the search for missing migrants until they find their whereabouts, whether the criminal investigation has been completed or not. To maintain the humanitarian principle, which means that the priority in the investigation is the search for the person, without undermining the investigation of related crimes when required.
- 14) States should strengthen the scientific-criminal research capacities of the workforce of the related institutions and exchange good practices, including those of context analysis and patterns identification.
- 15) In cases where it is deemed necessary, the right of relatives to independent experts and the establishment of transnational commissions should be guaranteed.

### **Obligations under International Human Rights Law and**

#### **International Humanitarian Law**

- a) The disappearance of a person affects their family and community, and therefore, regardless of the criminal investigations, they have the right to find answers in the ordinary, registry, and administrative law. Thus, implying to consider their involvement as victims to use the necessary mechanisms to obtain information of the possible whereabouts of the missing person.
- b) Each State Party shall ensure that any person claiming to have been subjected to enforced disappearance has the right to denounce the events to the competent authorities, who shall promptly and impartially assess the denouncement and, where appropriate, conduct a thorough and impartial investigation without delay.
- c) The common and criminal justice system must guarantee that relatives or the claimant community can participate through trusted lawyers, by providing means of investigation and presenting proposals for the authorities to investigate them, and by having the necessary capacities to submit them to the competent courts.

#### **References:**

Right to justice and truth, Articles 12.1, 24.2 of the International Convention for the Protection of all Persons against Enforced Disappearances. Articles 8 and 25 of the American Convention on Human Rights. Article I.d of the Inter-American Convention on Forced Disappearance of Persons.

### **RULE 4 LOCATION - IDENTIFICATION OF MISSING MIGRANTS**

**In cases where live missing migrants are located, the consular mechanisms and the necessary protocols must be implemented to comply with due process. The migrant should be given attention and, with their consent, their relatives should be informed. If they are of age, they should be supported to be reunited with their family as soon as possible and with full security guarantees.**

**The identification process should be carried out on the basis of international standards for personal and forensic identification and the implementation of appropriate protocols between States, which should ensure the identification of the person. The actions**

**implemented will prevent the revictimization and the violation of the integrity of the missing migrants' relatives.**

**Recommendations:**

- 1) States should strengthen the coordination between entities in charge of the search for missing migrants and those in charge of the identification, both in the immediate search route under the presumption that the person is alive, as in the search under the presumption that the person was deceased.
- 2) Access to psychosocial support should be facilitated for families and people located alive, prioritizing reintegration at family, community, and social levels, if they choose to. In the event of death, provide psychosocial support to families in their grief and seeking for truth and justice process, as well as reparation.
- 3) States should promote the activation of an institutional support network to address the reintegration needs of missing migrants who have been found alive.
- 4) States should create and integrate national databases and share them regionally. They should include useful data for identification, and it must contain biometric, genetic and any other information that contributes to identification under scientific standards, promoting informed consent and data security.
- 5) States should appropriately inform the relatives about the processes of identification, the information needs, seeking the appropriate understandable language, and taking into account the cultural aspects of the affected family.
- 6) Make the necessary efforts to ensure that analysis and identification processes are not unreasonably delayed, ensuring prompt and dignified delivery to families and communities.
- 7) Any identification process and forensic investigation must be accompanied by a thorough work of tracing potential relatives of missing migrants.
- 8) Whenever relatives so request, local organizations (national or transnational) should be included in the search and forensic investigation processes of missing migrants to contribute to the effectiveness of the technical, legal and psychosocial work processes, as well as to ensure compliance with national and international legal and scientific standards, on the understanding that they should act with transparency, independence, and objectivity.
- 9) Forensic work should be guaranteed to comply with scientific, legal and technical standards (national and transnational). This includes ensuring measures for individualization, finding

the cause of death, identification, and preservation of bodies, as well as treating them with dignity regardless if they have been identified or not.

