

National Search Plan Proposal presented to the National Commission for the Search for Missing Persons August 2006

I. Mission

EQUITAS is a non-governmental, scientific organization that provides pro-bono forensic and psychosocial services to the families of individuals disappeared¹ due to Colombia's internal armed conflict. EQUITAS works on search, recovery, analysis and identification of human remains and associated materials, using internationally recognized forensic and scientific techniques. As part of its mission, EQUITAS encourages families and communities to participate in the search and recovery of the remains of their missing.

II. General considerations

- EQUITAS regards as the following documents as pillars in the search of missing persons in Colombia: "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" by the International Committee of the Red Cross, complemented through national legislation currently in force (Law 589 of 2000, Law 971 and 975 of 2005) and United Nations documents on forensic investigation, such as the United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary, and Summary Executions (Minnesota Protocol of 1991), and the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1999 Istanbul Protocol).
- The application of the principle of rigorousness must guide the processes of the search for missing persons and the forensic investigation, based on competence, exhaustiveness, timeliness, and impartiality. These aspects must be adapted to local norms and should guide all investigations.
- The fundamental need of the relatives is to be informed about the fate of the persons unaccounted for, as well as the acknowledgment of the dignity of the disappeared, of the crime and the responsibility of the State authorities or the armed groups².
- A conflict situation must not stand in the way of the implementation of an appropriate strategy for the search of missing persons.
- A State entity must play the role of information office and register cases and information regarding mass graves. When legal limitations prevent the setting up of such offices, it is advisable to turn to international entities, such as the International Committee of the Red Cross and other independent agencies. This does not exempt the State from its legal obligations.
- The State must foresee mechanisms that provide support to the relatives of the victims as an essential part of the search process; needs must be re-evaluated in the space and time frame of this process, within the social and cultural context of the victims.

¹ "Disappearances" are defined by the Colombian Criminal Code as a crime committed by any armed actor. This definition is more wide-reaching than that found in international human rights legislation, but falls under the definition of "missing in conflict", found in the 1949 Geneva Conventions, particularly in *Additional Protocol II Relating to the Protection of Victims of Non-International Armed Conflicts*.

² Article 7, Law 975 of 2005: "The investigations and judicial processes to which the present law applies must promote the investigation of what happened to the victims of such conducts and inform their families of what is relevant." Further references to these rights can also be found in Chapter IV, Articles 130 to 134, of the Code of Criminal Procedure; and in Chapter I, Article 15, of Law 971 of 2005. See also the rulings of the Inter-American Human Rights Court on the rights of the families.

III. Regional Search Strategy

The search, recovery, and identification of missing persons is long and complex processes; therefore, it requires a comprehensive, long-term strategy and demands inter-institutional and multidisciplinary efforts. An appropriate search process must provide answers to three fundamental questions, which are interconnected and continuously informing each other:

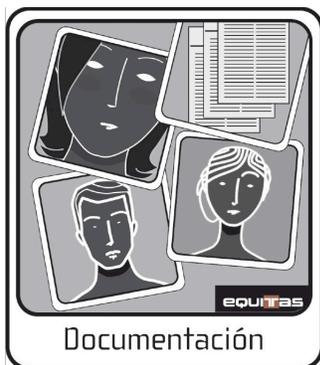
- a. Who are the missing persons?
- b. Where might they be?
- c. What happened to them?

This interconnectedness among the questions will make it possible, in a successful search process, not only to find out the whereabouts and carry out identification, but also to reconstruct the facts surrounding the disappearance of the persons affected.

The *Regional Search Strategy* seeks to maximize the possibility of finding and identifying missing persons in a given region. Instead of working on a case-by-case basis. This strategy aims to provide a methodology that views disappearance as a systematic, generalized, and regional phenomenon. This strategy is based on an appropriate documentation, followed by a rigorous analysis of various lines of evidence and triangulation of data indispensable for planning and executing a successful process of recovery and identification of missing persons. The main objective of a National Search Plan for Missing Persons should be to return the remains to their relatives, so they can mourn according to their customs and beliefs.

IV. Phases of the Search Strategy

The following is an outline of the main activities related to the phases of a search process.



1. Documentation: Capturing or documenting all the information indispensable on missing persons and where these individuals may be found.³

- a. Effective implementation of the National Registry of Missing Persons as the single and coordinated mechanism for registering and managing the information on missing persons denounced by their relatives. This registry will be the responsibility of the National Institute for Legal and Forensic Sciences.⁴ The registry should be fed and updated by judicial authorities, judicial police, the families and other sources regarding missing persons through the use of the

Single Format on Missing Persons.

