



**GUIDANCE NOTE 2**

# **PRINCIPLES OF AND ENABLERS FOR A SUCCESSFUL MECHANISM**



The national mechanism<sup>6</sup> should ensure that the humanitarian objectives of clarifying the fate and whereabouts of the missing and supporting their relatives are pursued.

This guidance note examines key principles and enablers that allow for the development of a successful mechanism.

## 1. THE MECHANISM'S ESTABLISHMENT AND FUNCTIONING SHOULD FOLLOW A PARTICIPATORY PROCESS, WHICH ENSURES A CENTRAL ROLE FOR FAMILIES

The voices of the families need to be heard and taken into consideration to ensure that the mechanism's objectives correctly reflect their rights, needs and concerns.

The mechanism should encourage and ensure, to the extent possible, the active participation of the families alongside relevant authorities, experts, local associations and non-governmental organizations (NGOs) in the design and implementation of measures related to the search and in the broader response to their needs.

The objective of ensuring effective support for, engagement with and outreach for the families should be articulated from the beginning of operations and provide safe and effective channels of communication.



### Peru

In 2018, Peruvian authorities created a Working Group by Ministerial Resolution 0373-2018-JUS in support of the implementation of the Law on the Search for Missing Persons during the 1980–2000 Period of Violence (Law No. 30470). The mandate of the Working Group was renewed in 2020 by [Ministerial Resolution 0269-2020-JUS](#). The Working Group comprises representatives from the Ministry of Justice, the Ministry of Health, the Office of the Attorney General, the ICRC and nine different human rights NGOs and family associations. This measure embodies the participatory approach for the families of the missing and allows for a formal communication channel with them.



For further information, refer to the following guidance notes:



<sup>6</sup> For the purpose of these notes, the term “mechanism” refers to all national institutions, commissions and other bodies and processes established by relevant authorities that aim to provide individualized answers on the fate and whereabouts of missing persons, and provide support to families of missing persons. Beyond this humanitarian objective, mechanisms may pursue other objectives, including those linked to accountability or transitional justice. However, these objectives will not be further explored in this set of guidance notes, other than insofar as they relate to the search for missing persons.

## 2. THE MECHANISM NEEDS TO RESPECT THE PRINCIPLE OF NON-DISCRIMINATION; IT SHOULD PROVIDE THE SAME OPPORTUNITIES TO ALL FAMILIES

The missing and their families are entitled to equal protection of the law and must be protected against discrimination on any ground, such as race, colour, sex, age, language, religion, political or other opinion, cultural beliefs or practices, property, birth or other status, sexual orientation, ethnic or social origin or disability.



### Sri Lanka

Office on Missing Persons Act

#### Article 14

In exercising its powers under this Act the Office on Missing Persons (OMP) shall ensure that the rights of missing persons and relatives of missing persons shall be enforced on a basis of equality without regard to status and without discrimination on any grounds whatsoever.

## 3. THE MECHANISM SHOULD ENSURE IT HAS THE TRUST OF THE FAMILIES. IT SHOULD BE OPEN AND TRANSPARENT, PROVIDING THE FAMILIES WITH REGULAR UPDATES ON THE SEARCH PROCESS AND RELEVANT INFORMATION ON THEIR RIGHTS

The mechanism should share as much information as possible with the families, to avoid prolonging their suffering unnecessarily. It should keep them and their communities informed about the search and identification efforts, decisions adopted and implications thereof, and about its constraints and chances of success, including the probability of finding relatives alive.

It should inform families about their rights, including in relation to holding accountable those responsible for their relatives going missing. The quality and quantity of information shared with the families are crucial in both addressing needs of families effectively and managing their expectations around the process. Information should be provided in a language they can understand. For effective engagement with families, a point of contact should be created to ensure the families are adequately informed; this would help create a relationship of confidence and trust in the mechanism, as well as in the results of the search for and identification of missing persons.

## 4. THE MECHANISM SHOULD HAVE A CLEAR MANDATE TAILORED TO THE CONTEXT AND ABLE TO ADAPT TO A CHANGING ENVIRONMENT

Social, ethical, cultural, religious, legal, economic and political aspects specific to the environment will all have ramifications for the work of a mechanism and should be considered when establishing its mandate.

There is a need to carefully assess the situation in the country, including the legal and institutional set-up, relevant legal framework and procedures in place, in order to identify gaps and bottlenecks in the response to missing persons. The mandate of a mechanism should address the gaps identified and ensure overall coherence of the response.

Key factors such as political will, existing legal frameworks or accessibility of support services for families may change over time. Agility and responsiveness in both the mandate and functions of the mechanism are therefore required as the context changes and family needs evolve.

At the same time, the mechanism's set-up should, to the extent possible, include safeguards, ideally in law, that would protect it from less favourable changes in the context that may limit or hinder its functioning, e.g. changes to budget, compulsive powers.





**For further information, refer to the following guidance notes:**



The mechanism's position vis-à-vis other state structures and the powers granted to it should enable it to ensure an integrated, multidisciplinary and multi-agency response to missing persons and their families.

The search for and identification of missing persons and support to their families are multidisciplinary and may involve a range of state institutions.

The mechanism would therefore need to ensure:

- a proper representation of all entities and agencies involved
- effective communication and coordination among relevant state actors and other stakeholders
- a proper articulation of responsibilities at operational and political levels.

A mechanism should seek the trust of the families and community which it is set up to support. In contexts of ongoing or past armed conflict and other situations of violence, this might require a higher degree of autonomy from other state institutions.

The mechanism should be granted the necessary powers, such as the ability to collect necessary information from relevant governmental and non-governmental entities, including the judiciary, that may help clarify the fate and whereabouts of missing persons.



**For further information, refer to the following guidance notes:**



## 5. THE MECHANISM SHOULD BE ABLE TO DEVELOP AND SUSTAIN POLITICAL SUPPORT, AS WELL AS THE BUY-IN, TRUST AND SUPPORT OF THE VARIOUS STAKEHOLDERS

Political will is essential for the setting up and sustainable and effective functioning of a mechanism. This includes a sufficient budget and the cooperation of the authorities, especially with regard to information sharing.

Trust, whether between parties to an ongoing or previous armed conflict, authorities and families, or among previously divided communities, is also fundamental to a mechanism's ability to operate and make progress. In order to generate trust and support, sufficient representation and participation of relevant stakeholders in the setting up and, where appropriate, operations of the mechanism should be ensured.



**For further information, refer to the following guidance notes:**



## **6. THE MECHANISM SHOULD BE SUSTAINABLE AND HAVE THE NECESSARY HUMAN AND FINANCIAL RESOURCES, AS WELL AS INFRASTRUCTURE AND EQUIPMENT**

When a mechanism is set up, authorities should commit to allocating, on a long-term basis, the required financial and human resources, infrastructure and equipment.

Mechanisms should endeavour to adapt their scientific methods to the available means, while adhering to international scientific standards of best practice.

Where a mechanism does not have sufficient resources, including expertise, seeking the support of relevant external actors – including international and NGOs, as well as other mechanisms – should be considered.