### **Obligations under International Human Rights Law and**

#### **International Humanitarian Law**

- a) Persons reported as missing can be found in a variety of situations, either before state or private authorities. Therefore, search systems do not respond only to medical-forensic systems, but to any state entity that, in one way or another, has the required search, investigation, and localization capacities. Likewise, health centers and entities for the deprivation of liberty should also have comprehensive and up-to-date information records. Thus, ensuring effective access to them to determine that the person or persons are not in their care or custody.
- b) In the event that persons are victims of trafficking, illegal trafficking of persons or of any other crime affecting their freedom and physical integrity, the authorities should ensure rescue systems that allow immediate access to hospital care and the registration of their general data in a database that allows them to be consulted by the search systems.
- c) Deceased missing persons must be registered in unified state systems to avoid sub-registries or parallel registries. Likewise, systems that ensure that highly qualified personnel and adequate technical equipment will be used in the information collection and documentation process in each case.

#### **References:**

Fifth paragraph of the guidelines on the privacy protection and cross-border flows of personal data; Articles 15 and 17 of the International Convention for the Protection of all Persons against Enforced Disappearances; Guideline four of the recommended Principles and guidelines on human rights at transnational borders.

### **RULE 5 NOTIFICATION WITH DIGNITY**

**In the notification with dignity act or procedure the information must be clear, simple and accurate, either in cases where the notification is about a missing migrant who is alive or dead. It should also include a cooperation process with the parties involved: the Public**



**Prosecutor's Office, the Forensic Research Institute, Psychosocial Support Teams, the Victim Care Unit, among others.**

**The act or procedure must be carried out in person, directly, and in appropriate spaces to ensure physical and psychological security, the necessary medical and psychological assistance to the families of missing migrants.**

**Recommendations:**

- 1) States should establish a consensual notification protocol with organizations of relatives of missing migrants and their representatives, giving priority to the needs of their families and establishing conditions to avoid any revictimization. The authority responsible for notification, the procedure to be followed during the process, the competences of the actors involved, and the conditions to ensure the active participation of families should be established.
- 2) It is essential for the multidisciplinary team from the State and accompanying organizations involved in the notification to meet in advance to get to know each other, define roles and coordinate tasks of each member for this moment. The entire team must know the procedures and be aware of the type of information that will be given to the families.
- 3) In the case of notification of the migrant's corpse location, the receiving State or the State of origin must make every effort to identify and locate relatives, considering that non-location could involve both emotional damage and violation of family rights.
- 4) Civil society organizations must work together to locate and contact relatives through local and national processes.
- 5) Specialized transnational organizations should create spaces for sharing the best practices for tracking relatives.
- 6) In relatives tracking processes, the authorities should take into account the possible circumstances of intimidation, mistrust, and insecurity that can keep relatives in silence or isolation.
- 7) When notifying, it is essential to implement the criterion of action without harm, assessing, analyzing, and preventing the notification process from revictimizing families.
- 8) Psychosocial care teams from institutions and organizations involved need to work in advance with families to inform, clarify and resolve search-related situations and their results.

- 9) During notification, the language used with the families should be clear, simple and understandable. Each of them presents specific needs in terms of language, the pace of receiving and assimilating information, ways of responding emotionally to facts and findings, as well as raising concerns about the case. Family concerns and the diverse reactions to the notification must be respected. If it is important for the families, information on the conditions of the remains to be delivered in the event of death notifications should be provided.
- 10) During the notification, the team of identification experts should explain the method used for the migrant identification clearly and easily, ensuring the certainty of the results and addressing all the concerns of the families with the necessary technical and scientific support.
- 11) It is necessary to make a difference between the identification and the investigation for the search for truth and justice processes, and the institutions responsible for each one of them so families clearly know who can provide them with information and what role they have played in the case of their relative. Thus, being able to differentiate the time of each intervention.
- 12) States and their notification authorities should recognize the families' right to decide who and how many persons will accompany them at the time of the notification. The relatives' needs should be prioritized, bearing in mind that this is a very difficult time for them. The team's professionalism is essential for the development of the necessary steps. The States involved should guarantee coordination and presence of the institutions and organizations participating at the time of notification.
- 13) Notifications should in no case be made by telephone, electronic means or correspondence. They must be carried out in person, directly and in spaces suitable for relatives.
- 14) Information on notifications should never be disseminated through media without the relatives' consent. Accompanying authorities and organizations must respect the relatives' decisions.
- 15) The official summons to call the relatives of the migrant must only contain relevant information about the place, time and date of the procedure.
- 16) Inform families of the migrants that were found alive about their relative's legal, medical, and social situation, among others, only with the prior consent of the localized migrant, if they are of age. Notification must respect the will of the person found alive and the right of the family to know that they are alive. Legal elements that guarantee the integrity of the persons involved (claimant – researcher – migrant) should be taken into account.

