

# Implementing international law: An avenue for preventing disappearances, resolving cases of missing persons and addressing the needs of their families

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## Abstract

*International humanitarian law and international human rights law seek to prevent people from going missing, and to clarify the fate and whereabouts of those who do go missing while upholding the right to know of their relatives. When implementing international law at the domestic level, national authorities should plan carefully before engaging in any policy or legal reform that will address the issue of missing persons and the response to the needs of their families. This article seeks to present a general overview of the provisions of international law that are relevant to understanding the role of national implementation vis-à-vis the clarification of the fate and whereabouts of missing persons and the response to the needs of their*

\* The views expressed here are those of the authors and do not necessarily reflect the position of the International Committee of the Red Cross. The authors would like to thank Cristina Pellandini and Helen Obregón for their valuable comments on earlier drafts of this article.

*relatives. It also presents the role that the ICRC has played in this regard and highlights three challenges that may arise at the national level when working on legal and policy reforms.*

**Keywords:** ICRC, missing persons, families, national implementation, legal status, missing persons' mechanisms, international humanitarian law, international human rights law.

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## Introduction

Every year thousands of persons go missing, notably as a result of armed conflicts, other situations of violence or disasters. The circumstances in which people go missing may vary: families are separated because of hostilities and violence, or when people flee their homes across international borders, which may result in the disruption of means of communication. On the battlefield, members of States' armed forces and non-State armed groups can go missing, and so can people who are detained, arrested or held incommunicado or in secret places of detention. If human remains are inappropriately handled, these persons can also become missing. Families suffer great anguish not knowing whether their relatives are alive or dead. They make despairing attempts to find them and live in limbo for many years, even decades. The uncertainty of not knowing what has happened to their relatives can generate important psychological and sociological consequences for them, such as difficulties in starting to cope with the grieving process, and can also rupture the family's structure and functioning.<sup>1</sup>

In situations of armed conflict, international humanitarian law (IHL) and, in both wartime and peacetime, international human rights law (IHRL) seek to prevent people from going missing and to clarify the fate and whereabouts of those who do. In this regard, it is of paramount importance to ensure that the rights and obligations derived from these bodies of international law are implemented at the national level through the adoption of the proper domestic laws and policies which include the establishment of relevant and well-coordinated structures, procedures or mechanisms. National implementation is only a first step; enforcing laws and policies is an essential next step to ensuring their effective application in favour of those who have gone missing and their families.

This article looks at the importance of implementing international law, in particular IHL, at the national level in order to prevent people from going missing and to clarify the fate and whereabouts of those unaccounted for, while upholding

1 To better understand the impact of disappearances on families, see ICRC, *Accompanying the Families of Missing Persons: A Practical Handbook*, 2015, available at: [www.icrc.org/en/publication/4110-accompanying-families-missing-persons-practical-handbook](http://www.icrc.org/en/publication/4110-accompanying-families-missing-persons-practical-handbook) (all internet references were accessed in October 2018); and see Pauline Boss, "Families of the Missing: Psychosocial Effects and Therapeutic Approaches", in this issue of the *Review*.

the rights and needs of their families. It will also look at the role of the International Committee of the Red Cross (ICRC) in supporting States' efforts to implement IHL at the domestic level, and will provide examples of domestic normative frameworks adopted in different regions of the world that seek to address the issue of missing persons and respond to the needs of their families. The article will also look at three challenges related to national implementation: (1) the definition of missing persons; (2) the recognition of the legal status of missing persons; and (3) the creation of appropriate mechanisms to search for the missing and respond to the needs of their relatives.

## The international legal framework

Before reflecting on national implementation, a brief overview of the main relevant international law provisions regarding the protection of missing persons is necessary. This part of the article does not seek to analyze in detail all the provisions of IHL and other branches of international law dealing with the prevention of disappearances and the clarification of the fate and whereabouts of missing persons, but rather aims to give readers the tools needed to understand the role of national implementation of international law in preventing disappearances, clarifying the fate and whereabouts of missing persons and addressing the rights and needs of their families.

The Geneva Conventions of 1949, their Additional Protocols of 1977 and customary IHL contain important rules, which are applicable in situations of armed conflict, to ensure that people do not go missing and to account for those who do. IHL also contains rules regulating the search for, collection, evacuation, identification and return of human remains, which play a central role in reducing the number of persons unaccounted for. In international armed conflicts, underlying the obligations relevant to missing persons is the right of families to know the fate and whereabouts of their missing relatives, which is enshrined in Article 32 of Additional Protocol I (AP I) as a general principle that shall prompt States parties, parties to armed conflict and humanitarian organizations to search for missing and dead persons.<sup>2</sup> Furthermore, under customary international law,

2 Helen Obregón Gieseken, "The Protection of Migrants under International Humanitarian Law", *International Review of the Red Cross*, Vol. 99, No. 904, 2017, pp. 149–150. Article 32 of AP I states: "In the implementation of this Section, the activities of the High Contracting Parties, of the Parties to the conflict and of the international humanitarian organizations mentioned in the Conventions and in this Protocol shall be prompted mainly by the right of families to know the fate of their relatives."

The right of families to know the fate of their relatives is also supported by a number of resolutions adopted in multilateral fora. For example, in a resolution adopted in 1974, the United Nations (UN) General Assembly stated that "the desire to know the fate of loved ones lost in armed conflicts is a basic human need which should be satisfied to the greatest extent possible". UNGA Res. 3230 (XXIX), 6 November 1974, Preamble. Also, the former UN Commission on Human Rights affirmed in two resolutions in 2002 and 2004 "the right of families to know the fate of their relatives reported missing in connection with armed conflict". UN Commission on Human Rights, Res. 2002/60, 25 April 2002, para. 2, and Res. 2004/50, 20 April 2004, para. 3.

each party to both international and non-international armed conflicts “must take all feasible measures to account for persons reported missing as a result of armed conflict and must provide their family members with any information it has on their fate”.<sup>3</sup> As noted in the ICRC’s Customary Law Study, “[p]ractice indicates that this rule is motivated by the right of families to know the fate of their missing relatives”.<sup>4</sup>

As seen above, parties to an armed conflict have obligations in terms of preventing disappearances and clarifying the fate and whereabouts of those unaccounted for. The following concrete examples illustrate what these two obligations entail: in terms of preventing people from going missing, States and parties to an armed conflict (1) should produce and provide means of identification for members of armed forces or groups, for instance by issuing identity cards and discs;<sup>5</sup> (2) must allow persons deprived of their liberty for reasons related to the armed conflict to correspond with their families, subject to reasonable conditions relating to frequency and the need for censorship by the authorities;<sup>6</sup> (3) must establish an official Graves Registration Service and/or National Information Bureau, as provided for in the Geneva Conventions;<sup>7</sup> and (4) must record all available information relating to the dead, deliver proper death certificates and ensure that the management of human remains is carried out in a proper and dignified manner.<sup>8</sup>

Once people have gone missing, the obligation to clarify their fate and whereabouts requires that States and parties to an armed conflict take all feasible measures to account for missing and dead persons<sup>9</sup> and all possible measures to search for, collect and evacuate the dead without adverse distinction, as well as to identify the dead.<sup>10</sup> Measures such as burying the dead in individual graves<sup>11</sup> and

Finally, the International Conference of the Red Cross and Red Crescent has adopted on various occasions resolutions stressing the right of families to be informed about the fate of their relatives. See in particular 25th International Conference of the Red Cross and Red Crescent, Res. XIII, October 1986; 26th International Conference of the Red Cross and Red Crescent, Res. II, December 1995.

