



GUIDANCE NOTE 4

ASSESSING THE POLITICAL CONTEXT, BUILDING AND ENSURING POLITICAL WILL



A mechanism⁹ requires political will and support to ensure it has the necessary powers and resources to carry out its mandate effectively and meet its objectives.

This guidance note examines the concept of political will and explains why it is necessary for the establishment of a national mechanism, the proper functioning of the mechanism and implementation of its objectives.

It aims to identify indicators of political will, highlight some of the key internal and external factors that can influence decision-makers, and provide some guidance on how to build political will while mitigating the risk of politicization.

This guidance note aims to support civil society, key political actors and authorities involved in the establishment of the mechanism, and, ultimately, the mechanism itself.

1. INTRODUCTION

Political will is a prerequisite for creating an effective and sustainable mechanism. The level of political will is an important element in deciding what type of mechanism is best suited for that context and time. Political will occurs at the level of individuals, constituencies/communities or institutions.

In many contexts, especially those in or recovering from armed conflict and other situations of violence, the issue of the missing is plagued by a lack of political will. This may be for different reasons: ongoing fighting; a political elite not ready to confront the past and acknowledge wrongdoing, or lacking the political capital owing to low public support; or the missing may be predominantly from marginalized populations.

2. DEFINING POLITICAL WILL

Political will is closely connected to implementation capacity. A lack of political will may be an indicator of insufficient government capacity (e.g. skills and resources). In some circumstances, creating political will may therefore require developing government capacity.

The presence or absence of political will is something that can be actively influenced and built. In order to generate and nurture political will, it is important to seek to understand the principal elements of political will and key influencing factors.

3. POLITICAL WILL AS A PRECONDITION FOR A MECHANISM

Political will is the single most important precondition for the creation of a mechanism and for its successful operation. Without the support of key elements of the legislature, the executive, the judiciary and relevant societal actors, a mechanism cannot succeed.

⁹ 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.

The level of political will in a given context will affect the objectives that can realistically be set. It will determine whether the mechanism is granted a sufficiently strong legal foundation and powers to ensure the cooperation of key state institutions (e.g. by sharing information and granting access to locations and witnesses) and whether a mechanism will have the required resources in the long term. It will also influence whether an impartial approach serving all the families of missing persons can be implemented.



Lebanon

Thousands of Lebanese people went missing during the period of civil war between 1975 and 1990, with profound and long-lasting consequences for their families and communities. As many of the political actors dominating Lebanon's post-conflict political order were themselves involved in the events leading to the disappearances, forging the political consensus necessary to begin the work of clarifying the fate and whereabouts of missing persons has been a long and arduous process.

For more than 30 years, an evolving coalition of family associations, civil society actors and parliamentarians has persistently exercised political pressure, used judicial avenues and engaged in awareness campaigns to keep the missing issue on the agenda and push state institutions to act. While this contributed to a number of initiatives being undertaken by successive Lebanese governments to clarify missing persons cases in the period from 2000 to 2005, these failed to yield meaningful results, mostly owing to the overly narrow focus of the commissions (e.g. only on missing persons deemed alive), their lack of independence or because they did not effectively address the plight of the families.

A significant milestone was reached in 2014, when the Lebanese State Shura Council, among the country's highest judicial authorities, ruled on a case brought by family associations by recognizing the families' right to know and ordering authorities to grant families access to large amounts of documents compiled during previous investigations of missing persons. This judicial decision helped re-energize efforts in the Lebanese parliament to pass a law on missing persons. This was finally achieved in 2018 with the passage of Law 105 on Missing and Forcibly Disappeared Persons, thanks in large part to the persistent collaboration of key members of parliament with family and civil society groups. The Lebanese authorities further cemented this important step in June 2020 with the establishment of the National Commission for the Missing and Forcibly Disappeared.

4. WHEN POLITICAL WILL IS LACKING

Given the sensitivity of most missing persons caseloads, the lack of political will at the outset of efforts to create a mechanism is common. While this calls for efforts to formulate and implement a strategy to influence political will, there are other steps that can be taken to prepare the ground for an eventual mechanism. These include respecting relevant human rights and IHL obligations, including on preventive action in detention places, and marking and protecting gravesites. It can also include the protection of archives. Other steps that should be considered include compiling lists of missing persons, or developing technical capacities and regulatory frameworks that could ultimately support the work of a mechanism, including forensics capacities and institutions, and regulatory frameworks pertaining to cemeteries, the identification process, genetic banks, or mass fatality plans as part of an emergency preparedness response. The role of neutral actors may be called upon in support of these efforts.

5. ASSESSING AND BUILDING POLITICAL WILL

In order to build political will it is important to:

- analyse the political environment and the factors and circumstances driving it
- define the meaning of political will in the context of missing persons with reference to practical indicators
- map and identify relevant actors and constituencies, assess the degree to which they possess political will and analyse the motives and concerns that may drive their thinking
- identify avenues of engagement best suited to influence different stakeholders.

a. Analysis of the political environment

In carrying out an assessment, both internal and external factors should be considered.

Internal factors:

- the extent to which political parties embrace the missing issue
- whether the armed conflict or other situation of violence is ongoing
- the extent to which political parties represent all sectors of the affected population
- the extent to which preventive and early measures were implemented during the armed conflict
- whether those allegedly responsible for persons going missing remain in power, whether formally or informally
- the extent and quality of dialogue between the (former) parties to the armed conflict
- whether (former) parties to the conflict have appointed persons with the necessary decision-making power to address the issue
- whether the missing issue is part of transitional justice or accountability processes
- how politically sensitive the accountability processes are and whether ongoing investigations and/or prosecutions make the prospect too sensitive
- the extent to which the issue is already regulated in domestic frameworks
- the extent to which the rule of law, human rights and good governance are espoused
- the extent to which the electorate is affected and the support that could be generated by awareness campaigns
- the extent to which advocacy and lobbying by civil society groups, including family associations, may exert positive pressure on relevant authorities
- in contexts where families of missing persons are organized, whether they are advocating together or have competing agendas
- other aspects that are directly linked to the issue of the missing that affect the political will, e.g. cultural aspects, economic interests.

