

# FAMILY RIGHTS

## SHORT GUIDE FOR FAMILIES OF THE MISSING



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# YOUR RIGHTS AT A GLANCE

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- ▶ You have **the right to the truth** about the fate and whereabouts of your disappeared family members and the circumstances in which they disappeared or went missing.
- ▶ You have **the right to an effective and official investigation** into the fate and whereabouts of your missing family members, and the circumstances of their disappearance.
- ▶ You have **the right to seek, receive, and impart information**, including across borders.
- ▶ You have **the right to form associations** and communicate with international agencies.
- ▶ You have **the right to family life**, to communicate and visit your family members. Your children have the right not to be separated from you against their will.
- ▶ You have **the right to effective access to justice** and adequate reparations for harm suffered.
- ▶ You have **the right to access, change, delete any personal information** you provide to others, and to control with whom they may share your information.
- ▶ You have **the right not to be discriminated against** on any grounds, such as gender, religion, ethnicity, or political affiliation, when you are exercising your rights and freedoms.

## WHY THIS GUIDE?

The International Commission on Missing Persons (ICMP) has prepared this short Guide to provide you with straightforward information about your rights as the family member of a missing person under international and national law. This Family Guide also indicates where you may be able to find help if your rights are not upheld. In addition, this Guide outlines how you, as a family member, can contribute to ensuring that authorities will respect your rights.

We have worked with families from around the world who have been on a similar journey and we know that the pursuit of answers from authorities and others is sometimes met with indifference or obstruction. We also know that many individuals who are searching for family members may face discrimination based on their nationality, religion, gender, political beliefs, or other factors under the law.

The information in this Family Guide will help you to address challenges you may face and make your voice heard; it will shed light on how you can find assistance to accessing your rights and how science and technology can play a role in accounting for missing persons and upholding your rights.

### WHO IS A FAMILY MEMBER?

**A family member is someone who is linked to the missing person by blood or by social family structures. This includes biological children, adopted children and stepchildren; life partner/ spouse; parents (including mother-in-law, father-in-law and adoptive parents); and brothers and sisters born of the same parents or different parents or adopted. This inclusive definition may not apply to you in some countries. For international help see below: WHERE CAN I FIND HELP.**



# FAMILY RIGHTS



## RIGHT TO TRUTH

You have the right to know the truth regarding the progress and results of any investigations conducted by the authorities to establish the fate and whereabouts of your disappeared family member and the circumstances in which they went missing. This right is enshrined in Article 24 of the UN International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), among other international documents.

Families have the right to seek and receive information about investigations that have been or are being conducted, and to access all relevant archives and locations where the missing person might be found. If the missing person is deceased, families have the right to receive a report that explains the circumstances of the disappearance, including the cause and manner of death.

If the authorities withhold information about missing persons from their family, the family has the right to object. Withholding such information may amount to cruel and inhumane treatment, which is a violation of the prohibition of torture, under Article 7 of the International Covenant on Civil and Political Rights (ICCPR). The prohibition of torture is an absolute norm of international law.



## RIGHT TO EFFECTIVE INVESTIGATIONS

Everyone's right to life, liberty and security is protected by law. This means that no one may be arbitrarily arrested or detained. It also includes not being subjected to enforced disappearance or detention in a secret location. The right to life, liberty and security also entails your right as the family member of a missing person to obtain an effective investigation into the fate and whereabouts of your missing relative, and the circumstances of the disappearance. These rights are protected under Articles 6 and 9 of the ICCPR.

Effective investigations must be official, independent, impartial, finalized in a timely manner, and capable of establishing the facts and circumstances in each case. Investigations should also be able to contribute to bringing those responsible to account.

You can initiate an official investigation by reporting to the authorities that your relative is missing. However, the authorities are obliged to begin an impartial investigation as soon as they become aware of a possible disappearance, or a person going missing under potentially threatening circumstances, regardless of who committed the violations and abuses. The same applies to the authorities becoming aware of locations of hidden graves or secret detention places or other places where missing persons might be found.

Investigations must also be transparent, and you have the right to observe or participate in locating and identifying your missing relative. Certain specific rules at crime scenes or gravesites may apply, such as cordoning off the area and limiting access by family members to sites under investigation. This is normally done in order to protect you against harm, to secure the effectiveness and integrity of the investigation and to protect evidence that could establish the cause and manner of disappearance of your missing loved one.

Professionals involved in the investigation must minimize any harm that may result from the process, especially harm to the physical and mental well-being of family members. They must communicate appropriately the reason for limiting your access to sites under investigation.

