



GUIDANCE NOTES NATIONAL MECHANISMS FOR MISSING PERSONS

A TOOLBOX



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GUIDANCE NOTE 1

MISSING PERSONS NATIONAL MECHANISMS: CONTEXTUALIZED APPROACH AND MANDATE

This guidance note describes how contextual realities will influence the establishment, scope and functioning of national mechanisms¹ dealing with missing persons. It explains the importance of a clear mandate and sets out key elements of such mechanisms, including their objectives, organizational set-up and relationship with other authorities and powers, legal status, and representation and participation of relevant constituencies.

GUIDANCE NOTE 2

PRINCIPLES OF AND ENABLERS FOR A SUCCESSFUL MECHANISM

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

GUIDANCE NOTE 3

THE NEEDS OF THE FAMILIES OF MISSING PERSONS

This guidance note examines how a mechanism can support the families of the missing. It underscores the importance of carrying out a needs assessment to ascertain the families' specific difficulties, needs and expectations, and provides a brief overview of the different needs that families of missing persons may have.

GUIDANCE NOTE 4

ASSESSING THE POLITICAL CONTEXT, BUILDING AND ENSURING POLITICAL WILL

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.

GUIDANCE NOTE 5

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

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

¹ 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.

GUIDANCE NOTE 6 DOMESTIC LEGAL AND POLICY FRAMEWORKS DEALING WITH THE MISSING

This guidance note provides recommendations to ensure that domestic legal and policy frameworks dealing with the missing address the plight of the missing and their families effectively and in line with relevant international, regional and domestic obligations. This includes but is not limited to: the prevention of people going missing; the search for and identification of missing persons; the recovery and proper treatment of the dead; and the needs of families of missing persons.

GUIDANCE NOTE 7 INVOLVEMENT OF THE FAMILIES AND FAMILY ASSOCIATIONS

This guidance note underscores the importance of family involvement in the mechanism and provides an overview of the possible roles families can play. It examines the formation and activities of family associations and outlines the opportunities that could be explored, as well as some of the challenges that may need to be addressed.

GUIDANCE NOTE 8 DATA AND INFORMATION MANAGEMENT REGARDING MISSING PERSONS

This guidance note provides an overview of common objectives that underpin the creation of a data and information management system within the mechanism and sets out key aspects of data and information processing in accordance with the principle of “do no harm” and applicable data protection rules and standards.

GUIDANCE NOTE 9 THE MULTIDISCIPLINARY SEARCH PROCESS

This guidance note provides an overview of common parameters of the search process and outlines the basic principles and key requirements relating to search processes to ensure families of the missing are provided with prompt, effective, transparent and individualized answers, with due respect for the dignity of the missing, including the dead.

GUIDANCE NOTE 10 THE IDENTIFICATION PROCESS: AN INTEGRATED APPROACH

This guidance note explores identification as part of the broader search process and sets out key concepts, principles and recommendations. As reliable identification is vital for legal, administrative and humanitarian purposes, and for providing answers to families, this guidance emphasizes an integrated and multidisciplinary approach to the identification of missing persons.

GUIDANCE NOTE 11 ENSURING COMPLEMENTARITY IN THE SEARCH FOR AND INVESTIGATION OF CASES OF MISSING PERSONS, INCLUDING VICTIMS OF ENFORCED DISAPPEARANCES

This Guidance note examines the relationship between search and criminal investigative processes related to missing persons and identifies key concerns that need to be addressed in order to ensure that these processes are conducted in a complementary manner and in accordance with international legal frameworks and standards.

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INTRODUCTION

Hundreds of thousands of people are missing around the world as a result of armed conflict, other situations of violence, disasters and in the context of migration. This includes victims of criminal acts, such as enforced disappearance. In many cases, efforts to address such caseloads fall outside the mandates, or exceed the capacity, of existing national institutions. It is in this context that consideration should be given to setting up a dedicated national mechanism on the missing, with the aim of clarifying the fate and whereabouts of missing persons and providing support to their families.

Not knowing the fate and whereabouts of a loved one has been recognized as one of the deepest wounds inflicted by armed conflict. Left unaddressed, the issue can affect not only families but also communities and entire societies, and could represent an obstacle to peace and reconciliation. Families need to know what has become of their loved ones – whether they are alive or dead. The right to know is recognized under both international humanitarian law (IHL) and international human rights law (IHRL). Addressing it requires the involvement of multiple actors and stakeholders.

In recent decades, a variety of national and international mechanisms have been established that aim to provide a more effective response to the issue of missing persons. While these mechanisms have taken different forms and achieved different results, a number of them has been effective in resolving cases and providing protection and support for missing persons and their families.

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.

In June 2019, the United Nations Security Council (UNSC) underscored the importance of mechanisms in Resolution 2474, in which it stressed the need “to take all appropriate measures, to actively search for persons reported missing” and “to strengthen(ing) the role and capacity of the existing national, regional and international mechanisms”.² It called on member states to exchange experiences and best practices, which can contribute to comprehensive responses to the issue of missing persons in armed conflict.

However, despite the above-mentioned experiences, to date, few standards or guidance documents exist to advise states and other actors on how to establish or strengthen such mechanisms.

Against this background, practitioners, experts and representatives of families from around the world gathered in Nicosia, Cyprus in October 2019 to share insights and lessons learned from their work with such mechanisms in the context of armed conflict and other situations of violence. [The expert meeting](#) was a valuable opportunity for exchange and learning, and enabled participants to identify common principles and features considered to be fundamental for the effective functioning of mechanisms for missing persons. While participants acknowledged that there is no one-size-fits-all solution, they agreed on the need for practical guidance and tools to support the establishment and functioning of such mechanisms and committed to engaging in a process to develop them. Although these guidance notes focus primarily on so-called national mechanisms,

² UNSC Resolution 2474, 11 June 2019.

the guidance contained in several of the notes is equally relevant for other mechanisms, such as coordination mechanisms set up between former parties to armed conflict.

The development of the guidance notes has benefited from extensive discussions with representatives of mechanisms and practitioners from various disciplines, and builds on decades of International Committee of the Red Cross (ICRC) experience in advising on, and working with, mechanisms. It is hoped that these notes will help states and other actors address the issue of missing persons more effectively.³

³ The following guidance notes are now available:

Guidance Note 9 The Multidisciplinary Search Process

Guidance Note 10 The Identification Process: An Integrated Approach

Guidance Note 11 Ensuring Complementarity in the Search for and Investigation of Cases of Missing Persons, Including Victims of Enforced Disappearances.



GUIDANCE NOTE 1

MISSING PERSONS NATIONAL MECHANISMS: CONTEXTUALIZED APPROACH AND MANDATE



The mechanism should have a clear mandate that allows it to clarify the fate and whereabouts of missing persons and respond to the needs of their families in a comprehensive, efficient and sustainable manner.

This guidance note describes how contextual realities will influence the establishment, scope and functioning of national mechanisms dealing with missing persons. It explains the importance of a clear mandate and sets out key elements of such mechanisms, including their objectives, organizational set-up and relationship with other authorities and powers, legal status, and representation and participation of relevant constituencies.

1. WHO IS A MISSING PERSON?

The circumstances in which individuals go missing vary greatly. For instance, armed conflicts can cause mass displacements, which result in people going missing because they may lack adequate means of communication or they may become separated en route. Migrants may go missing when they are unable or choose not to establish contact with their families, including when they are detained. Members of state armed forces or non-state armed groups can go missing in action. Deceased individuals whose bodies are abandoned, buried in haste or mismanaged, making identification difficult or impossible, may also be reported missing. So may people who are captured, arrested or abducted and held incommunicado or in a secret location.

There is no legal definition of a missing person under international law. For the purpose of this guidance, “missing persons” is understood to mean individuals of whom their families have no news and/or who, on the basis of reliable information, have been reported missing as a result of an armed conflict or other situation of violence, or any other situation that may require the intervention of a competent state authority.⁴ This notion includes victims of enforced disappearances.

This definition of a missing person is not limited in time and contains no presumption of death. Hence, people are considered to be missing from the moment they are reported missing by their families, i.e. there is no waiting period before someone can be considered missing. Persons are no longer considered missing after their families have received sufficient, reliable and credible information on their fate and whereabouts.

2. NATIONAL MECHANISMS FOR MISSING PERSONS

For the purpose of these notes, the term “mechanism” refers to all institutions, commissions or other bodies and processes established by relevant authorities, with the humanitarian objective to provide individualized answers on the fate and whereabouts of missing persons and provide support to families of missing persons. Mechanisms may also pursue other objectives, including those linked to accountability or transitional justice.⁵ In all cases, efforts should be taken to ensure complementarity between the different objectives.

Mechanisms can be set up in situations of ongoing armed conflict and other situations of violence, in post-conflict contexts and even to address decades-old legacies.

National mechanisms tasked with searching for missing persons have been established in, *inter*

⁴ This definition is based on that in *Missing Persons: A Handbook for Parliamentarians*, ICRC, Geneva, 2009.

⁵ However, these objectives will not be further explored in this set of guidance notes, other than insofar as they relate to the search for the missing.

* Kosovo unilaterally declared its independence from Serbia on 17 February 2008. Its status remains disputed.

alia, Bosnia and Herzegovina, Colombia, Croatia, El Salvador, Kosovo*, Lebanon, Mexico, Peru, Serbia, South Africa, Sri Lanka and Ukraine. In addition, a number of mechanisms has been established to facilitate the coordination of search efforts between former parties to armed conflicts – for example, after the armed conflicts in Bosnia and Herzegovina, and between Croatia and Serbia; in Cyprus; after the 1998–1999 conflict in Kosovo; after the 1991 Gulf War and the armed conflict between Iran and Iraq; after the 1992–1993 conflict in Abkhazia; and after the 2008 armed conflict in South Ossetia. The guidance notes focus primarily on national mechanisms, even if they are also to a large extent relevant for coordination mechanisms.

3. A CONTEXTUALIZED APPROACH

The aforementioned mechanisms, including their mandates, operational approaches and the degree to which they have succeeded, differ considerably, reflecting the historical, political, socio-economic, cultural, legal and institutional realities in each context.

Key considerations that are likely to determine what a mechanism can set out to achieve and whether it can be effective include:

Institutional capacity

Searching for and identifying missing persons and responding to the needs of their families requires a broad range of capacities. The extent to which authorities have these capacities will be an important criterion when setting up a mechanism.

Trust in institutions

Past events often dictate the level of trust in such authorities as the military, the judiciary, law enforcement and forensics institutions. In contexts of armed conflict and other situations of violence, the population, or parts of it, may not trust or may fear authorities. Where this is the case, cooperation of the population with, and confidence in the work of, the mechanism are likely to be affected.

Social and political cohesion and political will

Those responsible for persons going missing may or may not be in positions of power. Critical political constituencies may not support efforts to deal with the past, including with regard to the issue of the missing. In such situations, efforts to clarify the fate and whereabouts of missing persons tend to be more complex and sensitive, as are accountability processes.

If left unaddressed, these and other considerations risk limiting the scope of objectives pursued by a mechanism. They may also affect the level of autonomy of and the powers granted to a mechanism in terms of, for example, access to information, access to locations, or powers to compel witness testimony and ensure the confidentiality of information the mechanism receives. For this reason, those seeking to set up a mechanism should devise strategies to address these factors early on.

4. THE NEED FOR A LEGAL BASIS

A mechanism requires a mandate, usually provided through the adoption of the relevant legal framework.

The mandate should be provided in the domestic legal framework that establishes the mechanism. Additional to the mandate, other critical elements that should be set out in the legal basis establishing the mechanism include the objectives to be pursued by the mechanism, its structure, governance and functions, its powers and status (including that of its staff) and its resourcing. Furthermore, the legal framework should include, as appropriate, provisions regarding the representation and participation of different constituencies, including families of missing persons.

The mechanism must be adapted to the nature and scale of the caseload, the needs and expectations of the families, and the overall socio-economic, cultural, institutional, legal and political environment of the country.



National missing persons mechanisms that have been created pursuant to a law include:

Mexico: the General Law on the Forced Disappearance of Persons, Disappearances Committed by Individuals and the National Search System came into effect in 2018, establishing the National Search Commission.

Ukraine: the Commission on Missing Persons in Special Circumstances was established based on the Law of Ukraine On the Legal Status of Missing Persons 2018.

In some circumstances, other procedures have been used:

The **South African** Missing Persons Task Team was established in terms of the recommendations of South Africa's Truth and Reconciliation Commission, which stated that government should set up a task team in the National Prosecuting Authority to continue investigating the fate and whereabouts of those who disappeared in political circumstances between 1960 and 1994, and to recover their remains, where possible.

5. KEY ELEMENTS OF A MANDATE

In line with the above, the following elements should be considered:

a. Objectives

The objectives of a mechanism should include, but need not be limited to, the following issues:

i) *Who is the mechanism looking for?*

A mandate should set out the jurisdiction/caseload of a mechanism. It can be formulated either broadly or with reference to a specific armed conflict or event, time period, region or geographic area, the manner of disappearance or any combination of these. It must be kept in mind that the line between different caseload of missing persons is often not a clear one. It is essential, therefore, that the mandates of different authorities involved are clear, without overlap, and that standard operating procedures (SOPs) are put in place to articulate issues such as jurisdiction, process and exchange of information, among others.



Bosnia and Herzegovina

Law on Missing Persons, Article 2 – Definitions

1. "A missing person is a person whose family is without news of him/her and/or who is reported as unaccounted for, on the basis of reliable information, owing to armed conflict that occurred on the territory of the former Socialist Federal Republic of Yugoslavia. This Law shall apply to persons who went missing in the period from 30 April 1991 to 14 February 1996."*

Ukraine

Law of Ukraine On the Legal Status of Missing Persons, Article 3 – Scope of the Law

"This law covers the public legal relations connected with obtaining the legal status of missing persons in situations of an armed conflict, hostilities, domestic insurgency, emergency situations of natural or man-made disasters, other events that can cause mass death of people, as well as of the persons missing as a result of any other circumstances."*

* Unofficial translations

ii) What does the mechanism aim to do?

The mandate of a mechanism should spell out, as a minimum, the powers and functions required to clarify the fate and whereabouts of missing persons and to serve and assist their families.



Colombia: Decree establishing the Missing Persons Search Unit

Article 5, *inter alia*, sets out the following functions and powers:*

- Gather all the information necessary for the search for, location and identification of missing persons and establish the list of missing persons.
- Design and implement a national plan and corresponding regional plans for the search for, location, recovery, identification and dignified delivery of the remains of missing persons.
- Coordinate and advance, with the technical support of the National Institute for Legal Medicine and Forensic Sciences (INMLCF) and other public entities, search processes, location, recovery, identification and dignified return of the remains of missing persons.
- Guarantee the participation of the relatives of missing persons in the search for, location, recovery, identification and dignified return of remains.
- Promote interinstitutional coordination in terms of guidance and psychosocial care for the families of missing persons.
- Deliver to the next of kin a detailed official report of the information that has been obtained about what happened to the missing persons.
- Deliver to the Commission for the Clarification of the Truth, Coexistence and Non-Repetition detailed reports of the information obtained on what happened to the persons considered missing.
- Report publicly and periodically (at least every six months) on activities relating to the search for, location, recovery, identification and return of remains.

* Unofficial translations





El Salvador: [Decree No. 45 of 6 October 2004](#) creating the Interinstitutional Commission for the Search for Missing Children as a Consequence of the Armed Conflict in El Salvador – Article 3*

- a) Investigate *ex officio* or at the request of any person and receive information about the disappearances of girls and boys.
- b) Promote the victims' right to the truth, by promoting procedures to search for disappeared children.
- c) Ensure the preservation and defence of the right to identity of the persons who were victims of disappearances.
- d) Inspect documentary records or files of state institutions belonging to the Executive Branch. [...]
- e) Promote the guarantee of restitution of family relationships between the person who was disappeared as a child and their biological family.
- f) Promote coordination with public institutions and the participation of private, national and international organizations. [...]
- g) Request before the competent authority precautionary measures of protection to guarantee the rights of child victims of disappearance, as well as to preserve relevant information that is in danger of being altered, destroyed or hidden.
- h) Maintain permanent communication with the conglomerate of victims of child disappearance in order to know their needs and problems, and to provide them with comprehensive assistance. [...]
- i) Conduct national awareness campaigns and educational processes on the rights of victims of child disappearance.
- j) Produce periodic public reports on the result of the Commission's work.
- k) Promote the victims' rights of access to justice, transferring to the attorney general of the Republic and to the competent authorities the pertinent information on criminal offences that come to the Commission's attention in the exercise of its mandate.

* Unofficial translations

iii) What is the term of the mandate granted to the mechanism?

A mechanism's mandate may be ad hoc and limited in time, indefinite – until the fate and whereabouts of the missing are clarified – or provide for the establishment of a permanent body. In practice, the time required to investigate a given caseload is often grossly underestimated at the outset. Care therefore needs to be taken to avoid unrealistic expectations.



- The [Decree](#) establishing the Missing Persons Search Unit (Unidad de Búsqueda de Personas dadas por Desaparecidas) in **Colombia** grants it a 20-year mandate, which can be extended (Article 1).
- In **Kosovo**, the Governmental Commission on Missing Persons has been formed for an undetermined time frame. Its work will end when its mandate is completed, as determined by [Law No. 04/L-023](#) on Missing Persons 2011 and Regulation No. 15/2012 on the Work of the Government Commission on Missing Persons (10/07/2012).

b. Organizational set-up and coordination with other institutions

The search for and identification of missing persons, and addressing the needs of their families are complex and potentially sensitive processes and might require the involvement and collaboration of judicial, investigative and forensics systems, as well as other entities and stakeholders. These may include non-state actors, both domestic and international, who may have specific resources and expertise to bring to the mechanism's work.

An evaluation should assess the capacity, both technical and political (including trust and independence), of existing institutions and processes to pursue the above objectives.

A decision must then be taken as to whether these capacities can be strengthened to address the gaps identified, providing they are properly coordinated, or whether it is necessary to create new structures under the mechanism.

The mandate and objectives of the mechanism should reflect the gaps identified, ensure coordination and avoid overlap and duplication of tasks with, and optimize the knowledge, experience, capacities and resources of the existing institutions.

These considerations will inform the shape and role of a future mechanism, be it a commission with a coordinating role, a unified registry able to centralize and process all information on missing persons and unidentified human remains, a specialized unit to deal with a specific caseload, or a separate institution with a broad range of capacities. It is also necessary to clearly set out and articulate its relationship and interaction with other authorities and institutions. In this regard, it should generally be assumed that the higher a mechanism is positioned in a state structure, the higher the chances of it succeeding in fulfilling its mandate.



The **Colombian** Missing Persons Search Unit has developed an [organigram](#) of its organizational set-up.

Lebanon – Law 105 on Missing and Forcibly Disappeared Persons*

Article 7 – Obligation of Exchange and Cooperation:

“The competent authorities shall exchange information pertaining to determining the fate and identity of missing and forcibly disappeared persons and shall submit such information to the Commission. In order to improve the search for missing and forcibly disappeared persons, the competent authorities in Lebanon shall cooperate with the International Committee of the Red Cross (ICRC), the [United Nations’] Office of the High Commissioner for Human Rights (OHCHR), the Commission, the Lebanese Red Cross, or with any other humanitarian organization, in accordance with their respective mandates.”

Kosovo – Law on Missing Persons*

Article 8 (1) – Governmental Commission on Missing Persons:

“[The] Commission is a governmental body that heads, supervises, harmonizes and coordinates activities with local and international institutions, cooperates with institutions and international organizations and other stakeholders with regard to clarification of the fate of missing persons as a result of the 1998–1999 war, regardless of their ethnic background, religion or military or civil status.”

* Unofficial translations

c. Specific powers and legal status of the mechanism and its staff

Searching for missing persons often requires having access to restricted information, to witnesses, including state officials, and to physical locations, for the purpose of carrying out searches. Mechanisms may also wish to provide confidentiality to witnesses or have compulsive powers, e.g. to obtain witness testimony or access to information. Finally, the work of mechanisms and their staff may need to be protected from interference, including by other state institutions.



Peru: Law on the Search for Missing Persons during the 1980–2000 Period of Violence*
Obligation of cooperation and protection of information – Article 13: “The Ministry of Justice and Human Rights will require the information it deems necessary for the purposes of this Law from public entities and competent private companies, which must provide timely cooperation or assistance in the provision of same.”

* Unofficial translations

d. Issues of representation and participation

The representation and participation of relevant constituencies – not only families of missing persons but also political, ethnic or religious groups, state institutions or civil society – may be critically important to ensure the legitimacy of and trust in the work of a mechanism.



Bosnia and Herzegovina

The Missing Persons Institute’s Advisory Board represents the interests of the members of families of missing persons. The Advisory Board consists of six members, who are appointed based on proposals made by registered Associations of Families of Missing Persons in Bosnia and Herzegovina. Appointment procedures provide for ethnic and gender equality.



GUIDANCE NOTE 2

PRINCIPLES OF AND ENABLERS FOR A SUCCESSFUL MECHANISM



The national mechanism⁶ 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:



⁶ 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:

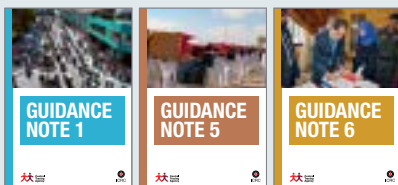
- a proper representation of all entities and agencies involved
- effective communication and coordination among relevant state actors and other stakeholders
- a proper articulation of responsibilities at operational and political levels.

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.



GUIDANCE NOTE 3

THE NEEDS OF THE FAMILIES OF MISSING PERSONS



A mechanism⁷ should be guided by the multifaceted needs of the families of persons and its objectives designed to meet those needs.

This guidance note examines how a mechanism can support the families of missing persons. It underscores the importance of carrying out an assessment to ascertain the families' specific difficulties, needs and expectations, and provides a brief overview of the different needs that families of missing persons may have.

1. INTRODUCTION

The families of the missing have specific needs, as recognized by, for instance, the 2003 International Conference of Governmental and Non-Governmental Experts on the Missing convened by the ICRC. These needs include the need to know the fate and whereabouts of their missing relatives, the need for recognition and/or justice, and needs related to economic, administrative and legal challenges. They may also have a need for psychosocial support, and for acknowledgement and commemoration. Until these needs are met, families cannot easily rebuild their lives.

There is no universally accepted definition of “family”, but the approach of several international and regional human rights law treaty bodies and courts is to interpret the term in a broad manner. The definition of a family member of a missing person will, in principle, be found in domestic law but must be able to be interpreted in a broad manner and should be flexible, in line with the traditions and cultural values of each people and contextual variations, and take into account prolonged emotional dependency and mutual acceptance of relationships. It should not be limited to a purely biological (rather than social) concept and must be interpreted to include adoptive or foster parents or, where applicable, the members of the extended family or community, as provided for by local custom. All children treated as a part of the family, regardless of legal status, should be acknowledged as family members.

Families and their members will exhibit different needs depending on a range of factors – such as gender, age, economic status, legal status and disability, among others – as will indigenous peoples and members of ethnic or cultural groups and members of the lesbian, gay, bisexual, transgender and intersex community. Any engagement with such family members may require specific approaches, experience and knowledge both to be effective and avoid inflicting harm or discriminating. There is also a need to consider the intersectional nature of vulnerabilities, discrimination and disadvantage that can affect engagement with such family members and challenge their effective participation.

A mechanism should ensure that these multifaceted needs of families are addressed, either by relevant local or national institutions, or by the mechanism itself. Wherever possible, a mechanism should strive to actively involve family representatives in the planning and delivery of services.

The person who goes missing is the primary individual affected. But the tragedy affects many others too. The relatives of a missing person usually endure great suffering until they learn of the individual's fate and whereabouts. Often, their situation is exacerbated by the administrative, legal and economic difficulties they face.

⁷ 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.

A family needs assessment should be carried out to ascertain what the families' specific difficulties, needs and expectations are.

2. FAMILY NEEDS ASSESSMENT

In order to have a comprehensive understanding of the needs of families of missing persons, mechanisms should conduct a family needs assessment. Those carrying out the assessment should be familiar with the context and trained to understand the needs of the families, as well as their perceptions of the fate of the missing. It will likely include interviews and focus groups with affected families, thus allowing a better understanding of their issues and their views on how their situation could be improved. The assessment should also address security and protection concerns.

As part of the assessment, an evaluation should be carried out of the extent to which relevant institutions, national laws, regulations and administrative procedures can address the families' needs. This could include mapping all relevant actors and the services they provide. This should allow the mechanism to identify gaps and develop its strategy accordingly.

The ICRC has publicly available reports on family needs assessments undertaken in [Brazil](#), [Nepal](#), [Sri Lanka](#), and [Ukraine](#).

3. FORMULATING A STRATEGY TO MEET FAMILY NEEDS

A strategy to address family needs could include the following activities:

- taking steps to streamline and coordinate the services provided by different state agencies to ensure an effective response to the specific needs and circumstances of the families of missing persons
- establishing an efficient and transparent system of information and referral to existing services for families of the missing
- providing certain services through the mechanism itself in cases where specific needs cannot be met by existing institutions and structures
- raising awareness and promoting recognition among the public of the needs of families and organizing community support for them
- advocating for and advising on the creation or reform of laws, regulations, policies and procedures to address challenges faced by families of the missing.



A needs assessment may need to take into account different categories of people within an affected population or even different dynamics within families themselves. For example, an assessment was conducted in **Nigeria** in 2019 with children searching for missing parents or siblings. It was repeatedly observed in previous interviews that young people were reluctant to share their opinions in the presence of other adults, or adults would speak on their behalf. For some participants, it was the first time they were able to discuss having a missing relative with somebody, as it was a sensitive subject within the family.