- 17) The team in charge of the notifications must be trained to provide adequate care, based on knowledge of the social and cultural context of each family.
- 18) During the notification, false expectations must not be given in relation to the time of repatriation or the support offered by the states, because not fulfilling the same represents a violation to the families.
- 19) Expedite the time and processes between notification and repatriation, facilitating inter-institutional coordination mechanisms at the regional level.

### **Obligations under International Human Rights Law and**

#### **International Humanitarian Law**

Relatives should receive the information in their language with accompaniment that guarantees privacy and confidentiality, as well as tactfully helping them understand the procedures to be followed and their implications.

The use of personal information, as well as that of persons involved in the proceedings, should not be disseminated if this affects human rights, freedoms or dignity.

#### **References:**

Article 19 of the International Convention for the Protection of all Persons against Enforced Disappearances; guideline two and seven of the guidelines for the protection of migrants in countries affected by conflict or natural disasters.

## **RULE 6 REPATRIATION OF HUMAN REMAINS**

**States and their entities in charge of the repatriation of the identified migrants' corpses should consider (before, during and after the repatriation) the elements related to the customs, the culture of the country of origin, and the cultural and religious practices expressed by the victim's relatives.**

#### **Recommendations:**

- 1) States must assume, through one of their competent entities (or create it for this purpose, if it does not exist), the responsibility to exhaust every possible avenue and overcome all obstacles preventing a comprehensive approach to reparation for the repatriation and return of the remains found and identified, in such a way as to ensure that this action is carried out with dignity for the memory of the victim, and with respect and dignity for their relatives.

- 2) The institutions responsible for the repatriation must acknowledge the dignity of the deceased and their families. To do so, they should treat the remains with dignity, respecting their culture and burial rituals. The belongings associated with the deceased should be delivered along with their human remains, since it is important.
- 3) States should eradicate the practice of cremation of the remains of missing migrants since it does not respond to cultural practices in the region and makes it impossible for relatives to carry out any subsequent analyses.
- 4) The State must provide the necessary resources in the repatriation of the human remains based on specific programs through which the costs of the process are covered and that provide assistance in recognizing the status of victims of the affected families. Depending on the socio-economic situation of the families, the necessary means must be provided to move the family to the place where the delivery will take place and move them back to the place for the vigil or burial.
- 5) States must make every effort to reduce bureaucratic paperwork and implement more streamlined procedures for reasonable deadlines.
- 6) All parts involved in repatriation must handle the information confidentially, only providing it to family members and their representatives.
- 7) States, through competent institutions, or in coordination with family-designated organizations, should provide psychosocial care to families during the process of repatriation of identified deceased migrants.
- 8) States should respect and facilitate the decision of relatives to conduct independent identification processes.
- 9) States should ensure by all possible means that no undue charges are made to the relatives by officials in charge.
- 10) States and competent authorities should allow relatives to have contact and be able to review the remains of their loved ones when required.
- 11) States should refrain from encouraging relatives of deceased migrants to declare the presumed death. It is the duty of States to adopt protective measures and promote the prohibition of requirements that harm the moral, emotional, and mental integrity of the victims' relatives, such as the requirement to declare the presumed death unless expressly requested as a free and informed decision of the victims' relatives.

