

INTERNATIONAL COUNCIL ON ARCHIVES
SECTION ON ARCHIVES AND HUMAN RIGHTS

Guiding Principles for the Dignified Management of the Dead in Humanitarian Emergencies and to Prevent them Becoming Missing Persons (International Committee of the Red Cross)

Comments submitted by the International Council of Archives
(Section on Archives and Human Rights) on 31 March 2021

The International Council on Archives, Section on Archives and Human Rights (ICA-SAHR), welcomes this draft set of Guiding Principles for the Dignified Management of the Dead in Humanitarian Emergencies and to Prevent them Becoming Missing Persons. The draft consolidates and summarizes the key provisions of international treaties, rules and practices in respecting the dignity and rights of the dead and their families/relatives during and after humanitarian emergencies.

The draft Principles present complicated legal and moral principles and obligations in an accessible manner, making them easier to understand and strengthening the possibility of their implementation by the relevant parties. ICA-SAHR agrees with the draft Principles but recommends elaboration of some of the Principles and clarifications of some of the terms used.

General Comment

ICA-SAHR believes the draft should address with the entire cycle of information and data that is created or collected during the process of tracing missing persons: records of identification, investigation, confirmation of death, return of the remains and personal effects; records of the process of gathering, disseminating and using the information, including to whom information access is granted; and the determination of which records of all physical types that should be preserved or disposed of. These issues are briefly addressed in Principle VIII which states that the necessary information “should be gathered, managed, made available and preserved with appropriate regard to data protection in accordance with international law and standards.” Footnote xii to Principle VIII points only to principle 11 of the UN document, Guiding principles for the search of disappeared persons, though there is more relevant guidance in other parts of this document. We believe Principle VIII needs to be expanded to incorporate additional guidance on managing records. The text should emphasize that adequate and proper records and information are required, both to respect the dignity and rights of the dead and their families and to secure the right to know the truth by local, national and international communities. We suggest the data and information to be gathered on a missing person should include: the name of the missing person, gender, place and date of birth, marital status, occupation, address, date and details of last circumstances of disappearance, the reason why the person is thought to be missing, and details of the families that correspond to the missing persons. If there is reliable information that the person is dead, the records should include information on the exact or approximate date of death and the causes, any indications of maltreatment

or violation of human rights, and images of the likely burial site and graveyard. All these records must be provided in a timely manner to family members free of charge to assist them in administrative, investigative or judicial actions, or other immediate needs. It is important to recognize that both the individual case files on the missing and the records of the entity that is searching for them have historical value after administrative and legal actions have been completed. All records created or collected, in any physical format including DNA samples, must be properly appraised for disposition as soon as practicable. Those possessing permanent value should be preserved by the relevant archives, with the rest destroyed in a secure manner. Prevailing laws and regulations seldom touch upon privacy of the dead and how disclosures of information may affect family members/beneficiaries, even though modern information technology has greatly aided the storage, search, collation, sharing and use of these information and records. Special consideration must be drawn to the proper management and security of the records to ensure their continued authenticity, preservation, and authorized access, especially for those in digital formats. Sensitive information needs to be carefully redacted or depersonalized before disclosure to other than family members to avoid disrespecting the dead and harming the living. Access to unredacted information may be granted in special cases for statistical, research or other legitimate public interests. Commercial use should be avoided unless there is consent from the family members/beneficiaries

Specific Comments

a. The text should begin with definitions; for example, of “victims” and “relatives.” Point 6 in the Preamble states “the truth of the facts surrounding such violations be made known to the victims and their relatives and also the concerned communities.” Is the truth about the facts the same as the facts? Who are the victims? If the “victims” refer only to the missing and the dead, how can truth be communicated to them? The term “relatives” of the dead is used in Principles II, IV, V, XIII, XIV and XVI while “families” is used in Principles III, VI, XVII, XVIII, XIX and XX. Are these two terms used interchangeably or do they have different meanings? The clarification of who constitute families or relatives is important, as it will impact on the rights and privacy of the dead as well as the related parties, particularly when disputes and legal proceedings are involved.

b. Guiding Principle 1 provides that: “identification is individualization by attribution of the birth name or other appropriate name to a dead person.” What if there are victims bearing the same name, which is not uncommon in many parts of the world? How are they differentiated from one another just by the name(s)? Perhaps the text could add “or other unique personal identifier” which could include identification numbers.

c. According to Point 4 of the Preamble, “Respect to a human being does not cease with death.” Point 5 states that “the identity of human beings must be preserved after death.” In that connection, it seems necessary to extend Guiding Principle 2, which states that “the dignity of the dead, their relatives and communities should be respected at all stages and at all times: while searching for the dead... the return of the remains and personal effects, and the final disposition of the dead,” to cover the handling of personal data and information even after death. Upon conclusion of the tracing and confirmation of death, all personal data and confidential information held by the designated Registry or Bureau must be treated with care to protect privacy and rights of the dead and the family members as well as any related third parties. Unrestricted access should be granted to family members and legal representatives and legal representatives of the missing persons and those to whom the information directly relates.