4. NEEDS OF FAMILIES OF MISSING PERSONS

It is essential to keep in mind that families' needs may differ, even within the same context, depending on cultural, religious and socio-economic factors. Also, needs evolve over time. The following list outlines some of the main needs families may have.

a. Need to know the fate and whereabouts of the missing person

Families need to receive information on the fate and whereabouts of their missing relative and have the opportunity to restore and maintain contact. If their relative has died, they need to know the date, place and circumstances of death and the location of the person's remains. They also need to know the process that led to their relative's identification (see page 28). If remains have not been found, families need to understand why this is the case.

b. Need for information about the search and identification processes

Families need regular information, conveyed in a clear and precise manner, about the progress of the search and identification processes. This should include information on the different stages, from the moment a case is registered to the moment the missing person is found. Furthermore, they should receive information on strategies, methods, time frame, legal aspects and challenges encountered. Families should be briefed on all possible outcomes in order to manage their expectations. Once the identity has been established, families also need to understand the process that led to it.



In **Cyprus**, families who have been searching for their missing relatives over the last four to five decades requested to receive more information about the different processes involved in establishing their fate and whereabouts, including the investigative, search and identification processes. While they mostly rely on media reports, families said they preferred to receive information directly from a more credible source. In the words of one family member, “for each family to be able to say that they know what is going on with the issue of missing persons, we need constant updates.”

c. Need to receive psychological and psychosocial support

The psychological impact of having a missing relative is wide-ranging. Persistent uncertainty and the impossibility of going through a proper grieving process are often accompanied by feelings of fear, frustration, powerlessness, guilt and anger.



The term “**ambiguous loss**” was first coined by a psychologist called [Pauline Boss](#). She defined ambiguous loss as “a situation of unclear loss resulting from not knowing whether a loved one is dead or alive, absent or present”. This severely affects the psychological well-being of families, even if they were not vulnerable before. They may spend a lifetime looking for answers, and tend to become socially and emotionally isolated as a result. One of the theory’s major achievements is that it gives a name to the isolating experience of grief without closure.

Ambiguous loss may lead to emotional disengagement, anxiety, depression and other mental health and medical conditions. Relatives often face difficulties within their families and their social environment. Therefore, they may need psychological and psychosocial support.



In **Uganda**, families talk, emotionally, about having *cwer cwiny*, an Acholi (tribe in Northern Uganda) idiom describing how their heart bleeds out of sadness for their missing loved one. Some have *par*, a sickness of thoughts, from constantly thinking of the relative who disappeared. Others have unexplained physical pains and sleeping problems, linked to psychological distress. They may even feel haunted by spirits of their missing loved ones, as, without a body, they are unable to properly perform funeral rites that would give peace to the departed soul of their relative.

In **Sri Lanka**, families of missing persons mentioned that they rarely or never talk about their problems to others. Families feel that their pain is not understood by others. Well-wishers advise them to move on, encouraging them to believe that their missing relative is dead and will not come back. For these reasons, families begin to isolate themselves from their community.

Brazil’s Missing Persons Search Policy Act stipulates that the state must create psychological and social support programmes. These services are provided mainly by cities’ Social Services Offices and the Psychosocial Support Network. The Public Defender’s Office in Rio de Janeiro employs psychologists and social assistants, and legal services are provided in coordination with psychosocial and psychological services offered to the people affected.

d. Need to receive legal and administrative support, including information on rights and procedures

Where national legal frameworks are ill-adapted, relatives may encounter a range of legal and/or administrative hurdles and may be left without any means of support. For example, families may lack access to pensions and other social benefits or be unable to exercise their rights under contract, property and family law (e.g. marriage, guardianship, inheritance). For this reason, it is important for the law to recognize missing persons, to guarantee and ensure the continuity of their legal personality and to protect their and their families' rights. Moreover, there is a need to provide clear and accessible information to families about their rights and how to claim them.

e. Need for economic or financial support

Families of missing persons may have financial problems that are directly related to the disappearance of their loved one – for instance, when the missing person is the family's breadwinner or due to the financial burden of the search. As a result, they may not be able to provide for basic needs, such as food, accommodation, health care and education costs, in addition to costs related to the search.

In some contexts, the lack of legal recognition of a person as missing and/or of their relatives as family members of a missing person has economic consequences. For example, families of missing persons may not be recognized as "victims" and are consequently excluded from certain services or benefits. In addition, they may have difficulty gaining access to bank accounts, pensions, property and other assets of the missing person.

It is important to ensure that families are aware of their rights and how to access them.



The **Ukrainian Law On the Legal Status of Missing Persons** introduces the right of families of missing persons to apply for social security. It amends the Law on Mandatory State Pension Insurance to introduce the relatives of missing persons as a category entitled to support in case of loss of breadwinner.

f. Need for truth and justice

Where persons have gone missing as a result of armed conflict or other situations of violence, families may also insist on knowing who was responsible for the disappearance or death of their relative, and, where a crime has been committed, they may demand that the perpetrators be prosecuted and punished. It is therefore important to ensure that efforts to clarify the fate and whereabouts of missing persons and to assist their families are carried out in a manner that does not become an impediment to justice.⁸



In October 2015, the **Sri Lankan government** co-sponsored [UN Human Rights Council Resolution 30/1](#) promoting reconciliation, accountability and human rights in Sri Lanka. The Office on Missing Persons (OMP) became operational on 15 September 2017, as one of four pillars of transitional justice prescribed by the government. Its mandate is to search for missing persons, with the aims of clarifying the circumstances in which they went missing, and identifying and informing proper avenues of redress to which missing persons or their relatives may have recourse. The OMP has a humanitarian mandate and is not empowered to carry out any search activities for the purpose of a criminal investigation. However, the mechanism does have the power "to inform victims, relatives, witnesses and other informants who provide information to the OMP of their right to directly refer matters to relevant authorities, including their right to report serious crimes to the relevant law enforcement or prosecuting authority": [Sri Lanka – Office on Missing Persons Act, Article 12\(i\)](#).

⁸ See Guidance Note 11 Ensuring Complementarity in the Search for and Investigation of Cases of Missing Persons, Including Victims of Enforced Disappearances.

g. Need to hold funerals or commemorative rituals

Families have the need for commemorative rituals. These can provide a form of public recognition of families as mourners, pay tribute to the life of the deceased and contribute to closure. Practices differ greatly according to context and may be influenced by personal, political, social, religious and cultural factors.

Usually, though not in all contexts, families will express the need to recover the body of the deceased together with scientific proof of the identity, so that funeral rites can be performed in accordance with their religious and cultural beliefs. They may also require administrative and financial assistance to enable them to hold such rituals.

Where it is determined that remains cannot be recovered, some families may be satisfied with a confirmation of death by the authorities or an organization that they consider credible. In such situations, culturally appropriate ceremonies of recognition and acknowledgement may be held to pay tribute to the memory of the missing person.



When the **Committee on Missing Persons in Cyprus** returns identified remains to a family, it provides them with a lump-sum contribution towards the costs of the funeral.

In southwestern **Nepal**, support groups for the families of missing persons have built a *pratichhalaya*, a rest area for travellers, to honour the missing. Such memorials serve as a public register of the names of the missing and also offer the neighbourhood refreshment or shelter from the rain or sun.

h. Need for recognition of harm suffered, public memory and reparations

Ensuring the memory of missing persons and the public recognition of the harm suffered by their families and communities and providing appropriate reparations are important steps in supporting families, rebuilding trust and fostering reconciliation.

This could include measures such as:

- An official acknowledgement through official statements recognizing the suffering of the families and their predicament.
- National commemorations, in order to pay respect to the persons who have gone missing and their families, and memorials which are inclusive of all families with missing relatives.
- Published lists of missing persons, with the consent of the families involved, to preserve historical memory and provide acknowledgement.

A family needs assessment should aim to understand their concerns and expectations in this regard.



On the [Peruvian government website](#), the Minister for Justice and Human Rights offers an official apology to families on behalf of the state: “On behalf of the government, we apologize for all that they [the families of the disappeared] have suffered.”

A coalition of human rights and family organizations called *Memoria Abierta* (Open Memory) has been closely involved with the government of **Argentina** and a number of other groups in designing a museum at a former torture centre in the Naval Mechanics School in Buenos Aires, to make it accessible to the public as a way to remember those who were disappeared during the 1976–1983 military dictatorship.



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.



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 Guidance Note 11 Ensuring Complementarity in the Search for and Investigation of Cases of Missing Persons, Including Victims of Enforced Disappearances.



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.



GUIDANCE NOTE 6

DOMESTIC LEGAL AND POLICY FRAMEWORKS DEALING WITH THE MISSING



A mechanism¹² must ensure an informed and appropriate response, which complies with international obligations and is compatible with the prevailing legal system. It is therefore important to have a good understanding of the domestic legal and policy framework. The establishment of the mechanism may require legal reforms to ensure the effectiveness of the system and to address any gaps and shortcomings.

1. ENSURING AN APPROPRIATE DOMESTIC LEGAL AND POLICY FRAMEWORK

Efforts to prevent and resolve cases of missing persons and address the needs of their families necessitate a multitude of legal provisions, policies and administrative processes and procedures. These pertain to such issues as the prevention of disappearance, the search for and identification of missing persons, the management of the dead, the needs of and support to families of missing persons and the ability of a mechanism to carry out its mandate.

Analysing existing domestic legal and policy frameworks (e.g. laws, regulations, procedures and policies) will help determine the extent to which they facilitate these objectives, whether they comply with relevant international legal obligations, standards and best practices and where gaps exist. An assessment will also help determine the extent to which existing provisions are properly applied in practice. This analysis can then inform recommendations for changes and additions to the legal and policy framework, including those required to ensure the functioning of a mechanism.

Some of the key areas to be considered in the analysis of the domestic legal and policy framework are listed and addressed in more detail in the [ICRC's Guiding Principles/Model Law on the Missing](#).

Relevant definitions, including of missing persons and their families

Providing definitions of terms such as “missing person” and “relatives of the missing person” in domestic law will facilitate a consistent and uniform interpretation of these terms.

The legal status of the missing and the related rights of missing persons and their families

Recognizing the legal status of a missing person at the domestic level is essential and has three main objectives: first, to recognize, by law, that a person is missing until his or her fate and whereabouts are clarified; second, to ensure the continuity of the legal personality of the sought person, to protect his or her civil and family rights; and third, to enable any legal or administrative claim submitted by families of missing persons to be processed, including when a declaration of death would normally/otherwise be required.

Measures to prevent people from going missing

When the relevant IHL and IHRL obligations are properly implemented, the national legal framework can also play a vital role in preventing people from going missing. It must protect certain specific human rights, such as: the right to life; the right to liberty and security of person; the right to respect for family life; the prohibition of torture, cruel, inhuman or degrading treatment or punishment; the prohibition of enforced disappearance; and the right to recognition as a person before the law. Furthermore, states must adopt identification measures to help prevent disappearances and facilitate search efforts in the event a person does go missing.

¹² 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 the missing.



Reporting procedures and search processes

An analysis of the procedures for reporting a person as missing and how search processes are conducted by relevant authorities is key to assessing the legal framework.

Issues related to data management and the protection of personal data

Information relating to the missing person must be handled appropriately with respect to the privacy of that person and his/her family. Appropriate data protection rules and practices at the national level can ensure that all personal information remains sufficiently protected in terms of who has access and for what purpose, and that access to it is permitted when required for humanitarian reasons. Rules regarding data protection need to balance these potentially conflicting needs and will require an explicit or inherent flexibility in any measures, administrative or legal, that operate at the national level.

The management of the dead

Procedures need to be established for the search, recovery and treatment of the dead, including for unclaimed or unidentified bodies, as well as for restitution to families, issuance of the death certificate and death registration, and for burial and exhumation. The assessment of the legal framework needs to encompass all of these.

Criminal responsibility and prosecution

States must adopt the relevant legislation in order to ensure that crimes against missing persons and their families are criminalized under domestic law and that criminal proceedings can be initiated by the missing person or his/her legal representative, family members, interested parties or state authorities.¹³

¹³ Refer to Guidance Note 11 Ensuring Complementarity in the Search for and Investigation of Cases of Missing Persons, Including Victims of Enforced Disappearances.



INTERNATIONAL LEGAL FRAMEWORK ON THE MISSING

The primary responsibility for preventing persons from going missing and ascertaining what has happened in the case of those that do go missing lies with state authorities.

International humanitarian law (IHL), which applies in situations of armed conflict, contains rules that seek to prevent persons from going missing as a result of the conflict and to clarify their fate and whereabouts when they do (1). Notably, IHL requires parties to the conflict to take all feasible measures to account for persons reported missing as a result of armed conflict and to provide their family members with any information they have on their fate. IHL also requires the dead to be searched for, collected and evacuated, and all available information to be recorded before they are disposed of, with a view to identification. It also requires that those who have died during armed conflict be properly managed and their dignity protected, and that parties to an armed conflict must endeavour to facilitate the return of remains to families upon request (2). IHL also contains obligations regarding the investigation and prosecution of war crimes, including those resulting in persons going missing or being forcibly disappeared.

International human rights law (IHRL) contains rules and standards that are relevant to prevent persons from going missing and clarifying the fate and whereabouts of missing persons not only in connection with armed conflict but also in connection with natural disasters or migration. It also contains rules related to the investigation and prosecution of gross violations of human rights. The 2006 **International Convention for the Protection of All Persons from Enforced Disappearance** is the first universal treaty to include specific obligations for States Parties to prevent and protect against enforced disappearance. In the case of alleged or suspected enforced disappearance, states must take all appropriate measures to search for, locate and release disappeared persons, as well as to investigate acts of enforced disappearance and bring those responsible to justice (3). Finally, states must take appropriate measures to uphold each victim's right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation, and the fate of the disappeared person (4).

Rules relevant to searching for missing persons and to ensuring proper management of the dead and protection for their dignity can be found in other bodies of law. For instance, international disaster response law contains relevant provisions and standards relating to forensic activities and the management of the dead.

States are required to adopt and apply measures at the domestic level to fulfil their obligations under international law.

- 1 See the [Missing Persons and their Families](#) factsheet issued by the ICRC Advisory Service on IHL.
- 2 See the [Humanity after Life: Respecting and Protecting the Dead](#) factsheet issued by the ICRC Advisory Service on IHL.
- 3 [International Convention for the Protection of all Persons from Enforced Disappearance \(ICPPED\)](#). See Article 24, which also states that in the event of death, States Parties shall take all appropriate measures to locate, respect and return their remains; Article 3; and Article 15, providing that States Parties shall cooperate with each other and shall afford one another the greatest measure of mutual assistance with a view to assisting victims of enforced disappearance, and in searching for, locating and releasing disappeared persons and, in the event of death, in exhuming and identifying them and returning their remains.
- 4 [International Convention for the Protection of all Persons from Enforced Disappearance \(ICPPED\)](#). See Article 24.



ICRC Advisory Service

The ICRC's Advisory Service on IHL helps states implement IHL at the national level. With a global network of legal advisers, it provides guidance to national authorities on specific domestic implementation measures needed to meet their IHL obligations and it supports the work of national IHL bodies established to facilitate IHL implementation domestically. To this end, it provides legal advice and technical support, it facilitates the exchange of information on national measures of implementation, and it helps with capacity-building upon the specific request of national authorities and other actors concerned.

The ICRC's Advisory Service works closely with national governments – taking into account their specific needs, political systems and legal traditions – with a view to all states adopting IHL treaties and other relevant instruments, and putting in place comprehensive national legislation. To this end, it can also support authorities when they are assessing the compatibility of their domestic legal and policy framework with international law and standards, including with regard to the missing persons file.

2. PROVIDING A LEGAL BASIS FOR THE WORK OF A MECHANISM

If, after assessing the national legal and policy framework, the institutional framework and the needs of the families the authorities conclude that there is a need to establish a national mechanism or to adapt the existing mechanism's mandate, the domestic legal framework may need to be reformed to ensure that the mechanism is able to exercise its mandate and meet its objectives while ensuring complementarity with other existing institutions. To ensure complementarity, this may require delineating and clarifying the roles of different actors involved in the missing persons file, including, for instance, those involved in the search for missing persons and the investigation of crimes resulting in persons going missing.

To ensure the success of the mechanism, it is important to take measures to establish it in the domestic legal framework at the proper level (preferably at the highest possible level, such as in the law) to facilitate its stability and the cooperation of relevant actors with the mechanism.

The following are some important aspects to be included in the domestic legal framework establishing the mechanism:

- The mechanism should have a clear mandate setting out its scope of application (e.g. to clarify the fate and whereabouts of missing persons and to respond to the needs of their families).
- The mechanism should be granted the necessary resources. This includes ensuring that the mechanism has a budget and sustainable source of financing.
- Indicate the composition and structure of the mechanism and how its members are selected: they may comprise members of government bodies, representatives of civil society, representatives of the families of missing persons and, wherever pertinent, representatives of the National Red Cross and Red Crescent Societies.
- The mechanism should have clear tasks and competencies/powers, such as:
 - coordinating, supporting and supervising the process of searching for and identifying missing persons and informing the families accordingly
 - receiving and registering cases of missing persons from families and relevant authorities
 - accessing, collecting and analysing appropriate information on the circumstances of the disappearance and the fate and whereabouts of a missing person, and providing this information the applicant and relevant authorities while ensuring data protection
 - carrying out, or requesting the relevant authorities to carry out, any measures necessary to search for missing persons and verify information
 - delineating the roles and respective responsibilities of all relevant institutions involved in the search for and clarification of cases of missing persons
 - accessing all sites/locations where missing persons or their remains are presumed to be and protecting gravesites

- obtaining from relevant governmental and non-governmental entities, including from the judiciary, all relevant information that may help clarify the fate and whereabouts of missing persons. This could include information on circumstances in which persons went missing, names of witnesses and of those responsible, information on persons who died, were wounded or detained, an unidentified bodies registry, or documentation at cemeteries or burial places
- taking measures to respond to the needs of relatives and ensuring support – for instance, regarding mental health, economic (e.g. burial costs, participation in commemorative events), legal and administrative needs, as required, and keeping the families and communities abreast of the process and the results achieved.



GUIDANCE NOTE 7

INVOLVEMENT OF THE FAMILIES AND FAMILY ASSOCIATIONS



The mechanism¹⁴ should ensure the effective participation of families of missing persons in both the process to establish and the operation of the mechanism.

This guidance note underscores the importance of family involvement in the mechanism and provides an overview of the possible roles they can play. It examines the formation and activities of family associations and outlines the opportunities that could be explored, as well as some of the challenges that may need to be addressed.

1. INTRODUCTION

While there is a tendency to “inform” families of the work of the mechanisms relating to missing persons, there is a need and growing effort to actively involve families and their representatives throughout the process, encourage them to work together, and promote their agency and ownership of the process as much as possible.

The involvement of families is invaluable to ensure that responses are appropriate and effective, to facilitate information flow and to ensure community acceptance.

Although there is a general agreement with the principle of family participation, the extent and manner of the involvement of families will depend on the will, capacity and resources of the families themselves and their associations. It will also depend on the context in which the mechanism is set up and the technicalities associated with the mechanism processes.

Family associations can be an effective means of representing the interests of families. Where their objectives align with those of the mechanism, their support can be drawn upon. At the same time, possible challenges need to be taken into account – for example, those related to legitimacy and representation.

2. THE IMPORTANCE OF FAMILY PARTICIPATION

a. Ensuring a targeted, appropriate and effective response to the needs of the families

Involving the families is essential to ensure that the mechanism understands their particular needs and is able to design objectives and a strategy that respond to these and are also culturally appropriate.

b. Facilitating information flow

Families are invariably the ultimate authority on who is missing. They play an important role in the compilation of a consolidated list of missing persons and other information, such as on the circumstances in which people went missing or possible gravesites. Families can also be invaluable intermediaries to exchange information, facilitate referrals and provide assistance to other families as part of family associations.

¹⁴ 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 the missing.

c. Ensuring community acceptance

Involving the families ensures greater understanding of the mechanism and trust in it among communities. In politically sensitive contexts where trust in the state is compromised, this can be essential for the security and protection of mechanism staff.

3. THE POSSIBLE ROLE OF FAMILIES IN A MECHANISM

Families can be represented in a mechanism in various ways that may differ according to context. They may be organized in formal groups or be represented directly or through a loose, informal structure, such as one led by community leaders.

Families could be involved in the setting up, governance, operations and monitoring of the mechanism. They may take on an advisory or liaison role or be involved in decision-making. The extent of their involvement will depend on their will, capacity, resources, and the risks involved.

A mechanism's mandate and objectives should be defined in consultation with families, their associations and other civil society organizations representing them, putting their concerns, experience and knowledge at the centre of the process.

Once a mechanism is operational, family members or civil society representatives with relevant profiles could act as sounding boards for decisions or participate in the mechanism's management and operations.

Families may also participate in the process of gathering, analysing and sharing information to determine the fate and whereabouts of missing persons. Involvement in the exhumation and identification process may be more technical and complex. The mechanism should ensure the families have access to relevant information and support them in understanding the often highly technical processes.

When defining the role of family associations in a mechanism, their set-up, objectives and acceptance in the community should be considered.

In addition to its interaction with family associations or representatives of families, a mechanism should not neglect direct contact with individual families, including those not represented by family associations.



Ukraine

The Law of Ukraine on the Legal Status of Missing Persons 2018 states that individuals, NGOs and legal entities can be involved in the search conducted by the National Police. They can gather information from other authorities, except confidential information under a criminal procedure. This provision gives relatives an opportunity to be more actively and organically involved in the search for their loved ones, and to cooperate more closely with the authorities involved in the search in a more transparent way.



Mexico

The General Law on the Forced Disappearance of Persons, Disappearances Committed by Individuals and the National Search System demands the creation of a National Citizen Council (*Consejo Nacional Ciudadano*), whose role is primarily to advise the National Search System, but also the other institutions of the National Search System. National Citizen Council members are relatives of the disappeared, experts from a variety of disciplines (e.g. forensic science) and human rights defenders. A body like the National Citizen Council must also be formed in each of the states.

4. FAMILY ASSOCIATIONS

Family associations are groups of families who come together because they share the experience of having a missing relative.

Family associations can develop in a variety of ways. In many contexts, especially where persons have gone missing during armed conflict or other situations of violence, families may spontaneously organize themselves to create networks and groups. In other contexts, they may be created with the encouragement and support of religious institutions, human rights organizations, civil society, political actors or even state institutions.

Family associations may be formal or informal and can be created as a local community, regional or national organization. In some cases, specifically in situations of armed conflict, they may be established in a country different from the one in which persons are going missing.

Family associations have a dual role:

- representing the families and advocating on their behalf
- providing services to the families, either directly or indirectly, by acting as a channel for the state and others.

There may be several family associations operating in the same territory, representing different constituencies, e.g. based on ethnicity, circumstances of disappearance or political affiliation. Competition between different groups and internal disputes may result in divisions and fragmentation.

The status and effectiveness of family associations can vary depending on the will and capacity of the families involved and the prevailing normative framework. Even where a family association has no formal status, it may nevertheless enjoy a certain authority and legitimacy among certain groups of families and/or the affected community and may be a relevant actor in a mechanism.

Before entering into cooperation with a family association a mechanism may wish to obtain clarity on the following issues:

- Which families does it represent (i.e. how many members does it have and what proportion of the families does it represent)?
- Which affected communities are represented?
- What is the origin of the initiative? Is it local? Is it part of a national network? Is it sustainable?
- How does it represent all its members to authorities, the media, NGOs, etc.?
- Are the declared objectives and intentions of the family association compatible with the mandate and mission of the mechanism?
- How is its structure defined and how are individual responsibilities defined?
- Which rules and procedures are in place governing operational management, financial management and public communication?
- Is it guided by the express needs of its members?
- To what extent is it independent in terms of political affiliations and material and financial resources?
- How does it keep data and records on the missing and how does it ensure the protection of data?
- How is it able to facilitate the exchange of information and help families understand the information they are given?
- How is it regarded by the authorities?
- How does it participate in decision-making and in channelling of community-based support programmes?

5. ACTIVITIES OF FAMILY ASSOCIATIONS IN SUPPORT OF THE WORK OF A MECHANISM

Many of the activities of family associations will be in line with the objectives of a mechanism and could be drawn on to support the work of the mechanism. Some of these activities are highlighted below.



Associations of families of missing persons can serve as a means to transform individual pain into a collective cause. In July 1998, associations of wives of missing people from **Srebrenica** gathered in Goražde, on the bridge over the Drina river under which, three years earlier, the bodies of victims of the Srebrenica massacre had been carried along by the river. The ceremony created a collective bond among individuals and gave them a place in their community and in their society as *families of missing persons*. Family associations are also key stakeholders for authorities in search and identification efforts, legal reform processes and in the establishment of domestic institutional frameworks to address the question of missing persons. Their role transcends the individual stories of their members and acquires a societal dimension – it shapes the way a country deals with a part of its past. (Adapted from “[Where are they now](#)”.)

a. Advocacy and representation

- Emphasizing the role of the families as actors in a process to address their needs, and not simply as victims.
- Bringing social and political recognition to the missing issue through collective advocacy and political pressure.
- Engaging with the authorities and others to advocate for improved support in addressing the needs of the families.
- Ensuring that the authorities in charge of ascertaining the fate and whereabouts of missing persons do not neglect their duties.



In **Colombia**, the *Asociación de Familiares de Detenidos Desaparecidos de Colombia* (ASFAD-DES) provides information to other families and communities about transitional justice mechanisms. The association successfully advocated for the inclusion of the prohibition of enforced disappearance in Colombia’s basic military manual and national legislation. Together with the family association *Fundación Nidia Erica Bautista* and the NGO *Cooperación Jurídica Libertad*, ASFADDES participated in negotiations in Havana, Cuba to conclude the Peace Agreement.

