International Review of the Red Cross (2025), **107** (930), 1370–1375.
Symposium on Colombia's JEP & Selected Articles
doi:10.1017/S181638312510091X

IRRC

REPORTS AND DOCUMENTS

Guidance note: Certificates and declarations of absence

Introduction

In situations of armed conflict, other situations of violence, and disasters, and in the context of migration, countless families become separated and many people go missing. Those awaiting news of the fate and whereabouts of a family member usually find themselves "living in limbo", and such uncertainty has severe psychological and emotional consequences. The deep wounds inflicted when people go missing continue to undermine relationships among communities and peoples, sometimes for decades afterwards.

In its work, the International Committee of the Red Cross (ICRC) understands "missing persons" to be individuals whose families have no news of them, or who, based on reliable information, have been reported missing as a result of an armed conflict (whether international or non-international), other situations of violence, or any other situation requiring action by a neutral and independent body. A broad and inclusive definition is essential to ensure a comprehensive response that addresses the multifaceted needs of all families of missing persons.[1] International law, particularly international humanitarian law (IHL) and international human

1 For more information, see ICRC, "Q&A: The ICRC's Engagement on the Missing and Their Families", *International Review of the Red Cross*, Vol. 99, No. 905, 2017, available at: https://international-review.icrc.org/sites/default/files/irrc_99_905_5.pdf (all internet references were accessed in December 2025).

© The Author(s), 2026. Published by Cambridge University Press on behalf of International Committee of the Red Cross. This is an Open Access article, distributed under the terms of the Creative Commons Attribution licence (http://creativecommons.org/licenses/by/4.0), which permits unrestricted re-use, distribution and reproduction, provided the original article is properly cited.

https://doi.org/10.1017/S181638312510091X Published online by Cambridge University Press

rights law, imposes obligations with respect to missing persons and their families. Both bodies of law seek to ensure their protection and to respond effectively to their specific needs.[2]

Beyond the emotional toll, families face significant legal and administrative challenges. These include issues related to family matters such as marriage dissolution, guardianship of children, inheritance, property management and access to legal documents. In some legal systems, the only available legal pathway is to obtain a declaration of presumption of death or a death certificate, an approach that can compound grief, halt efforts to clarify the missing person's fate (including stopping the search for them), and prematurely alter the legal status of the missing person and/or their family members. This can also affect the exercise of some rights should the person reappear.

Consequently, many families do not seek a declaration of death, leaving them unable to access compensation or resolve urgent legal, financial or administrative matters. In some contexts, the lack of sufficient evidence makes it impossible to obtain a death certificate, further complicating their situation. For these reasons, many jurisdictions offer a vital alternative: a certificate or declaration of absence.

This guidance note outlines the core elements of domestic/national legislation concerning certificates of absence, drawing on comparative examples from diverse jurisdictions. It is intended to support and guide States in drafting new laws or enhancing existing legal frameworks and administrative systems.

What is a certificate of absence and why is it important?

The legal status of missing persons is not regulated under international law.[3] A certificate or declaration of absence represents a legal acknowledgement of the status of the individual as "missing", while preserving their legal personality and protecting civil and family rights. This legal document enables families to move forward with necessary procedures and formally recognizes the status of a missing person without presuming death.

The distinction between a certificate and a declaration of absence typically lies in the legal system and the issuing authority: certificates are generally issued by administrative authorities in common-law systems, while declarations are issued by judicial authorities in civil-law systems. For simplicity, the term

See also ICRC, *Guiding Principles/Model Law on the Missing*, Geneva, 2009, available at: www.icrc.org/en/document/guiding-principles-model-law-missing-model-law.

2 For more information, see ICRC, *Missing Persons and Their Families: International Legal Framework*, Geneva, November 2023, available at: www.icrc.org/sites/default/files/document/file_list/missing_persons_and_their_families_.pdf.

3 However, the 2006 International Convention for the Protection of All Persons from Enforced Disappearance recognizes under Article 24(6) that States party to the Convention "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".

https://doi.org/10.1017/S181638312510091X Published online by Cambridge University Press

"certificate of absence" will be used throughout this document to refer to both types of instruments.

Who can request a certificate of absence?