3 Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law*, Vol. 1: *Rules*, Cambridge University Press, Cambridge, 2005 (ICRC Customary Law Study), Rule 117.

4 *Ibid.*, commentary on Rule 117.

5 Geneva Convention I (GC I), Art. 16(f); Geneva Convention II (GC II), Art. 19(f); Geneva Convention III (GC III), Art. 17.

6 GC III, Arts 70–71; Geneva Convention IV (GC IV), Arts 106–107; Additional Protocol II (AP II), Art. 5 (2)(b); ICRC Customary Law Study, above note 3, Rules 105, 125.

7 GC III, Arts 120, 122, 124; GC IV, Art. 136.

8 GC I, Art. 17; GC II, Art. 20; GC III, Art. 120; GC IV, Art. 130; AP I, Art. 34; AP II, Art. 8; ICRC Customary Law Study, above note 3, Rules 112–116.

9 ICRC Customary Law Study, above note 3, Rules 116, 117.

10 GC I, Arts 15–17; GC II, Arts 18–20; GC III, Arts 120, 122–124; GC IV, Arts 16, 136–141; AP I, Arts 32–34; AP II, Art. 8; ICRC Customary Law Study, above note 3, Rule 112.

11 In international armed conflicts, parties to the conflict shall ensure that burial or cremation of the dead is carried out individually as far as circumstances permit (GC I, Art. 17(1); GC II, Art. 20(1)). Deceased prisoners of war and internees must be buried in individual graves unless unavoidable circumstances require the use of collective graves (GC III, Art. 120; GC IV, Art. 130). See also ICRC Customary Law Study, above note 3, Rule 115 and commentary.

recording all available information prior to their disposal<sup>12</sup> can facilitate any identification process.

IHRL is also relevant for preventing and protecting persons against disappearances, especially against enforced disappearances. The 2006 International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) is the first universal treaty to regulate this issue and to include specific obligations for States Parties in terms of prevention, clarification and accountability.<sup>13</sup> Other regional human rights instruments also deal with the issue of enforced disappearances, for example the Inter-American Convention on Forced Disappearance of Persons.<sup>14</sup> IHRL obligations regarding the prevention and protection of persons against disappearances should also be implemented into domestic laws.

In order to ensure that IHL is fully applied and respected during armed conflicts, States have the responsibility to adopt the relevant measures at the domestic level, including in peacetime.<sup>15</sup> This responsibility is “prominently set forth in Article 1 common to the four Geneva Conventions, which requires States Parties to ‘respect and to ensure respect for the present Convention in all circumstances’”.<sup>16</sup> National implementation of this body of law is a permanent process which covers a wide range of measures<sup>17</sup> such as the adoption of laws, policies, administrative regulations and other measures, including practical ones. IHL rules themselves contain specific practical measures that States must adopt to give effect to the rules they contain, such as the obligation to disseminate IHL to the armed forces and civilian population and to provide instruction in IHL to armed forces.<sup>18</sup> These measures are also relevant when dealing with the issue of missing persons and their families. The collaboration of various entities,

12 See note 8 above for references concerning the obligations of parties to record all available information prior to disposal of the dead, including ICRC Customary Law Study, above note 3, Rule 116.

13 International Convention for the Protection of All Persons from Enforced Disappearance, 2716 UNTS 3, 20 December 2006 (entered into force 23 December 2010).

14 Organization of American States (OAS), Inter-American Convention on Forced Disappearance of Persons, 9 June 1994 (entered into force 28 March 1996), available at: <http://www.refworld.org/docid/3ae6b38ef.html>.

15 Toni Pfanner, “Various Mechanisms and Approaches for Implementing International Humanitarian Law and Protecting and Assisting War Victims”, *International Review of the Red Cross*, Vol. 91, No. 874, 2009, p. 282.

16 Cristina Pellandini, “Ensuring National Compliance with IHL: The Role and Impact of National IHL Committees”, *International Review of the Red Cross*, Vol. 96, No. 895–896, 2014, p. 1044. For more information on the obligation to respect and ensure respect in Article 1 common to the four Geneva Conventions, see Knut Dörmann and Jose Serralvo, “Common Article 1 to the Geneva Conventions and the Obligation to Prevent International Humanitarian Law Violations”, *International Review of the Red Cross*, Vol. 96, No. 895–896, 2014; ICRC Customary Law Study, above note 3, Rules 139, 140, 144; ICRC, *Commentary on the First Geneva Convention: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, 2nd ed., Geneva, 2016, Art. 1.

17 ICRC, “Implementing International Humanitarian Law: From Law to Action”, Advisory Service Factsheet, 2002, available at: [www.icrc.org/en/document/implementing-international-humanitarian-law-law-action](http://www.icrc.org/en/document/implementing-international-humanitarian-law-law-action).

18 GC I, Art. 47; GC II, Art. 48; GC III, Art. 127; GC IV, Art. 144; AP II, Art. 83; ICRC Customary Law Study, above note 3, Rules 142, 143.

ministries and/or other national authorities is key to ensuring the effectiveness of processes aimed at implementing IHL at the domestic level.