In **Chile**, the *Agrupación de Familiares de Detenidos Desaparecidos* (AFDD) has been advocating for answers on the fate and whereabouts of those who disappeared under the military dictatorship since 1974 through collective action, including protests, events and the making of tapestries or *arpilleras*. The tapestries are exhibited around the world to raise awareness of the issue of disappearance.

b. Support to members and facilitating access to support provided by the state and other actors

- Mapping and assessing services available to families of missing persons.
- Linking families to service providers, including the state.
- Providing guidance on legal and administrative processes to exercise rights and obtain benefits.
- Representing, where required, families in interactions with national missing persons mechanisms and judicial processes.
- Keeping families informed of developments in the search, identification or judicial investigations.



More than 30 family associations provide support to families searching for their missing relatives in **Bosnia and Herzegovina**. They conduct a range of activities, including: accompanying families during the identification process; participating in organizing collective burials; taking care of missing persons' family members (children attending schools – enrolments, scholarships, taxes – supporting those in socially vulnerable categories – the elderly, etc.); raising awareness of the missing persons issue and families' needs in local communities; commemorations and memorial events; creating and maintaining memorials; advocating for the families' rights with local authorities; filing criminal charges; collecting data from eyewitnesses; and finding and accompanying those who testify in court. The associations also link families in need to other service providers and keep them informed of developments in relation to the search (e.g. issuing bulletins, organizing meetings, etc.).

In particular, the Advisory Board of the Missing Persons Institute of Bosnia and Herzegovina (MPI), whose six members are proposed by family associations from all over the country, acts as a link between families and missing persons mechanisms and judicial processes. The Advisory Board organizes round tables at local level in different regions of the country and gathers together families of missing persons, authorities and international organizations involved in the search process to answer questions the families may have about the different processes and to enable an exchange of information between individual families and the MPI investigators.

c. Memorialization and reconciliation

- Organizing commemorations and memorials that acknowledge all missing persons without discrimination, following a consultation process with all communities involved.
- Promoting reconciliation among communities in a manner that does not adversely impact the issue of missing persons.
- Promoting efforts to prevent disappearances in the future, including by engaging younger generations.





In **Georgia**, families of missing persons initiated a project to design a Missing Memorial with the support of the ICRC and the authorities. This tangible reminder of their loved ones was inaugurated on 30 August 2021, the International Day of the Disappeared.

Since 1998, hundreds of families in **Bougainville**, Papua New Guinea, are still yearning to know the fate of their missing loved ones. On 1 November 2020, families of those who went missing in Central Bougainville gathered to commemorate their relatives. A community priest conducted a ceremony, giving blessings to pictures brought by families of their loved ones and to trees, which the families then planted close to their homes. The ceremony provided a platform for families to celebrate the lives of their loved ones and find ways forward without them.

In **Cyprus**, the members of the Bicomunal Association of Relatives of Missing Persons, who come from both the Greek Cypriot and Turkish Cypriot communities, actively work together to find information on the fate of missing persons and collectively advocate for greater understanding of the issue, particularly among future generations of Cypriots, by publicly talking about their shared grief as families of missing persons.

Las Abuelas de la Plaza de Mayo is an Argentinian association of grandmothers searching for their disappeared children and grandchildren who were born in captivity. The association has held public awareness-raising campaigns and events, such as *Teatro por la Identidad* (Theatre for Identity) and *Tango por la Identidad* (Tango for Identity) to publicize the issue of children abducted during the military dictatorship of 1976–1983 and urge young people who have doubts about their identity to contact it. The aim of such events is to challenge historical amnesia and ensure the memory of the disappeared is passed on to subsequent generations.

6. ENSURING EFFECTIVE FAMILY PARTICIPATION

The mechanism should seek to ensure the support of the families and their effective participation, including by:

- ensuring transparency and communication in order to ensure families' expectations are realistic
- promoting non-discrimination and inclusivity, without distinction between specific groups or geographic locations
- ensuring the mechanism and/or related institutions have the capacity to support families, including with regard to their legal, administrative, economic, psychological and psychosocial needs
- managing the different outcomes for different families, i.e. some will receive answers while others will not, understanding that this can cause divisions between them and ensuring that interactions with families and family associations address this issue
- acknowledging that individual families themselves may be divided
- recognizing and mitigating the possible exposure of family members to security risks or stigmatization where they participate in the mechanism
- building trust and understanding between families and authorities, and providing safe spaces for family engagement with the authorities
- in situations of armed conflict or other situations of violence, promoting connections between families on all sides, emphasizing common suffering and pain, and encouraging a united front in achieving objectives related to the search for missing persons and the clarification of their fate and whereabouts
- acknowledging that the families' voluntary engagement may waiver due to demotivation and security risks, and taking steps to encourage sustained engagement
- where one does not exist and families have indicated an interest in establishing one, encouraging and facilitating the development of family associations as a means of support for the families of missing persons.



In **Colombia**, a *Mesa de Atención Psicosocial a Familiares de Personas Desaparecidas* (Round Table for Psychosocial Support to Families of the Disappeared) was, for many years, a means of bringing together representatives of family associations and state authorities on a regular basis to share experiences and exchange knowledge in the field of psychosocial support to families of missing persons and to promote best working practices in this regard. The Mesa was also aimed at strengthening the capacity of prosecutors and forensic civil servants to respond more effectively to the needs of families of missing persons and the challenges they face in the field while carrying out their work. The Mesa has also published relevant documents that highlight the plight of families of the missing and contributed to the drafting of the law on the declaration of absence of missing persons (*Ley de Ausencia*). The success of this joint initiative resulted from the political will on the part of state actors, the high visibility and organization of associations for families of the missing, and the participation of all actors in the Mesa on an equal basis.



GUIDANCE NOTE 8

DATA AND INFORMATION MANAGEMENT REGARDING MISSING PERSONS



The national mechanism¹⁵ should create a data and information¹⁶ management system to ensure all data and information collected are trusted, accessible, secure and optimized for use, to increase the impact and effectiveness of a national mechanism for missing persons according to its mandate.

This guidance note provides an overview of common objectives that underpin the creation of a data and information management system within the mechanism and sets out key aspects of data and information processing in accordance with the principle of “do no harm”¹⁷ and applicable data protection laws and standards.

1. INTRODUCTION

The search for persons who go missing and the support to their families involve, among other actions, the collection, storage, processing and preservation of information and data. The extent of the data and information to be gathered will depend on the mandate and objective(s) of the national mechanism. Data may have different uses at various stages over the life of the mechanism, which may therefore be required to adapt how it manages data over time.

Collecting, managing and preserving good-quality and accurate data are essential to transforming them into useful information that guides the mechanism’s search for missing persons and the support it provides to families. These actions also contribute to measuring the mechanism’s achievements. If managed and preserved properly, data can be used in the search process well into the future and the mechanism becomes a custodian of the history of the missing and their families.

While tools and technical infrastructure (e.g. databases, servers) are important, these alone do not ensure data and information are used effectively in the search process. A mechanism needs to set up an information management system (IMS), which develops the policies, processes and competencies required to efficiently manage the mechanism’s data and information over time. Equally important, where the search for and/or identification processes are not part of the activities of the mechanism itself, the mechanism’s IMS still needs to take into account such information held within other national IMSs and ensure that processes exist for sharing information and communicating results between the different systems.

¹⁵ 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 the missing.

¹⁶ Data are the facts or figures from which information is derived. Individual pieces of data are rarely useful alone. For data to become useful information, they need to be processed, organized, structured or presented in a given context.

¹⁷ “Do no harm” refers to the imperative to ensure that humanitarian action does not have adverse impacts on, or create new risks for, individuals or populations. “Do no harm” is noted in the first protection principle of the Humanitarian Charter and Minimum Standards in Humanitarian Response, which emphasizes a need to “avoid exposing people to further harm as a result of your actions”. See the Sphere Project, Humanitarian Charter and Minimum Standards in Humanitarian Response, Protection Principle 1, available at: <https://handbook.spherestandards.org/en/sphere/#chapters>

Challenges to creating an IMS include the availability and reliability of information and data, and sufficient capacity of the mechanism to manage and use them efficiently. For these reasons, an IMS should be developed at the early stages of mechanism design to avoid delays in data collection and processing, system failures, or the data becoming unusable or untrustworthy over time. Moreover, the process of data protection must be incorporated in the early stages of the planning and development of the IMS.¹⁸

The management of all personal data should take into account applicable data protection laws, regulations and standards, including but not limited to the requirement that there be a “legal basis” for the processing of data, and the secure and confidential management of data and information over time, to ensure the mechanism permanently upholds the respect of each missing person and their family members until their fate and whereabouts can be clarified.

2. DATA AND INFORMATION GOVERNANCE OF A NATIONAL MECHANISM

An IMS drives the mechanism’s decision-making and ensures the coordination, control and analysis of all relevant and available information and data. It should consider an analysis of the context, the data stakeholders involved, i.e. who has the data, the sources and types of information available, the objectives to be achieved and the availability of human and technical resources to manage such a system. An effective IMS requires that a combination of people, processes and technologies be made available to ensure the efficient and secure management of the information and data received by the mechanism in any given format (electronically and physically). Data protection laws may also require that an institution keep records of personal data-processing activities and share such records with regulatory authorities upon request.

The definition and construction of an IMS must be linked to, and influenced by, the mechanism’s mandate as defined in the legal basis that created it. For example, a mechanism charged with the consolidation and centralization of a national missing persons caseload will need to create processes that facilitate the acquisition, processing and consolidation of a large amount of information and data on missing persons from different sources. However, should a mechanism be required to manage an official compensation system in addition to conducting the search, the IMS will need to adapt its processes to manage information related to compensation activities, as well as provide certification of such a service to families. The mandate¹⁹ of a national mechanism therefore becomes the key guiding policy of the IMS.

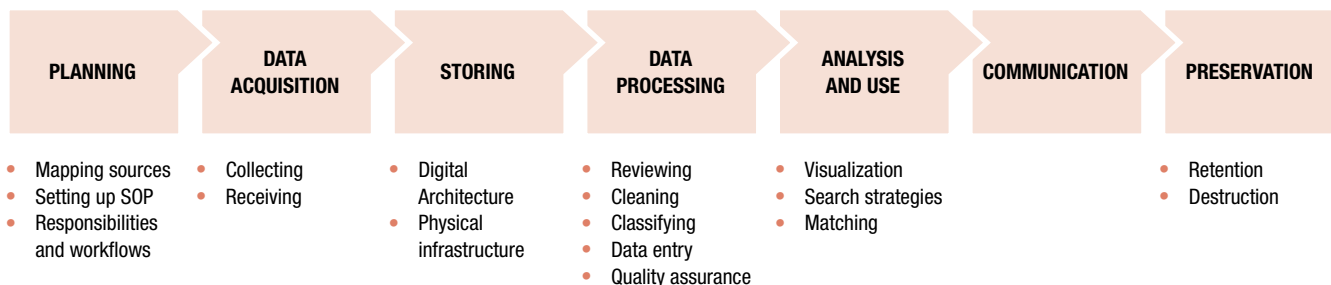
¹⁸ For guidance on interpreting data protection principles in the context of humanitarian action, see: C. Kuner and M. Marelli (eds), *Handbook on Data Protection in Humanitarian Action*, 2nd edition, Brussels Privacy Hub/ICRC, Geneva, 2020: https://reliefweb.int/sites/reliefweb.int/files/resources/4305_002_DataProtection2020_web.pdf

¹⁹ The legal basis creating a national mechanism establishes the functioning of a mechanism and should include its mandate, the objectives to be pursued, its structure, governance and functioning, its powers and status and its resourcing. Furthermore, the legal basis should include, as appropriate, provisions on the representation and participation of different constituencies, including families of missing persons. See Guidance Note 1 Missing Persons National Mechanisms: Contextualized Approach and Mandate.

The mandate will also set out the IMS's structure and reporting lines. This may be relevant when designing information and data workflows and establishing roles and responsibilities among the different teams within the mechanism. Ideally, a data and information management unit (DIMU) should be created within the mechanism's structure, and workflows developed within and between the DIMU and all those responsible for handling data within the mechanism.

Developing an IMS entails taking several interconnected steps, each requiring structure and planning. This sequence is called the information and data life cycle and usually contains the following elements:

There are different practices with regard to positioning a DIMU within a national mechanism. Given the cross-cutting role of a DIMU, it should ideally be placed high up within the mechanism's operations, to have an overview of all its information and data needs and ensure cross-disciplinary decision-making. Should this not be the case, a strong coordination mechanism needs to be put in place to ensure information and data flows are structured and efficient.



During the initial planning phase, understanding the context in which the data and information will be acquired is essential to creating an IMS. Three main elements need to be addressed:

a. Mapping of sources

It is often the case that data relating to missing persons are scattered among several sources. It is therefore essential, first, to attain an overview of the data and information available and assess the usefulness, reliability and relevance of their sources. A map of available sources becomes particularly relevant when consolidating a list of missing persons. While families of the missing are initially the primary source of data and information, it is necessary to consider other sources, such as attempts by any previous mechanisms/ commissions/bodies to consolidate lists of missing persons, or information collected by other actors in the past related to witness accounts, or investigative data that have been collated over time, etc. This mapping exercise sets the baseline for the IMS and may include information on the following:

- details of the source: these include name and contact details, type of source (e.g. pre-existing list of missing persons, perpetrators, witnesses, etc.)
- type of data, their availability and the format in which they are stored (electronically, physically)
- volume of the data
- accessibility, confidentiality and security
- reliability.



Sources of information can be the following (not exhaustive):

- Families
- National Authorities (including public forces)
- Civil society (e.g. family associations, local NGOs, etc.)
- Armed groups
- Witnesses
- Pre-existing mechanisms/commissions/bodies
- Open sources of information (e.g. social media, press, etc.).

Once relevant sources have been mapped, the mechanism needs to identify how best to obtain and process the data in order to build the mechanism's caseload. Legal instruments (e.g. a data-sharing agreement) with which data are obtained from an external entity may also need to be considered. An analysis of each data source should be carried out during the mapping exercise. This may provide a key document for further decision-making.

b. Standard operating procedures

An IMS needs to have a strong set of SOPs to establish the processes and regulate all aspects of managing data and information on missing persons at all stages of the search. Given the sensitivity of the type of data and information being collected, the SOPs must include specific instructions on how to handle confidential information and establish the level of sensitivity for each type of information (e.g. public, confidential and strictly confidential). A comprehensive data protection policy must also be drawn up that aligns with the requirements laid out in national and regional laws and regulations, as well as data protection standards. Access rights to information, including personal data, need to be established on a strictly "need-to-know basis" and, particularly, in line with the needs of the different teams within the DIMU and beyond. SOPs need to regulate each part of the information and data life cycle by:

- providing details on how data are collected (e.g. designing standard forms)²⁰
- defining specific criteria when collecting and incorporating a variety of data, including from different sources, taking into account the context in which individuals went missing (e.g. in certain contexts, data relating to ethnicity might be essential, while in others, they might not be as relevant)
- establishing formats in which data and information may be acquired and processed
- creating procedures to ensure standard processing of the data and the development of a coherent filing system
- developing instructions and guidance to ensure the quality of the data to be processed
- producing guidelines regarding the management of confidential data in electronic or physical format and a data protection policy
- developing policy relating to the preservation/archiving of data (digitally and physically) and establishing an appropriate schedule for retaining the information and data, i.e. determining how long the data will be stored for.

c. Workflows, roles and responsibilities

An IMS needs to be able to rely on a dedicated team of trained staff with different profiles – ideally, the following:

- **Head of data and information management:** usually in charge of data governance and incorporated into the operational decision-making body of the mechanism.
- **Data analyst:** has specific technical skills to analyse data and provide support to the teams in charge of the search.
- **Data operators:** different profiles working on data processing, accessing and entering information and data in a centralized system. These roles may be filled by specialized staff or by other existing profiles within the mechanism (investigators, lab scientists, field archaeologists, etc.). However, dedicated staff to ensure data control/data quality, data training/coaching and data entry are also required. Data operators may also oversee the filing of information in any of the approved formats.
- **Researcher/archivist:** a mechanism might need other specialists in the team with specific skills in archival research (e.g. historians or professional archivists).

²⁰ See separate Guidance Note [Core Dataset for the Search of Missing Migrants](#) as a basis for designing relevant forms. One of the most significant obstacles encountered in the search for missing migrants is the lack of compatibility among the data gathered by different actors. This dataset has been formulated as a means to harmonize data collection efforts by establishing a number of shared data fields that can be completed to aid the search for a missing migrant, whether living or dead. It is a basis upon which different organizations/authorities may adapt their data collection according to their context, needs, resources and mandate.

- **Data protection officer:** has expert knowledge of data protection law and practices. Working in an independent capacity, this person informs staff of and advises them on their obligations pursuant to applicable data protection laws.

There is a general misconception that information and data management professionals working within the mechanism need to have very technical profiles (e.g. information and communication technology (ICT) profiles). However, the key to the success of an IMS is including a variety of professionals with complementary skills, ranging from those specialized in technology, to data analysts, to more generalist profiles who understand processes and methodologies relating to the management of data and information (e.g. information managers, archivists, etc.).

Workflows are also an important element of an IMS, since they define and structure each step of the information and data flow and assign responsibility of staff to each step. Workflows are a practical way to organize the activities of IMS staff and ensure the flow of information and data is centralized and their quality and security assured.

3. CONSOLIDATING A LIST OF MISSING PERSONS AND COLLECTING DATA AND INFORMATION

It is necessary to collect detailed information on the missing person for the purpose of creating a missing persons case. Creating a missing persons case is key to structuring data collection and data processing and should include all necessary and relevant data and information collected from mapped sources related to the missing person and the circumstances of their disappearance. The missing persons case is then used as part of a search intended to clarify the fate and whereabouts of the missing person.

Consolidating a list of missing persons

The first, and perhaps most important, step is to consolidate a list of missing persons, which then becomes the basis for the mechanism's case management. This is also one of the greatest challenges of any mechanism, but it is important that, at the start of any search, the scale or magnitude of the issue, i.e. the number of individuals involved, is established. Consolidating the list of missing persons may be a time-consuming exercise; however, it is not necessary to have the entire list consolidated for the mechanism to begin its work.

Some mechanisms might be charged with consolidating the list of missing persons, clarifying each missing person's fate and whereabouts, and providing support to families, while relying on the medico-legal system of the country to take lead responsibility for the forensic identification of recovered human remains. Other mechanisms, however, might integrate forensic identification as part of their mandate. These details must be considered, as they directly affect the IMS to be created. The more data held by different institutions, the more difficult it can be to consolidate information. Robust coordination and data-sharing agreements may be required between all the data stakeholders involved.

A **unified consolidated list** of names of those reported missing should be created by centralizing and consolidating data from different sources. These could be from direct reports of disappearances by the families to the mechanism, but names could also be incorporated from the lists of previous mechanisms/commissions/bodies. In the latter case, the challenge will be to process lists that may have been compiled according to different criteria and objectives, and to make them compatible. Managing duplicates becomes critical at this point also, making it necessary to establish well-defined steps to identify duplicates before data are entered into the system (e.g. a mandatory checking step should be included in the data workflow).

The methodology to consolidate the list of missing persons entails assigning a **Unique File Number** (UFN) to each missing individual. Each missing persons case, even those relating to people who went missing in a common event, must be assigned a UFN. The list of missing persons is based on the personal data of the missing person, not that of the family member reporting the case, although these data are also essential and must be collected and stored safely.

The UFN also allows for the tracking/traceability of all associated data and information collected related to a missing person case, managing duplicates and facilitating communication exchange between families and other agencies involved. In the course of collecting personal data related to the missing person, other physical evidence (e.g. personal belongings, identification cards, etc.) may be collected and needs to be managed and preserved. A UFN reduces the risk of this information being lost and ensures coherency among all those working on the same case.

Types of data to be collected

The types of data that may be collected²¹ according to the mandate of and legal basis for creating the mechanism, whether that be to account for persons who went missing because of armed conflict, other situations of violence, disasters or in the context of migration, are as follows:

Data on missing persons refer to the personal background that makes the person identifiable and includes data relevant to the search. When collecting information about a missing person, it is important to recognize that it may not be known at the time of collection which features, characteristics or secondary information will ultimately be useful for the identification process. Hence, the quality and quantity of information collected are crucial.

Collecting these data requires interviewing one or several family members but also other potential witnesses. Interviews should be conducted by trained staff to ensure the confidentiality, security and legal rights of families and witnesses are protected, in accordance with data protection legislation. The use of standard contextualized forms is advisable, in line with the guidelines established during the planning phase and data protection laws and standards must be followed.

Collecting data on missing persons may need to be done at different stages, depending on the circumstances and the analysis of the context, and in accordance with the evolution of the search. Frequent contact with the families may be necessary to ensure the mechanism has the most up-to-date information while providing families with news on the search. The frequency of this contact should be decided together with the families.

The information and data on a missing person case may exist in different formats – electronically, physically or a combination of both. Consequently, the mechanism must foresee the need to process and structure such data in the IMS (often a database but not exclusively – see section 4 below), while maintaining the integrity of the original format (e.g. case filing). A missing person case usually contains:

- a **UFN**
- **personal identifiable data** (missing person's name, family names, nationality, date of birth, any documentation that verifies the individual's identity, etc.)
- **biological background and social history/lifestyle**
- **details about the circumstances of the disappearance**, with special attention paid to last-known place and date of disappearance, which are key elements with which to begin a search and, possibly, link missing persons cases when other disappearances might be connected
- **details of alleged sites of human remains** – if relevant and available, information on possible gravesite locations connected to the case might also be collected. Specific standard forms may be designed to ensure the proper collection of these data
- **personal data of the families** – it is essential to record and securely store complete contact details of families to ensure case follow-up
- information related to the legal basis to collect and process the data.

²¹ The data protection principle of minimization must be adhered to when processing personal data, i.e. the data handled by the institution must be adequate, relevant and not excessive for the purpose(s) for which they were collected.

A dedicated form to collect and structure the data on the missing person may be designed and standardized. Standard forms and SOPs might be adjusted according to the different data collection stages. The collection of biological reference samples (e.g. blood, saliva) from relatives for forensic genetic analysis purposes also requires a distinct strategy and SOPs.²²

Data on unidentified persons may also be collected by mechanisms that are mandated to conduct forensic identifications. Identification is a process to compare information relating to a person being sought to the person/remains whose identity is to be confirmed. Accordingly, as part of the identification process, it is necessary to gather detailed information on the unidentified person with the purpose of creating a unidentified person case file, which integrates biological data resulting from a forensic examination with investigative and recovery information. The unidentified person case must also be assigned a UFN for the same reasons stated above. Collecting data on unidentified persons must be done by forensics experts. The specific steps of the process of scientific and legal identifications are likely to vary depending on the domestic legal framework.

If the **person is alive**, the basic unidentified person case file may contain:

- a review of the circumstances that led to their status as an unidentified person
- a personal interview with the unidentified person
- forensic examinations and documentation.

If the **person is not alive**, the basic unidentified person case file contains:

- a review of the circumstances that led to their status as an unidentified person
- information on the recovery of all human remains in situ, including detailed information on location
- forensic examinations and documentation
- information on the cause, manner and circumstances of death.

Data on human remains sites (HRS) may be available and not linked to a specific missing person or unidentified person case. It is important that, in the course of its work, the mechanism collects and structures these data, which might prove to be essential information related to the search. When interviewing a witness, a specific form must be used for collecting data related to the HRS and a UFN must also be assigned to the HRS. This will allow for links to be made between the site and possible identities in the consolidated list of missing persons (e.g. to formulate a hypothesis on the identities of those buried) and for storage of all information possibly connected to the site. The form may include information about the following:

- **the interviewee:** personal details of the interviewee and relation to the presumed identity/identities
- **the human remains site:** geographical location, reference points, features of the terrain, accessibility, risks associated with the site (whether it is contaminated by weapons, for example)
- **the presumed identities:** number of sets of remains, possible identities, features of the remains
- **informed consent** of the interviewee for collecting and processing the data.

Data on events related to disappearances may be collected in the course of the action and can be linked to one or more missing persons. Collecting data on events will make cross-checking data relating to e.g. a place, date and circumstances of a disappearance, easier. It is necessary to structure the collection of these data to further analyse them and this can be done through another standard form. Events should also be assigned a UFN to make it easier to determine possible links with identities already in the consolidated list of missing persons.

²² See M. Salado Puerto et al., “The search process: Integrating the investigation and identification of missing and unidentified persons for more information about an effective search process which includes the investigation and identification phases of the missing using a multidisciplinary and multiagency approach”, *Forensic Science International: Synergy*, Vol. 3, 100154, Elsevier, 2021: <https://doi.org/10.1016/j.fsisyn.2021.100154>

The form may contain the following information, if relevant:

- date and place (geographical references)
- description of the event
- alleged perpetrator
- details on the victims (number, type of victim)
- data-sharing restrictions.

Other information of interest may be acquired by the mechanism over the course of its mandate that may be useful for clarifying the fate and whereabouts of the missing person. Any piece of information can be the key to resolving a case, including:

- **list(s) of missing persons** contained in unconsolidated documents
- **records/logbooks** from various entities, such as registries, tribal entities, communal services, hospitals, morgues, funeral companies, cemeteries, etc.
- **reports from parties to a conflict** that might contain lists of missing persons, detainees, exchanges of detainees, deceased persons, those killed in action, etc.²³
- **official/unofficial reports/photographs/video footage** describing the clearing of a battlefield, burial sites, etc.
- any **judicial proceedings materials** describing disappearances, detention, executions, etc.
- **user-generated content online**, such as video footage and photos of popular events, demonstrations, attacks, arrests, etc.
- **records from various international organizations, NGOs or civil society bodies** containing reports, statements, photographs, information on disappearances, arrests, places of detention, satellite imagery, etc.
- information related to **capture, arrest, abductions and detention**, including registers from places of detention, logbooks, accounts of witnesses, etc.