**The UN Minnesota Protocol on the Investigation of Potentially Unlawful Deaths is a useful manual you can use. Among other things, this Protocol explains the rights of family members of missing persons during investigations into the fate and whereabouts of their loved ones. It also offers guidance and best practice to individuals and professionals involved in the investigative process. Being familiar with best practice related to investigation processes will put you in a better position to know your rights and advocate accordingly for your rights.**



## **RIGHT TO SEEK AND SHARE INFORMATION**

You have the right to share information with whomever you may choose, the freedom to seek, receive and impart information, including across borders, and the right to access and communicate with international agencies. The right to seek and share information includes reporting about missing relatives and sharing necessary personal information to facilitate locating your missing relative.

You also have the right to associate freely at home and across borders and with international agencies for the purpose of supporting and forming organizations and associations of families of the missing, and documenting and sharing information.

You should be mindful that any exercise of the right to share and seek information carries with it duties and responsibilities to respect the rights of others, especially privacy rights. For instance, sharing personal information concerning another person, including information about a family member can breach privacy rights, unless the missing family member is considered to be at risk.

The rights and freedoms related to seeking, receiving, and imparting information are asserted in Article 19 of the ICCPR.



## RIGHT TO FAMILY LIFE

Missing persons and their family members have the right to family life and family reunification. This includes your right to maintain family relationships, communicate, visit, and correspond with your family members and not to be separated from your family members.

Failure by the authorities to allow communication with your family is a violation of this right and could amount to cruel or degrading treatment. Detained persons also have the right to be visited by and to correspond with relatives, subject to reasonable conditions and restrictions as specified by law or lawful regulations. Women are most often affected by the disappearance of family members and could suffer additional forms of intimidation and persecution arising from such disappearances.

Children also suffer from the disappearance of their parents, and their right to remain with their family is jeopardized by the disappearance of their family members. The loss of a parent through disappearance is also a serious violation of a child's human rights. Children have the right to family relations as recognized by law without unlawful interference as well as the right not to be separated from their parents against their will, except on specific grounds deemed in the best interest of the child.

These rights pertaining to family life and family unification rights are asserted in the ICCPR as well as the International Convention on the Rights of the Child.



## RIGHT TO EFFECTIVE REMEDY AND REPARATIONS

You have the right to equal and effective access to justice, adequate and prompt reparation for any harm suffered, and access to relevant information concerning violations and all available reparations mechanisms. As the family member of a missing person, you have the right to remedy and reparations to address mental, physical, or economic harm you have suffered as a result of the disappearance of your relative.

Remedies and reparations aim first of all to restore the situation before disappearance occurred. If restoring the original situation is not possible, remedies and reparations to family members of the missing can take other forms such as:

- ▶ Compensation
- ▶ Rehabilitation
- ▶ Satisfaction
- ▶ Guarantees of non-repetition

Asserting and defending the right to effective remedies and reparations is among the greatest challenges faced by families of the missing. Advocating collectively with other families of the missing through, for example, family associations and seeking the support of specialized organizations can strengthen your voice and your efforts to have your rights recognized by the authorities through legal and administrative measures as well as ensuring the effective implementation of your rights.



## RIGHT TO PRIVACY

Your right to privacy consists of your right to determine freely and for yourself what personal information is communicated to others.

Accordingly, any personal information you provide in relation to your missing relative should be used only with your free and informed consent.

Informed consent means that you understand in detail:

- ▶ Who will receive the information that you provide
- ▶ For what purposes the information will be used
- ▶ How the information will be managed and protected

In addition, you as the family member of a missing person should always be able to:

- ▶ Control personal information related to yourself and your missing relative
- ▶ Have the ability to access, update, amend or withdraw such information as you deem necessary
- ▶ Ensure that personal data, including the nature of family relationships, will only be accessible to those who need to see it for the purposes for which the information was collected
- ▶ Ensure that your personal data will be deleted once it is no longer needed, for instance because your missing relative is found

Sensitive personal information such as medical conditions or DNA samples and profiles must be accompanied by your **written consent and include the information above**. Your right to privacy is a fundamental human right recognized in Article 12 of the Universal Declaration of Human Rights, which underpins human dignity, autonomy, and liberty.





## RIGHT TO EQUALITY AND NON-DISCRIMINATION

The principles of equality and non-discrimination apply to all rights and freedoms. All persons enjoy, without discrimination of any kind, fundamental rights, without adverse distinction and regardless of:

- ◆ Political or other opinion
- ◆ Association with a national minority
- ◆ Birth, age, sex, sexual orientation, gender identity, marital status
- ◆ Religion or belief
- ◆ Race, color, language, ethnicity, caste, national or social origin
- ◆ Physical or mental disability, health status

This applies, for example, to your right to seek to know the fate, whereabouts, and circumstances of disappearances of missing relative without any discrimination based on your political opinion or affiliation. It also applies to your right to associate and advocate for the rights of your missing loved one without any distinction related to the missing person or the family, such as race, religion, national or social origin or other status.