- b. Complement this information by consulting updated information in other databases and sources including governmental, non-governmental, religious and humanitarian organizations, among others).
- c. Consult archive and context information found in local, regional, national, and international press, radio and TV, as well as municipality archives, testimonies, collective memory and academic publications.
- d. Obtain information on unidentified deceased persons (NN) at regional level, in the registries of the National Institute of Forensic Medicine and the General Prosecutor's Office.⁵
- e. Obtain documental, testimonial, and field information regarding the possible location of the victims (hospitals, municipal cemeteries, clandestine cemeteries).⁶
- f. Obtain alternative lines of evidence such as archaeological evidence, maps, aerial photography, and satellite photography, among others.



2. Search-specific analysis: Analysis of documentation obtained to carry out search efforts for missing persons.

- a. Activate the Emergency Mechanism for the Search of Missing Persons⁷. This mechanism will be applied equally by judicial authorities, whether the victims are alive or deceased.

b. On the basis of the information collected in Phase 1, cross-reference the data from State and nongovernmental institutions based on the RND, in order to estimate the general universe of missing persons in the region and carry out analysis of tendencies and of under-registration.⁸

³ The Inter-American Human Rights Court, in rulings on the cases of Wilson Gutiérrez Soler, Mapiripán, Pueblo Bello, and Ituango, has repeatedly demanded that the Colombian state apply these protocols in its investigations.

⁴ Article 9, Law 589 of 2000: "The National Registry of Disappeared Persons will be coordinated by the National Institute of Legal Medicine and will operate in its headquarters." See also Article 5, Chapter II, Decree 4218 of 2005.

⁵ The aforementioned article also includes regulations for the registry of inhumations and exhumations of unidentified dead persons (NN). See also Decree 4218 of 2005, Chapter VII, Article 14, "final arrangement of corpses."

⁶ As Article 13 of Decree 4218 of 2005 states, the providers of health services will report and present all the necessary information regarding the autopsies practiced on unidentified dead persons (NN) in their premises.

⁷ Article 13, Law 589 of 2000, and Law 971 of 2005.

⁸ This cross reference should be possible through the implementation of the SIRDEC system, under the responsibility of the National Institute of Legal Medicine.

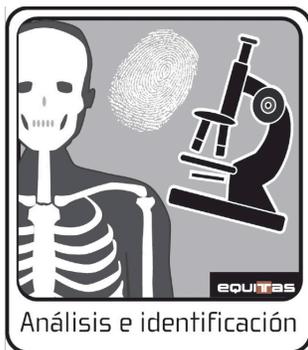
- c. Consolidate the information on the possible whereabouts of the missing persons, with other lines of evidence, in order to determine the places where the missing persons could be found, and complement ante-mortem information needed for identification⁹.
- d. Plan a field exploration to obtain all the information possible regarding local physical and environmental conditions and the type of burial (Archaeological, aerial photography, remote sensors, geophysical and magnetic methods).
- e. Plan the exhumation determining the expert and logistics personnel necessary, as well as the resources, materials, equipment, and infrastructure required. Design program of activities, security and contingency plans, chain of custody. Design a plan to accompany and support families during exhumations and the presence of independent experts to carry out scientific oversight.
- f. In cases that warrant an urgent judicial intervention in order to avoid alteration or destruction of clandestine graves and corpses, methodologies will be implemented for emergency cases, such as those used in mass disasters.

⁹ Taking biological samples (saliva, blood, hair, or tissue) for the purpose of genetic studies (such as DNA) should be undertaken only when a preliminary identity has already been established and when the remains have not been positively identified by any other means. Having to do with biological information, the relatives authorize the exclusive use of their sample for the identification by signing a protocol, and the authorities should guarantee such a use.



3. Recovery: Carry out field-work that leads to finding the remains of missing persons.

- a. Convene the forensic and specialized support teams and organizations that will accompany the scientific and psychosocial process.
- b. Coordinate logistics and field activities taking into account technical parameters of forensic archeology: Superficial field searches, secure areas, mapping and registration of all findings and evidence in writing (field diary) and through visual means (photography, video, topographic, and cartographic). Expose the evidence where necessary, extend grid for mapping.
- c. Secure and recover the evidence, initiating protocols on the chain of custody by classifying, labeling, and packaging of evidence and the appropriate inventory (date, time, person responsible) and writing a protocol of recovery.
- d. Transport evidence to temporary or permanent deposits¹⁰, handing over the corresponding material and reports to the National Institute for Forensic Medicine.
- e. Coordinate constant and clear communication with families and accompanying organizations regarding the processes being carried out.



4. Analysis and identification: Facilitate laboratory work in order confirm the identity of missing persons, and document the cause and manner of death

- a. Receive and confirm inventory of human remains and associated evidence, according to the chain of custody.
- b. Carry out procedures for analyzing and identifying remains and associated evidence, according to standard scientific forensic parameters at national and international levels¹¹, including independent supervision of all forensic laboratory processes:
 - If possible, carry out visual inspection of the remains by the relatives in order to guide the identification.
- Carry out an exhaustive examination of the remains (internal and external, anthropological¹², radiological, dental, and pathological examination).
- Compare the ante- and post mortem data using available techniques suitable to the context, including associate evidence (clothing, personal effects).
- Establish and document cause and manner of death.