4. INFORMATION AND DATA STORING AND PROCESSING

Information and data on missing persons acquired by a national mechanism must be stored and processed in a manner that ensures their security and confidentiality. The level of security needs to be commensurate with the sensitivity of the data to protect them against unauthorized or unlawful access and use, or against accidental loss, destruction or damage.

a. Information and data storing

Information and data may be contained in various formats and will require different forms of secure storage. There are two main types of infrastructure required:

- **Digital infrastructure:** a robust ICT ecosystem is required to securely store electronic data in various formats (audiovisual material, electronic documents, digital hosting space for the data, etc.). Technical ICT resources (both human and infrastructure) need to be allocated to ensure the system is compliant with security requirements. Decisions will need to be made regarding the use of “on premises” versus “cloud” server solutions. While an on-premise server solution is generally more secure for storing and managing strictly confidential data, it is also more expensive and difficult to maintain.
- **Physical infrastructure:** the mechanism needs to build physical and secure infrastructure to handle physical formats, such as paper files, tapes, analogue pictures, etc. It is important that the mechanism allocate the space for those items as they are gathered at different stages of the search process. A chain of custody must be created to ensure compliance with archival standards for preservation:²⁴
 - Filing of records (in any format) refers to those items that need to be categorized, processed and preserved. These records should also be converted to an electronic format as soon as they are received within an electronic document and record management system.

²³ As this information is likely to be highly sensitive, it will need to be classified as “strictly confidential”, which also implies ensuring highly restricted access.

²⁴ See <https://www.ica.org/en/preserving-archives>; https://gfbio.biowikifarm.net/wiki/ISO_Standards_for_Digital_Archives

- As the archives provide a historical record of the mechanism’s work and may be further consulted, the final archival of records (in any format) entails securely preserving and archiving certain items and information. This may include information or data related to the mechanism’s operations from its creation, according to pre-established retention policies and relevant laws on data protection, historical preservation and/or laws regulating public records.²⁵

b. Information and data processing

One of the most challenging and key elements in terms of the efficacy of an IMS is the necessary tool(s) to acquire, process, structure and analyse information and data. The objectives of these tools are manifold:

- consolidate the list of missing persons (and manage any duplicates)
- centralize and structure all data collected in relation to missing person/unidentified person cases
- assign and manage the UFN of the missing person/unidentified person case serving as the link with any other related items collected in any format
- ensure follow-up of the cases during the search and provision of support to the families
- organize and prioritize work
- analyse data in order to build search strategies
- analyse data in order to make identification matches
- report on progress to families, including new information
- manage various sources and electronic content.

Usually, there is a need for more than one tool to cover all the different needs listed above. There are at least two types of tools that may facilitate the work of a mechanism in fulfilling the above objectives: a case management system and an electronic document and records management system. In the event that the mechanism includes the clarification of the fate of missing persons through the forensic identification of human remains, additional processes and tools will be used. If the data will need to be shared with third parties, a secure means to transfer those data will need to be procured or developed.

Case management system: centralizes, structures and processes all data collected in relation to missing persons cases. Typically, these data comprise the following:

- data on missing persons and their families
- data on unidentified persons
- data on HRSs
- data on events.

Ideally, a database will already be available and capable of processing, structuring and analysing the different types of data (see section 3 above). Relational databases are usually appropriate for this type of work, as they provide a structure for linking different pieces of data hosted in different tables (e.g. linking data on events with personal data or data on human remains sites). The mechanism may use an existing database that can be easily customized to suit the mechanism’s needs. It is recommended to avoid, where possible, building a database from scratch, as this can be technically and financially prohibitive.²⁶ However, a tool alone will not ensure the success of the IMS; strong IMS policies and workflows must accompany whatever tool is used.

²⁵ Retention policies refer to a basic policy that lists for how long each type of record is kept and what the final disposition of the record will be (archive or destroy) when it is no longer needed for business purposes.

²⁶ The ICRC has developed the “Resolve Platform” – a web-based solution – which it offers free of charge to relevant stakeholders, including governments, experts, agencies, organizations, etc. to help them record, process, store, archive and share information on missing persons and human remains. For more information, see: *The Resolve Platform: A Comprehensive Web-based Solution for Managing Information on Missing Persons and Human Remains*.



The **Dirección General de Búsqueda de Personas Desaparecidas del Perú** built its work process based on Excel spreadsheets to consolidate the list of missing persons and to structure the basic data that allowed them to carry out the mechanism's work. The mechanism was able to use this tool to create an inventory of missing persons cases and make links with the different sources from which data were collected (e.g. audiovisual material, physical file containing forms, etc.) to enable case analysis. The capacity of this type of tool to process and analyse data is, however, limited. Whenever there is existing technical capacity, resources and knowledge, it is advisable to use a case management system, which automates the many steps explained in this guidance note.

Elements to consider when using a case management system include:

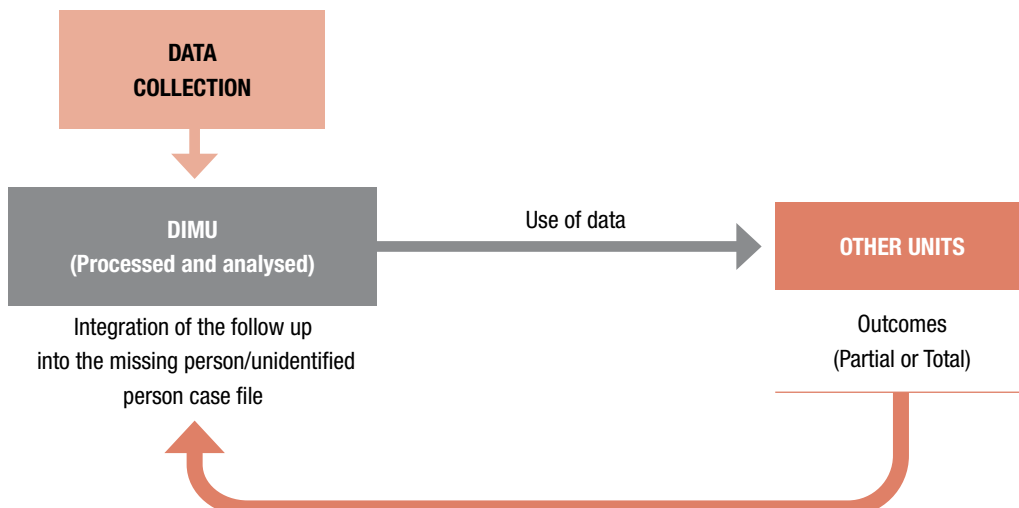
Security and confidentiality

- **Robust access-rights management:** the system needs to be able either to restrict access or provide it on a strictly needs basis and according to the different roles of staff. Ensuring security (whether physical or digital), data protection and confidentiality may be more challenging when using less advanced tools. In the case of ad hoc tools (e.g. Excel), a daily backup of the data should be incorporated into data workflows and processes. An offsite backup should also be made (e.g. in case of fire).
- **Collaboration:** the system will need to be used by several staff and therefore needs to facilitate the sharing, analysis and comparison of data.
- **Language and alphabet:** the system may need to handle different alphabets or languages.
- **Configuration:** the system needs to be adaptable to changes in the context and the evolution of the mechanism.

Electronic document and records management system (EDRMS): manages documents and records electronically and physically. The EDRMS complements the case management system, as it offers additional functionalities to store, organize and describe digital and physical content.

Regardless of the tool used, the main feature of an IMS is the centralization of information and data, which includes the acquisition of externally collected data. Information and data must always be centralized internally within a mechanism, regardless of whether the information is collected internally or externally.

Internally, clear workflows need to be created to centralize all information and data acquired and produced by the different units of the mechanism. There needs to be excellent coordination to ensure that the DIMU receives and processes all available information and data. This is relevant not only during the process of data acquisition but also during the search, as different outcomes resulting from the search may need to be recorded for follow-up.



Externally, data and information on missing persons are generally scattered among different sources and organizations and are therefore not centralized. It is rare for only one entity to collect and process all the data and information on missing persons. Following the completion of an exercise to map the different sources available, the mechanism may decide to coordinate with different entities by using data-sharing agreements. From the technical perspective, and in an ideal scenario, different entities collecting data would use tools that are interoperable, enabling the automatic sharing of data between the external organization and the mechanism. However, this is extremely rare and also challenging, unless the systems were originally designed with that purpose in mind. Manual interaction (e.g. data cleaning) will be needed in most cases. One element that may help the process of sharing data and information between different external entities is an agreement on the type and number of data and formats to be collected. Moreover, data-sharing agreements will, ideally, set out the specific purpose of data sharing and processing.²⁷ If forensic identifications are part of the mandate of the mechanism, additional agreements should be reached with the relevant authorities in charge of civil registration (e.g. for the production of death certificates). The more details that are agreed on prior to the mechanism beginning its work, the easier further exchange of these data will be. Prior to creating a new IMS, it is important to check if other systems already exist that could be adapted or built upon for the purposes of the mechanism.

5. ANALYSIS OF INFORMATION AND DATA

In addition to properly collecting and processing information and data, the importance of information and data analysis must be underscored. Collecting information is not synonymous with analysing it; both aspects are essential to the process.

Information and data, including personal data, on missing persons may be used to build search strategies, to support the identification of missing/unidentified persons and to provide answers to the families. Analysis of contextual information and data needs to occur throughout the search process. Data-analysis tools can be used to generate lines of investigation to help establish hypotheses of identity. The analysis of networks (e.g. relationships between missing persons; movement of individuals between detention centres, refugee camps and burial sites; transport of human remains once recovered during or after events, etc.) with hot-spot maps (e.g. key points on migration routes, places of executions, human remains sites, etc.) can be undertaken if the mechanism is in possession of the right data to do so.

In many contexts, incomplete information, compounded by a lack of transmissibility and coordination between governmental and non-governmental agencies or even between different units within the mechanism itself, can hinder the process of information comparison and analysis. Likewise, information that is adequately collected and registered in centralized repositories but not comprehensively analysed renders all efforts pointless and ultimately increases the number of missing persons. The analysis of data is further developed in the forthcoming Guidance Note 9.

²⁷ This should include information related to restrictions (if any) on the onward transfer of the data or other data protection obligations between different external entities sharing data and information with the mechanism, including the safeguarding of data-subject rights and the secure means of data transfer to be used.



GUIDANCE NOTE 9

THE MULTIDISCIPLINARY SEARCH PROCESS



In accordance with its mandate, the mechanism should develop, promote and streamline search processes to ensure the families of the missing are provided with prompt, effective, independent, impartial, transparent and individualized answers, with due respect for the dignity of the missing, including the dead.

This guidance note provides an overview of common parameters of the search process and outlines the basic principles and key requirements relating to search processes aiming to clarify the fate and whereabouts of missing persons.¹



For further information, refer to the following guidance note:



1. WHAT IS A SEARCH?

The search for missing persons refers to multidisciplinary processes involving several parties that aim to determine the fate and whereabouts of missing persons and provide individualized responses to their families, while respecting the dignity of the missing and the dead. In a generic sense, “fate” refers to the state or condition of the person (alive or dead) and the circumstances and journey that led to that state, while “whereabouts” relates to the person’s location.² The search is essentially an amalgamation of processes entailing the capacity to:

- a. **identify and coordinate appropriate search avenues** – devising a **search strategy** and **identifying and coordinating search activities** are important parts of the search process. Sources and avenues of enquiry can quickly accumulate,³ overburdening available resources and hampering the effectiveness and efficiency of investigations. Processes to inform decisions regarding what is most relevant, important and/or urgent are central in establishing priorities and directing search avenues. The identification of search avenues is a continuous process and the mechanism should monitor and revisit planning decisions in this regard throughout its coordination of the search to maximize achievements and manage expectations.



For further information, refer to the following guidance notes:

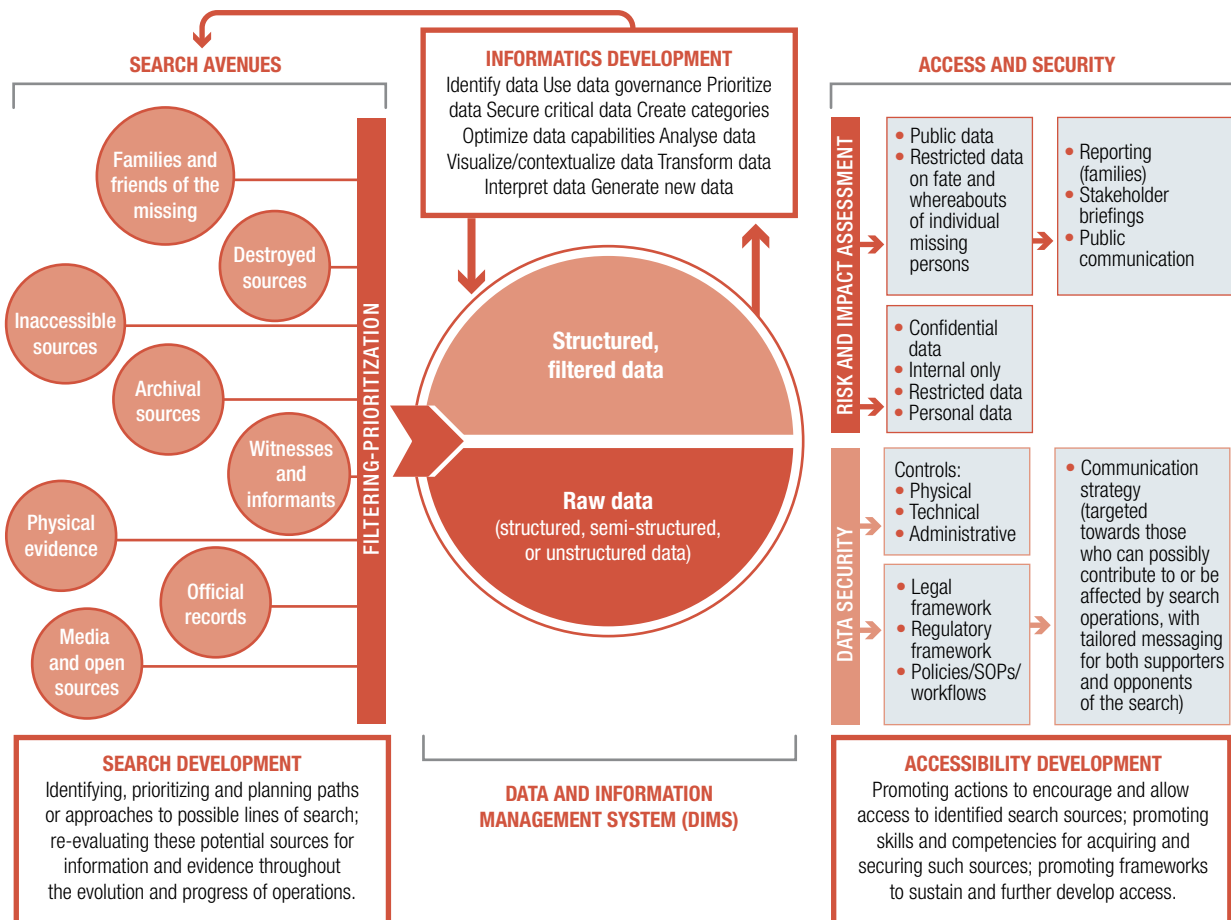


- 1 This guidance note forms part of the set of guidance notes published by the International Committee of the Red Cross (ICRC) Missing Persons Project to support the establishment and functioning of national search mechanisms for missing persons. This document benefited from comments and feedback from, among others, representatives of civil society organizations, state institutions and international institutions.
- 2 See ICRC, [The Forensic Human Identification Process: An Integrated Approach](#), ICRC, Geneva, 2022, p. 10.
- 3 In this guidance note, an investigation is a systematic, thorough attempt to learn the facts about something complex or hidden. It involves examining the facts of a case to clarify the fate and whereabouts of a missing person. For the purpose of this guidance, it does not involve any investigations for criminal or judicial proceedings, and it is distinct from the investigations as set out in The Geneva Academy of International Humanitarian Law and Human Rights/ICRC [Guidelines on Investigating Violations of International Humanitarian Law: Law, Policy, and Good Practice](#), ICRC, Geneva, 2019, p. 10.

- b. access and secure pertinent search sources** – additional search-related processes need to be in place to ensure that **all relevant facts and evidence** that support efforts to clarify the fate and whereabouts of missing persons can be **made available and captured** in a timely, comprehensive, acceptable and effective manner. This requires *inter alia* actions to foster the sharing of information; diplomatic, legal and administrative frameworks to approve or regulate operations; and the necessary skills and competencies to maximize the quality and completeness of the acquired information.
- c. protect, process and interpret search outcomes** – the search mechanism must have processes in place to protect its sources; properly record and preserve all physical evidence, materials, observations, decisions, testimonies and information relevant to the search; analyse, connect or infer data; and extract impartial and reliable data from a broad range of activities. Prompt, impartial and effective **processing, interpretation, generation and transformation of information** can positively impact and steer the search operations.



For further information, refer to the following guidance note:



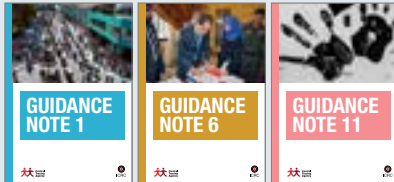
In effect, these three aspects of the search process are dynamic and not unidirectional: they are intertwined and interdependent on both a technical and an operational level. Consequently, failures in one sphere will adversely affect the efficacy of the overall search process.

2. WHO CONDUCTS THE SEARCH?

States bear the primary responsibility of searching for missing persons. To this end, they must take all feasible measures to establish an effective mechanism that streamlines and coordinates multidisciplinary entities and processes to support the search and to provide individualized answers on the fate and whereabouts of missing persons.



For further information, refer to the following guidance notes:



The political will of authorities – and the will of society in general – is the cornerstone of any system that effectually guarantees the conduct of a search process. The collective need for safeguarding peace and reconciliation frameworks and for settlement of conflicts between communities calls for the establishment of various mechanisms. It is crucial that these include a dedicated mechanism with a humanitarian mandate, as this will prioritize the needs of the families of missing persons in providing individualized answers regarding the fate and whereabouts of their loved ones.

In a mechanism with a humanitarian mandate to search for missing persons, the entity that is assigned to direct, coordinate and help implement actions to search for and locate missing persons should, ideally, be independent and autonomous, and not hierarchically subordinate to any institution or person that may have been directly involved in the disappearance of missing persons. It is important that the independence and autonomy of the search process are not undermined by or linked to political agendas, otherwise they run the risk of being seen as partisan or biased by the wider local community. The selection of personnel to participate in the search process should be transparent and offer guarantees of accredited impartiality, moral integrity, independence and professional competence. Public endorsement by and/or involvement of the families of the missing in the selection process can promote a sense of trust and legitimacy, while including impartial representatives who offer different perspectives can reduce bias.

Appropriate channels should be in place to facilitate communication with families regarding the search process. Family members may participate in the search, providing there are institutional safeguards in place to ensure a “do no harm” approach. These include ensuring that their integrity is not compromised, that they are not exploited – for example, by being asked for money in exchange for information about their missing relative – and that the information they obtain will not be used for purposes that fall outside the mandate of the search. Security risks must be evaluated to mitigate the exposure of family members to exploitation or stigmatization.

The search mechanism can also interact with competent national institutions, civil society and other parties to approve, authorize, or empower such bodies to engage in targeted operations. When the search process involves coordination efforts among multiple states, or when there are internal barriers impeding the search, international organizations can be of help.⁴ Overall, a legal framework for the search helps foster the sustainability of the search process and provides the necessary authority for tailoring the structure, governance and functioning of the investigations.

⁴ The present guidance note supplements initiatives of other international bodies, such as the CED’s [Guiding Principles for the Search for Disappeared Persons](#), UN Committee on Enforced Disappearances, 16th session, Geneva, 2019.



For further information, refer to the following guidance notes:



In Colombia, the Ministry of Foreign Affairs initiated a process of diplomatic dialogue aimed at facilitating cross-border search and identification actions through bilateral agreements.

In addition, Colombia's Search Unit for Missing Persons (abbreviated to UBPD in Spanish) employs participation and differential approach guidelines to ensure inclusivity and respect for diverse groups affected by disappearances in the context of armed conflict. These guidelines emphasize the active involvement of victims' families and communities, recognizing their cultural, gender, ethnic and regional differences. The approach fosters collaboration with indigenous, Romani, Black, Afro-Colombian, Raizal and Palenque communities, ensuring that each search process is sensitive to the unique needs and experiences of the community concerned, enhancing restorative justice.

3. WHO IS SEARCHED FOR?

The mechanism's mandate is the basis for establishing the expected scope of the search, i.e. the parameters of who is being searched for and the context under investigation, and, as such, it governs the comprehensiveness or limitedness of search operations.



For further information, refer to the following guidance note:



The caseload of the search may include categories of missing persons pursuant to domestic law or the constitution, and be framed broadly or with reference to a specific armed conflict or event, timespan, geographical area, manner of disappearance, or any combination of these. Searches may include efforts to: (a) trace the missing (alive or dead); (b) reunite families with their loved ones, if found alive, in a voluntary and agreed manner; (c) locate, recover and identify the dead and return their remains to their families, where possible; and (d) provide answers to the families regarding the fate and whereabouts of the missing, through processes that allow the families, individually and collectively, to have decision-making power over requirements for closure.



For further information, refer to the following guidance note:



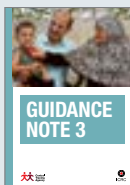
Investigations should not be bound by unrealistic timeframes, or a universal presumption of death. Evaluating each alleged case of a missing person and corroborating it, if possible, through regional or national sources (such as birth certificates, passports, or other records) is also advisable to eliminate duplications or inclusion of fictitious persons. Criteria for entering missing persons on the official register of missing persons should be established and should address the following:

a. Who can submit a search request for a missing person

In some contexts, it may be necessary for the enquirer to be a family member; in others, search requests may be initiated by state armed forces or non-state armed groups, community and/or religious leaders, or any other person or entity with a legitimate interest. The possibility for non-family members to initiate a search is particularly important where entire families or communities are absent/dead, or where the only surviving family members are unable to initiate a search (such as in the case of young children). It is essential to acknowledge that different people and/or entities may hold different information that can change over time.



For further information, refer to the following guidance note:



The ICRC visits places of detention to register detainees, monitor their conditions of detention and treatment, and restore and maintain family links. In cases where registered detainees go missing, the ICRC initiates the search, irrespective of the involvement of their families, i.e. a tracing request does not have to have been submitted.

b. How a search request can be submitted

To facilitate the further processing of a search request, protocols and procedures should be explicitly outlined, including regarding jurisdiction to receive and process search requests, based on the model chosen to collect cases (the use of standardized forms may support such requests). The system for submitting a missing person case should be clearly communicated to the general public and made easily accessible to all concerned. Additionally, rules regarding the collection of information about missing persons, and any other supporting material evidence or biological samples, should be considered in light of applicable data protection rules and standards.



For further information, refer to the following guidance note:



c. Who can request and receive information on the outcome of the search

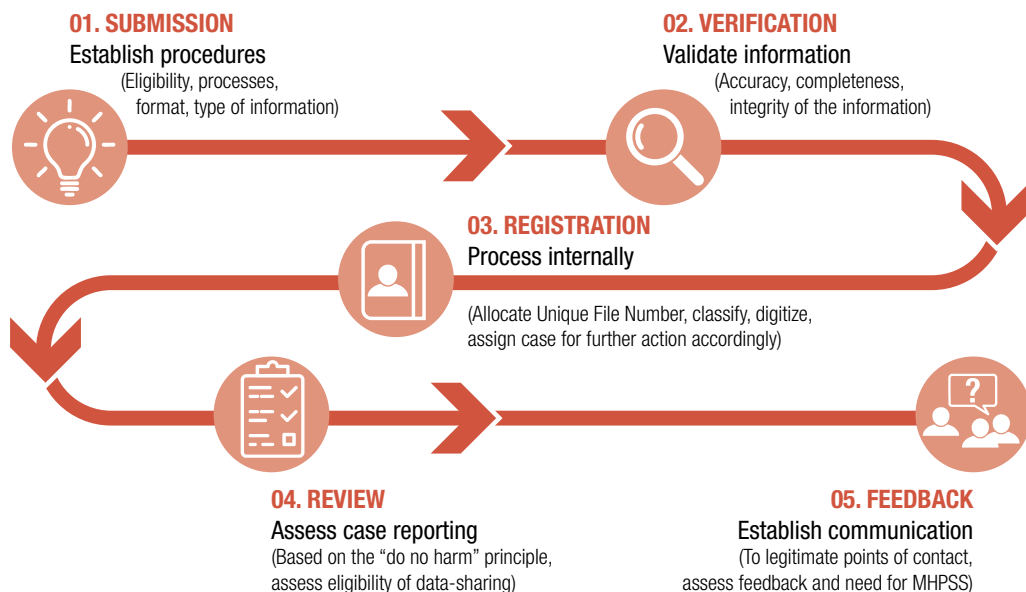
Various factors influence the explicit authorization (or refusal) to share information with the person who submitted a missing persons case. The investigation team should assess possible risks and take action based on the principle of “do no harm”, and, accordingly, identify and register a legitimate primary point of contact/family member for each missing persons case. Note that missing persons who are traced alive should be asked to provide their informed consent to the sharing of any information by the mechanism with their family.

d. How a case can be closed

It is essential that procedures and rules are in place regarding closing a case and determining that a person is no longer missing, or establishing that it is no longer feasible to pursue the case to a resolution. Such rules and procedures must be established with due consideration of applicable international humanitarian law and international human rights law obligations and a case should never be closed to prevent further searches or criminal investigations. A case should only be closed following thorough and exhaustive search efforts, and the reasons for and consequences of its closure should be clearly explained to the family members concerned. The families must be able to trust the search results, if these are to have meaning and validity for them, regardless of whether they elect to continue the search of their own volition. Furthermore, families should be consulted on dignified ways to honour persons still considered missing and on the disposition of any unidentified remains.