## **Implementing international obligations at the domestic level: The role of the ICRC**

Preventing people from going missing and restoring contact between families separated by armed conflicts, other situations of violence, disasters or other circumstances that might require action by a neutral and independent body has been at the core of the ICRC's mandate since the organization's inception. The Central Tracing Agency<sup>19</sup> was created with the main purpose of obtaining information on "prisoners of war and protected civilian persons, particularly those subject to internment", and "transmit[ing] it to their country of origin or of residence or to the Power on which they depend, except where such transmission might be detrimental to the persons whom the information concerns or to their relatives"<sup>20</sup>. In addition, the ICRC's work on the missing focused initially on traditional activities such as dissemination of IHL and bilateral interventions recalling States' obligations regarding missing persons and their families, detention visits, Restoring Family Links activities and processing tracing requests.<sup>21</sup> However, in the 1990s in the former Yugoslavia, the ICRC started expanding its activities on the issue of the missing and adopting a longer-term approach.<sup>22</sup> For instance, it started helping authorities to establish mechanisms between parties to exchange information in order to clarify the fate and whereabouts of missing persons, and to draft legal frameworks related to missing persons that also address the needs of the families.<sup>23</sup> It also implemented psychosocial programmes to support the families of missing persons and started increasing its expertise in forensic services.<sup>24</sup>

Given the expansion of ICRC activities on the issue of the missing and the need to ensure a more uniform and coordinated approach on this matter globally, in 2002 the ICRC launched a process aimed at addressing the plight of missing persons and their families. This process focused on reviewing methods for preventing persons from becoming unaccounted for and for responding to the needs of families of missing persons, with a view to agreeing on recommendations and operational practices to this end. The first phase consisted of a series of workshops and studies resulting in the elaboration of recommendations and best

19 For a brief overview of the Central Tracing Agency's work, see ICRC, "Central Tracing Agency", available at: <https://casebook.icrc.org/glossary/central-tracing-agency>.

20 *Ibid.*

21 Marco Sassòli and Marie-Louise Tougas, "The ICRC and the Missing", *International Review of the Red Cross*, Vol. 84, No. 848, 2002, pp. 733–736; Olivier Dubois, Katharine Marshall and Siobhan Sparkes McNamara, "New Technologies and New Policies: The ICRC's Evolving Approach to Working with Separated Families", *International Review of the Red Cross*, Vol. 94, No. 888, 2012, p. 1471.

22 O. Dubois, K. Marshall and S. S. McNamara, above note 21, p. 1472.

23 *Ibid.*, p. 1473.

24 *Ibid.*, p. 1473.

practices on each topic addressed.<sup>25</sup> For the second phase, the ICRC held an International Conference of Governmental and Non-Governmental Experts on the missing entitled “The Missing: Action to Resolve the Problem of People Unaccounted for as a Result of Armed Conflict or Internal Violence and to Assist their Families” in 2003. The Conference adopted observations and recommendations to strengthen the response to the issue of missing persons and their families. In particular, the observations and recommendations not only addressed the need to prevent people from going missing and to clarify their fate and whereabouts but also highlighted the importance of newer areas of support such as forensic services and support to families of missing persons.<sup>26</sup> Later that year, Resolution 1 of the 28th International Conference of the Red Cross and Red Crescent<sup>27</sup> adopted the Declaration and Agenda for Humanitarian Action. The Agenda for Humanitarian Action addressed four humanitarian concerns, including the issue of persons that have gone missing in connection with armed conflicts or other situations of violence. The resolution provided for different actions to achieve the following six goals relating to missing persons and their families:

1. prevent persons from becoming missing;
2. ascertain the fate and whereabouts of missing persons;
3. manage information and process files on missing persons;
4. manage human remains and information on the dead;
5. support families of missing persons; and
6. encourage non-State armed groups engaged in armed conflicts to resolve the problem of missing persons, assist their families and prevent others from becoming missing.<sup>28</sup>

This served as a basis for the ICRC to step up its efforts and develop a multidisciplinary and holistic approach to the issue of missing persons and the needs of their families, responding to this issue through different activities that are all essential for providing meaningful answers and support. It “was a significant step forward, not only for this particular area of the ICRC’s work but for the institution as a whole”.<sup>29</sup>

In order to assist States in their efforts towards ratification of relevant international treaties and the implementation of their international obligations at the domestic level, and based on Resolution 1 of the 26th International

25 *Ibid.*, p. 1473.

26 ICRC, “The Missing: Action to Resolve the Problem of People Unaccounted for as a Result of Armed Conflict or Internal Violence and to Assist Their Families”, *International Review of the Red Cross*, Vol. 85, No. 849, 2003.

27 “These new areas of emphasis took a more long-term view of, and arguably even post-conflict development-oriented approach to, the ICRC’s work on missing persons.” 28th International Conference of the Red Cross and Red Crescent, Res. 1, “Adoption of the Declaration and Agenda for Humanitarian Action”, 6 December 2003, p. 1474, available at: [www.icrc.org/eng/resources/documents/resolution/28-international-conference-resolution-1-2003.htm](http://www.icrc.org/eng/resources/documents/resolution/28-international-conference-resolution-1-2003.htm).

28 *Ibid.*

29 O. Dubois, K. Marshall and S. S. McNamara, above note 21.

Conference of the Red Cross and Red Crescent Movement,<sup>30</sup> which was adopted by consensus, in 1996 the ICRC established a specialized structure – the ICRC Advisory Service on IHL.<sup>31</sup> The Advisory Service provides guidance to national authorities on specific domestic implementation measures needed to meet their IHL obligations through a global network of legal advisers who facilitate the exchange of information regarding national measures of implementation and good practices.<sup>32</sup> Since its inception the Advisory Service has developed a series of tools and publications, the main purpose of which is to provide technical support and guidance on domestic normative frameworks, as well as perspectives on States’ practices, in order to address different issues related, for example, to the protection of victims of armed conflict and other situations of violence at the domestic level.<sup>33</sup> It also supports the work of National Committees on IHL, which are national bodies established to promote, advise on and coordinate IHL implementation domestically, usually through an inter-ministerial and multidisciplinary advisory group of experts.<sup>34</sup>

More particularly, with regards to the protection of missing persons and their families in 2007, the ICRC, through its Advisory Service on IHL, organized the Second Universal Meeting of National Committees on International Humanitarian Law, on the topic “Legal Measures and Mechanisms to Prevent Disappearances, to Establish the Fate of Missing Persons, and to Assist Their Families”.<sup>35</sup> One of the main objectives of this meeting was to increase the capacity of National Committees on IHL to work on preventing and resolving cases of missing persons as a result of armed conflict and other situations of violence while strengthening their actions and commitments in this regard. The meeting also aimed at providing a forum for discussion on means to assist

30 28th International Conference of the Red Cross and Red Crescent, above note 27. In this vein, since its creation, the ICRC Advisory Service on IHL has been working with a global network of legal advisers in “encouraging and supporting adherence to IHL and related instruments; providing specialist advice and technical assistance for the adoption of legal and administrative measures which States must take in order to comply with their obligations under IHL [and other relevant branches of international law]; and collecting and facilitating exchange of information between States on national IHL implementation laws and administrative measures adopted.”

31 Marion Harroff-Tavel, “The International Committee of the Red Cross and the Promotion of International Humanitarian Law: Looking Back, Looking Forward”, *International Review of the Red Cross*, Vol. 96, No. 895–896, 2014, pp. 844–845.

32 See: [www.icrc.org/en/document/icrc-advisory-services-international-humanitarian-law](http://www.icrc.org/en/document/icrc-advisory-services-international-humanitarian-law).