In most domestic legal systems where they exist, a certificate of absence can be requested by any interested party,[4] including relatives of the missing person and competent authorities such as the Public Ministry or Prosecutor's Office. In such a legal process, a representative of the missing person should be designated to represent his or her interest. When a certificate of absence is requested by someone other than a family member, the family should have the right to intervene and, if necessary, oppose the request before the competent authority.

Access to these legal instruments should be non-discriminatory, regardless of the circumstances of the disappearance or the missing person's status or situation (e.g., civilian, member of the armed forces, member of a non-State armed group, detainee).

What is the procedure for obtaining a certificate of absence?

In many jurisdictions, the issuance of a certificate of absence is contingent upon an officially recognized period during which the individual has been reported missing.[5] This period serves to allow for efforts to locate the person before formally acknowledging their status as missing or absent and triggering the associated legal consequences. The ICRC recommends a minimum absence period of one year prior to issuance, although shorter durations may be warranted in exceptional circumstances, such as situations of armed conflict.

Depending on the legal system, a judicial or administrative authority is empowered to issue the certificate of absence under the requirements provided for by the legislation and according to a defined procedure. The procedure is usually initiated by a family member submitting a formal request, along with relevant information about the missing person and their relationship to the applicant. Supporting documentation is usually required to substantiate the claim.

The procedure should be accessible to affected individuals and adapted to local realities, taking into account aspects such as the effectiveness and reliability of

4 See, for example, the domestic legislation of Argentina (Law No 24,321, Art. 3, and Civil and Commercial Code, Art. 80), France (Civil Code, Art. 122), Belgium (Civil Code, Art. 118), Uruguay (Civil Code, Art. 55), Mexico (Civil Code, Art. 673), Peru (Civil Code, Art. 49), Burundi (Code des Personnes et de la Famille, Art. 64), Switzerland (Civil Code, Art. 35), Ethiopia (Civil Code, Art. 154.1), Côte d'Ivoire (Civil Code, Arts 115, 121) and Kyrgyzstan (Civil Code, Art. 77).

5 See, for example, the domestic legislation of Sri Lanka (Registration of Deaths (Temporary Provisions) Act, No. 16 of 2016), Belgium (Civil Code, Arts 112–118), Uruguay (Civil Code, Arts 55–57), Mexico (Civil Code, Art. 669), Peru (Civil Code, Art. 49), Ethiopia (Civil Code, Art. 154.1), Ukraine (Civil Code, Art. 43), Burundi (Code des Personnes et de la Famille, Art. 64), Côte d'Ivoire (Civil Code, Art. 115), Kyrgyzstan (Civil Code, Art. 77), France (Civil Code, Art. 122) and Switzerland (Civil Code, Art. 36).

https://doi.org/10.1017/S181638312510091X Published online by Cambridge University Press

the national registration system, the possibility of relying on other relevant mechanisms or entities such as the police or the health system, and the needs of the population. Special consideration should be given to the challenges of collecting evidence and official documents in contexts such as armed conflict, post-conflict, other situations of violence, or migration. Legal frameworks should allow for alternative or substitute documentation where standard evidence is unavailable.

The procedure usually includes the verification of the accuracy of the submitted information and documents, and public notification of the request through appropriate channels, followed by a legally defined waiting period before the certificate can be issued. This waiting period should be as short as possible and clearly established by law. During this time, provisional or precautionary measures may be adopted to safeguard the rights of the missing person and their family.

It is essential to note that the issuance of a certificate of absence does not fulfil the State's obligation to search for the missing person or to clarify their fate and whereabouts.[6]

What are the effects of a certificate of absence?

The issuance of a certificate of absence carries legal and practical consequences that must be assessed with regard to the best interests of both the missing person and their family separately. A non-discriminatory, accessible and gender-inclusive approach should guide its implementation.

Effects on the missing person

The certificate of absence formally establishes the legal status of the individual as missing, which must be clearly distinguished from "deceased". The presumption of life remains until the person's fate or whereabouts are ascertained or their death is officially established.

This legal recognition serves to safeguard the missing person's rights and those of his or her family, including civil status, property and assets, through measures such as:

1. Appointment by the official authority of a legal representative or administrator to act on behalf of the missing person and manage their affairs. In some cases, provisional measures to protect assets may be enacted before the certificate is issued. The missing person may also have legally designated a representative prior to their disappearance, in which case the designated person can act on their behalf.