Pragmatically, decisions are influenced by the mechanism’s mandate and whether it is temporary, i.e. bound by a specific timeframe, or permanent, i.e. in force until the fate and whereabouts of all missing persons are clarified. In any case, the families of the missing retain the right to receive credible and reliable information about the fate and whereabouts of their loved ones, and they should be able to mourn with dignity and in accordance with their traditional practice.

PROCESSES FOR REGISTERING MISSING PERSONS

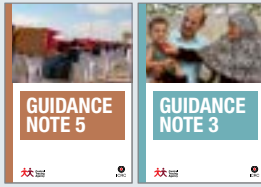


4. KEY PRINCIPLES FOR DESIGNING A SEARCH MECHANISM

Cultural sensitivity: the search process should be context-specific, nationally owned and focus on the needs of the families.⁵



For further information, refer to the following guidance notes:



Collaborative effort: the processes involved in and the extent of the search depend on the mandate of the national mechanism and the degree to which the communities concerned and actors involved embrace that mandate. Search processes can benefit from an initial needs assessment to determine the resources and network required to ensure their success. Such requirements depend on the number of missing persons, the complexity of the cases, the effectiveness of the medico-legal system, the forensic services and other actors relevant to the search, the needs of the families of the missing and of the wider community concerned, and the overall requirements and limiting factors within each context. Stakeholders and representatives of governmental bodies, civil society organizations and academia can provide valuable input and assistance in designing the search structure, functions and parameters. Partnerships can be established with competent bodies, which can act as informational or supportive resources and contribute to comprehensive reparation efforts. These partnerships can be formalized through specific agreements or memoranda of understanding, under which experts from various disciplines can come together to provide diverse knowledge, perspectives and resources to help resolve cases of missing persons and address the families' multifaceted needs. Inevitably, investigations will be curtailed or impeded if key stakeholders do not cooperate with each other; close cooperation and coordination are necessary to address the issue of missing persons.

A standardized and coordinated framework: a central coordinating body should direct, coordinate and contribute to all search activities, especially where multiple agencies are involved. In a multi-agency search mechanism, it is important to establish policies for the continuity of operations and personnel changes, as well as to detail the distinct and non-overlapping roles of each contributing agency.

Having terms of reference, rules of procedure and guidelines for investigations that are accepted by all stakeholders involved, together with clearly articulated roles and responsibilities, can ensure that search processes are aligned, jurisdiction is accorded based on legal status and competencies, and any overlap of responsibility is minimized. Effective and coordinated mechanisms lower the risks of duplicating data collection and search efforts and of revictimizing families and witnesses by contacting them multiple times to collect or verify the same information. It is equally important that the working practices, technical language and information used are commonly understood and shared among all relevant bodies. The search methodology must be supported by protocols, directives and standard operating procedures (detailing the organization, operations and investigations), as well as a short-term plan of action and timeline, together with short- and medium-term budgetary planning, to ensure operational sustainability.

⁵ Though the guidance in this note is designed to assist national mechanisms in the search for missing persons, it may not all be relevant for all mechanisms; it is acknowledged that there are variations in contexts and that a one-size-fits-all solution is unrealistic.

There should be robust collaboration among all entities involved in the search process. Information should be secured, centralized and processed by a single authority, although agreements can be established with other contributing entities to the mechanism to ensure effective communication and coordination based on their specified roles and responsibilities.

Transparency: transparency and communication are key to fostering community acceptance and ensuring that the families' expectations are realistic. The trust of the families and community is critical for the efficacy of the search. This can be achieved through regular communication with affected families and communities, involving them in designing the acceptance criteria and priorities of the search, taking their cultural concerns or objections to any aspect of the search process into consideration and managing their expectations with regard to case closure. During consultations with the families, key topics can be introduced regarding possible constraints and anticipated limitations, and the possibility of non-recovery or non-identification.⁶

Legal and ethical compliance: changes in the legal and administrative framework may be required to accommodate search processes and ensure they run smoothly. These may include, for example, adopting or revising existing provisions regarding jurisdiction for conducting a search; physical protection and management of gravesites, including sanctions for their unwarranted destruction; a framework for minimizing formal rigours that can delay, hinder, or derail search processes; as well as specific provisions for human resource management (such as requirements for background checks, confidentiality agreements, etc.).



For further information, refer to the following guidance note:



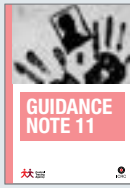
Privacy and security: these are of paramount importance. The privacy and consent of the people involved must be respected and robust security measures implemented to protect victims, witnesses and perpetrators, as well as the families of the missing.⁷ Measures should be in place for preventing the adverse use of information obtained by the mechanism, as should safeguards against the manipulation of staff and/or family members in exchange for information on the fate and whereabouts of the missing. Policies should be established to ensure individuals can share information on a confidential basis, and that the mechanism is not compelled to disclose any information received in confidence. In a humanitarian mechanism, witnesses should be informed of their rights, including that no statement (oral or written) they provide can be admissible in any legal action. It should also be clearly explained to them how the information obtained from them will be stored, accessed and used, and how this information can be protected against unauthorized use. Risk and impact assessments should be conducted prior to making any commitments to a witness.

⁶ Other concepts that can be gradually introduced include partial results, that is, search outcomes considered by the family as not entirely addressing their need for information on the fate or whereabouts of the missing person.

⁷ Such measures can be especially challenging in contexts experiencing ongoing armed conflict.



For further information, refer to the following guidance note:



Outreach and accessibility: the search mechanism should be publicly acknowledged and easily accessible for those wishing to report and share information about missing persons. To this end, the mechanism could enter into partnerships with the media or other community organizations to reach a broader audience, and accept information via various channels, such as a website and over the phone. Outreach efforts must be carried out with due consideration of the principle of “do no harm”.

Feedback mechanism: a feedback mechanism involves processes in which plans, outputs, or results of search processes further influence and refine inputs or activities. Such a mechanism should be available to those affecting the search mechanism’s operations and to those directly affected by them, to explore their level of acceptance and support. This allows for the creation of an astute strategy to systematically enhance positive support and take measures to mitigate identified or potential threats encompassing, for example, political, sociological or other practical objections.

5. SEARCH PROCESSES

Conducting an effective investigation into a missing person in a humanitarian setting is a complex and sensitive process. The main objectives are to clarify the fate and whereabouts of the missing person, and in case of death, to recover, identify and return their remains to their relatives, where possible. The search requires expertise that should be readily available and necessitates the involvement and collaboration of humanitarian, investigative and forensics actors, data and information management experts, and even international assistance.

The adequacy of the search can be measured against the following four criteria:⁸

- **Promptness:** the investigation should be conducted as soon as possible and followed through without undue delay or compromising the quality of the investigation. Any decision to delay or cancel the search should be satisfactorily justified and documented, and the family concerned consulted and informed accordingly.
- **Effectiveness and completeness:** the search should seek to collect all available testimonial, documentary and physical evidence and assess its veracity. At a minimum, all missing persons must be registered, material and testimonies documenting circumstances of their disappearance collected, and potential witnesses and informants identified and interviewed in relation to the disappearances. The practical steps of the investigation method, how interviews are conducted, and how remains are recovered and managed should be outlined. Sufficient resources should be planned and allocated for the collection, analysis and management of data and evidence; the forensic examination of (possibly) relevant locations; communication with family members; establishing the chronology of events; locating, interviewing and protecting witnesses; seeking international technical assistance; and other measures involving a financial cost.
- **Independence and impartiality:** the search process must be free from the influence of any political party or powerful actor, including alleged perpetrators, and must be perceived as such. All available evidence, traces and indicators of the possible fate and whereabouts of missing persons must be analysed objectively, with the aim of clarifying their fate and whereabouts.

⁸ These criteria stem from existing practice and standards on investigations, such as OHCHR, [Minnesota Protocol on the Investigation of Potentially Unlawful Death](#), Office of the United Nations High Commissioner for Human Rights, Geneva, 2016.

- **Transparency:** there should be transparency about the existence of a search, the procedures followed, and the factual, scientific and legal bases of the search's conclusions. The search process and outcomes should be open to scrutiny by the families of the missing and the general public.

Additional key aspects to consider throughout the search operation include the following:

Prioritization of cases should be transparent, based on viable search avenues and non-discriminatory. When assessing lines of investigation, the complexity and feasibility of undertaking the search should be evaluated and the optimal approach planned accordingly. Cases assigned to an investigator can be grouped cogently (e.g. related to a specific event, or geographical area) and investigators should not be assigned more cases than they can actively investigate at any one time. This is to avoid the search becoming ineffective owing to an unmanageable workload, or multiple investigators working independently on related cases. An overview of case assignment priority and case supervision should be maintained and information-sharing meetings between all investigators should be held as needed. The investigators selected should have the right experience and personal qualities for the case(s) they will work on, as well as thorough knowledge of the procedural rules and overall context.

The **timing required for case resolution should not be underestimated**. Searching for and identifying missing persons require a substantive system to support sustained investigations over the longer term, in accordance with the mechanism's mandate.

Missing persons cases should be treated equally, without discrimination, to include discrimination on the grounds of ethnic or social origin, religion, language, sex, age, political or other opinion, cultural beliefs or practices, status, or disability.

Investigations gather information or evidence and develop logical lines of enquiry, considering the context in which the person went missing, any systemic patterns and the complexity of facts. Collecting data requires **interviewing** one or several family members but also other informants and potential witnesses, including possible perpetrators or bystanders, and other individuals who were reportedly the last to be in contact with the missing person. Staff involved in the investigation should be trained to ensure that the confidentiality, security and legal rights of those sharing information are protected, while trauma-cognizant approaches should be incorporated in the operations. Similarly, those interviewing victims, witnesses and others should be trained in how to do so and guided by standard operating procedures, to avoid causing harm or discriminating, while ensuring the appropriate information is collected.

In addition, sound **witness management and control policies** should be in place, as should a dedicated witness file system that enables assessment of both the witnesses and the information they provide.

To minimize risks of re-traumatizing people who are asked to recall and describe painful experiences, interviews need to be carried out or supervised by trained counsellors. When interviewing certain people, such as children and victims of sexual abuse, special procedures should be in place. Coordination with other institutions may be established for the provision of guidance and psychosocial care for witnesses to ensure their protection and mental well-being and to address other concerns.

Emotional trauma can affect long-term memory and perception, and those who have experienced it may have fragmented or even false memories. Moreover, less than ten per cent of the communication in an interview is verbal, with the majority being non-verbal or intonation-based. Consequently, **investigative techniques** such as the PEACE method (Preparation and Planning,

Engage and Explain, Account, Closure and Evaluate), cognitive interview, phased interview and conversation management can be applied to elicit a more detailed and accurate account of an event. Good communication strategies (active listening, establishing rapport) can strengthen commitment to the interview and promote safe and effective gathering of information/evidence.

When selecting the most appropriate interviewer based on the interviewee's profile, **gender considerations** are key. For example, a female interviewer may promote greater trust and participation on the part of female victims who have experienced sexual violence. Staff should also have the required technical and personal skills and demonstrate a high level of integrity.

The decision to carry out searches must be assessed on the basis of risk. This will ensure that neither the personnel involved, the missing person, the missing person's family, nor the general public are exposed to physical or psychological risks. Appropriate measures should also be in place to prevent any individual from obstructing or interfering with investigations, and to prevent breaches of confidentiality. Searches should be methodical, transparent and follow legitimate lines of enquiry at all times. They can also employ less bureaucratic mechanisms (i.e. fast-track procedures) to enhance flexibility and response times.

Consideration may also be given to frameworks regarding **accessibility of information or locations**. To fulfil the search mandate, information considered relevant may need to be gathered from/inspected at any source, any individual may need to be interviewed in private at the investigation's discretion and any place may need to be visited, with or without prior notice.

Analysis of data related to the fate and whereabouts of the missing person: in many search contexts, data can become segmented owing to a lack of coordination or transmissibility between governmental and non-governmental bodies, as well as a lack of comprehensive data analysis (even in centralized repositories). This hinders proper comparison and analysis of the information, often leading to curtailed search strategies.



For further information, refer to the following guidance note:



Analysts evaluate the reliability and veracity of information and data and ensure that the search mechanism manages and uses every credible lead for the search efficiently. Information development is critical for orienting the search for missing persons, whether living or dead; for formulating hypotheses, free of bias or presumptions, relating to the missing person's possible fate and whereabouts; and for determining the general or systematic nature of events surrounding the disappearance. Data can be highly diverse, repetitive, or contradictory. Investigations can be expedited and better targeted by extracting accurate and reliable information and establishing a greater understanding of the context and human factors based on direct or circumstantial evidence (the nature of the events; operational areas of the groups involved in the conflict; lists of persons connected to the events, such as witnesses and former detainees; the *modus operandi* of perpetrators; patterns of burials or disposals of the dead; actions preceding, surrounding, or following the events during which individuals went missing; temporal or regional particularities). Information analysis should be, to the extent possible, multidisciplinary and coordinated. It can be a complex process, especially when large amounts of data are involved, and include highly technical or specialized terminology. Involving analysts of diverse backgrounds, skills and competencies contributes to more efficient and secure management of the information, as well as to comprehension and analysis of information in different languages or dialects.

Additionally, mapping locations using GIS (geographic information system) technology makes for a more dynamic investigation, especially when locations and events are considered sequentially (temporal and spatial). Such technology can help enormously with data screening and mining, especially with regard to the veracity and efficacy of the available data.

Recovery operations relating to known or presumed sites of forensic interest: activities such as the search for burial sites, or other sites of forensic interest, and the exhumation of remains are an essential part of clarifying the fate and whereabouts of missing persons. Documenting, marking, mapping and protecting known or potential gravesites from the onset of operations is critical. This information can be regularly updated as new data are acquired. The list of sites should be as thorough as possible, and centralized and consolidated by the various competent authorities, while each site should be associated with a unique code for traceability and quantification purposes.

Proper planning, site assessments and reconnaissance, conducted on the basis of available investigatory information, can determine the extent of a site, the expected timeframe of recoveries and associated logistical and budgetary requirements. Recovery operations entail destructive processes, so, to minimize the risk of loss of evidence, excavations should be conducted by trained experts using proper methods based on detailed working guidelines. The situations in which search mechanisms function are often complex, requiring the development of various strategies to access and work in certain sites. Procedures and findings must be documented thoroughly, following techniques and processes based on the mandate of the search, and respecting religious and cultural accords. If remains are not handled with dignity and skill, the families may be traumatized or the investigation undermined.

Another important issue to consider is the personal safety of the recovery team: health and safety officers and/or ordnance disposal specialists should be available to provide support in this regard.



In the Republic of South Africa, following the recommendations of the Truth and Reconciliation Commission, a Missing Persons Task Team (MPTT) was established within the National Prosecuting Authority to determine the fate and whereabouts of victims of political circumstances and, where possible, to recover their remains. By September 2024, the MPTT's meticulous searches, forensic investigations and identification processes had ensured that the remains of more than 180 political activists were returned to their families for dignified reburial during special ceremonies across the country hosted by the Justice Ministry.

In line with the country's National Policy on the Repatriation and Restitution of Human Remains and Heritage Objects, an interdepartmental Implementation Plan was approved in 2023, designating the MPTT as a key implementing partner in the Exile Repatriation Project and tasking it with collecting data, mapping graves, exhumations and confirming the identity of recovered individuals. This project was launched in 2024 with the exhumation and repatriation of the remains of 49 freedom fighters who died in exile in Zambia and Zimbabwe. The MPTT works closely with the families of the missing and supports them in conducting symbolic reburials or spiritual repatriations in cases where the remains cannot be located.⁹

⁹ For further background to this example, see Republic of South Africa, "[Minister Simelane and Deputy Minister Nel to participate in the historic Homecoming Ceremony for South African Freedom Fighters](#)", Department of Justice press release, 26 Sep 2024. This example does not necessarily represent or reflect the views of the ICRC.

Management of human remains: management, identification, return and final disposition of remains are essential components of the search and must be carried out with full respect for the dignity of the dead.¹⁰ A persistent failure to identify recovered bodies or remains can prolong the anguish of the families and delay the dignified commemoration of the deceased. Conversely, planning sustainable operations, featuring the necessary infrastructure and trained and readily available personnel, ensures that forensic examinations are concluded without undue delay.

International standards and guidelines have been developed to support states and mechanisms in managing the dead, including in emergencies, but it is acknowledged that these can be adapted according to the different levels of infrastructure and resources available. How remains are managed should be clearly explained to the families and communities, and forensic approaches can be adopted when needed and available in the context.

All appropriate measures should be taken to bury the dead with dignity or to repatriate them in a timely manner, i.e. immediately after identification of the remains, or confirmation that they are not of a missing person. Retention and burial policies for unidentified or unclaimed remains can be established in accordance with local custom and religious norms. Authorities should bear in mind that, beyond the operational costs of the exhumation and management (processing, testing and reporting) and identification of remains, it may be necessary to budget for other costs related to notifying the families and returning the remains (coffins, transport), as well as funeral costs, including in the form of funeral allowances.

Reporting and communication: it is important that staff dealing with the families throughout the search and during closure of a case are trained and competent in this regard. Authorities should keep the families regularly informed on how the investigation is progressing; this is extremely important to many families, even if the search efforts fail to locate the missing person, or when the recovery and/or identification of remains are unlikely. Often, search efforts remain unreported and unacknowledged, owing to the absence of a state mechanism for reporting this information. However, even in the most difficult circumstances, families want to be reassured that every effort possible is being made to locate their loved one. In certain situations, such as when people decide to disappear or change identity, the confidentiality of information regarding the whereabouts of that person (when not concerning a minor) should be respected and protected.

Public annual or periodic reports: drafting reports to document the successes, challenges and metrics of the search efforts is important, as these help keep public expectations in check and promote the credibility and transparency of the search operation. As information sharing is important for the families and decision makers, it is essential to organize regular reporting events and activities to communicate search actions and outcomes through various means (print, radio and television, meetings and ceremonies – bearing in mind the need to accommodate those who are illiterate) and in all major national languages. When the public is aware of and understands the search process, and there is widespread support among civil society and government, public engagement is higher, making it generally easier to obtain more information to achieve the search objectives. Such periodic reporting can also help internally to determine whether any gaps in the search process need to be addressed, or if existing provisions are being efficiently applied in practice.

¹⁰ See also ICRC, [The Forensic Human Identification Process: An Integrated Approach](#), ICRC, Geneva, 2022.



GUIDANCE NOTE 10

THE IDENTIFICATION PROCESS: AN INTEGRATED APPROACH



Determining what has happened to a missing person is crucial for upholding families' right to know the fate of their loved one and involves identifying a person or their remains. Reliable identification is vital for legal, administrative and humanitarian purposes, and for providing answers to families.

This guidance note¹ explores identification as part of the broader search process and sets out key concepts, principles and recommendations. It emphasizes an integrated and multidisciplinary approach to the identification of missing persons. The guidance, while applicable broadly, is aimed primarily at helping mechanisms² handling specific missing persons caseloads.

1. INTRODUCTION

Uncertainty about what has happened to a missing relative, and where they are, can have a direct effect on all members of the family unit and, in some cases, on an entire community. Most families will continue to search for their loved one until all avenues have been explored and until they receive authoritative and reliable information on the missing person's whereabouts and/or fate.

Over the past two decades, advances in technology and the refinement of existing methodologies have significantly improved the identification process. There is now greater potential to identify remains that, in the past, would have been impossible to identify. This can be of great value in large and complex caseloads.

Adherence to international best practices is crucial for any forensic discipline to ensure accurate, reliable and credible identifications that can withstand peer review. This respect of scientific standards also mitigates the potential risks of misidentification, increased numbers of unidentified bodies, misassociations of commingled remains and the inadvertent return of remains to the wrong family. Such outcomes have profound consequences for the families of missing persons, societal peacebuilding efforts and the overall perception of the reliability of the overseeing institutions.

2. GENERAL PRINCIPLES RELATING TO IDENTIFICATION

There are many definitions of the term identification. In this note, identification is defined as "the individualization of a person to determine who they are".³ This can be applied to living persons as well as human remains when their identity is unconfirmed or unknown, and represents the allocation of the correct name/identity to an unidentified person.

A broader appreciation of the identification process

Rather than seeing identification as a specific technique, like genetic (DNA) matching, it is better to understand it – and undertake it – as a comprehensive, holistic and multidisciplinary process.

- 1 This note should be read in conjunction with M. Salado Puerto *et al.*, "[The search process: Integrating the investigation and identification of missing and unidentified persons](#)", *Forensic Science International: Synergy*, Vol. 3, 100154, 2021.
- 2 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 their families. 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 the missing.
- 3 M. Salado Puerto *et al.*, "[The search process: Integrating the investigation and identification of missing and unidentified persons](#)", *Forensic Science International: Synergy*, Vol. 3, 1000154, 2021.

Identification is intrinsically linked to the search process

Identification is not just about giving a name to an individual or to a set of human remains – it is a crucial part of retracing a missing person’s journey. Determining what happened to them (their fate) and where they are (their whereabouts) involves piecing together various items of information. While knowing the whereabouts of a missing person can contribute to inferring what happened to them, identifying the individual or their remains is essential for a complete understanding of their fate.

The quality of information matters

The information gathered during the search process directly impacts identification efforts and results. The more accurate, detailed and broad the information collected, the better the chances of clarifying the fate and whereabouts of missing persons.

The comparative and investigative nature of the identification process

Identification involves comparing information collected from various sources. It is an investigative process, where data about the missing person (including the circumstances in which the person went missing) and data from a person or a set of remains being identified are equally important. Conclusions are drawn by analysing both sets of data, ensuring a thorough and fair assessment.



For further information, refer to the following guidance note:



The identification should, where practicable, involve pursuing several lines of evidence rather than relying solely on a single technique. The choice and number of techniques depend on the context and complexity of the individual case. While many jurisdictions rely solely on DNA analysis for identifying human remains, challenges such as high costs and the need for specialized facilities and expert knowledge for analysis purposes make it unwise to rely on this single technique.⁴ Assessing evidence is a fundamental responsibility within operational medico-legal systems, constituting a distinct step in the process that demands the requisite knowledge and expertise.

a. Legal aspects

The right to an identity is implied in various international human rights instruments. For example, under international humanitarian law, parties to a conflict must take all possible measures to search for, collect and evacuate the dead without adverse distinction. They must also record all available information before disposing of the dead and mark the location of the graves, with a view to identification. Identification is also an obligation in terms of means: in other words, parties must do all they can with all means available to them.⁵

⁴ See UNGA, [Report by the Human Rights Council Advisory Committee on Best Practices in the Matter of Missing Persons, A/HRC/16/70](#), 21 February 2011; and Argentina MFAW and ICRC, [Good Practice Guide for the Use of Forensic Genetics in Investigations into Human Rights and International Humanitarian Law Violations](#), 2nd ed., ICRC, Geneva, 2019.

⁵ For more guidance on the international legal framework relevant to the identification of missing persons and to the rights and needs of their families, see ICRC, [The Forensic Human Identification Process: An Integrated Approach](#), ICRC, Geneva, 2022.



For further information, refer to the following guidance note:



To fulfil their obligation to search for and identify missing persons, states must make efforts to determine the fate of such persons and the circumstances of their disappearance, and, ultimately, restore their identity.

The legal framework governing death investigations should mandate identification, irrespective of the cause or circumstances of death. This ensures, from a public policy standpoint, that all deceased citizens are properly identified. Authorities responsible for this task must be adequately equipped within the medico-legal system. Similarly, institutions managing identification processes should incorporate, in their policies, a family-centric approach to addressing the needs and concerns of the families of the deceased.

Information should be compared as independent lines of evidence; each line will include comparable data from different information sources to confirm or refute a hypothesis formulated during the identification process.



LEGAL IDENTIFICATION:

The final determination of identification is a legal decision, which must be made by competent authorities according to the legislative framework.

TECHNICAL IDENTIFICATION:

The legal determination of identification should be grounded in a variety of scientific evidence derived from the findings established at the technical or forensic level.

Figure 1: Legal and technical identification

In some forensic investigations – for example, large-scale incidents handled by law enforcement services – it can be necessary and worthwhile to categorize data under certain headings. This involves establishing key details like ethnicity, religion, biological profile and the cause of death for all the victims. This broader representation of information can prove crucial when it comes to prosecuting large-scale crimes, and to understanding and improving public health and safety. However, it's equally important to present the individual attributes of each deceased person, thereby ensuring the rights of families and individuals are met. Even in cases of natural death, where evidence is not routinely presented in court, it is essential to adhere to strict policies to ensure reliable identification and accurate conclusions.

Identification serves various legal purposes, provides clarity on deaths in the interest of community safety, contributes to the compilation of important statistics and meets the humanitarian needs of surviving families. While not all identification methods are scientific in nature, the information and evidence gathered as a result need to be scientifically analysed in order to reach conclusions.

Figure 1 describes the difference between legal and technical identification, and how decisions on the former are made by competent authorities based on the latter, i.e. expert opinions. These opinions should be presented in an integrated identification report (see section 5 of this Guidance Note).

b. Social aspects

Understanding identity

Identity is the connection between a name and a physical body, and to the social ties that link a person to a place, time and other factors.⁶ The search and, consequently, the identification task, are therefore influenced by the political, economic, cultural and social context of the investigation. Specific circumstances and their significance should be considered when undertaking the identification of missing persons.

LEVELS OF ACCEPTANCE

In establishing the identity of an unidentified person, there are several **levels of acceptance of the outcome**:

1 The technical and legal level:

- involves individualizing and attributing the correct name to the person
- is the initial act of recognition and reconnects the individual identity to a body (alive or dead).