33 These are part of the ICRC publication *The Domestic Implementation of International Humanitarian Law: A Manual* (available at: [www.icrc.org/eng/resources/documents/publication/pdvd40.htm](http://www.icrc.org/eng/resources/documents/publication/pdvd40.htm)), which is a practical tool to assist policy-makers, legislators and other stakeholders worldwide in adhering to IHL instruments and implementing their obligations domestically, including those related to the repression of serious violations of IHL. For more information on the tools produced by the ICRC Advisory Service, see ICRC, “National Implementation of IHL: Documentation”, available at: [www.icrc.org/en/war-and-law/ihl-domestic-law/documentation](http://www.icrc.org/en/war-and-law/ihl-domestic-law/documentation); ICRC National Implementation of IHL Database, available at: <https://ihl-databases.icrc.org/ihl-nat>.

34 C. Pellandini, above note 16, pp. 1043–1048.

35 ICRC, *Report of the Second Universal Meeting of National Committees on International Humanitarian Law*, 31 March 2007, available at: [www.icrc.org/en/publication/0924-legal-measures-and-mechanisms-prevent-disappearances-establish-fate-missing-persons](http://www.icrc.org/en/publication/0924-legal-measures-and-mechanisms-prevent-disappearances-establish-fate-missing-persons).



National Committees in their efforts to include the issue of missing persons and their families in their plans of action and activities.

In 2008 the Advisory Service published a set of Guiding Principles/Model Law on the Missing.<sup>36</sup> This tool seeks to effectively support States in the adoption of national legislation and other measures to address, prevent and resolve the issue of missing persons while responding to the rights and needs of their families. As such, Dubois suggests that “[t]he creation of these resources represents something more than just the ICRC’s traditional promotion of IHL; they are also contributions to efforts to restore the rule of law and stability in a post-conflict society”.<sup>37</sup>

The ICRC Guiding Principles/Model Law served as a basis for the development of further tools, in particular a joint publication, with the Inter-Parliamentary Union, of a Handbook for Parliamentarians that stresses the role of parliamentarians in the prevention of disappearances and more particularly in addressing the rights and needs of missing persons and their families.<sup>38</sup> Notably, the Handbook highlights the role that parliamentarians can play in adopting the appropriate national legal and policy frameworks by proposing six avenues for action that could guarantee a holistic response to the issue of missing persons and their families at the national level.<sup>39</sup>

It is also worth mentioning that, during its 31st Plenary Session in November 2008, the Interparliamentary Assembly of Member Nations of the Commonwealth of Independent States (CIS) adopted a regional Model Law on Missing Persons, based on the 2008 ICRC Guiding Principles/Model Law. Since the adoption of the regional Model Law the ICRC has promoted this instrument with CIS member States.<sup>40</sup>

In 2015, the Advisory Service on IHL published a fact sheet entitled “Missing Persons and Their Families” which summarizes States’ and parties to a conflict’s obligations on the matter under international law, in particular IHL.<sup>41</sup>

With regards to implementation of the law, the observations and recommendations adopted by consensus on 21 February 2003 by the International Conference of Governmental and Non-Governmental Experts highlight the importance of full implementation of IHL at the domestic level by States in order to prevent persons from becoming unaccounted for, and of the work of the ICRC in supporting States in fulfilling their responsibilities.<sup>42</sup> Thus,

36 ICRC, *Guiding Principles/Model Law on the Missing*, 2009, available at: [www.icrc.org/en/document/guiding-principles-model-law-missing-model-law](http://www.icrc.org/en/document/guiding-principles-model-law-missing-model-law).

37 O. Dubois, K. Marshall and S. S. McNamara, above note 21.

38 Inter-Parliamentary Union and ICRC, *Missing Persons: A Handbook for Parliamentarians*, 2009 (Handbook for Parliamentarians), available at: [www.icrc.org/en/publication/1117-missing-persons-handbook-parliamentarians](http://www.icrc.org/en/publication/1117-missing-persons-handbook-parliamentarians).

39 The six avenues for action are: (1) adopting international humanitarian law and human rights law treaties; (2) adopting national legislation on missing persons; (3) overseeing government action; (4) putting appropriate mechanisms in place to prevent, resolve and process disappearances; (5) mobilizing and sensitizing public opinion; and (6) establishing cooperation at the national and international levels.

40 CIS, Model Law on Missing Persons, 2008, available at: [http://iacis.ru/upload/iblock/410/ass\\_31\\_17a.pdf](http://iacis.ru/upload/iblock/410/ass_31_17a.pdf).

41 See: ICRC, Missing persons and their families- Factsheet, 31 December 2015, available at: <https://www.icrc.org/en/document/missing-persons-and-their-families-factsheet>.

42 ICRC, above note 26.

the work of the ICRC Advisory Service on IHL has been and remains essential in supporting States in the development of domestic normative and policy frameworks.

It is worth highlighting that the need to work on the adoption, implementation and enforcement of proper domestic legal frameworks to address the issue of missing persons and their families has been dealt with in different resolutions adopted at the universal and regional levels. For example, every two years since 2003, the United Nations (UN) General Assembly has adopted a resolution entitled “Missing Persons”<sup>43</sup> which deals with the issue of people who go missing during armed conflicts. In particular, in the preamble of Resolution 71/201, the UN General Assembly recognizes that “respect for and implementation of international humanitarian law can reduce the number of cases of missing persons in armed conflict”.<sup>44</sup> Furthermore, it calls upon States “to take measures to prevent persons from going missing in connection with armed conflict, including by fully implementing their obligations and commitments under relevant international law”.<sup>45</sup> At the regional level, the General Assembly of the Organization of American States (OAS) has regularly adopted since 2005 a resolution on disappeared persons and on the provision of assistance to their relatives.<sup>46</sup> It also mentions this topic in its resolution on the promotion and protection of human rights.<sup>47</sup> The OAS General Assembly has also recognized the importance of working on the adoption of domestic normative frameworks to respond to disappearances and has highlighted the usefulness of the tools produced by the ICRC.<sup>48</sup> As an example, the resolution adopted in 2013 urged States, in keeping with their obligations under IHL and IHRL,

to continue the progressive adoption of measures, including domestic regulatory and institutional provisions, to prevent the disappearance of persons in the context of armed conflict or other situations of armed violence, with particular focus on those related to vulnerable groups; clarify the fate and whereabouts of those who have disappeared; strengthen technical capacity and promote regional cooperation for forensic search, recovery, and use of forensic genetics for the identification of human remains including as regards the problem of migrants presumed to have disappeared; and attend to the needs of the family members, using as a reference, *inter alia*, the Guiding Principles/Model Law on the Missing prepared by the Advisory Service on IHL of the International Committee of the Red Cross.<sup>49</sup>

43 UNGA Res. 57/207, “Missing Persons”, UN Doc. A/RES/57/207, 14 February 2003.

44 UNGA Res. 71/201, “Missing Persons”, UN Doc. A/RES/71/201, 26 January 2017.

45 *Ibid.*

46 OAS, General Assembly Res. AG/RES 2134 (XXXV-O/05), “Persons Who Have Disappeared and Assistance to Members of Their Families”, 7 June 2005.