6 See Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law*, Vol. 1: *Rules*, Cambridge University Press, Cambridge, 2005, Rule 117, available at: https://ihl-databases.icrc.org/en/customary-ihl/rules; Protocol Additional (I) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 1125 UNTS 3, 8 June 1977 (entered into force 7 December 1978), Arts 32–33.

https://doi.org/10.1017/S181638312510091X Published online by Cambridge University Press

2. Granting heirs provisional possession of the missing person's estate, subject to conditions such as restrictions on selling or mortgaging property, or the requirement of a security deposit. In certain jurisdictions, this possession may become permanent after a period defined by law.
3. Other measures may include safeguarding employment rights or addressing the status of any criminal proceedings involving the missing person, including criminal prosecution against that person.

Effects on the family and relatives of the missing person

The certificate of absence enables families to pursue legal and administrative claims and procedures, and to access essential documents. This has a particular impact on claims related to family matters, such as:

1. the end or dissolution of marriage and the right to enter a new union at the request of the remaining spouse and subject to the conditions established by domestic legislation;
2. guardianship over dependent children, in accordance with the principle of the best interest of the child;[7]
3. the inheritance or management of the missing person's assets and property;
4. access to financial assistance and social security benefits, housing support, employment opportunities, health care, and education benefits – in the absence of public aid, allowances may be drawn from the missing person's assets;
5. proof of the absence for administrative and legal purposes; and
6. access to compensation schemes and psychosocial services. Information about these programmes should be widely disseminated.

The effects of the certificate of absence should be recognized and enforceable by all of the authorities in the State.[8]

What is the relationship between a certificate of absence and a certificate of death?

The transition from a certificate of absence to a certificate of death should not occur automatically after a fixed period; it must be initiated by an interested party, by a competent authority,[9] or upon official confirmation of the missing person's death.

7 Generally, a guardianship is appointed as soon as possible for minor children of missing persons who are left without any other legal guardian.

8 See, for example, the domestic legislation of Mexico (Ley Federal de Declaración Especial de Ausencia para Personas Desaparecidas, Art. 6).

9 If someone other than a relative requests a declaration of death, the relatives should be allowed to oppose such a declaration with the competent national authority.

https://doi.org/10.1017/S181638312510091X Published online by Cambridge University Press

The certificate of absence should remain valid until a certificate of death is officially issued at the end of a clear process. Any certificate of death must be based on legally recognized forensic identification procedures.

Some laws recognizing the possibility of receiving a certificate of absence explicitly provide that families which had been issued a declaration of death at a time when the possibility of receiving a certificate of absence did not exist can apply to convert the declaration of death into a certificate of absence.[10] This reversal should not be detrimental to the rights and interests of the missing person, the family or any third party who acted in good faith based on the declaration of death.

The role of the ICRC

The ICRC, through its Advisory Service on IHL, offers technical legal assistance to States seeking to implement IHL domestically. For further guidance, States may consult the ICRC's manual *The Domestic Implementation of International Humanitarian Law.*[11]

The ICRC has also developed the *Guiding Principles/Model Law on the Missing*, which supports States in establishing legal frameworks for the protection of missing persons, including provisions on certificates or declarations of absence.[12] Additionally, the ICRC maintains a Database on National Implementation of IHL, which facilitates the exchange of national laws, practices and case law related to missing persons and their families.[13]

Although the ICRC receives tracing requests from family members of missing persons, it does not issue certificates of absence or any official document equivalent to such certification. Under certain conditions, the ICRC may attest that a tracing request has been opened on behalf of a family; however, this attestation does not constitute, nor should it be interpreted as, a certificate of absence.

Promoting awareness and understanding of certificates of absence among authorities, institutions and affected families of missing persons is essential to ensuring their effective use and impact.

10 See, for example, the domestic legislation of Sri Lanka (Registration of Deaths (Temporary Provisions) (Amendment) Act, No. 16 of 2016).

11 See ICRC, *The Domestic Implementation of International Humanitarian Law: A Manual*, Geneva, 2015, available at: www.icrc.org/eng/assets/files/publications/icrc-002-4028.pdf.

12 See ICRC, *Guiding Principles/Model Law*, above note 1.

13 Available at: https://ihl-databases.icrc.org/en/national-practice.

https://doi.org/10.1017/S181638312510091X Published online by Cambridge University Press