2 The family level:

- is subjective, with the family deciding to accept or reject the attributed identity and the evidence of identification.

3 The community/social level:

- is the collective recognition of the missing and their identification.

In some international instances, accurate and reliable identifications, which were both technically and legally sound, were rejected by families. Often, their decisions stemmed from a lack of credibility or trust in the institutions overseeing the identification process. In various scenarios, political manipulation of information at the social level has undermined the acceptance of identifications at the legal and family levels.

For identification processes to be successful, there must be credibility, legality and legitimacy at all levels. Building trust and ensuring operational legitimacy is essential, not only for the families concerned but also for communities and civil society at large.

3. METHODOLOGICAL PROCESS OF IDENTIFICATION

During the identification process, data concerning both the missing person and the unidentified person need to be compared. This comparison is performed using independent datasets or lines of evidence that have been attributed different weights according to their individualizing or discriminating power.



For further information, refer to the following guidance note:



a. Lines of evidence

Lines of evidence are different sets of information that can either confirm or challenge a hypothesis of identity. These include fingerprints, dental, genetic or medical data, as well as contextual details like circumstances of disappearance, geographic and temporal data, relationships, personal belongings and distinctive features.

⁶ Sarah E. Wagner, *To Know Where he Lies. DNA Technology and the Search for Srebrenica's Missing*, University of California Press, 2008.

Each dataset contributes to a line of evidence, either supporting identity, rejecting it owing to inconsistencies, or leading to inconclusive results. The value of information varies – for example, a match in terms of hair colour is less significant than a fingerprint or genetic-profile match.

Discriminating power

The ability to uniquely identify an individual, or exclude other possibilities within a group, is crucial. Some evidence, such as a genetic profile or fingerprints, is highly individualizing, to the point of excluding all other candidates. Other evidence, while less definitive, adds to the overall consistency and can exclude some incompatible candidates.

Integration of scientific data and context

Best practices involve integrating scientific data with contextual information, while adhering to international standards. This is particularly important in scenarios with numerous samples, from either a large number of individuals or fragmented remains, or where some or all of the data are of poor quality.

Case-specific approaches

The number and types of lines of evidence needed will vary for each case. Their selection depends on relevance, reliability, case type, complexity, available information and feasibility. The goal is to choose the most suitable techniques for a specific case, and this choice is made by the multi-disciplinary teams working on the cases. It therefore requires scientific expertise.

Circumstantial information

Circumstantial details, like time and place, are crucial. They can support or challenge conclusions and should complement other scientific evidence collected. Combining all information helps avoid administrative errors and misinterpretations that could lead to misidentification or failure to make an identification.



TYPES OF INFORMATION

The types of information most commonly used in the identification process that produce comparable data that may constitute lines of evidence include the following:

- contextual or background information from the recent, ongoing, or historical investigation (date, place, circumstances of the disappearance/find; cause and manner of death)
- visual recognition
- documentation and identification tags (often referred to in the military as “dog tags”)
- fingerprints
- radiography or other image-based data
- dental data
- genetic data
- biological profile and physical characteristics
- individualizing/distinctive features (tattoos, scars, piercings, etc.)
- medical/health conditions
- personal belongings and clothing at the time of disappearance.

b. Analysis and comparison of information: integrated reconciliation process

Comparison purpose

The analysis and comparison process aims to find evidence to support or refute an identification. It involves looking at similar data pairs (like sex, age, missing date versus discovery date, etc.) to establish compatibility (consistency) or discrepancy (inconsistency).

This process is like putting the pieces of a puzzle together, ensuring that the information relating to both the missing person and the unidentified person aligns correctly. If the pieces fit (consistency), the identification is supported. If there are mismatches (inconsistency), this raises questions that need further examination.

Key elements of the comparison process

- Ensuring homologous (similar) data pairs from both the missing and unidentified persons, such as sex, age and relevant dates. Homologous data pairs or lines of evidence come from both the background (investigative) and technical information collected during the search process.
- Compatibility check, i.e. evaluating whether the data pairs align, indicating consistency.
- Discrepancy identification, i.e. recognizing differences in the data pairs, indicating inconsistency.

The aim of carefully comparing these elements is to create a coherent and accurate picture, ensuring that the identified individual truly matches the missing person's profile.

	MISSING PERSON	UNIDENTIFIED PERSON
Lines of evidence	Place the missing person was last seen alive	Place the unidentified person was found
	Date the missing person was last seen alive	Date the unidentified person was found/ state of preservation of human remains
	Grave specified by witnesses to the burial	Grave with unidentified remains in the site specified
	Biological profile	Biological profile
	Dental information	Dental findings
	Fingerprints	Fingerprints
	Genetic profiles obtained from biological reference samples	Genetic profiles obtained from the unidentified person
	Clothing and personal belongings	Clothing and personal belongings
	Health conditions	Medical findings

Figure 2: Examples of comparable data (lines of evidence)

Comparison outcomes

Comparing information can lead to different outcomes:

- Compatibility/consistency: when data pairs align well.
- Relative explainable discrepancies or inconsistencies: when there are slight differences that can be reasonably explained. **For example**, when a slight difference in age or height between family-reported and forensic-estimated values can be explained by factors like memory distortion, cultural factors, or methodological errors.
- Absolute/excluding discrepancies or inconsistencies: when there are substantial differences that, once errors are ruled out, exclude the possibility of identity. **For example**, when a missing tooth is documented in the dental charts and radiographs of the missing person but is present in the unidentified person.

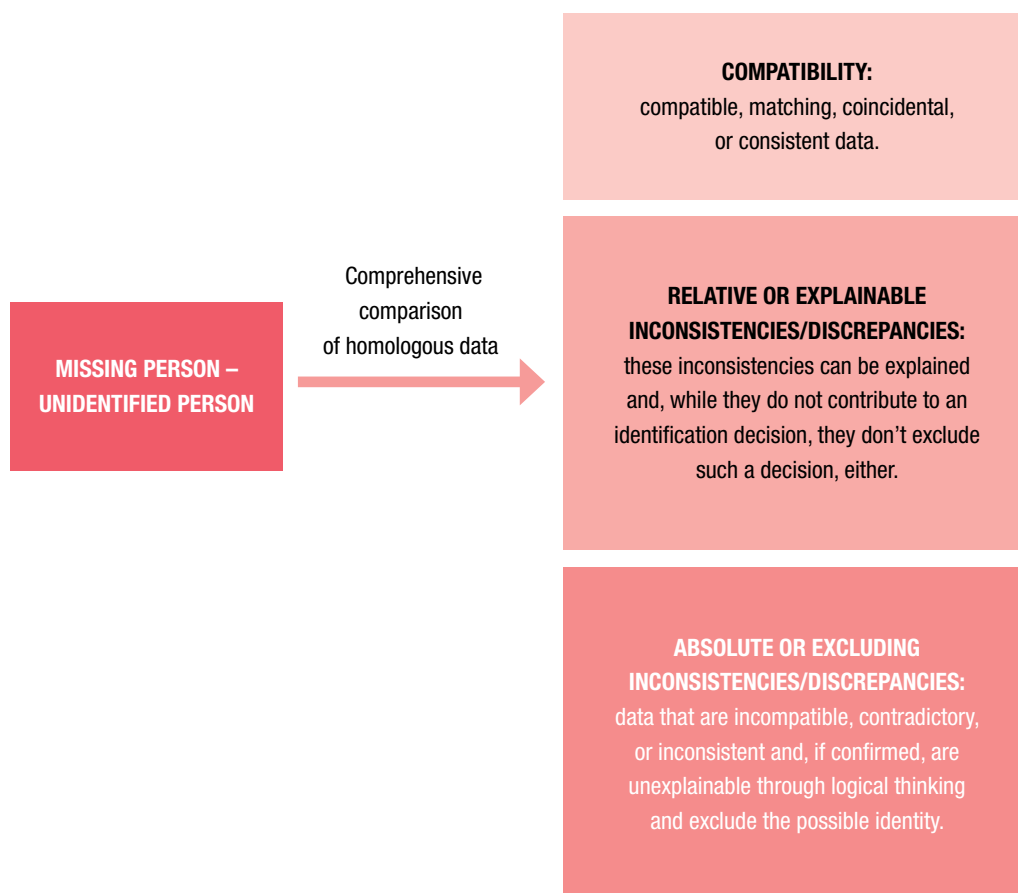


Figure 3: Possible outcomes after a comprehensive comparison of data (lines of evidence)

Comprehensive comparison

For a thorough and reliable outcome, all relevant case information must be compared during the reconciliation process in a comprehensive and integrated manner. This ensures certainty and reliability of the end results.

Reconciliation phase

The analysis and comparison of all information, including the lines of evidence, constitute the reconciliation phase. This phase leads to a decision regarding the identification of an individual or a set of human remains.

Criteria for decision-making

When making an identification decision, ideally, the following are considered:

- Consistency across multiple lines of evidence: when more than one line of evidence aligns or is compatible.
- Absence of absolute or excluding inconsistencies/discrepancies: when there are no significant differences that would rule out the possibility of identity.
- Presence of distinctive features: when there are enough unique features that differentiate the individual within the population or the caseload.

The final decision should be grounded in these criteria, ensuring a robust identification process that combines various perspectives and sources of information.

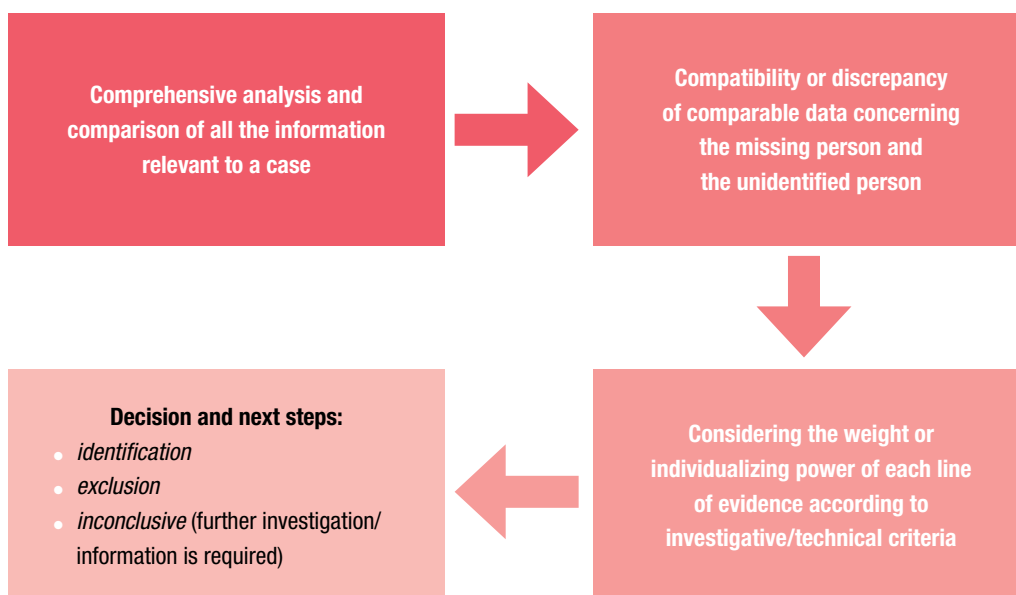


Figure 4: Steps in the comparison and analysis of information in the reconciliation phase

All three requirements must be fulfilled in order to reach an accurate and reliable conclusion in the identification process.

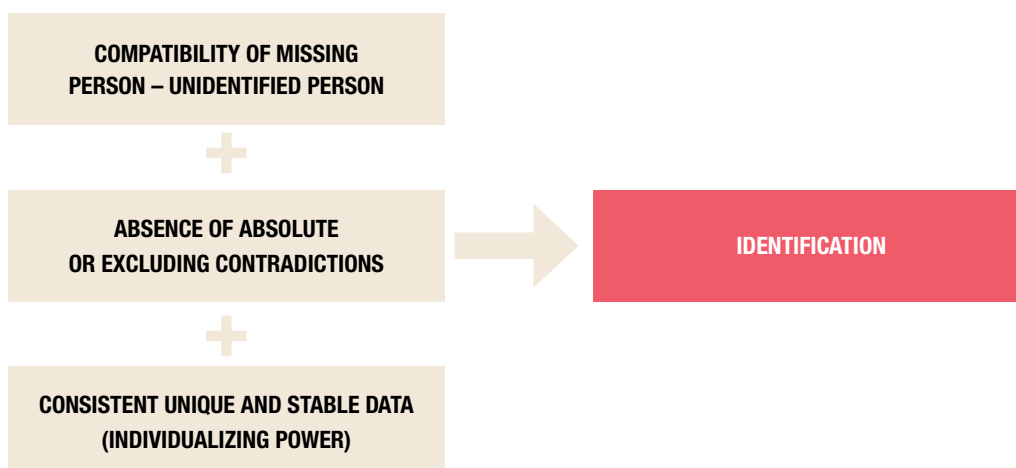


Figure 5: Requirements to reach an identification

As emphasized, the identification process is adaptable, in that the selection and combination of lines of evidence can be tailored to the specific characteristics and complexity of each case. It is a dynamic process, and the number and types of lines of evidence required cannot be predetermined. The aim is to use as many lines of evidence as necessary to confidently establish or refute an identification. In cases where evidence is insufficient (resulting in inconclusiveness), a more thorough search for information is essential until there is sufficient evidence to reach a comprehensive conclusion.

Working on identification in open vs closed incidents

Open incidents (such as earthquakes) require more lines of evidence, likely involving laboratory techniques, owing to the unknown number of victims and identities.

Closed incidents (such as airplane crashes) have a predetermined number of victims and identities, therefore a more focused approach can be taken.

Summary of the components of the identification process

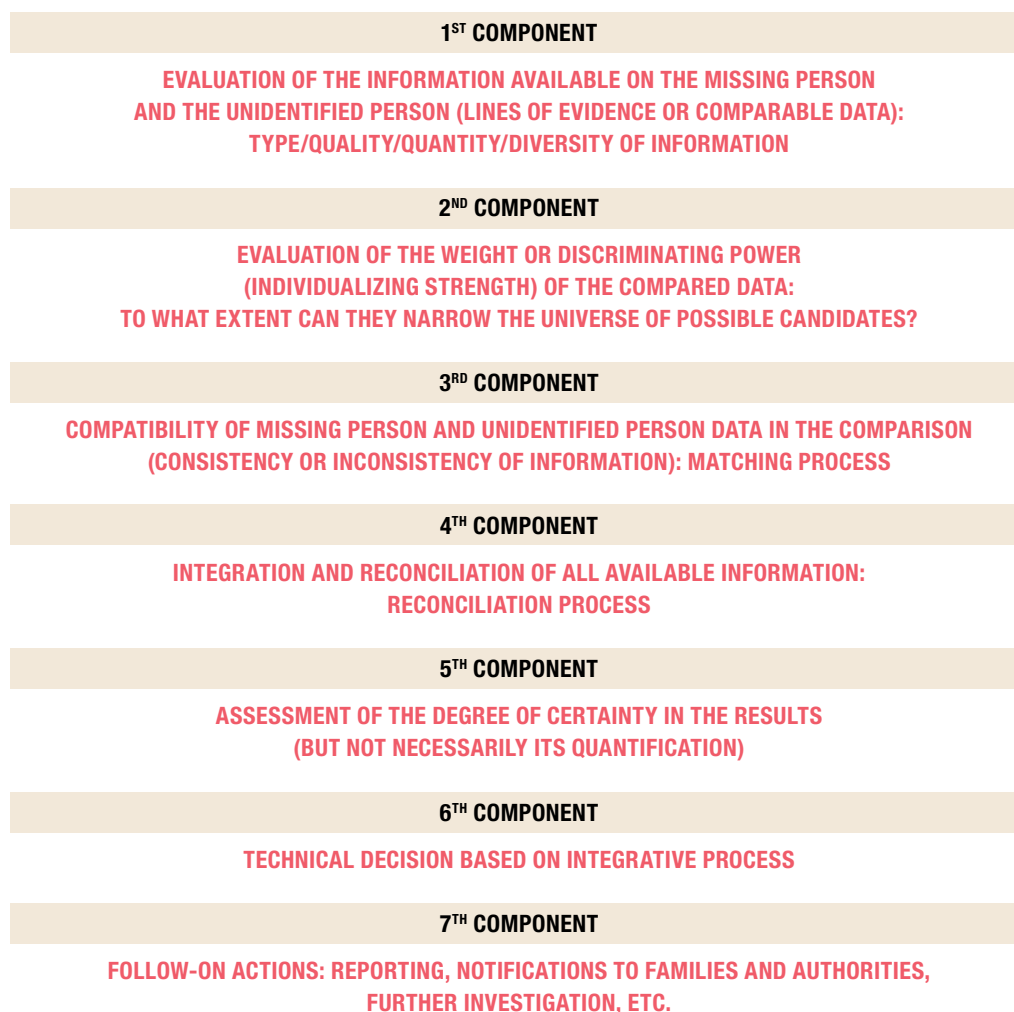


Figure 6: Sequence of steps and decisions needed in the identification process

Evolutionary approach to human identification: a multidirectional iterative model

In the realm of large-scale incidents or mass casualties, the approach to human identification has evolved into a model that recognizes that the search for and identification of missing persons are not linear but rather multidirectional processes, in which investigative elements may need to be repeated to generate adequate levels of correspondence between datasets to achieve an identification. It is a dynamic, multifactorial, holistic approach, whereby all elements converge during the integrated reconciliation phase.

Key features of the multidirectional model

- 1 Non-linear dynamics: unlike a step-by-step linear progression, the model acknowledges the fluidity of the identification process, allowing for flexibility and adaptation based on evolving information.
- 2 Dynamic nature: the model accommodates changes and adjustments as new data emerge, ensuring a responsive and evolving approach to identification.
- 3 Multifactorial consideration: multiple factors, lines of evidence and datasets are continuously revisited and integrated, recognizing the complexity of large-scale incidents.
- 4 Holistic integration: all elements, from technical details to investigative insights, converge in the integrated reconciliation phase, emphasizing the interconnectedness of various components.

This model reflects a contemporary understanding of the intricate nature of human identification, particularly in scenarios involving mass casualties.

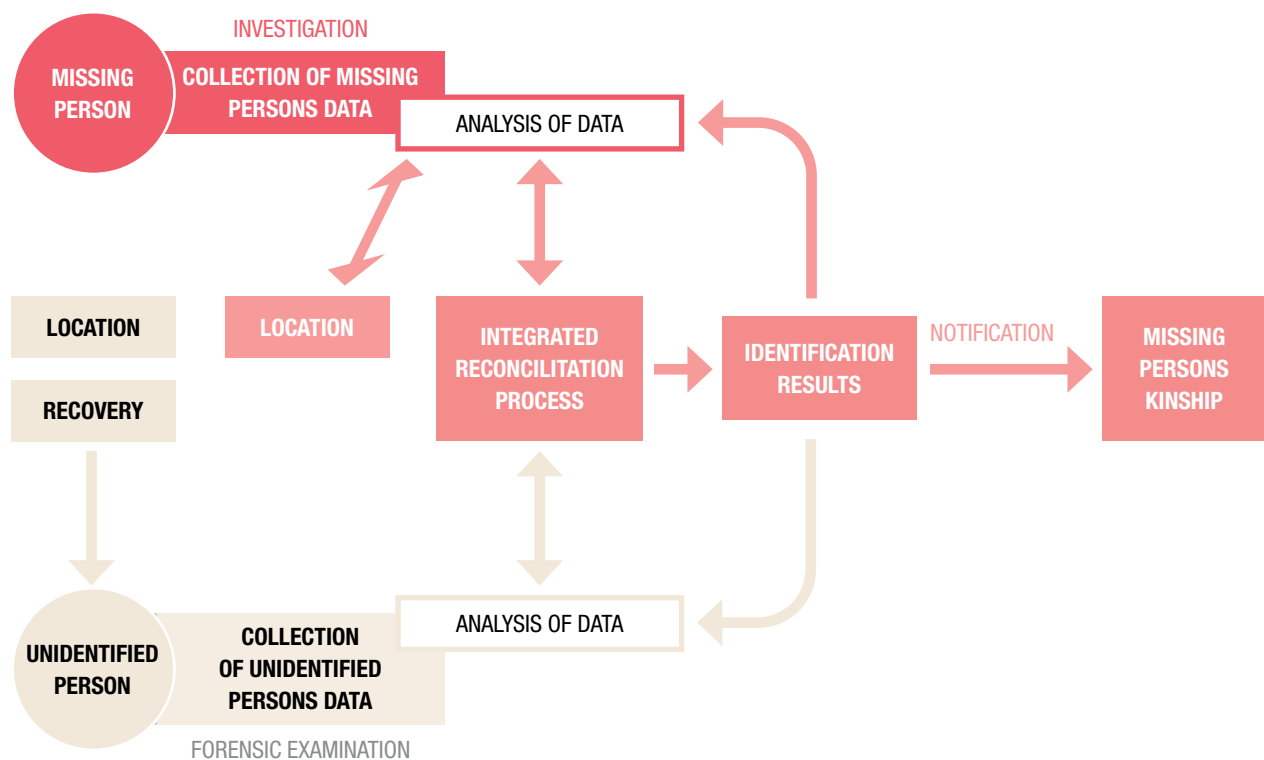


Figure 7: Flow of information in the identification process within the overarching search process

Enhanced family engagement through a comprehensive approach

The adoption of this inclusive approach, incorporating all available lines of evidence, serves to empower families in understanding identification results. More significantly, it enables families to reference familiar characteristics, features and personal belongings, fostering a stronger connection with the case and promoting acceptance of the outcome.

Key benefits for families:

- 1 Deeper understanding: the comprehensive use of diverse lines of evidence provides families with a more profound comprehension of the identification process.
- 2 Personal connection: references to familiar characteristics and personal belongings mean families establish a more personal and intimate connection with the case, so they feel more involved.
- 3 Facilitated acceptance: the inclusive approach facilitates a smoother acceptance process for families, as they can recognize and relate to specific elements contributing to the identification.

Overall impact

This family-centric approach not only respects the emotional and personal dimensions of the identification process but also acknowledges the crucial role families play in accepting and embracing the outcome. It constitutes a more compassionate and empathetic approach to dealing with the intricate nature of identification results.

4. IDENTIFICATION RESULTS

The final decision in the identification process must be conclusive, with a degree of certainty that, in technical and legal contexts, could be considered “beyond reasonable doubt”.

The conclusion must fall into one of the following three categories:

POSITIVE IDENTIFICATION
The person IS , or the remains ARE , identified as the person expected or sought and any other possible identity at the time of the analysis is excluded.
EXCLUSION
The person IS NOT , or the remains ARE NOT , the person expected or sought.
INCONCLUSIVE
The analysis of all the information relevant to the case IS NOT SUFFICIENT to conclude, with certainty, in favour of confirming or refuting the hypothesis of identity. It will be necessary to expand the investigative and/or scientific information in the case.

Clear categorization in identification results: a holistic perspective

The use, in the identification process, of subcategories such as presumptive, circumstantial, possible, probable or positive is not advised. The preferred approach is to maintain a straightforward classification, recognizing that a person is either identified, excluded or the identity remains inconclusive. By adhering to this approach, the identification process maintains transparency, fairness and a level of certainty that is essential for the well-being of the individuals and their families affected by the outcomes.

5. INTEGRATED IDENTIFICATION REPORT

Because the information resulting from the identification process is gathered at various stages and derived from different techniques, the submission of reports to legal or judicial authorities is often fragmented. This introduces challenges, as the uncoordinated presentation of investigative and scientific reports may make them appear contradictory, thus potentially impeding the process and leading to erroneous conclusions.

To address these issues, an integrated identification report is strongly recommended. This is not a mere compilation but rather a comprehensive analysis of results from the different technical studies and available information. The aim is to present, to the relevant authorities, a coordinated and consensual document, featuring a consolidated conclusion.

Key considerations when creating an integrated identification report

- 1 Coordinated presentation: the report ensures a harmonized and coherent presentation of results, mitigating the risk of contradictory or confusing information.
- 2 Comprehensive analysis: every aspect of the identification process, including various technical studies and available information, is thoroughly analysed to provide a holistic view.
- 3 Multidisciplinary approach: the report reflects the multifaceted nature of the identification process and encompasses the contributions of the diverse disciplines, reinforcing its completeness.

The integrated identification report thus becomes a pivotal tool, embodying the multidisciplinary, holistic and comprehensive essence of the identification process. It contributes to effective decision-making and facilitates a unified understanding among all stakeholders involved.



For further information, refer to the following guidance note:



SAMPLE TEMPLATE OF AN INTEGRATED IDENTIFICATION REPORT

- Case information and background information
- Findings relating to the recovery or finding
- Summary of findings of the examination of the person, body, or skeletal remains for identification purposes:
 - a. State of the body
 - b. Biological profile and individualizing features
 - c. Dental chart
 - d. Medical findings and trauma
 - e. Information on samples collected for identification purposes
 - f. Cause/manner of death, if pertinent, as stated in the autopsy report
- Personal effects and associated artefacts
- Summary of the information on the missing person:
 - a. Circumstances of the disappearance
 - b. Biological information available and individualizing features
 - c. Dental/medical information
- Results of complementary analysis for identification purposes:
 - a. Radiological analysis
 - b. Dactyloscopy/fingerprints
 - c. Genetic analysis
 - d. Dental comparison
- Analysis, comparison and interpretation of results:
 - a. Comparison and reconciliation of the lines of evidence
 - b. Other comments, results relevant to the case
- Conclusions
 - a. Identification
 - b. Exclusion
 - c. Not conclusive

6. NAVIGATING THE CHALLENGE OF MISIDENTIFICATION

Misidentifications are, unfortunately, common and not confined to regions with limited forensic resources. They demand continuous attention from judicial authorities, investigators, forensic practitioners and decision makers within national mechanisms for missing persons. The repercussions of misidentifications are wide, encompassing psychological, religious, cultural, psycho-social, financial and legal aspects for the families concerned.