### **Obligations under International Human Rights Law and**

#### **International Humanitarian Law**

- a) When the missing person or persons are found dead, the State, through its forensic organs or private entities with sufficient competence, must ensure full identification of the corpse. Thus, avoiding misunderstandings with the relatives and the victim's own states of origin.
- b) State and any entity's records involved in the repatriation process must guarantee the protection of the privacy of personal and family data.

#### **References:**

Principles for limiting the use of the OECD guidelines on privacy protection and cross-border flows of personal data.

## **RULE 7 RETURN OF MIGRANTS**

**The parties responsible for the return of persons, injured, ill, and mutilated migrants, children, and crime victims should consider respecting the rights of the repatriated person and giving adequate notice to their families.**

#### **Recommendations:**

- 1) States, through the competent institutions, should provide psychosocial care to families during the process of returning injured, ill, mutilated migrants, children, crime victims from the country of destination to the country of origin.
- 2) Respect for the rights and States' responsibility to support unaccompanied minors, trafficking victims, persons with amputations, among others.
- 3) States must respect the principle of non-separation of families/the right to family unity
  - a) The principle of the best interest of the family, as a guiding principle of state activity in cases where families or family units are in migration. The maintenance of the family unit implies the obligation to have adequate spaces, and specialized and interdisciplinary staff. Based on this principle, it is necessary to avoid a lack of communication between father and mother, and between them and their children, or with any other relative they meet.
  - b) The existence of family units has the implicit obligation of having specialized places, personnel, and procedures for care, assistance, and protection. All this is aimed at

providing minimum conditions for family relationships and, particularly, at avoiding enforced separations, cruel, inhuman or degrading treatment.

- c) If, under any circumstances, families are separated, full knowledge of the place, proceedings and authorities in charge of each of them must be kept. This separation should not last more than 12 hours and the only purpose is that of taking information or personal administrative measures. Exceeding that time or not informing where the person is, implies secret detention and conditions facilitation for the person's disappearance.
- 4) States should ensure that key aspects to determine the status of girls, boys, and adolescents prior to return, are taken into account:
  - a) If the treatment is appropriate to their condition as a girl, boy, or adolescent.
  - b) Explicitly determine whether or not they are accompanied by their family or by another person.
  - c) Determine their nationality or their stateless status.
  - d) Information about the reasons why they left their country, family separation, and any other grounds to establish their need for protective measures.
- 5) Implement preconditions for the return of people to their countries of origin:
  - a) Prior to the return of a person to their country of origin, regardless of whether it is due to irregular migration, voluntary application or any other circumstance; it must be ensured that the premises must have minimum hygiene conditions, are suitable for overnight stays, shouldn't use restraint mechanisms, and have rooms with minimum conditions for rest and access to restrooms.
  - b) Isolation or subjection of persons to degrading, inhumane conditions or cruel treatments are crimes of transnational relevance and punishable in most countries of the region.

#### **Obligations under International Human Rights Law and**

#### **International Humanitarian Law**

- a) When the return is focused on girls, boys, or adolescents, whether or not they are unaccompanied or were separated from their families, any authority must always observe four guiding principles: non-discrimination, best interests, respect for the right to life, survival, and development; principle of respect for the views of the child.
- b) Before any return, there are "certain specific duties to be carried out by the receiving State, which include: (i) to enable the girl or boy to apply for asylum or refugee status. For such reason, they cannot be rejected at the border without a proper and individualized analysis of their applications, with due guarantees through the corresponding procedure; (ii) not to return the girl or boy to a country where their life,

freedom, security, or integrity might be at risk, or to a third country, from which they can be subsequently returned to the State where they are at risk; and (iii) grant them transnational protection when the girl or boy qualifies for it and benefit other members of the family with this acknowledgment, in accordance with the principle of family unity.”