The principle of equality is frequently difficult to realize where large numbers of persons have gone missing, whether following armed conflicts or as a result of organized crime or disasters. International cooperation can help to reduce inequality in such scenarios through the provision of support and assistance to all persons and groups affected, but specifically those who are marginalized politically, economically, socially or for other reasons.

The principles of equality and non-discrimination are established in the Universal Declaration of Human Rights and the ICCPR.

## WHERE CAN I FIND HELP?

There are various legal and administrative processes to access your rights. Generally, you should be able to report a missing person to the police, another law enforcement entity, or a national human rights or specialized national institution.

Reporting missing persons to national authorities might not always be possible, safe, or sufficient. You may decide to turn to international bodies and other organizations that work on the issue of missing and disappeared persons. These include courts and investigative institutions, human rights and humanitarian organizations, and advocacy groups. The following organizations can be contacted by anyone and may be able to assist:

**You need to be aware that reporting a missing persons may place you and the missing person at risk. International Organizations can help. You should always ask with whom your information is shared and for what it is used. For assistance on reporting missing persons, or to learn more about international resources available to you, you can contact ICMP via the [OIC](#) web-page, or by email at [ic@icmp.int](mailto:ic@icmp.int).**

### **COMMITTEE ON ENFORCED DISAPPEARANCE (CED), UNITED NATIONS**

The CED is a human rights treaty body established by the ICPPED. In accordance with Article 31 of the ICPPED anyone can submit a complaint to the CED asserting a violation of rights guaranteed by the Convention, if the State concerned has accepted the competence of the CED to examine individual complaints. A few, mostly European and Central and South American countries, have done so. A list of these countries is available at the [CED](#) webpage.

### **INTERNATIONAL COMMISSION ON MISSING PERSONS (ICMP)**

Family members and others may report a missing person to ICMP, an intergovernmental organization that works with governments and others to locate missing persons. Family members and others can provide information to ICMP's Integrated Data Management System (iDMS), which can then be used in investigations. ICMP might also ask you to provide samples of your DNA, for the purposes of being reunited with a missing relative (for example a child), or to help identify missing persons who are no longer alive. ICMP will not share or otherwise process your information without your consent. You can report missing persons using ICMP's Online Inquiry Center ([OIC](#)).

## **INTERNATIONAL COMMITTEE OF THE RED CROSS (ICRC)**

The ICRC is an independent, neutral organization that ensures humanitarian protection and assistance for victims of armed conflict and other situations of violence. The ICRC has a Restoring Family Links program, which is designed to locate persons who have been separated from their families and to put them back into contact with their relatives. The ICRC's Central Tracing Agency (CTA) helps to prevent family separation and disappearance by collecting and transmitting information as a neutral intermediary. You can report missing persons to the [CTA](#) online.

## **INTERPOL**

INTERPOL is an international organization that works primarily with national law enforcement agencies, especially police. INTERPOL uses a system of Notices to issue international requests for cooperation or alerts, allowing police in member countries to share important police-related information. Yellow Notices are used to communicate information about missing persons. On the INTERPOL website, it is possible to search the Yellow Notices. INTERPOL also operates a database called I-FAMILIA. You may submit your DNA sample for matching to [I-FAMILIA](#). You need to contact your national police to do so.

## **INTERNATIONAL ORGANIZATION FOR MIGRATION (IOM)**

IOM is the leading organization within the United Nations system working to promote and support orderly, dignified and humane migration. It also works on issues related to missing migrants through its Missing Migrants Project and to produce a public online database. [IOM](#) does not directly conduct activities to locate missing persons. However, it provides information on resources for families globally and regionally relating to persons who have gone missing while migrating.

## **WORKING GROUP ON ENFORCED OR INVOLUNTARY DISAPPEARANCES (WGEID), UNITED NATIONS**

You may report a missing persons case directly to the United Nations WGEID. The [WGEID](#) does not itself carry out investigations but assists families in their communications with the government concerned. The WGEID examines and transmits to governments reports of enforced disappearances, asking governments to carry out investigations and to inform the WGEID of the results.

**REGIONAL INTERNATIONAL COURTS** have accepted complaints concerning missing and disappeared persons. They include the European Court of Human Rights, the Inter-American Court of Human Rights, and the African Court on Human and Peoples' Rights through the African Commission on Human and Peoples' Rights.

You must have exhausted all available legal remedies at the national level before your complaints regarding a human rights violation can be accepted by an international court. Regional international courts have rendered judgements against states for the failure to investigate in an effective manner persons disappearing and going missing and for violating the prohibition of torture and inhumane treatment in respect of families of the missing who are left without answers, in addition to other human rights violations.