Often, misidentifications stem from basic flaws in evidence management, spanning from the point of discovery to the return of remains to the family, coupled with the absence of robust quality control systems. These errors undermine the overall response and erode public and familial trust in identifications.

Addressing misidentifications is paramount, requiring thorough investigations to establish accurate identification and ensure the correct body is returned to the family. It is imperative for technical teams and legal authorities to invest time and effort in transparently explaining the reasons behind misidentifications to concerned families, and to put in place measures to rectify and prevent future misidentifications.



POTENTIAL CAUSES OF MISIDENTIFICATION

- Lack of rigorous procedures that ensure a comprehensive, integrated and systematic approach to the identification, which takes into consideration all available lines of scientific and circumstantial evidence.
- A hierarchical and exclusive approach to identification.
- Over-reliance on one criterion/technique of identification only.
- Reliance on visual recognition in isolation.
- Acceptance of circumstantial personal information alone (e.g. clothing or personal effects, documents found with a body).
- Use of unreliable methodologies for identification.
- Use of unreliable information on the missing person.
- Inadequate recovery of human remains.
- Inadequate forensic examination of the unidentified person/body.
- Lack of, or inadequate, interpretation and reconciliation of the information.
- Lack of traceability (chain of custody) throughout the identification steps: incorrect labelling, record-keeping and case traceability system.
- Lack of appropriately qualified practitioners in each step of the process (investigation, recovery, forensic examination, further analyses, reconciliation of information).
- Lack of quality control and quality assurance mechanisms.
- Yielding to external pressure to complete an identification without following accepted procedures and/or reaching the necessary degree of certainty.

7. ADDRESSING CASES WHERE NO IDENTIFICATION IS MADE

The impetus to make identifications swiftly is often fuelled by compassion for families, public scrutiny faced by authorities, and the valid humanitarian and legal concerns of families. Beyond reuniting loved ones, identification is a legal imperative subject to peer review and legal scrutiny.

However, there are instances in which the available lines of evidence relating to missing persons, or data representing unidentified individuals, fall short, rendering identification unachievable. Acknowledging this limitation is a justifiable finding that demonstrates credibility and professionalism. In cases where the evidence does not provide the required certainty for competent peer review, refusing to make an identification is an objective decision, even if there is a strong suggestion or suspicion of a match based on circumstantial evidence.

An inconclusive identification does not mean that identification will never be possible.

8. NOTIFICATION, RESTITUTION OF BODIES AND FINAL DISPOSITION

According to the report by the UN Human Rights Council Advisory Committee on best practices in the matter of missing persons, “[a]ny forensic work on missing persons should be based on standards of forensic best practice (legal, ethical, scientific and technical) and conducted with the primary aim of identifying victims and returning their remains to their families. Direct contacts should be established between forensic teams and the relatives of the missing persons.”⁷

⁷ See UNGA, Human Rights Council, [Report by the Human Rights Council Advisory Committee on Best Practices in the Matter of Missing Persons A/HRC/16/70](#), 21 February 2011.

In practice, the method of notification is at the discretion of the relatives and can be private, through a designated contact, with family representatives, community involvement, or in the presence of religious or community leaders.

Before returning the remains, a preparatory meeting involving all parties concerned should be organized. Countries with successful experiences, such as Colombia and Cyprus, employ multi-disciplinary teams for notification and handover.

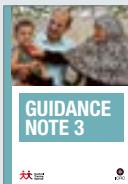
Sufficient time must be allotted for family meetings. Questions may arise about procedures, tests performed and conclusions. Addressing these queries requires careful consideration, ensuring scientific results are comprehensible to non-experts.

The identification of remains confirms the missing person's fate. Upon confirmation of death, a death certificate must be issued and registered, enabling family members to exercise legal and administrative rights related to the death.

The subsequent step is often the return of the remains. Proper arrangements, respecting families' wishes for viewing, and adherence to cultural and religious practices are essential. Families should have the autonomy to decide on specifics, in accordance with standards for dignified handover and final disposition.



For further information, refer to the following guidance note:



Consideration of the magnitude of operations is crucial, with designated areas for the return of remains. Forensic facilities can serve this purpose, ensuring a proper and dignified handover by staff familiar with the forensic process.⁸

Restitution of human remains
after their identification should be done in accordance with the local regulations and taking into consideration the wishes of the families.

Notification of the death and identification of a missing person is a crucial moment that must be thoroughly prepared for.

It can be done by different means of communication and at different stages.

The details must be agreed in advance with the family members.

⁸ See ICRC, [Accompanying the Families of Missing Persons: A Practical Handbook](#), ICRC, Geneva, 2013.



GUIDANCE NOTE 11

ENSURING COMPLEMENTARITY IN THE SEARCH FOR AND INVESTIGATION OF CASES OF MISSING PERSONS, INCLUDING VICTIMS OF ENFORCED DISAPPEARANCES



This Guidance note examines the relationship between search and criminal investigative processes related to missing persons and identifies key concerns that need to be addressed in order to ensure that these processes are conducted in a complementary manner and in accordance with international legal frameworks and standards.

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1. BACKGROUND AND PURPOSE

When a person is unaccounted for, international law sets out obligations for states relating to searching for and clarifying what has happened to that person, depending on the specific circumstances. International law also requires that states investigate and, if appropriate, prosecute international crimes, including those resulting in persons going missing. Where there are indications that a disappearance may be linked to a criminal offence, such as enforced disappearance, hostage-taking, homicide, kidnapping or extrajudicial execution, a criminal investigation must be opened. In contexts where the search for missing persons is conducted separately from criminal investigations, despite the complementary nature of the legal obligations, which are equally binding on states, challenges related to the interplay between the search and criminal investigations can arise – often, with regard to a specific caseload of missing persons. Bearing in mind that coordination practices must be context- and case-specific, this guidance note¹ discusses what needs to be anticipated to ensure that searches and criminal investigations are conducted in a complementary manner and in accordance with international legal frameworks and standards.

2. TERMINOLOGY

For the purpose of this guidance note, “**missing persons**” is understood to mean individuals of whom their families have no news and/or who, on the basis of reliable information, have been reported missing as a result of an armed conflict, other violence, or any other situation that may require the involvement of a competent state authority.² This notion includes victims of enforced disappearance and other crimes, such as hostage-taking, homicide, kidnapping or extrajudicial execution; it also includes people who have gone missing in the absence of a crime.

The notion of **missing persons**, although not defined in international law, is found in different international humanitarian law (IHL) rules, which broadly refer to persons reported missing for reasons related to an armed conflict, including those who were forcibly disappeared. Under international human rights law (IHRL), **enforced disappearance** is defined as the arrest, detention, abduction or any other form of deprivation of liberty by agents of the state, or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by a refusal to acknowledge the deprivation of liberty, or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.³ Enforced disappearance is a continuing violation against victims, including the disappeared person and their next of kin, until the fate and whereabouts are clarified. States party to the 2006 International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) must take the necessary measures to ensure that enforced disappearance constitutes an offence under their criminal law and to bring those responsible to justice.⁴ When such acts are committed by persons or groups of persons acting without the authorization, support or acquiescence of a given state, that state must take the appropriate measures to investigate and bring those responsible to justice.⁵

¹ This guidance note forms part of the set of guidance notes published by the ICRC Missing Persons Project relating to the creation of national search mechanisms for missing persons. The aim of these notes is to provide guidance to stakeholders in countries where the decision has been taken to create a new search mechanism. This document benefited from comments and feedback provided by a large number of stakeholders, including representatives of civil society organizations, state institutions and international institutions. The other guidance notes in the set focus on the following themes: contextual approaches, needs of families, assessment of political contexts, existing authorities, domestic legal and policy frameworks, involvement of families and family associations, impact measurement, data management and forensic aspects.

² ICRC, [Guiding Principles/Model Law on the Missing](#), ICRC Advisory Service on International Humanitarian Law, Geneva, 2009.

³ ICPPED, Art. 2. See also the preamble of the Declaration on the Protection of all Persons from Enforced Disappearance; and the Inter-American Convention on Forced Disappearance of Persons, Article II, 9 June 1994.

⁴ ICPPED, Arts. 4 and 11.

⁵ ICPPED, Art. 3.

Criminal investigations seek to establish whether the disappearance is linked to the commission of a crime (for example, enforced disappearance, hostage-taking, homicide, kidnapping or extrajudicial execution) and, if so, to identify, prosecute and, if appropriate, sanction the alleged perpetrators. They also seek to locate and release the person concerned, recover the body in the event of their death, and gather and preserve all evidence pertaining to the crime.

A **search process** is initiated because a person has been reported missing by his/her family or by any other actor, including state authorities. The search for missing persons involves a series of steps aimed at tracking and reconstructing their journey to determine their fate and whereabouts. In conjunction with the identification process, it aims to provide individualized answers on the fate and whereabouts of missing persons, including those forcibly disappeared, to their families and, ultimately, to reunite them with, or return their remains to, their loved ones. In a generic sense, “fate” refers to the state or condition of the person (alive or dead) and the circumstances and journey that led to that state, while “whereabouts” relates to the person’s location.⁶

In this guidance note, **coordination between the search process and criminal investigation** is understood as processes of interaction and exchange between different actors, institutions and mechanisms involved in the search and criminal investigations concerning missing persons. Coordination in these contexts includes, among other things, the recognition of respective mandates, a mutual understanding of the technical processes involved and the putting in place of procedures that support (and do not hinder) these processes and respect the specific mandates of those involved.

3. COMPLEMENTARY INTERNATIONAL LEGAL OBLIGATIONS

Both the search and criminal investigation are essential to meet the basic needs and uphold the rights of the missing and their families, and to ensure compliance by states with their international obligations related to accounting for missing persons and to accountability for international crimes. In addition, comprehensively addressing a legacy of serious violations of IHL and gross human rights violations that resulted in persons going missing is key to achieving and maintaining peace.⁷

In situations of armed conflict, IHL contains obligations for the parties to the conflict, whether states or non-state armed groups, to clarify the fate and whereabouts of persons who go missing as a result of the conflict, as well as obligations for states related to the repression of international crimes.⁸ The families of persons reported missing as a result of armed conflict have a right, under IHL, to know the fate and whereabouts of their relatives.⁹ Parties to the conflict must take all feasible measures to account for persons reported missing as a result of the conflict and to

⁶ ICRC, [The Forensic Human Identification Process: An Integrated Approach](#), ICRC, Geneva, 2022, p. 10.

⁷ See, for instance, the preamble of United Nations Economic and Social Council Commission on Human Rights, [Promotion and Protection of Human Rights: Report of the Independent Expert to Update the Set of Principles to Combat Impunity](#), Diane Orentlicher. Addendum: Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity (E/CN.4/2005/102/Add.1), 8 February 2005; United Nations Human Rights Council, [Accountability: Prosecuting and Punishing Gross Violations of Human Rights and Serious Violations of International Humanitarian Law in the Context of Transitional Justice Processes: Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence](#), Fabián Salvioli (A/HRC/48/60), 9 July 2021, para. 94; Swiss Peace Foundation, [A Conceptual Framework for Dealing with the Past](#), swisspeace Essential, Bern, February 2016, p. 5.

⁸ For more detail on relevant legal obligations, see ICRC, [Missing Persons and their Families](#), ICRC factsheet, Geneva, November 2023.

⁹ This right is enshrined in Protocol I additional to the Geneva Conventions, Article 32. See also J-M Henckaerts and L. Doswald-Beck (eds), *Study on Customary International Humanitarian Law, Vol. I*, ICRC/Cambridge University Press, 2005, [Rule 117](#) (Obligation to account for missing persons) and its interpretation, which notes that “[p]ractice indicates that this rule is motivated by the right of families to know the fate of their missing relatives”. See also, ICRC, [International Humanitarian Law and the Challenges of Contemporary Armed Conflict](#), ICRC, Geneva, September 2024, section III.

provide their family members with any information they have on their fate.¹⁰ Furthermore, in armed conflicts, there are also obligations under IHL to maintain, to the degree possible, family unity and contact between family members.¹¹ IHL also contains obligations relating to the dead that are of relevance to accounting for missing persons.¹² For instance, parties to the conflict must take all possible measures to search for, collect and evacuate the dead without adverse distinction. Bodies of those who died during armed conflict must be properly handled and their dignity protected. Parties must also record all available information before disposing of the dead and mark the location of the graves, with a view to identification and to informing the families of their fate and whereabouts. Parties must also endeavour to facilitate the return of remains to families, upon their request. Importantly, in addition to obligations related to accounting for persons who go missing in armed conflicts, IHL establishes obligations to investigate serious violations of IHL (or “war crimes”), including those resulting in persons going missing or being forcibly disappeared, and, if appropriate, to prosecute the suspects.¹³

IHRL also contains obligations and standards that are relevant to clarifying the fate and whereabouts of missing persons, and on the treatment of the dead, in connection not only with armed conflict but other situations also. In the case of enforced disappearance, under the ICPPED, states parties must take appropriate measures to uphold each victim’s right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation, and the fate of the disappeared person.¹⁴

States party to the ICPPED must take all appropriate measures to search for, locate and release disappeared persons and, in the event of death, to locate, respect and return their remains.¹⁵ States parties must cooperate and afford one another the greatest measure of mutual assistance in searching for, locating and releasing disappeared persons and, in the event of death, in exhuming, identifying and returning their remains.¹⁶ Other than with regard to enforced disappearance, human rights law treaties do not set out detailed provisions dealing specifically with missing persons or the treatment of the dead. However, several provisions contained in these have been interpreted by United Nations treaty bodies and regional courts as giving rise to obligations relevant to missing persons, the dead and the rights of their relatives, including provisions on clarifying the fate and whereabouts of missing persons. Under IHRL, states can be held responsible for failing to uphold: the rights to life, human dignity, private and family life,¹⁷

¹⁰ J-M Henckaerts and L. Doswald-Beck (eds), *Study on Customary International Humanitarian Law, Vol. I*, ICRC/Cambridge University Press, 2005, [Rule 117](#), applicable in international and non-international armed conflicts.

¹¹ See, for instance, J-M Henckaerts and L. Doswald-Beck (eds), *Study on Customary International Humanitarian Law, Vol. I*, ICRC/Cambridge University Press, 2005, [Rule 105](#) (Respect for family life) and its interpretation.

¹² See, for instance, ICRC Database, [Customary IHL](#), Rules, Customary IHL, Chapter 35. For more detailed information on specific provisions of the Geneva Conventions and their Additional Protocols, please refer to ICRC, [Humanity after Life: Respecting and Protecting the Dead](#), ICRC factsheet, Geneva, 2019.

¹³ For further information on this point, see the factsheets and reports listed under “Penal repression” in the ICRC’s [documentation on the national implementation of IHL](#). Under IHL, enforced disappearances are not specifically listed as grave breaches or other serious violations of IHL. However, when an act of enforced disappearance amounts to one of the grave breaches listed in the Geneva Conventions of 1949 and their Additional Protocol I (e.g. torture, inhuman treatment, wilfully causing great suffering or serious injury to body or health, and taking of hostages), it must be investigated, and those allegedly responsible must be prosecuted, as required by the grave breaches regime. Furthermore, under customary IHL, serious violations of IHL, whether committed in international or non-international armed conflicts, constitute war crimes. See ICRC Database, Customary IHL, Rules, Customary IHL, [Rule 98 \(Enforced disappearance\)](#); *ibid.*, [Rule 156 \(Definition of war crimes\)](#); *ibid.*, [Rule 158 \(Prosecution of war crimes\)](#).

¹⁴ ICPPED, Art. 24.2. See also United Nations Human Rights Council, [Report of the Working Group on Enforced or Involuntary Disappearances \(A/HRC/16/48\)](#), January 2011, para. 39, General comment 10, on the right to the truth in relation to enforced disappearance.

¹⁵ ICPPED, Art. 24(3).

¹⁶ ICPPED, Art. 15.

¹⁷ The protection of the family and the right to family life and unity are enshrined in numerous international and regional human rights instruments; under IHRL, no one shall be subjected to arbitrary or unlawful interference with one’s family life.

and an effective remedy; and the prohibition of torture, cruel, inhuman, or degrading treatment or punishment, and enforced disappearance.¹⁸ Notably, the right to life imposes a procedural duty on states to carry out an effective investigation of unlawful or suspicious deaths that occur within their jurisdiction.¹⁹ Finally, based on the right to an effective remedy and the obligation of public authorities to carry out an effective investigation into the circumstances surrounding a disappearance or other gross violations of human rights, human rights bodies and regional courts have also recognized a right to the truth.²⁰ Going beyond the individual rights and needs of the missing and their families, and the obligations of states, human rights bodies and regional courts have recognized that the respective community or society has a collective right to know what led to people going missing, and that there is a need to ensure that similar events are prevented from happening in the future.²¹

Where gross violations of human rights or serious violations of IHL have allegedly occurred in connection with a missing person, states have an obligation to investigate those violations and bring alleged perpetrators of international crimes to justice. Under IHRL, families have a right to justice.²² The ICPPED also requires that states take appropriate measures to investigate acts of enforced disappearance and bring those responsible to justice, and to inform families about

¹⁸ The relevant provisions can be found in several international human rights law instruments, such as the 1948 Universal Declaration of Human Rights (UDHR), the 1966 International Covenant on Civil and Political Rights (ICCPR), the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the 2006 ICPPED, as well as in various regional treaties, such as the 1950 European Convention on Human Rights (ECHR), the 1969 American Convention on Human Rights (ACHR) and the 1986 African Charter on Human and Peoples' Rights (AfCHPR).

¹⁹ See United Nations Human Rights Committee, [International Covenant on Civil and Political Rights: General Comment No. 36](#) (CCPR/C/GC/36), 3 September 2019, paragraphs 27–29.

²⁰ See, for instance, United Nations General Assembly, Human Rights Council, [Implementation of General Assembly Resolution 6/251 of 15 March 2006 Entitled "Human Rights Council": Right to the Truth – Report of the Office of the High Commissioner for Human Rights](#) (A/HRC/5/7), 7 June 2007; United Nations Economic and Social Council, Commission on Human Rights, [Promotion and Protection of Human Rights: Report of the Independent Expert to Update the Set of Principles to Combat Impunity, Diane Orentlicher. Addendum: Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity](#) (E/CN.4/2005/102/Add.1), 8 February 2005. See also, for instance, Inter-American Court of Human Rights, *Bámaca-Velásquez v. Guatemala*, Judgment of 25 November 2000 (Merits), para. 201; *Barrios Altos v. Peru*, Judgment of 14 March 2001 (Merits), para. 48; European Court of Human Rights, *Cyprus v. Turkey*, Judgment, 10 May 2001, para. 136.

²¹ See, for instance, Principle 2 – The Inalienable Right to the Truth, in UN Economic and Social Council, Commission on Human Rights, [Promotion and Protection of Human Rights: Impunity – Report of the Independent Expert to Update the Set of Principles to Combat Impunity, Diane Orentlicher*: Addendum – Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity](#) (E/CN.4/2005/102/Ad.1), 8 February 2005; United Nations Human Rights Council, [Report of the Working Group on Enforced or Involuntary Disappearances \(A/HRC/16/48\)](#), January 2011, para. 39, General comment 10, on the right to the truth in relation to enforced disappearance; Inter-American Court of Human Rights, *Barrios Altos case*, Judgment of 14 March 2001, Series C No. 75, para. 45. For more information on the four pillars of a holistic approach to dealing with the past (or transitional justice), beyond disappeared persons, see Swiss Peace Foundation, [A Conceptual Framework for Dealing with the Past](#), swisspeace Essential, Bern, February 2016.

²² See, for instance, the International Covenant on Civil and Political Rights, Art. 2, para. 3a and 3b, requiring states to give an effective remedy to any persons whose rights or freedoms are violated, to ensure that any person claiming such a remedy has their right thereto determined by competent authorities and to develop the possibilities of judicial remedy. See also United Nations [Human Rights Committee, General comment no. 31, 80th session, New York, 2004](#), para. 18. Beyond enforced disappearance, other relevant violations of human rights that can occur in the context of persons going missing or being disappeared include torture, cruel, inhuman and degrading treatment, and extrajudicial killings. Under international criminal law, international crimes may occur in the context of persons going missing or being disappeared, including enforced disappearances as a crime against humanity – see Rome Statute, Art. 7(1)(i). See also United Nations Human Rights Council, [Accountability: Prosecuting and Punishing Gross Violations of Human Rights and Serious Violations of International Humanitarian Law in the Context of Transitional Justice Processes: Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, Fabián Salvioli, \(A/HRC/48/60\)](#), 9 July 2021, para. 94, which states: “Mechanisms for seeking the truth are complements to justice and full redress, not substitutes for them.”

developments.²³ In cases of enforced disappearance, families are also considered victims under the ICPPED.²⁴ The authorities should at all times respect families and, where relevant, communities, and encourage and enable their participation in the search process and, where appropriate, in criminal investigations, without prejudice to the measures taken to preserve the integrity and effectiveness of the search and of criminal investigations.²⁵ Such participation can be hampered if the respective institutions do not work in a coordinated manner. It is the responsibility of state authorities to ensure that this is not the case.



For further information, refer to the following guidance note:



4. THE NEED TO ENSURE COMPLEMENTARITY IN PRACTICE

Despite a robust international legal framework protecting the missing, those who have died and their families, coordination among the different actors involved in search processes and criminal investigations can be challenging in practice. Challenges can arise owing to the fact that the search and criminal investigation look for similar information, such as personal and biological information regarding missing persons and their families; the circumstances in which the person went missing; and their suspected whereabouts, such as places of detention or the location of suspected gravesites. If there is no coordination between the search and the criminal investigation, one institution may monopolize the information, or create competition over access to and custody of it. As a result, the two processes may impede one another. This is relevant, for example, with regard to the investigation of human remains and gravesites, as activities such as excavations and exhumations can only be carried out once. Lack of coordination can cause delays and loss of critical information. If family members and witnesses are interviewed multiple times by different institutions, this can cause them undue stress and emotional harm. Improperly conducted interviews may also compromise testimonial evidence. Finally, lack of cooperation between search and criminal investigation processes can also revictimize families by asking them to choose one process over another.²⁶

In most contexts, law enforcement authorities are responsible for both the search and criminal investigations. However, separate search mechanisms,²⁷ as well as accountability mechanisms, are sometimes created, because existing law enforcement institutions do not have the capacity or willingness to deal with a large volume of complex cases, they lack the required independence and political trust, or they don't have a mandate to provide answers to families. While some such institutions do have mandates to focus exclusively on the search (for example, the Unit for

²³ Under IHRL, persons may disappear as a result of the crime of enforced disappearance – see, for instance, Articles 3, 4, 5, and 6 ICPPED; the preamble of the ICPPED also refers to the crime of enforced disappearance and to the right of victims to justice.

²⁴ ICPPED, Art. 24(1): “For the purposes of this Convention, ‘victim’ means the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance.”

²⁵ ICPPED, Art. 24(2); Principle 5 of the United Nations Committee on Enforced Disappearances (CED) Guiding Principles on the Search for Disappeared Persons.

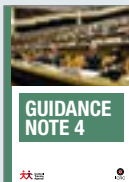
²⁶ United Nations Human Rights Council, [Accountability: Prosecuting and Punishing Gross Violations of Human Rights and Serious Violations of International Humanitarian Law in the Context of Transitional Justice Processes: Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, Fabián Salvioli](#), (A/HRC/48/60), 9 July 2021, para. 95.

²⁷ For the purpose of this guidance note, the term “mechanism” refers to all national institutions, commissions and other bodies and processes established by authorities that aim to provide individualized answers on the fate and whereabouts of missing persons and provide support to families of missing persons.

the Search for Persons Presumed Disappeared in Colombia, the National Search Commission in Mexico, the Committee on Missing Persons in Cyprus, the General Directorate for the Search for Disappeared Persons in Peru, the Missing Persons Task Team in South Africa, or the recently created UN Independent Institution on Missing Persons in Syria), others focus on the criminal investigation (for example, most prosecutorial institutions, Colombia's Special Jurisdiction for Peace, or the UN's International, Impartial and Independent Mechanism on international crimes committed in the Syrian Arab Republic). Still others seek to contribute, to varying degrees, to both objectives (for example, the Office on Missing Persons in Sri Lanka, whose primary goal is the search for missing persons but it also has the authority to coordinate with other authorities, including the judiciary). Where such separate search mechanisms or accountability mechanisms are created – for instance, based on a peace agreement, domestic law or UN resolutions – or where an existing institution sets up new procedures in this regard, any potential tensions between the search and criminal investigations need to be prevented and addressed from the outset.²⁸



For further information, refer to the following guidance note:



5. FACTORS THAT CAN IMPEDE COORDINATION, AND CONSIDERATIONS TO ADDRESS THEM

This section identifies key factors that can affect coordination. To show how these factors have been dealt with in practice, examples from different domestic contexts are provided. These examples are intended to be illustrative and are not indicative of good or bad practice.

5.1 Different institutional set-ups, mandates and sequencing

Where a new mechanism is created, issues of overlapping mandates and sequencing can arise. Specifically, overlap may refer to the types of cases regarding missing persons that a search mechanism has authority to pursue and that also fall under the authority of other entities, such as investigative authorities. Both search and criminal investigations may have limitations based on the law. For example, a search mechanism's mandate may be limited by time, geography, a specific situation or the circumstances of the disappearance. Meanwhile, a criminal investigation must follow rules of evidence and procedure that may not allow for the investigation of all missing persons cases for the purposes of the search.

