



GUIDANCE NOTE 5

PROVIDING A COMPREHENSIVE RESPONSE: EXISTING AUTHORITIES AND ORGANIZATIONS DEALING WITH THE MISSING



The objective of a mechanism¹⁰ is to ensure a comprehensive institutional and procedural response to the missing and the needs of their families. In order to ensure the response is appropriate, multidisciplinary, integrated and effective, it is important to ascertain existing capacities, identify gaps and challenges, and design a strategy to create or complement the response.

This guidance note provides an overview of the actors involved, directly or indirectly, in clarifying the fate and whereabouts of missing persons and meeting the needs of families. It also highlights some practical challenges that could affect the response and recommends an assessment of existing capacities prior to designing the mechanism's activities and response.

1. CONDUCTING AN ASSESSMENT

It is essential from the outset to map and assess all government and other institutions that have relevant capacities for clarifying the fate and whereabouts of missing persons, managing the dead and addressing the rights and needs of the families of the missing. Such an assessment should consider mandates, objectives, roles, procedures in place, capacities, resources, knowledge, skills, infrastructure and equipment available, as well as the level of interaction with families. An assessment of the domestic legal and policy framework (also called a legal compatibility study) and a family needs assessment will provide invaluable information to support this exercise.

Given the need for a multisectoral response and integrated action, emphasis should be placed on ascertaining the extent to which different government and operational structures are able to coordinate their activities and communicate adequately.

Identifying gaps and challenges and establishing an appropriate response therefore requires prior consultation with relevant authorities, including, as appropriate, at national, regional and local level. It also requires consultation with organizations that could provide technical support, with civil society and, last but not least, with the families affected.

2. FINDINGS OF THE ASSESSMENT

The findings of the assessment will determine whether existing government institutions and processes have sufficient capacities, whether they should be adapted or reinforced, or whether a mechanism should be set up to complement them.

If it is concluded that a new mechanism is required, the findings will inform its mandate and structure in a manner that meets the needs identified. For example, it could take the form of a commission with a coordinating role, a unified registry able to centralize and process all information on missing persons (and, where relevant, on unidentified human remains), a specialized unit, or an independent office. This should avoid overlap and duplication of tasks and ensure optimal use of the capacities and resources provided by existing institutions.

¹⁰ 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 are related to the search for missing persons.

It should also guide how the mechanism's mandate, work and processes should dovetail with those of other government institutions and operational structures, and determine what, if any, compulsive powers would need to be accorded to a mechanism to allow it to carry out its mandate effectively.

3. STATE INSTITUTIONS AND OTHER ACTORS INVOLVED IN CLARIFYING THE FATE AND WHEREABOUTS OF MISSING PERSONS

Multiple actors are involved in the effort to clarify cases of missing persons and provide support to the families. These include state authorities, non-state armed groups, civil society and family associations and international organizations, including the International Red Cross and Red Crescent Movement.



The **International Red Cross and Red Crescent Movement**, composed of National Red Cross and Red Crescent Societies, the International Federation of Red Cross and Red Crescent Societies, and the ICRC, has a long-standing engagement to help re-establish family links each time a person goes missing or is separated from their loved ones because of an armed conflict or other situation of violence, disasters or other emergencies. The Movement's global [Restoring Family Links \(RFL\) Network](#) traces and reunites separated families. The ICRC is currently engaged in operational activities related to missing persons in more than 60 contexts. In many of these, the organization works with authorities to adapt domestic legal frameworks and take measures to prevent people from going missing, clarify their fate and whereabouts when they do and respond to the needs of their families. This may include the setting up and operation of mechanisms and the strengthening of medico-legal systems and forensics services.

Involvement of external actors can also help ensure adherence to international legal obligations and standards. Ultimately, however, it is the authorities that must assume responsibility for preventing people from going missing, clarifying the fate and whereabouts of all missing persons under their jurisdiction and addressing the rights and needs of their families, including needs related to clarifying the fate and whereabouts of the missing and ensuring accountability.



Mexico ratified the [International Convention for the Protection of All Persons From Enforced Disappearance](#) in 2008. In 2020, the Mexican government and the Mexican Senate, in a unanimous decision, recognized the competence of the United Nations Committee on Enforced Disappearances to consider individual cases of alleged disappearance in Mexico and to provide recommendations to the state both on individual cases and structural measures.

In most countries, the police is the default agency for leading an investigation into cases of missing persons and unidentified human remains and will be tasked with the immediate search. Other agencies and institutions, such as the military and emergency rescue services, may also have a role to play.

Where the search for a missing person may be linked to a criminal investigation, it may, in addition to law enforcement, involve prosecutors and investigative judges and the medico-legal system. In this situation, it should be assessed whether and to what extent they are able to offer an individual clarification of the fate and whereabouts of missing persons in all cases in a timely manner or whether a specialized body needs to be responsible for tackling the humanitarian objectives (individual clarification) separately from processes to do with criminal investigations.



Peru

More than 21,000 people went missing in Peru during extended periods of violence in the 1980s and 1990s. Between 2002 and 2018, in the course of criminal investigations into unlawful killings, the remains of around 3,800 of these people were recovered and 2,300 identified and delivered to their families. For many families, this represented insufficient progress. They demanded a dedicated missing persons mechanism, independent of judicial investigations. As a result, in 2016, the Peruvian government promulgated a [law](#) that created a humanitarian mechanism to search for disappeared persons during the “Period of Violence 1980–2000”. In the same year, it approved a National Plan on the Search for Missing Persons from this period. [A new plan was issued in 2021](#), establishing specific goals and indicators for 2030.