You may also turn to organizations providing specialized legal assistance, such as legal advice and litigation of cases before international courts as well as mental health and psychosocial support, in the course of your journey in realizing your rights.

## **CIVIL SOCIETY ORGANIZATIONS (CSOs)**

**CSOs can also help you to:**

- ▶ Report your missing loved one to international agencies and organizations
- ▶ Provide guidance and information on possible assistance you may obtain at the national and international level
- ▶ Provide training and information on the exercise of your rights
- ▶ Facilitate your access to international organizations and agencies

Many CSOs working on the issue of missing and disappeared persons belong to regional coalitions or federations of organizations and associations. These regional groups are an invaluable source of information, including guidance to smaller organizations or chapters.

## THE ROLE OF SCIENCE AND TECHNOLOGY

Modern science and technology tools are a crucial component in accounting for missing persons. Through clearly defined procedures, they can establish facts, including legal evidence to:

- Reunify families through DNA comparison,
- Determine cause and manner of death,
- Produce evidence for accountability and justice, including establishing the severity and scale of human rights violations and abuses, and
- Ensure that the historical record is correct regarding what actually took place.

Forensic investigations compare personal data about missing persons provided by their relatives with data obtained from other sources. For instance, a photograph that you provide of your missing relative can be combined with other photographs through facial recognition technology or with other information provided by someone who might have seen your missing relative.

DNA analysis can establish family relationships to enable missing persons to be reunited with family members. Where a missing person could be deceased, DNA analysis constitutes one of three accepted human identification methods, the others being fingerprints and dental analysis. The DNA of a family member of a missing person can be compared with DNA from unidentified human remains.

While the capacity of biological evidence to identify victims and perpetrators has increased, no legal right to DNA analysis has been established yet.

In most cases, it is government and judicial institutions, domestic and international, that have the capabilities and resources to ensure that investigations deliver consistent results.



## What Happens to Information that I Provide



The issue of missing persons is a challenge that affects all countries, whether rich or poor in the global south or north. Persons go missing as a consequence of conflict, human rights abuses (including enforced disappearance), natural and manmade disasters, organized crime, immigration, and other causes. There are processes and instruments to address the problem in an effective way, but they are not applied everywhere. The Standard Model developed by ICMP aims to outline these processes and instruments.

The Standard Model shows that processes to locate missing persons involve information from two sources:

- Someone – for example, you – reports a person as missing and provides information, such as the person's name and place of disappearance,
- Someone – for example, you – reports a location where missing persons may be, such as a secret prison or grave.

This information needs to come together. This is done through databases that use a common language to process the information received from both sources. That common language uses scientific, legal, medical and other standard terms that are universal. In this way large amounts of information can be compared to locate the missing.

In many parts of the world these processes may not be fully available. There will be gaps caused by obstruction and lack of political will. However, very often information that you and others provide is not processed by the authorities in a manner that produces results. This can be improved through better international and national cooperation, better data processing and data protection.

## WHAT CAN I DO?

You can play an important role in ensuring that your rights are recognized and upheld by calling for effective investigations that are capable of establishing the facts.

- ▶ You can report and document human rights violations and advocate for the establishment of public institutions that will uphold human rights and that deserve the public trust. This often requires legal reforms or new legislation guided by international conventions and other instruments that include guarantees related to the missing and their families.
- ▶ You should participate in mechanisms such as those described above that provide and collect data on missing and disappeared persons and contribute to establishing central records of missing persons. You can help to solicit views from communities with missing persons on the functions of any such mechanisms.
- ▶ You should seek to observe investigative work at locations where missing persons might be found, including detention facilities or illicit gravesites when it is safe to do so for you and others.
- ▶ You should contribute to shaping policies to create processes and laws to uphold your rights and to secure reparations and remedies for harm suffered, economic loss and other substantial violations and abuses of fundamental rights. Remedies and compensation are essential investments in establishing and maintaining peace.
- ▶ You may be able to provide evidence and testimony at trials and participate in other mechanisms aimed at holding perpetrators accountable.

International Conventions such as the ICCPED and the ICCPR are important tools for addressing the issue of missing persons and preventing the recurrence of violations and abuses. Their effective implementation can require legal and institutional reforms at the highest level. For example, these reforms can require that new institutions are created, such as human rights commissions or other legal review bodies. Families of the missing can contribute to the establishment of such institutions and work through advocacy, forming associations and participating in processes to locate the missing through local and international institutions that reinforce the responsibility of the state to account for missing persons. The [ICMP Paris Principles](#) outline the responsibilities of the state concerning missing persons and your rights.





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