External political factors:

- whether the issue of the missing is included on the agenda of peace discussions and/or stipulated in a negotiated peace accord
- whether the issue of the missing in that specific context is explicitly mentioned in resolutions of regional and international organizations
- whether progress on the issue of the missing is stipulated as a precondition in a political process, e.g. accession to regional political groups or recognition of international status
- the extent of donor interest in the issue of the missing and whether it has been stipulated by donor states or international organizations as an objective in funding agreements
- the extent to which a link has been made between the implementation of measures pertaining to the missing and other important issues on the political agenda, particularly those of national, regional or international significance.

b. Indicators to assess political will

To assess political will it is helpful to break the concept down into practical actions or indicators that signal political commitment. This will facilitate understanding of where commitment is strongest and weakest and help in tracking changes over time. It will involve a combination of indicators and quantitative elements as well as judgement.

Indicators could include:

- public statements made by political leaders pertaining to the missing, their families and/or the specific sectors of society particularly affected. It is important, however, to assess whether such statements amount only to verbal support or whether there is a certain commitment to follow through with action.
- actions that result in constitutional, legal or regulatory reforms; a national policy; or related government programmes. In the case of the missing, these could be the introduction of legal and regulatory reform to recognize the status of missing persons and help address the legal and administrative needs of the families. They may also include practical steps, such as the creation of specialized institutions or units, regulations and policies for protection and proper management of the dead and exhumations, and the gathering and documenting of information pertaining to the fate and whereabouts of missing persons.
- adherence to relevant international treaties and adoption of appropriate domestic implementation measures, such as laws, policies and regulations and their effective application.

Where a mechanism has been established, indicators can include:

- the extent of the powers vested in it, where the mechanism's mandate is enshrined, the level of political and financial independence granted to it and the political standing of the person appointed head of the mechanism.
- compulsive powers granted to the mechanism and rallying of stakeholders to support the mechanism. This would include, for example, the requirements of different ministries and departments to share information, technical support and know-how.
- sanctions and their enforcement for non-compliance with the mechanism by, for example, ministries and departments who fail to undertake certain actions in a timely manner, such as granting warrants needed to undertake a search, carrying out exhumations and providing information requested by the mechanism.
- allocation of appropriate and long-term resources (financial, technical and staffing) to the mechanism so that the mechanism does not suffer from a lack of funding, shortage of qualified personnel or limited access to search technologies.
- introduction of legal provisions, measures and incentives to encourage and make it easier for families and witnesses to share information of value with the mechanism.

c. Identify, map and analyse relevant actors

Political actors will fall within a spectrum ranging from those who ardently support the missing issue, to those who are disinterested or ambivalent, to others who may be opposed to efforts to address the issue.

Mapping stakeholders and their positions will help identify the following, *inter alia*:

- actors that could be brought into a coalition of supporters
- actors that are opposed to the issue, so their concerns can be analysed
- actors that are well placed to exert influence on public opinion, on their political parties or social movements, and on specific actors whose support needs to be obtained. These could include religious, social and political leaders, academics or organizations that can be rallied in support of the issue.

d. Identify avenues and practical actions for engagement

Once the stakeholder landscape has been mapped, the priority should be to identify levers of influence that may support an advocacy and organization strategy. It is important to remain cognizant of the fact that the issue of missing persons is susceptible to political exploitation, so such measures that are possible should be taken to mitigate this risk. For example:

- Promote discussions on missing persons in parliament or in the cabinet for the adoption or reform of domestic legal and policy frameworks.
- Consider participating in campaigns for and raising awareness about the issue of missing persons.
- Speak publicly on the issue of missing persons and their families, and organize and participate in public debates.
- Support local efforts and projects to help the people affected.
- Empower and encourage the families of missing persons to act. Where possible, support the establishment of family associations and/or help them become more structured and strategic.
- Support the advocacy and outreach strategies of the families of missing persons and civil society engaging with state and non-state actors to ensure political support.
- Invest in activities that help demonstrate the importance and benefits of a mechanism; these could include support to academics researching this issue.
- Showcase how working with a mechanism could benefit other institutions (e.g. National Institute of Forensic Sciences, Office of the Prosecutor).
- Encourage relevant leaders from (former) parties to the armed conflict to support cooperation with the mechanism (primarily in terms of sharing information).
- Consider whether external incentives can be used to foster and strengthen political will – for instance, including the missing in transitional justice processes and peace agreements; mentioning the issue in regional or United Nations resolutions; or reinvigorating the follow-up of the issue if already incorporated in a peace agreement or resolution.
- Engage with external experts who can make relevant contributions to discussions.

In formulating a strategy for engagement, it is important to reduce the risk of politicization of the missing issue, including by:

- ensuring that the mechanism and related efforts do not adversely discriminate among cases of missing persons
- ensuring transparent communication and regular engagement with families
- fostering a unified family platform (as opposed to having a plethora of “competing” family associations)
- encouraging families from all sides to emphasize common suffering and pain and show a united front in achieving humanitarian objectives, where possible and safe to do so
- ensuring that commitments on the missing are distinct and not contingent on progress on other aspects of political dialogue, and that information is not withheld as a negotiating tactic.

Working to preserve political will needs to be a continuous process to ensure that a mechanism retains the support and capacity to address the issue of the missing.