- c) In the case of people with disabilities, injured, sick, mutilated or with any other condition of special vulnerability, States should ensure specialized care, including specialized personnel and adequate assistance at the different state buildings. Individuals should have the possibility to apply for asylum or refugee status; in turn, they should have access to specialized medical facilities to take care of their situation while their preconditions for a safe and informed return are resolved.
- d) The general principle of non-refoulement is established without previously determining that the person will not be at any risk for their life, personal integrity, and freedom.

**References:** Article 19 of the American Convention on Human Rights; Convention on the Rights of the Child, Advisory Opinion number 21/14 of the inter-American Court of Human Rights; Guideline four, five, and nine of the recommended Principles and Guidelines on human rights at transnational borders.

## **RULE 8 RIGHT TO A COMPREHENSIVE REPARATION**

**States should offer comprehensive reparation to missing migrant victims and their families for the violation of their human rights, through developing the necessary measures agreed with the victims for non-repetition guarantees, satisfaction measures, and compensation, in accordance with international standards on this area, always taking into account a differentiated approach.**

### **Recommendations:**

- 1) States have an obligation to guarantee comprehensive reparation to disappearance victims and their families, for which purpose the States must bring their concept of a victim to the international law in this area. States must take an active role in all aspects of comprehensive reparation: legal, moral, judicial, historical, economic, social, cultural and emotional.

- 2) It is essential that the state institutions in charge analyze and investigate the concept of comprehensive repair in each context and situation, according to differential needs by ethnicity, age, gender, and type of human rights violation.
- 3) Comprehensive reparation measures should establish and implement mechanisms to provide psychological and medical care, education, health care, among others.
- 4) Historical memory processes defined by victims and their families must be part of comprehensive repair measures.
- 5) States should keep in mind and guarantee that the compensation is a part of the reparation owed to the human rights violations victims, which does not replace the duty of the State to provide reparation to the victims and to guarantee their right to know what happened, who carried out the events, and why, as well as to the application of sanctions when applicable.<sup>6</sup>
- 6) States should promote and develop campaigns to inform relatives, communities and society at large about their rights in the reparation processes (individual and collective) defined by national and international law, among them, restitution measures, compensation, rehabilitation, satisfaction measures, of historical memory, and non-repetition guarantees.
- 7) Social recognition of the facts should be promoted as a form of reparation, both for the social recognition of the victims and their families' suffering, as well as to achieve the society's right to know the truth. The dignification of migrants, preventing their criminalization and stigmatization by authorities and society at large.
- 8) As part of reparation policies, it is recommended to support the free establishment of associative areas for victims through legal, administrative, or economic measures.
- 9) States should make the necessary efforts and make available the resources to reveal the situations of persistent disappearances of migrants in Central America and Mexico. Transnational and national organizations should undertake investigations and campaigns to make the situation visible, supporting local groups working in the field, and promoting

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<sup>6</sup>Inter-american court, case of Manuel Cepeda Vargas C. Colombia, Judgment on objections, substance, reparations and costs, May 26, 2010, paragraph 139. On this occasion, the following was stated: "As noted above, when assessing the effectiveness of remedies initiated within the national administrative jurisdiction, the court must observe whether the decisions made in that jurisdiction have effectively contributed to ending impunity, ensuring the non-repetition of injurious acts and guaranteeing the free and full exercise of the rights protected by the convention. Particularly, such decisions may be relevant in regard to the obligation to integrally repair a violation of rights. Likewise, in several cases against Colombia, the court held that comprehensive reparation for a violation of a right protected by the Convention cannot be reduced to the payment of compensation to the victim's relatives. Comprehensive and adequate reparation, within the framework of the convention, requires measures of rehabilitation, satisfaction, and non-repetition guarantees."



transnational action towards the States until such practices are substantially and effectively terminated or diminished until their final elimination.

- 10) States should legislate or, where appropriate, approve the form of a declaration of absence due to disappearance so that the family carries out civil and administrative proceedings.
- 11) Psychosocial care should be a cornerstone for comprehensive reparation and the duty to provide humanitarian assistance to communities and families of enforced disappearance victims, arbitrary or extrajudicial killings. In the search and forensic investigations processes, all necessary measures must be taken to prevent new forms of victimization of relatives, communities, and their companions.
- 12) States, along with victims and civil society organizations, should monitor the searching, forensic investigation, and identification of missing migrant processes to be carried out taking into account the psychosocial perspective and respecting the victims' rights and expectations.