47 OAS, General Assembly Res. AG/RES 2928 (XLVIII-O/18), “Promotion and Protection of Human Rights”, 5 June 2018.

48 See, for instance, OAS, General Assembly Res. AG/RES 2794 (XLIII-O/13), “Persons Who Have Disappeared and Assistance to Members of Their Families”, 5 June 2013, *op. para. 2*.

49 *Ibid.*, *op. para. 2*.

With the development of these tools and the expertise available, the ICRC has provided legal and technical advice to national authorities in countries such as Colombia, Peru, Sri Lanka, Bosnia and Herzegovina, Kosovo, Georgia and Ukraine, with a view to strengthening the domestic legal and policy frameworks regulating the issue of missing persons and support to their families. Over the years, the ICRC has assisted twenty-two States in developing national laws and measures related to missing persons and their families. This work includes carrying out, or supporting States in carrying out, studies on the compatibility of domestic law with IHL and other international legal frameworks, such as IHRL, in order to identify the existing gaps or potential contradictions with international law in the domestic legal framework. It also includes promoting the adoption of laws and other regulations to create the appropriate mechanisms, structures, measures and procedures for the clarification of the fate and whereabouts of those who have gone missing in a specific context. Furthermore, this work allows authorities and other actors to respond to the various rights and needs of the families, be they administrative, psychological, psychosocial or legal, and enhances the medico-legal system. Finally, it helps to ensure that information pertaining to missing persons and their relatives is handled appropriately.<sup>50</sup>

## **Working on the development of domestic normative frameworks on the missing**

Regardless of the type of situation, be it to address cases of missing persons during armed conflicts, other situations of violence or disasters, or during a post-conflict or transitional justice process, it is evident that the clarification of the fate and whereabouts of those unaccounted for and the response to the rights and needs of their families requires a proper assessment of existing legal and policy frameworks and a subsequent regulation at the domestic level.

There is no one-size-fits-all approach to national implementation, which depends not only on the legal system of a State (e.g. monist or dualist, civil law or common law) but also on the particularities of the context and the laws, regulations or procedures that already exist at the domestic level. As a result, “careful planning and regular consultation with States are the keys to effective implementation”.<sup>51</sup> The ICRC has also identified a number of important elements that are the baseline of a comprehensive national legal and policy framework to address the issue of missing persons and to respond to the needs of their families. For example, a comprehensive national legal and policy framework should encompass measures to prevent disappearances, to clarify the fate and

50 For example, Crettol and La Rosa explain that there are different bodies that can be put in place to find out whether a person who has gone missing is dead or alive, while making the link with post-conflict and transitional justice processes. Monique Crettol and Anne-Marie La Rosa, “The Missing and Transitional Justice: The Right to Know and the Fight against Impunity”, *International Review of the Red Cross*, Vol. 88, No. 862, 2006, p. 357.

51 ICRC, *The Domestic Implementation of International Humanitarian Law*, above note 33, p. 25.

whereabouts of those who go missing, to ensure that the system or process that is put in place to search for the missing manages and processes information in a proper manner with due respect for the confidentiality of information and the protection of personal data in line with internationally recognized data protection rules and standards, to respect the human remains of those who have died, and last but not least, to ensure that families receive proper support and answers to their rights and needs.

To properly address the issue of missing persons and their families it is of paramount importance to carry out a preliminary assessment of existing domestic legal and policy frameworks, including practical measures. Some aspects related to the response to missing persons and their families may already be provided for in domestic regulations. For example, with a view to defining how the search, evacuation, recovery, treatment and identification of the dead are regulated in a particular country, it is important to understand which institution is, by law, in charge of the provision of forensic services and which legal and regulatory frameworks are in place to deal with the management of cemeteries, as well as the procedures regarding exhumation and identification. Another example relates to existing legal procedures that are in place to declare a person officially missing or dead *in absentia* and the legal effects these two situations may have. The existence of governmental services to address the various needs of the families of missing persons should also be understood. For example, social benefits and social assistance schemes should be looked into to determine if families of missing persons are entitled to access those services and schemes, or if there is a need to include them or to create new ones that will respond to the specific vulnerabilities of such families. Carrying out this analysis will allow a better understanding of the system in place and will allow those concerned to identify gaps and avenues for promoting legal and policy reforms.

In conclusion, to effectively respond to the issue of missing persons and the rights and needs of their families, the structures and procedures that are already in place or that will be put in place should have a clear mandate and should be equipped with the proper capacities in terms of information collection, processing and transfer, search and investigation, effective forensic capacities, and providing support for the families of those unaccounted for. Overall, adopting measures to prevent people from going missing requires careful planning. This would definitely set the framework for a comprehensive response to the issue of missing persons aimed at addressing what happened in the past and responding to, and solving, cases when they arise.

## Challenges

When promoting the adoption or reform of domestic legal and policy frameworks to address the issue of missing persons and respond to the rights and needs of their families, different challenges exist.

This section will focus on three specific challenges that arise when the decision to address the issue of missing persons and to respond to the needs and rights of their relatives is taken. Questions related to the following issues will be discussed: (1) definition of who is a missing person; (2) recognition of the legal status applicable to those unaccounted for; and (3) the creation of appropriate mechanisms to search for the missing, account for their fate and whereabouts and respond to the needs of their relatives.

## Defining who is a missing person

It is important to ensure that the rights of the missing and their relatives are properly addressed. As mentioned above, this starts with defining who is a missing person.

The notion of “missing person” is not defined under international law. However, the related notion of “disappeared person” is defined in different international law instruments<sup>52</sup> that were adopted as a response to the problem of enforced disappearances. Notably, Article 2 of the ICPPED refers to persons who go missing following

the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.<sup>53</sup>

Furthermore, the Statute of the International Criminal Court provides a similar definition of enforced disappearance as a crime against humanity.<sup>54</sup>

In comparison, the ICRC defines missing persons as

individuals of whom their families have no news and/or who, on the basis of reliable information, have been reported missing as a result of an armed conflict – international or non-international – or of other situations of violence or any other situation that might require action by a neutral and independent body. This includes disasters and the context of migration.<sup>55</sup>

The ICRC’s definition of missing persons is broader in scope than the notion of disappeared persons as it includes other situations besides enforced

52 See ICPPED, Art. 2; Inter-American Convention on Forced Disappearance of Persons, Art. II; Rome Statute of the International Criminal Court (Rome Statute), Art. 7(2)(i).