¹⁰ According to CPP, guidelines are provided for the management of evidence and chain of custody from the scene of the crime onward. Article 217 clearly establishes that the different judicial police authorities are obligated to observe the guidelines and send all biological material and other evidence to the National Institute of Legal Medicine for study.

¹¹ Article 214 of the CPP. See also International Committee of the Red Cross, "The Missing" Project, *Prácticas operacionales idóneas en relación con el tratamiento de los restos humanos y la información de fallecidos*. (Appropriate operational practices related to the treatment of human remains and information on deceased persons). These practices are based on the 1991 Minnesota Protocol (protocol on autopsy and analysis of bone remains) and INTERPOL Protocol on Autopsy.

¹² In spite of the fact that Colombian legislation considers positive identifications only those carried out through genetics, dentistry, and fingerprints analysis, at the international level and even in the 1991 Minnesota Protocol it is recognized that anthropological forensic analysis can lead to positive identifications.

- c. If necessary, perform other specialized and complementary proof for the (genetic) identification and to establish the cause and manner of death (ballistic, entomological, botanical, and biological, among others).¹³
- d. Prepare and present reports to the judicial authorities and to the families and their representatives in a thorough, truthful, efficient, and timely fashion.
- e. In case of positive identification, return the remains to the families so they can hold individual and collective commemorations and funerals and initiate legal action.
- f. In case positive identification is not possible, the post mortem information must be duly registered for its insertion in a unified registry of unidentified cadavers.¹⁴
- g. Guarantee that the unidentified remains are buried in a dignified manner and in conditions that enable efficient tracking down and classification. This implies an individual deposit site¹⁵, be it a grave or a vault in a municipal cemetery.

V. Bibliography regarding international manuals and norms

National Legal Norms

- Law 589 of 2000, Law 971 of 2005 and Law 975 of 2005
- New Code of Criminal Procedure, 2005
- Decree 2067 of 1991.
- Decree 4218 of 2005

International Legal Norms

- 1991 Minnesota Protocol, United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions
- 1999 Istanbul Protocol, Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Additional Protocol II to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, 8 June 1977.
- Report of the Secretary-General of the United Nations on Human Rights and Forensic Science, presented to the U.N. Commission on Human Rights, Resolution 1992/24.
- Guidelines for the investigations carried out by the United Nations on presumed massacres, 1995
- International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- International Covenant on Civil and Political Rights
- Optional Protocol to the International Covenant on Civil and Political Rights
- American Convention on Human Rights
- International Convention on the Prevention and Punishment of the Crime of Genocide
- Rome Statute of the International Criminal Court

¹³ Genetic identification studies should be attempted only when other procedures have been exhausted. However, biological samples of relatives as well as of corpses can be taken for storage without the need to carry out analysis. “The Missing Project: Action to resolve the problem of people unaccounted for as a result of armed conflict or internal violence and to assist their families.” *General recommendations on the use of DNA analysis in contexts involving missing persons*. ICRC/TheMissing/10.2002/EN/3.

¹⁴ Law 589 of 2000, Art. 9, Numeral 3. *Relación de los cadáveres, restos exhumados o inhumados, de personas no identificadas, con la indicación del lugar y fecha del hallazgo, condiciones, características, evidencias, resultados de estudios técnicos, científicos o testimoniales y cualquier dato que conduzca a su identificación.* (Record of the cadavers, exhumed or inhumed remains, of unidentified persons with indication of place and date of finding, conditions, characteristics, evidence, results of technical, scientific, or testimonial studies or any data leading to identification.)

¹⁵ Regulations on cemeteries and funeral facilities, Decree No. 391 of 1991. See also *Manejo de cadáveres en situaciones de desastre* (Serie de Manuales y Guías sobre Desastres No. 5), Washington, DC: Pan-American Health Organization and World Health Organization, 2004.

Operational Manuals

- “The Missing” Project: Action to resolve the problem of people unaccounted for as a result of armed conflict or internal violence and to assist their families. A Project of the International Committee of the Red Cross (ICRC).
- Manual of the Pan-American Health Organization on Management of Dead Bodies after Disasters (2004)

Other References

- Experiences of the Argentine Forensic Anthropology Team
- Experiences of the Peruvian Forensic Anthropology Team
- Experiences of the Guatemalan Forensic Anthropology Team
- Physicians for Human Rights
- Office on Missing Persons, International Criminal Tribunal for the Former Yugoslavia (ICTY)
- Joint declaration of the Public Ministry, the Ombudsman’s Office, the Truth and Reconciliation Commission, and the National Human Rights Coordinator: *Plataforma conjunta de trabajo en la investigación de fosas communes* (Joint Platform on the Investigation of Mass Graves), June 2002.