#### **Obligations under International Human Rights Law and**

#### **International Humanitarian Law**

- a) States should ensure that comprehensive repair for victims of disappearance does not depend on the result of judicial processes, so even without a court decision, they can approach an administrative entity for the restoration of rights for the victim and their relatives.
- b) Restitution of rights or reparation with dignity should not be used as an excuse to stop the administrative and judicial investigations aimed at determining the causes of disappearances, as well as the punishment of those who, for any reason, made migrants disappear.
- c) Investigations, reparations, and restitution of rights must be accompanied by administrative, legislative or judicial measures aimed at ensuring non-repetition.

#### **References:**

Articles 24.4; 24.5; and 24.6 of the International Convention for the Protection of all Persons against Enforced Disappearances.

## **RULE 9 DIFFERENTIATED APPROACHES**

**In the development of the comprehensive search process, differentiated approaches to gender, human rights, cultural, and victimological should be applied to analyze the events and their implications on the search route.**

**Aspects and meanings related to the culture of the affected population shall be taken into account and respected within the procedures or protocols.**

**The differentiated impact of the events related to the disappearances of migrants (between women and men) and the subsequent processes will be made visible. The additional and different obstacles that women and men face to participate in these processes will be taken into account, and propose differentiated measures to ensure their participation.**

**When children and adolescents who are victims or who somehow result involved in the search for missing migrants, the actions taken will consider the best interests of the child.**

### **Recommendations**

- 1) The work teams of the institutions that carry out the processes of the comprehensive search for missing migrants must have enough and relevant information and sensitivity about the cultural context of the victims and their families.
- 2) All actors involved must respect and recognize the cultural particularities and meanings that individuals, families, and communities give to search processes and forensic investigations related to missing migrants.
- 3) The culture of the victims and their relatives must be respected to the greatest extent possible, and actions that are perceived by the victims as invasive should be avoided. This includes the respect for the testimonies, context and proper transmission of all communications, as well as respect for the version of the persons affected.
- 4) Women and men must be accompanied when meeting their specific needs during their processes of seeking for truth, justice, and repair, taking into account the social and cultural characteristics of gender assessment.
- 5) Provide specialized advice and support, together with the elaboration of joint strategies of legal and psychosocial techniques in cases in which girls and boys are witnesses to the disappearances, extrajudicial or arbitrary killings.
- 6) Develop pedagogical activities in educational establishments of the places where forensic investigations that help children and youth to understand and give meaning to the experience that they have witnessed, are carried out.

- 7) In the search and forensic investigation processes of cases of missing migrants involving children and youth as witnesses, psychosocial work with them must be guaranteed. Also, advice on the importance of actions with a differential psychosocial approach aimed at the teams and actors involved in the process must be provided.
- 8) The state officials, as well as the independent teams that are involved in the search for missing migrants, and forensic investigation of those who must apply basic psychosocial knowledge to respond to the needs of the relatives' victims, adjusting the approaches and procedures to the generational, ethnic, and gender particularities in each case.

#### **Obligations under International Human Rights Law and**

#### **International Humanitarian Law**

- a) The application of approaches differentiated by gender and multiculturalism issues is a condition that allows for equal treatment for human rights assistance and protection.
- b) Any action taken by a state or private entity with regard to migrants and their families must be based on the primacy of human rights and the need for their protection.
- c) For the effective implementation of differentiated and non-discriminatory approaches, as well as for the effective protection of human rights, States should have interdisciplinary teams who consolidate interventions based on condition comprehensive attention.

#### **References:**

Articles 1 and 2 of the American Convention on Human Rights; Principles of human primacy; non-discrimination and assistance and protection against any harm to the recommended principles and guidelines on human rights at transnational borders.