53 ICPPED, Art. 2.

54 According to the Rome Statute of the International Criminal Court, “enforced disappearance of persons” as a crime against humanity means “the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time”. Rome Statute, Article 7(2)(i)

55 See “Q&A: The ICRC’s Engagement on the Missing and Their Families”, in this issue of the *Review*. It is important to note that this definition is based on the Handbook for Parliamentarians, above note 38.

disappearances where people might go missing. The definition takes into consideration three main elements: (1) the circumstances in which disappearances occur; (2) the element of uncertainty of the fate and whereabouts of the person for his/her relatives; and (3) the fact that a person is reported missing on the basis of reliable information in connection with a particular situation (e.g. armed conflicts, other situations of violence and disasters). The ICRC's definition also takes into consideration disappearances that do not take place at the hands of a State. This is particularly relevant in the context of non-international armed conflicts, where non-State armed groups can be perpetrators. The proposed definition is also wide in scope to ensure proper protection of the rights of the missing person and the needs of his/her relatives.<sup>56</sup>

In this vein, when adopting domestic legal and policy frameworks and putting in place the proper structures and procedures, the notion of missing persons should be interpreted as broadly as possible so that people do not fall outside the personal scope (*rationae personae*) of application of the laws, policies and procedures in question.<sup>57</sup> Additionally, if in a given context the State is party to the ICPPED or to other relevant instruments<sup>58</sup>, this should be reflected in the text of the law that defines who is considered a missing person by adopting provisions and procedures which implement the obligations of the Convention.<sup>59</sup>

It is also worth mentioning that practice has shown that in some cases, the law or procedures adopted at the domestic level to address the issue of missing persons have limited the temporal scope (*rationae temporis*) of application to a certain period or to specific situations. For example, in 2016 Peru adopted a new law on the search of persons who went missing during the period of violence between 1980 and 2000.<sup>60</sup> In Bosnia and Herzegovina, the law on missing persons of 2004 also refers to a specific period, “the armed conflict that happened on the territory of the former SFRY”, and limits its personal and temporal scope of application to those who went missing from 30 April 1991 to 14 February 1996.<sup>61</sup> In Kosovo, the law on missing persons circumscribes the temporal scope of the law to those “who were reported missing during the period 1 January 1998–31 December 2000, as a consequence of the war in Kosovo during 1998–1999”.<sup>62</sup>

56 Handbook for Parliamentarians, above note 38, p. 40.

57 ICRC, above note 36, p. 8.

58 For example, the Inter-American Convention on Forced Disappearance of Persons.

59 In Sri Lanka, for example, the law that created the Office on Missing Persons establishes that the Office will work on clarifying the fate and whereabouts of persons who are reasonably believed to be unaccounted for and missing “(i) in the course of, or in connection with the conflict which took place in the Northern and Eastern Provinces and its aftermath, or [who are] member[s] of the armed forces or police who [are] identified as ‘missing in action’; or (ii) in connection with political unrest or civil disturbances; or (iii) as an enforced disappearance as defined in the ‘International Convention on Protection of All Persons from Enforced Disappearances’”. Sri Lanka, Office on Missing Persons (Establishment, Administration and Discharge of Functions) Act, No. 14 of 2016, section 27.

60 Peru, Law No. 30470 on the Search for Missing Persons during the 1980–2000 Period of Violence, 2016, available at: <https://tinyurl.com/ybexc67p>.

61 Bosnia and Herzegovina, Law on Missing Persons, 2004, available at: <https://tinyurl.com/yd4l65dt>.

62 Kosovo, Law No. 04/L-023 on Missing Persons, 14 September 2011, available at: <https://tinyurl.com/ydhwtgww>.

These are just a few examples that corroborate that there is no one-size-fits-all approach to national implementation, and that defining who is a missing person at the domestic level is essential as it will allow authorities and other actors to determine, on the one hand, which missing persons the State is searching for and, on the other, which relatives are entitled to the protection of their rights and needs.

## Recognizing the legal status of the missing

In addition to defining who is a missing person, another important aspect in addressing the issue of missing persons and the needs of their families lies in providing a legal status to both the missing person and to their relatives. This is an issue that is not regulated under international law.<sup>63</sup> However, even if the recognition of a legal status for missing persons is not provided as such under international law, it is worth noting that the ICPPED recognizes under Article 24 (6) that States party to the Convention,

without prejudice to the obligation to continue the investigation until the fate of the disappeared person has been clarified, ... shall take the appropriate steps with regard to the legal situation of disappeared persons whose fate has not been clarified and that of their relatives, in fields such as social welfare, financial matters, family law and property rights.

In fact, in some contexts the absence of a person is either not recognized as such under the law or is recognized only for a certain period, after which the person is declared to be presumed dead.<sup>64</sup> Not providing for the notion of “missing person” in the domestic legal civil system results in families of missing persons often being left without any means of support. Moreover, in the majority of cases “many of the missing persons are male, often the sole breadwinners and account or property holders. Their families are thus left without their source of income.”<sup>65</sup> Notably, the absence of a relative entails a series of legal and administrative obstacles in relation to the exercise of property and inheritance rights, social benefits and pension rights, the right to enter a new union and the exercise of parental rights. Where there is no legal status for the missing, relatives of missing persons either have to accept, request and initiate procedures to declare a person absent for a limited period of time, or initiate procedures for the

63 Citroni explains that “at the international level there is no instrument obliging states to codify the legal status of persons who were subjected to enforced disappearance without resorting to the declaration of death”. Gabriella Citroni, “The Pitfalls of Regulating the Legal Status of the Disappeared Persons through the Declaration of Death”, *Journal of International Criminal Justice*, Vol. 12, No. 4, 2014, p. 789. This is also relevant for all cases of missing persons and not only for those related to enforced disappearances.

64 “A person should not be declared dead without sufficient supporting evidence. It is therefore desirable, before a death certificate is issued, to provide for an interim period of ‘absence’ of a reasonable length so that the circumstances of that person’s disappearance can be investigated and his or her fate ascertained. If the person is found alive, the certificate of absence should be annulled and his or her legal status fully restored.” ICRC, above note 1, p. 20.

65 M. Crettol and A.-M. La Rosa, above note 50, p. 356.

recognition of a presumption of death or for a formal declaration of death.<sup>66</sup> As such, Citroni suggests that

this practice fails to adequately tackle the circumstances of enforced disappearance. It also causes additional anguish to the relatives of the disappeared, who are exposed to re-victimization when having to declare their loved ones dead, often having to randomly fix a date for their death, ignoring what their status actually is and the fact that they may still be alive somewhere.<sup>67</sup>

This is also valid for the relatives of all missing persons and not just to those that are victims of enforced disappearances. By recognizing a legal status, the rights of the sought person are preserved. As rightly mentioned in the ICRC handbook *Accompanying the Families of Missing Persons*, “the rights and interests of missing persons must be protected at all times until their fate has been ascertained. To this end, they must be granted a special legal status.”<sup>68</sup>

Indeed, practice has shown that different States where people have gone missing as a result of armed conflicts or other situations of violence have undertaken legal reforms to incorporate into their domestic legal systems a special status for these individuals, considering different effects that reflect the particularities of these situations.