The main objective of this mechanism, which is managed by the Ministry of Justice and Human Rights, is to locate missing persons and return their remains to their relatives. It prioritizes the right of the families of the missing to find their missing relatives and give them a dignified burial. It also provides for the families’ direct participation in the search process and ensures the protection of burial sites.

Authorities at all levels that could be included in the assessment of the existing domestic system:

- Ministries and Departments of Defence and Veterans, the Interior, Justice, Social Welfare, Humanitarian Affairs, Minority Affairs, Health, Finance, Housing, Education, Foreign Affairs
- National authorities that issue birth and death certificates
- National authorities that issue certificates of absence, if relevant
- Prosecutors and judges
- Law enforcement and investigative authorities
- Medico-legal (forensics) institutes, forensics laboratories and other entities providing forensic services
- Other authorities involved in the search for missing persons and recovery of the dead, e.g. military, emergency services and civil protection
- Public hospitals
- Detention facilities
- Cemeteries
- National information bureaux (NIB) or similar, if existing
- Local, international and mixed tribunals
- Parliamentary commissions (e.g. human rights parliamentary commissions)
- Inquiry commissions
- Ombudspersons
- Truth-seeking mechanisms
- National victim and witness protection programmes
- National Committees on International Humanitarian Law or similar bodies in federal states; authorities at the federal, regional and municipal level.

Non-state actors, including:

- Non-state armed groups that are/were parties to an armed conflict
- Family associations and other civil society/charitable/religious support groups
- The ICRC and its Central Tracing Agency, National Red Cross and Red Crescent Societies and other organizations working on the missing and strengthening medico-legal systems
- Academic or research institutions involved in providing forensic services and/or archive, documentation and social memory projects
- Relevant intergovernmental and non-governmental organizations, including those involved in forensics and human rights.

4. SITUATIONS IN WHICH STATES ARE UNABLE TO ACT

The role of certain state institutions may be limited in certain situations, however, such as the following:

- where state authorities do not have access to an area (e.g. owing to armed conflict) or families live in very remote areas
- where cases are cross-border and the state does not have the ability to conduct proper searches for missing persons (lack of diplomatic ties, contacts, capacity to exchange information)
- where families believe the authorities are responsible for their relatives going missing or do not trust the authorities for other reasons
- where relatives may be reluctant to report a case for fear of repercussions, retaliation against themselves or their families, endangering the life of the missing person, the fact that their status is irregular or simply because they do not trust the process.

In such cases, the search for the missing would benefit from the involvement and support of international and other external organizations.



Colombia

In 2015, the government of Colombia and the Colombian Revolutionary Armed Forces (FARC) decided to take a wide range of measures to find missing people and provide answers to those searching for their missing loved ones. The ICRC supported both parties in implementing these measures by providing advice to the organizations in charge, lending support to families and exhuming human remains in areas the Colombian government was unable to access.

5. PRACTICAL CHALLENGES AFFECTING THE WORK OF STATE INSTITUTIONS

Even where state authorities do have access and the trust of the families, state institutions and processes may be hampered by several issues.

For instance, authorities could lack capacity, resources and tools to undertake a search or to identify remains, or may not take action where there is no indication of criminal activity.

Coordination between agencies suffers when internal systems and mechanisms are lacking, and where roles, responsibilities and processes to determine which authority has jurisdiction are not clear.¹¹ Between policing agencies in particular a lack of communication may result in failure to make connections between cases (linkage blindness).

A lack of appropriate information collection, coordination and management will result in inconsistent data collection, poor quality of information and even loss of critical information in registries in detention places, hospitals, temporary settlements of displaced people and gravesites. Also, access to documentation and archives may be restricted for confidentiality or security reasons. Where databases are fragmented and a centralized information system is therefore lacking, it is not possible to cross-check information, especially in cross-border cases.

The assessment of existing institutions and actors should inform plans to address any capacity issues and other shortcomings, and help ensure the mandate of the mechanism is formulated in line with the gaps identified.

¹¹ See (the forthcoming) Guidance Note 11 Coordination between the Search and Criminal Investigations.



The Mexican Search Commission

Mexico has one of the highest recent caseloads of missing persons in the world. It is also a large country, made up of 32 federal entities, of which 14 have a regulatory framework on missing persons. This is reflected in the country's law enforcement and judicial branches (including the medico-legal system), both of which comprise entities at federal and state levels. This has proven to constitute a challenge to efforts to clarify the fate and whereabouts of Mexico's missing persons.

In order to clarify responsibilities and ensure the coordination of search efforts, in 2017, Mexico's Congress passed the [General Law on the Forced Disappearances of Persons, Disappearances Committed by Individuals and the National Search System](#). A key element of this law was the creation, also in 2017, of the [National Commission for the Search for Disappeared Persons](#), with the task of initiating, executing and following up search actions for "missing and disappeared persons". The Commission is mandated to coordinate and monitor the actions of all state agencies involved in the search, and all authorities are obliged to collaborate with it. Moreover, every federal state must create a Local Missing Persons Commission with comparable functions.

A wide range of responsibilities has been given to the Commission. This includes the design of a national policy on the search, issuing technical recommendations for the work of state agencies (a capacity-building manual for the search issued by the Commission can be found [here](#)), maintaining a national registry of missing persons, unrestricted access to all relevant official databases and registries and coordination with civil society and foreign authorities involved in the search. To protect the identities of those reporting a missing person, the Commission has put in place an anonymous reporting system. Through the External Cooperation Mechanism, the Commission can liaise with people who have lodged requests outside the territory of Mexico.