

Bringing home the remains of forcibly disappeared persons

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2020-12-17T09:00:26

The COVID-19 pandemic has made it impossible for millions of people around the globe to say goodbye to their loved ones or to bury them according to their [beliefs](#). This situation is the reality for most families of forcibly disappeared persons. The suffering of those families is aggravated by the fact that they do not know whether their loved ones are dead or alive and experience [ambiguous loss](#). In case of death of the disappeared person, the uncertainty concerning the fate of the disappeared person is best allayed through the [return of remains](#).

The obligation to return remains of forcibly disappeared persons has been acknowledged in international law. While the [1992 UN Declaration](#) and the [1994 Convention](#) adopted within the Inter-American system did not explicitly oblige states to return remains of forcibly disappeared persons, the [2006 International Convention for the Protection of All Persons from Enforced Disappearance](#) (ICPPED) contains a provision obliging States to take all appropriate measures to return remains of forcibly disappeared persons in case of death (Article 24-3 ICPPED).

Advancing the obligation to return remains in international courts

The need of families to receive the remains was recognized by international human rights courts before the ICPPED entered into force in 2010. The first court that included returning remains of a forcibly disappeared person in its reparation measures was the Inter-American Court of Human Rights (IACtHR) in 1996 (*Neira Alegría et al. v. Peru* para. 69). The case concerned detainees that were disappeared after a riot in a Peruvian correctional facility was put down. The IACtHR obliged the state to do all in its power to find the remains and return them to the next of kin. In other cases, the IACtHR has ordered states to cover costs of transferring the remains of disappeared persons to the place of choice of their relatives (*Bámaca-Velásquez v. Guatemala*, para. 82), including to another country (*Caracazo v. Venezuela*, para. 124), as well as cover expenses of the burial in agreement with the next of kin (*Goiburú et al v. Paraguay*, para. 172). While the IACtHR does not always explain the rationale behind ordering to return the remains of disappeared persons, the earlier cases show that cultural and religious motives played a crucial role. In *Bámaca-Velásquez v. Guatemala* (para. 145 lit. f) the IACtHR invoked the fact that respect for human remains has a very special significance in the Mayan culture, to which the disappeared and his family belonged.

The IACtHR was the first international court ordering the return of remains, and its caselaw is still the most elaborate in this regard. However, this need of families has been recognized also by other courts. The [Human Rights Chamber for Bosnia and Herzegovina](#) decided in 2001 that the mortal remains of a disappeared colonel should be made available to his wife in the event that he was not alive (*Palić v.*

[Republika Srpska](#), para. 89 b). As I have argued [here](#), this approach was strongly influenced by the wish of families, who were predominantly Muslims and emphasized the importance of receiving the remains in order to give the dead a religious funeral. Thus, the two international courts that ordered the return of the remains of forcibly disappeared persons before the adoption of the ICPPED (IACtHR, Human Rights Chamber) took into consideration the specific cultural and religious background of the disappeared, as raised by the families. The UN Human Rights Committee has for the first time included the obligation to return remains of disappeared persons in an individual decision in 2010 ([Bashasha v. Libya](#), para. 9c), the year of entry into force of the ICPPED.

Forensic work

Returning the remains of forcibly disappeared persons will in most contexts require forensic work. In many parts of the world, states are supported in conducting exhumations and identifications by the [International Committee of the Red Cross](#) or the [International Commission on Missing Persons](#). Sometimes, international bodies are searching for and returning the remains of forcibly disappeared persons, such as the [Committee on Missing Persons in Cyprus](#). This shows that states have many possible ways to realize the obligations to return remains. However, it is clear that under the ICPPED state authorities must be involved in the search. At times, exhumations and identification of forcibly disappeared persons are conducted by civil society groups, as for example in Mexico, where [researcher teams](#) (see *Christina Varvia* in this Symposium) or [groups of mothers](#) search for their disappeared persons. The Committee on Enforced Disappearances (CED) has stated with regard to persons forcibly disappeared during the civil war and the dictatorship in [Spain](#) that the search should not rely on initiatives taken by relatives and that the State should allocate sufficient resources for those endeavors.

Returning remains and COVID-19

Measures taken with regard to the COVID-19 pandemic have reduced the capacity of States to search for forcibly disappeared persons and to return the remains of those that have died. It has been suggested that some States have used the pandemic as an excuse to [stop searching for forcibly disappeared persons](#) or for [committing enforced disappearances](#). In response, the CED and the Working Group on Enforced or Involuntary Disappearances adopted in September 2020 [Key Guidelines on Enforced Disappearances in the context of COVID 19](#). The document states that the search for forcibly disappeared persons are “continuing obligations that cannot be suspended, even in the context of the pandemic” (para. 8). Consequently, the search for forcibly disappeared persons and the forensic work has to be continued.

[Guideline 4](#) is specifically dealing with remains, stating that “in some context the treatment of the bodies of individuals deceased through COVID-19 has led to a risk of disappearances” of the remains (para. 15). It reiterates States’ obligations under the ICPPED to ensure that the identification and return of the remains is “carried out in a scientifically rigorous, dignified and respectful manner” (para. 16). While acknowledging the difficulties States encounter due to the pandemic, the Guidelines

highlight the suffering of the families of the forcibly disappeared, which does not diminish with the pandemic. At the same time, the taking all appropriate measures to return the remains needs to be assessed in the light of the circumstances and possibilities the State authorities have, which are influenced by the pandemic.

In my opinion, there is one exception to the obligation to return remains of forcibly disappeared persons during COVID-19, which is not addressed in the [Key Guidelines](#). If a forcibly disappeared person dies because of COVID-19, state authorities should not have to return the remains to the family, if they cannot do so safely (see also [ICRC COVID-19 General Guidance for the Management of the Dead](#)). While not returning remains could enhance the risk of disappearances, this risk needs to be carefully balanced in each situation with safety measures. The authorities would still be required to inform the relatives in a respectful manner, as well as to manage the dead in accordance with their cultural and religious needs. At the same time, the fact that the remains have not been returned to their families has to be taken into consideration when making reparation and paying compensation to family members in line with Art. 24-4 ICCPED, as the State is clearly responsible if a person gets infected with COVID-19 during illegal deprivation of liberty.

Enforced disappearances have long-lasting effects on families, who continue to hope for the person to return, often decades after the disappearance occurred. In case of death, the ambiguity of the loss is best addressed through the return of the remains of those who have died. This need of families, recognized as a right in the ICCPED and case-law, continues during a pandemic.