In 2012, for example, Colombia adopted Law 1531, which creates the declaration of absence for reasons of enforced disappearance and other forms of involuntary disappearance. This law incorporates into the domestic legal system the notion of the legal personality of a missing person. It also assigns different civil effects to the declaration of absence, such as the guarantee of the continuation of the legal personality of the missing person, the preservation of parental rights, the protection of patrimony, and the protection of the rights of the family and minors.<sup>69</sup>

In Mexico, the Federal Law on the Special Declaration of Absence for Missing Persons adopted in 2018 seeks to respond to the needs and rights of the families of missing persons. For instance, the law recognizes in its first article that the main objective of the law is to “recognize, protect and guarantee the continuity of the legal personality and the rights of the missing person; to provide for the legal certainty to the representation of the interests and rights of the missing person[;] and to provide for the appropriate measures to ensure the widest

66 It is interesting to note that the Council of Europe, in an issue paper of 2016, highlights that “the regulation of the legal status of missing and disappeared persons while their fate and whereabouts are unknown is necessary to settle matters related in particular to inheritance, social welfare, family law and property rights. Most Council of Europe member states lack ad hoc legislation that takes into account the specificities of the phenomenon and apply provisions on presumptions of death or even make social assistance and compensation conditional on obtaining a declaration of death.” Council of Europe, Commissioner for Human Rights, *Missing Persons and Victims of Enforced Disappearances in Europe*, Issue Paper, March 2016, p. 46.

67 G. Citroni, above note 63, p. 2.

68 ICRC, above note 1, p. 19.

69 Colombia, Law 1531 on the Declaration of Absence of Missing Persons, 2012, Art. 7.



protection to their relatives”.<sup>70</sup> Article 21 describes the effects of the special declaration of absence.

These examples provide an overview of what recognizing the legal status of those who have gone missing entails, in particular regarding the legal effects of such a recognition vis-à-vis the rights of the missing and the relatives.

As mentioned in the introduction to this article, implementing and adopting domestic normative and policy frameworks is only one step, but it is a very important one. However, for these frameworks to fulfil their main objective, it is of paramount importance to ensure that they are effectively applied by ensuring, among other things, that the procedures are relatively simple, that the families of those unaccounted for understand them and have access to them, and that those who are called upon to determine the status of affected individuals are aware of the existence of such frameworks.

To conclude, the domestic legal and policy frameworks that are put in place should provide proper protection and guarantees for the rights of the sought person and of his/her relatives. In this regard, the main effects and consequences of declaring someone officially missing should be to fully guarantee and ensure the continuity of his/her legal personality and to protect his/her civil and family rights.

## Putting in place appropriate mechanisms to search for the missing and respond to the needs of their relatives

The ICRC’s experience<sup>71</sup> in working with national authorities around the world has shown that there is a minimum amount of engagement necessary to ensure an integral approach to the search for those unaccounted for and the response to the rights and needs of their relatives. As mentioned above, there is not a unique formula or a one-size-fits-all approach to finding those who have gone missing. However, in every process, be it in Africa, the Americas, Asia, Europe or the Middle East, it is important to ensure a series of institutional efforts that will serve the purposes of alleviating the suffering of the families while providing meaningful answers. Institutional responses need to satisfy the rights of the missing and their families, and in particular their right to know the fate and whereabouts of their missing relatives. In this regard, the mechanisms that are put in place to fulfil such purposes need to have a clear mandate and different powers and functions that will allow for a proper search process. These mechanisms should encompass the proper management and protection of information, the establishment of a sound forensic process and the proper

70 Mexico, Federal Law on the Special Declaration of Absence for Missing Persons, 22 June 2018, Art. 1, authors’ translation. Original in Spanish: “II. Reconocer, proteger y garantizar la continuidad de la personalidad jurídica y los derechos de la Persona Desaparecida; III. Brindar certeza jurídica a la representación de los intereses y derechos de la Persona Desaparecida, y IV. Otorgar las medidas apropiadas para asegurar la protección más amplia a los Familiares.”

71 In 2017, the ICRC conducted missing-related activities in over sixty contexts across all regions. These activities include the provision of legal and technical advice to national authorities working on the adoption of domestic legal and policy frameworks to address the issue of missing persons and the response to the needs of their relatives.

response to the different needs of the families, in line with international rules and standards, always putting at the centre of the process the missing person, their families, and the families' need to know the fate and whereabouts of their missing relatives. In this vein, different States have adopted national laws to create structures to search for those who went missing during a specific conflict or to respond to the needs of their families.

In Colombia, for example, in 2000, a National Search Commission for Disappeared Persons was created and was tasked with supporting and promoting the investigation of cases of enforced disappearance, determining the circumstances in which a person disappeared and establishing the identity of the presumed perpetrators.<sup>72</sup> One important aspect of the Commission is its multi-sectoral composition, which includes representatives from different ministries and entities, international organizations, civil society and families of the disappeared. Additionally, following the peace process and the peace agreement signed between the government of Colombia and the Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia, FARC) in 2016, the search for missing persons in relation to the armed conflict was recognized as a priority.<sup>73</sup> In this regard, the law that created the transitional justice system in Colombia<sup>74</sup> also created the Missing Persons Search Unit. Unlike the scope of application of the National Search Commission of 2000, the definition of the personal scope of application of the new Unit was an important change as not only cases of enforced disappearance will be considered.<sup>75</sup> Following the law, a presidential decree was issued to organize the functioning of the Unit. The decree defines the fundamental pillars of the unit, its full independence and its autonomy (including financial), as well as all that is required to support its humanitarian mandate and extrajudicial character. Overall, the main objective of the Unit is to clarify what happened to those who went missing during the armed conflict while contributing to an effective response to the rights of the victims, to the truth and to reparations.<sup>76</sup>

In Peru, a law on the search for persons who went missing during the period of 1980 to 2000 was adopted in 2016.<sup>77</sup> Unlike the search scheme existing before 2016, which focuses on investigations and criminal proceedings aimed at

72 Colombia, Law 589, 7 July 2000, available at: <https://tinyurl.com/y7znz7e9d>.

73 Colombian Government and FARC–EP, Joint Communiqué No. 62, Havana, 17 October 2015, and Final Agreement, 24 August 2016, Chap. 5.

74 Following the peace agreement between the government of Colombia and the FARC, a law was adopted to incorporate into the Constitution different provisions related to end of the armed conflict and the building of a stable and long-lasting peace. Colombia, Acto Legislativo No. 1, 4 April 2017, available at: <https://tinyurl.com/ydyxhwp3>.

75 According to the law, “the Unit to search for persons who went missing in relation to and as a result of the armed conflict will have a humanitarian and extrajudicial character and will direct, coordinate and contribute to the implementation of humanitarian actions aimed at searching for and locating persons who went missing in relation to and as a result of the armed conflict that are alive, and in cases of death, when feasible, at the identification and dignified return of the human remains”. Authors’ translation.

76 Since the first decree in 2017, two decrees have been issued to define the specific structure and functions of the Unit: Decree 288 of 2018 and Decree 1393 of 2018.

determining responsibilities for the commission of a crime (e.g. gross human rights violations), the new process prioritizes the humanitarian search for missing persons and the clarification of the circumstances in which a person went missing, including their fate and whereabouts, and places the families at the centre of the process. The main issues considered in the 2016 law can be summarized as follows. First, the law defines the *humanitarian approach*. It emphasizes the importance of providing answers to family members regarding the circumstances of the death and the final location, as well as, if appropriate, the location of the human remains of their relatives for their respective return and proper burial. The same approach establishes that the entire search process should be carried out with the active participation of family members. Second, the law defines the competent authority in charge of the search, which is now the Ministry of Justice. It also creates a National Registry of Missing Persons and Burial Sites, regulates the forensic investigation process, establishes a psychosocial accompaniment component for families of the missing, and provides for logistic and material support to them. Finally, the information collected in the framework of the search mechanism will be protected according to the data protection law of Peru.

In Sri Lanka, as part of the implementation of the recommendations provided in UN Human Rights Council Resolution 30/1<sup>78</sup> to promote reconciliation, accountability and human rights in Sri Lanka, in 2016 the government adopted the Office on Missing Persons (Establishment, Administration and Discharge of Functions) Act, No. 14.<sup>79</sup> The Act recognizes in its preamble that relatives of missing persons are entitled to know the circumstances in which a person went missing, including their fate and whereabouts. In this regard, the Office has a mandate to search for and trace missing persons, to identify the appropriate mechanisms to do so and to clarify the circumstances in which they went missing while providing assistance to their relatives.

In Mexico, the General Law on Missing Persons was adopted in 2017.<sup>80</sup> It defines the distribution of competencies between authorities and their system of coordination with regard to searching for missing persons and establishing what happened, as well as preventing and addressing enforced disappearance and disappearances committed by individuals not attributable to the State. The General Law also creates the National Search System for Missing Persons, the National Search Commission, the National Registry of Missing Persons and the National Registry of Unidentified Dead Bodies. It seeks to guarantee the protection of the rights of missing persons and their relatives and establishes the

77 Law No. 30470, above note 60. Since the adoption of the law, different decrees, resolutions and directives have been issued to regulate the functions of the directorate in charge of the search and different aspects of the humanitarian investigation. For more information, see: <https://tinyurl.com/y9kspoop>.

78 See: [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/RES/30/1](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/30/1).

79 Sri Lanka, Office on Missing Persons (Establishment, Administration and Discharge of Functions) Act, No.14 of 2016, available at: <https://tinyurl.com/y96hf4z6>.

80 Mexico, General Law on Enforced Disappearance of Persons, Disappearances Committed by Individuals and the National Missing Persons Search System, 17 November 2017.

ways in which the families of missing persons can participate in the search process, including by receiving information.<sup>81</sup>

In Ukraine, the Law on the Legal Status of Missing Persons was adopted in 2018. It foresees the creation of a National Commission on Missing Persons and a Unified Register of Missing Persons for persons (military and civilian) missing under special circumstances such as armed conflict, internal riots and other emergency situations.<sup>82</sup> The National Commission will mainly aim at coordinating the work of the authorities responsible for the search for missing persons, with the objective of clarifying their fate and whereabouts.<sup>83</sup> It will include representatives of several State authorities as well as the ICRC and national and international NGOs.<sup>84</sup>

The above-mentioned examples illustrate how States can engage in legal reform to create structures that will support the search for those who have gone missing while providing meaningful answers to the families. As mentioned before, it is of paramount importance to ensure that these frameworks are not “empty shells”, as their proper practical application is essential to upholding the right to know and providing answers to the long-lasting suffering of the relatives of missing persons. It will also allow States to comply with their obligations under international law and to ensure that the primary responsibility to account for the fate and whereabouts of missing persons is not an illusion.

## Conclusion

International law protects people from going missing, upholds the right of families to know the fate and whereabouts of their missing relatives and protects the dignity of the dead. In order for international law to properly fulfil its purpose at the national level, national implementation of the relevant bodies of international law is essential in responding to the issue of missing persons because of armed conflicts, other situations of violence, disasters and other situations that might require action by a neutral and independent body. Notably, there is a need for parties to an armed conflict and national authorities to recognize the issue of missing persons and to politically support the established processes that aim at searching for missing persons and at providing a response to the rights and needs of their families.

As highlighted, over the years the ICRC has developed a unique expertise in responding to missing persons and their families. One important aspect of the ICRC’s work is the provision of legal and technical advice to national authorities, including through the development of different tools and approaches to ensure proper implementation of the law at the domestic level. In this regard, assessing

81 Mexico, General Law on Enforced Disappearance of Persons, Disappearances Committed by Individuals and the National Missing Persons Search System, 17 November 2017, Art. 2.

82 Ukraine, Law on the Legal Status of Missing Persons, 2 August 2018, Arts 10–16.

83 *Ibid.*, Arts 10, 11.

84 *Ibid.*, Art. 10.

the existing legal and policy framework of a particular State is an important first step, as it will enable a clear understanding of the existing (or lack of) response to the issue of missing persons and their families and will allow States and other actors to engage in concrete legal and policy reforms. National practice has shown that there are some challenges involved when working in promoting the adoption or reform of domestic legal and policy frameworks to address the issue of missing persons and respond to the rights and needs of their families. For example, defining who is a missing person and granting missing persons a legal status is essential as it is a way of recognizing that the missing person matters vis-à-vis the law, the policy and the State. Additionally, bearing in mind that processes aimed at searching for and identifying the missing and responding to the needs of their relatives are long-term processes, it is fundamental to ensure that any national structures which are created are equipped with proper technical and financial capacities so that they can fulfil their mandates, and that they are not simply “empty shells”.

As discussed in this article, there is no one-size-fits-all approach to national implementation of the response to the issue of missing persons and their families. Thus, it is important for authorities to ensure a series of institutional efforts that will serve the purposes of alleviating the suffering of the families while providing meaningful answers. Implementing States’ international obligations into their domestic law is just one of the avenues leading towards the prevention of missing persons cases, resolving cases where people do go missing, and addressing the needs of the families.