Where a search and criminal investigation take place at different points in time, coordination challenges can arise. There is no legal basis under international law regarding sequencing of efforts to clarify the fate and whereabouts of missing persons, or investigation and prosecution of enforced disappearance and other crimes resulting in people going missing. However, in contexts where, prior to a new search mechanism being established, one institution is responsible for both the search and the criminal investigation, it often tends to prioritize either establishing the fate and whereabouts or criminal responsibility, especially where there is a large caseload. In other contexts, political or other constraints may prevent criminal investigations from advancing and only permit search activities to take place.

²⁸ Certain considerations mentioned can also be relevant if one and the same institution is responsible for pursuing both objectives.

Issues to be considered:

- Where cases have been the subject of a criminal investigation or a search in the past, a new search mechanism should have access to relevant information. At a minimum, this should include list(s) of missing persons, their suspected locations (for example, places of detention, hospitals, mortuaries, or gravesites) and any other information relevant to establishing their fate and whereabouts. Although due consideration must be given to the humanitarian purpose of accessing information, the scope of the information that can be shared (for example, sources of the information) might be limited by laws that protect privacy, confidentiality and due process rights. In such cases, consideration must be given to amending relevant laws to include compliance with international legal obligations related to clarifying fate and whereabouts as a legal basis for processing and sharing personal and confidential information.
- If the search mechanism is established in a context where there is, for the time being, little scope for progression of a criminal investigation, search activities must in any case comply with due process (i.e. they must be conducted according to the law and in such a way as to protect the rights of individuals) and chain-of-custody requirements, to ensure that future criminal investigations are not impeded (see also sections 5.2 and 5.3 below). Moreover, it will be important to ensure that strategies are adopted to overcome decay of physical evidence over time and the potential loss of witness and informant information (because of ill health, old age, loss of memory or death).
- Where prevailing conditions prevent criminal investigations from moving forward at the time of the establishment of the new search mechanism, it is necessary to ensure that the search mechanism is authorized to collect information regarding the locations of suspected gravesites, existence of unidentified bodies and possibility that a crime may have occurred (see sections 5.2 and 5.3 below). Likewise, authorities will need to ensure that suspected gravesites are protected from further disturbance, intentional and unintentional, including from construction works.
- Regardless of the presumed perpetrator(s) of crimes (state or non-state actors), access to independent forensic expertise may be an important consideration in circumstances where identifications would otherwise risk being called into question.

If the search mechanism is temporary, its mandate should include provisions that indicate what happens to information held by it after the end of its mandate, including preservation and protection of that information against unauthorized access, and under what conditions law enforcement authorities or other institutions and actors may gain access to it and for what purpose.

**Mexico**

Before the General Law on Enforced Disappearance of Persons, Disappearance Perpetrated by Private Individuals and on the National Search System (*Ley General en Materia de Desaparición Forzada de Personas, Desaparición Cometida por Particulares y del Sistema Nacional de Búsqueda de Personas*) entered into force in 2018, the prosecutors' offices were in charge of both criminal investigations and searches for disappeared persons.²⁹ After the law entered into force, search and criminal investigation concerning disappeared persons were entrusted to different institutions, leading to the creation of, among other entities, the National Search Commission (*Comisión Nacional de Búsqueda*, CNB) and state search commissions. The main obligation of the CNB, a decentralized branch of the Ministry of the Interior, is to carry out and/or coordinate, together with the various federal and state authorities, search activities in order to clarify the fate or whereabouts of missing persons. The CNB is required by law to search for all missing persons, past, present and future, as long as they fall within the definition of "disappeared or unaccounted for".³⁰

²⁹ A. Srovin Coralli, [Coordination Between the Search and Criminal Investigations Concerning Disappeared Persons. Case Studies on Bosnia and Herzegovina and Mexico](#), swisspeace, Bern, June 2021.

³⁰ CNB, "[¿Qué es la Comisión Nacional de Búsqueda?](#)" (About the National Search Commission).



Colombia

In Colombia, the Prosecutor's Office has always been responsible for both the search and criminal investigations. To fulfil the former task, a separate section responsible for the search was created within the Prosecutor's Office.

Based on the Peace Agreement signed in 2016 between the Colombian Government and the FARC-EP (Revolutionary Armed Forces of Colombia – People's Army), new measures have been implemented in Colombia. Specifically, in 2017, the Comprehensive System of Truth, Justice, Reparation and Non-Repetition (abbreviated to SIVJNR in Spanish) was established. It comprises different mechanisms, such as the Special Jurisdiction for Peace (abbreviated to JEP in Spanish), the Search Unit for Missing Persons (abbreviated to UBPD in Spanish) and the Truth, Coexistence and Non-Repetition Commission. The UBPD and the JEP have specific mandates regarding, respectively, the search for and criminal investigations concerning disappeared persons.

The UBPD is a humanitarian and non-judicial authority that leads, coordinates and contributes to the search for persons who went missing, for whatever reason, during the various armed conflicts that have affected the country and whose disappearance was reported before 1 December 2016. In cases where the person concerned is found to have died, and where possible, it recovers and returns the remains. The UBPD has a remaining mandate of 15 years, extendable by law.³¹

The JEP is the justice component of the SIVJNR. It has the task of investigating, clarifying, judging and punishing the most serious crimes committed prior to 1 December 2016 due to, on the occasion of, or in direct or indirect relation to the armed conflict. Crimes committed after that date fall under the jurisdiction of the ordinary justice system. The JEP focuses on the most serious and representative crimes of the armed conflict (including enforced disappearances), in accordance with the selection and prioritization criteria defined by law and the judiciary. The JEP may try crimes committed by former FARC-EP members, members of the security forces, or other agents of the state, and civilian third parties. The JEP has a maximum term of 20 years.³²

In addition to the Peace Process mechanisms, ordinary state institutions, such as the National Forensics Institute, are involved in the search and/or criminal investigation processes.

In 2024, the state created a National Search System to unite search and investigation mechanisms under one public policy.³³

³¹ Colombia, [Decreto Ley 589 de 2017 \(Abril 5\)](#), *Por el cual se organiza la Unidad de Búsqueda de Personas dadas por desaparecidas en el contexto y en razón del conflicto armado.*

³² [Jurisdicción Especial para la Paz.](#)

³³ Colombia, [Decreto 532 de 2024 \(Abril 29\)](#), *Por el cual se adiciona el Capítulo 9 al Título 5 de la Parte 2 del Libro 2 del Decreto 1069 de 2015, Único Reglamentario del Sector Justicia y del Derecho, para reglamentar el Sistema Nacional de Búsqueda de Personas dadas por Desaparecidas en contexto y en razón del conflicto armado, incluyendo a las víctimas de desaparición forzada.*



Sri Lanka

Prior to the establishment of the Office on Missing Persons (OMP), the Police held primary responsibility for both the search for missing and disappeared persons and criminal investigations of such cases. However, other mechanisms, too, were legally entrusted with the power to investigate and search for missing and disappeared persons, though not necessarily with a criminal or prosecutorial function. For example, the Human Rights Commission of Sri Lanka (HRCSL) conducts its own investigations into those reported missing. Its legal basis for doing so derives from a possible violation of a fundamental right established by the Constitution (such as prohibition of arbitrary arrest or detention, or prohibition of torture) and committed by a state official. It can visit places for purposes of investigation, call for evidence and record statements from concerned parties. Where the HRCSL finds, as a result of its investigation, a possible violation of a fundamental right, it will refer this to the authorities for criminal prosecution. Among the other alternative mechanisms are the various commissions of inquiry that were created under the Commissions of Inquiry Act and presidential gazettes. These have conducted investigations relating to, and searches for, missing and disappeared persons but on an ad hoc basis for particular situations, and they were disbanded once they had fulfilled their mandate. Their investigations were not of a criminal nature, leaving the police with the task of gathering evidence for any subsequent prosecution.

Only a handful of cases involving missing and disappeared persons were prosecuted before the establishment of the OMP, however. In these cases, the missing and disappeared persons were not identified, and their remains were not returned to their families. For example, in the “Embilipitya abduction and murder case”, although several perpetrators were convicted before Ratnapura High Court, the remains of the victims were not identified or returned to the families.

The OMP was established by the Office on Missing Persons (Establishment, Administration and Discharge of Functions) Act No. 14 of 2016 (OMP Act). Under section 10(1), it has a mandate to:

- “(a) search for and trace missing persons and identify appropriate mechanisms for the same and to clarify the circumstances in which such persons went missing
- (b) make recommendations to the relevant authorities towards addressing the incidence of missing persons
- (c) protect the rights and interests of missing persons and their relatives ...
- (d) identify avenues of redress to which missing persons and relatives of missing persons are entitled ...
- (e) collate data related to missing persons obtained by processes presently being carried out, or which were previously carried out, by other[s] ... and centralize all available data, within the database established under this Act ...”³⁴

Under section 27 of the OMP Act, the OMP’s mandate extends to persons who went missing or disappeared in connection with the conflict, political unrest, or civil disturbances, or as an enforced disappearance; and to personnel of the armed forces or police who have been identified as missing in action. Searching for missing persons who fall outside of the OMP’s mandate – for example, those who went missing in connection with a natural disaster, on account of mental illness, or following a personal dispute – would come under the authority of the Police.

³⁴ Sri Lanka, [Office on Missing Persons \(Establishment, Administration and Discharge of Functions\) Act No. 14 of 2016](#).



Peru

Before the adoption in 2016 of Law No. 30470 on the Search for Disappeared Persons During the Period of Violence 1980–2000 (*Ley de Búsqueda de Personas Desaparecidas durante el período de violencia 1980–2000*), the prosecutor’s office was in charge of criminal investigations and searches for missing and disappeared persons (in individual cases).

In 2017, the General Directorate for the Search for Disappeared Persons (*Dirección General de Búsqueda de Personas Desaparecidas*, DGBPD) was created as a line agency of the Ministry of Justice and Human Rights and given responsibility for implementing the National Missing Persons Search Plan. The DGBPD is in charge of searching for persons who disappeared during the period of violence from 1980 to 2000, in coordination with other entities such as the prosecutor’s office. It has a humanitarian mandate, so, in ongoing cases where a crime has been committed, or when a judicial sentence determines that the search must be conducted by the prosecutor’s office, the search is led by the Public Ministry (which has its own protocol to adopt a humanitarian approach in these cases). According to Law No. 30470, the DGBPD’s humanitarian mandate requires it to orient the search for missing persons towards the recovery, identification, restitution and dignified burial of remains, without encouraging or hindering the determination of criminal responsibility. In addition, the DGBPD is in charge of managing the National Registry of Missing Persons and Burial Sites (abbreviated to RENADE in Spanish) and the Genetic Data Bank.

Disappearances that occurred before 1980 and after 2000 are investigated through the ordinary justice system, i.e. the search (and, where necessary, the criminal prosecution) is conducted under the auspices of the Public Ministry. There is also a specific mechanism for searching for vulnerable persons who have gone missing (children, women, victims of gender-based violence, migrants, elderly people, people with disabilities, indigenous people, LGBTIQ+, people in poverty, etc.). In these cases, the National Police leads the search process, in coordination with other authorities (Legislative Decree 1428 of 2018). None of these mechanisms was created in response to a specific situation or period of armed conflict.

Bosnia and Herzegovina

With the adoption of the Law on Missing Persons (LMP) in 2004, a new institutional and legal framework for the search for missing persons was established in Bosnia and Herzegovina (hereafter Bosnia-Herzegovina).³⁵ The LMP, according to Article 2, applies to persons who disappeared in the period from 30 April 1991 to 14 February 1996. It provides *inter alia* for the establishment of the Missing Persons Institute (MPI) of Bosnia-Herzegovina – a mechanism at the state level, which replaced two existing search commissions at the federal level.³⁶ The MPI was established in 2005 – co-founded by the International Commission on Missing Persons (ICMP) and the Bosnia-Herzegovina Council of Ministers.³⁷ It has a “mandate to search for and identify missing persons across the country and to establish and manage a central register of missing and identified persons”.³⁸ Specifically, its tasks are to:

- 1) “document and maintain records of missing persons and grave sites, as well as to request court orders to investigate these sites
- 2) participate in technical activities relating to the search, excavation, examination, identification and storage of the mortal remains of missing persons

35 OHCHR, “[Preliminary Observations from the Official Visit to Bosnia and Herzegovina](#)”, Statement by the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, Sarajevo, 10 December 2021.

36 A. Srovin Coralli, [Coordination Between the Search and Criminal Investigations Concerning Disappeared Persons. Case Studies on Bosnia and Herzegovina and Mexico](#), swisspeace, Bern, June 2021.

37 ICMP, “[Council of Ministers formally approves Missing Persons Institute](#)”, press release, 5 August 2005.

38 *Official Gazette of Bosnia and Herzegovina* No. 13/5, 29 December 2005.

- 3) provide support to families of the missing and their associations, especially in covering funeral costs
- 4) cooperate with relevant authorities in neighbouring countries in searching for the missing, and
- 5) inform the public about the outcomes of investigations and progress made.”³⁹

In addition, in the aftermath of the conflict, priority was given to the prosecution of war crimes, led by the work of the International Criminal Tribunal for the Former Yugoslavia (ICTY). As part of these efforts, a special prosecutor’s office and a special chamber on war crimes were created within the Court of Bosnia–Herzegovina.⁴⁰ Although enforced disappearances were not included in the mandate of the ICTY, “it prepared the ground for the prosecution of this crime in domestic settings ... by referring to the commission of [the crime of] enforced disappearances in a few cases ...”⁴¹

5.2 Gathering, handling and sharing information

When it comes to coordination between the search and the criminal investigation, a key challenge is the gathering, handling and sharing of information. Similar types of information are often sought by criminal investigations and searches, and both may exercise similar investigative powers.

Rules applicable to how search processes and criminal investigations gather and handle information can impact coordination. Criminal investigations must follow due process rules in gathering evidence and comply with chain-of-custody requirements as provided for by law. Search mechanisms can be made exempt from evidentiary rules applicable in criminal investigations.⁴² While this often allows search mechanisms to obtain information more easily and use a much broader range of information, it also means that information gathered by them may be of limited use to a criminal investigation.

Search mechanisms and law enforcement authorities may gain access to confidential information and information that was acquired on conditions of confidentiality, which may not be accessible to any other institution. At times, obtaining information from perpetrators may be critical to finding a person alive, locating a gravesite or establishing the identity of the deceased person in a grave. Such information may be obtained on conditions of confidentiality and/or, as appropriate, in exchange for lesser penal sanctions. In such a situation, if there is no coordination, one institution could monopolize access to and/or custody of the information, impeding the work of the other. For example, if information regarding the occurrence of a crime is acquired by a search mechanism on the condition of confidentiality, it may not be possible to share that information with a criminal investigation. At the same time, however, if confidentiality is not protected and the source of the information has to be disclosed in all circumstances, certain institutions/sources of information may not be willing or able to cooperate with the search mechanism and thus withhold potentially important information necessary to clarify the fate and whereabouts of a person.

³⁹ J. Sarkin, L. Nettelfield, M. Matthews and R. Kosalka, *Bosnia and Herzegovina: Missing Persons from the Armed Conflicts of the 1990s: A Stocktaking*, International Commission on Missing Persons, Sarajevo, 2014, p. 39.

⁴⁰ OHCHR, “[Preliminary Observations from the Official Visit to Bosnia and Herzegovina](#)”, Statement by the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, Sarajevo, 10 December 2021.

⁴¹ A. Srovini Coralli, [Coordination Between the Search and Criminal Investigations Concerning Disappeared Persons. Case Studies on Bosnia and Herzegovina and Mexico](#), swisspeace, Bern, June 2021, p. 20.

⁴² For instance, the Sri Lankan Office on Missing Persons is not bound by the Evidence Ordinance and it can admit evidence that might be inadmissible in civil or criminal proceedings ([Office on Missing persons Act No. 14 of 2016](#), section 12(c)(iii)).

Coordination issues can also arise where remains need to be recovered and identified. Key activities relating to the investigation of human remains, such as excavation and exhumation, can only be carried out once. Criminal investigations and the search may use different methods of investigation or lenses to analyse the remains and any other relevant finds discovered at a gravesite (the associated finds). For example, when investigating human remains, a criminal investigation seeks to go beyond processes required for identification in order to obtain evidence that a crime was committed. In such a context, if a search mechanism takes possession of physical evidence, including remains and associated finds at a gravesite, information relevant for criminal investigations might not be gathered or shared with law enforcement authorities.⁴³ Similarly, where law enforcement authorities recover and handle remains in the absence of a clearly defined search mandate, there may be a risk that relevant information is not gathered or analysed in a manner that enables the identification of the remains and their return to families.⁴⁴ For instance, information that may be relevant to searches for other missing persons may not be gathered or appropriately considered as part of a criminal investigation.

Issues to be considered regarding gathering and handling information:

Information acquired on conditions of confidentiality

- When search processes are being designed, all relevant authorities need to be consulted to ensure that a search mechanism's mandate and its provisions regarding access to information and conditions of confidentiality are in line with existing laws and regulations on access to information (information in national archives, information classified by Armed Forces, intelligence services, etc.) and with relevant international obligations.
- In consultation with relevant authorities, the search mechanism should establish rules on the conditions of confidentiality that can be granted to those who provide information to a search mechanism. Developing such rules in consultation with law enforcement and judicial authorities can help ensure that such rules support the priorities and obligations of both criminal investigations and search mechanisms – for example, by providing sufficient incentives for perpetrators to provide information – while ensuring compliance with relevant international obligations.
- Where the search mechanism has the authority to grant confidentiality regarding information that may lead to the identification of alleged perpetrators, the conditions of confidentiality should be narrowly construed to avoid impeding ongoing or future criminal investigations.⁴⁵ This can be done, for example, by ensuring that confidentiality is granted only with regard to information relevant to the fate and whereabouts of the disappeared person, thus allowing for the possibility of the source going on to cooperate with a criminal investigation. Alternatively, confidentiality may be only assured in relation to the source of the information, whereas the content of the information can be shared with a criminal investigation, which may then enable the law enforcement authorities to admit the same information into evidence using alternative sources.
- Authorities will also need to ensure that the ability of the search mechanism to accept information on the condition of confidentiality does not prevent it from reporting to

⁴³ In Ireland, the Independent Commission for the Location of Victims' Remains is not permitted to carry out forensic testing for any purpose other than identification. See the "[Confidentiality](#)" section of the Commission's website.

⁴⁴ In the context of investigations carried out by the Office of the Prosecutor of the International Criminal Tribunal for Former Yugoslavia, in some instances, following an analysis of the remains to gather information relevant for the criminal investigation, the remains were reburied without identifying markers. See E. Stover and R. Shigekane, "The missing in the aftermath of war: When do needs of victims' families and international war crimes tribunals clash?" *International Review of the Red Cross*, Vol. 84, No.848, December 2002, pp. 645–866 and p. 859.

⁴⁵ Note that some organizations, such as the ICRC, have specific working procedures that impose limitations on the use of their information. See, for instance, ICRC, "The ICRC's privilege of non-disclosure of confidential information", *International Review of the Red Cross*, Vol. 97, No. 897/898, 2016, pp. 433–444.

law enforcement authorities that a crime may have occurred. This ensures that if a crime did occur in relation to a person going missing, law enforcement authorities are informed that a criminal investigation may need to be carried out, in addition to the search.

- In consultation with the search mechanism, law enforcement authorities should establish rules on how to gather information regarding the fate and whereabouts of missing persons and on how to share such information with the search mechanism.

Searching premises

- If the search mechanism has the authority to search premises (such as places of detention, hospitals, morgues), it should, in consultation with law enforcement authorities where appropriate, develop rules for carrying out such visits in a manner that would not violate a potential crime scene. The rules should consider the circumstances in which a visit is carried out (for example, a search mechanism may elect only to visit places of detention if a missing person is believed to be in detention.) Alternatively, if the mechanism intends to visit a place of detention to obtain further information regarding persons who may have disappeared following their detention, it may decide not to take any physical evidence.

Physical evidence

- Rules of evidence and chain-of-custody requirements should be observed by the search process as well as the criminal investigation, as they are the basis for ensuring reliable and accurate information and conclusions.
- Search mechanisms should ensure that the gathering and handling of physical evidence do not impede a criminal investigation. For example, the search mechanism could restrict the physical evidence collected to that necessary for the purposes of the search and identification.

Human remains

- States should ensure that the search mechanism and law enforcement authorities carry out their work in a coordinated manner and do not work in silos.
- Search mechanisms and criminal investigations should both adopt a multidisciplinary approach to the excavation, exhumation and analysis of remains and should ensure that information is gathered in a manner that respects the dignity of the dead and follows forensic standards and practices.⁴⁶
- If the search mechanism has the authority to carry out excavations, exhumations and analyses of remains, it should adhere to rules of evidence and chain-of-custody obligations to prevent the destruction of evidence. This also helps ensure the evidence can be used in criminal investigations. In such contexts, the law enforcement authorities should be made aware that an excavation or exhumation is taking place. Further, the search mechanism may be mandated to provide information collected as a result of exhumations and analysis of remains to law enforcement authorities.⁴⁷
- If only law enforcement authorities have the authority to investigate remains, including via excavations or exhumations, the search mechanism should be permitted to act as a stakeholder in the investigation. This stakeholder status should permit the search mechanism to directly observe the investigation; make recommendations;

⁴⁶ Multidisciplinary means that multiple disciplines should be involved in the processes of excavating, exhuming and analysing remains and associated finds. For example, when remains are discovered, they and any associated finds should be gathered and analysed using the likes of witness testimony and historical research to establish the context of a gravesite, history of the local area and local burial practices. Various experts in the field of forensic science should also be used, including forensic archaeologists and anthropologists, forensic odontologists, forensic pathologists and experts in DNA analysis.

⁴⁷ In Colombia, law enforcement authorities may request the forensic reports and other material elements associated with the bodies from the UBPD – see Art. 3, [Decreto Ley 589 de 2017 \(Abril 5\)](#).

provide support if and as appropriate; and support families to observe and, where appropriate, participate in the investigation.

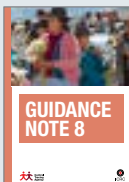
- Where law enforcement authorities carry out the investigation into remains, including excavation or exhumation, they should be under a duty to share with the search mechanism, as a minimum, information relevant to establishing the identity of the deceased.

Issues to be considered with a view to enhancing the sharing of information:

- When information is shared between search mechanisms and law enforcement authorities, their different mandates, existing regulations on data privacy, and the legal rights and the safety of the missing and their families should all be taken into account.
- Search mechanisms and law enforcement authorities should establish regular channels of communication (formal and informal) to provide a space in which information can be shared and potential challenges clarified.
- Search mechanisms and law enforcement authorities should be able to request information and assistance from each other and be under a general obligation to cooperate with such requests within the limits of their respective mandates and in compliance with applicable laws and standards on the protection of personal information.
- In some circumstances, search mechanisms can decide not to share the source of the information with law enforcement authorities. This may encourage some actors to share more information with search mechanisms, if they know their confidentiality can be protected.
- Actors involved in the search and in criminal investigations should share list(s) of missing persons relevant to these processes, in compliance with applicable laws and standards on the protection of personal information. A list of missing persons can inform both search mechanisms and law enforcement authorities.
- The same actors should establish a strategy for regular sharing of information generated through secondary analysis – for example, patterns in the context in which persons went missing; historical facts of relevance to the context; information generated from technical experts and through analyses of maps, satellite images, archival records and (international and national) databases.
- Information regarding suspected or confirmed gravesites should be shared between the search mechanism and law enforcement authorities.
- Relevant databases containing information regarding missing persons should be either consolidated or their interoperability established. These could include key information such as the date on and location at which a person went missing, and their personal information. To this end, authorities should develop and comply with standard operating procedures to govern the transfer and sharing of information (including physical, testimonial, or other) both ways between the search mechanism and the criminal process. In order to facilitate such transfers, clear rules should be set out on information and data collection and sharing among different actors (regarding, for example, harmonization and standardization of the information collected, ensuring interoperability among databases).



For further information, refer to the following guidance note:





Colombia

Colombia's National Registry of Missing Persons is an interinstitutional information system with the primary purposes of identifying unidentified human remains, searching for missing individuals and following up missing persons cases. This extensive registry, known as the Registro Nacional de Desaparecidos (RND) in Spanish, comprises various independent systems and databases, which work together to assist the search for missing persons in Colombia.

As for the Search Unit for Missing Persons (UBPD – see section 5.1 above), owing to its humanitarian and extrajudicial nature, the information the unit receives with regard to clarifying the fate and whereabouts of disappeared persons is confidential: it cannot be used as evidence in criminal proceedings and shall not have probative value.⁴⁸ In addition, UBPD officials, contractors and seconded staff are exempt from the duty to report and may not be compelled to testify in judicial proceedings, provided that the knowledge of the facts was gained in the performance of their functions.⁴⁹ However, Decree 589 also states that:

- the activities of the UBPD shall not replace or impede any judicial investigations that may be undertaken. The search by the UBPD for persons reported missing shall not disqualify the competent judicial authorities from carrying out the investigations they deem necessary to establish the circumstances and responsibilities of cases taken on by the UBPD
- the technical forensic reports and the physical evidence associated with the remains may be required by the competent judicial authorities and will have probative value. Neither the technical forensic report nor the physical evidence will contain any decisive information to incriminate an individual. To guarantee the probative value of this information, Article 10 of the Decree establishes specific rules for securing physical evidence associated with the remains.⁵⁰

Sri Lanka

Criminal or civil liability cannot arise from the findings of the OMP (section 13(2)). The OMP is also not bound by the Evidence Ordinance and it can admit evidence that might be inadmissible in civil or criminal proceedings (section 12(c)(iii)).

The responsibility for carrying out criminal investigations lies with the Police under the supervision of magistrates' courts (see Code of Criminal Procedure Act 1979, Chapter V), and prosecutions are carried out by the Attorney-General's Department before the High Court (see Judicature Act 1979, section 9).

The OMP can refer an offence to a law enforcement authority for criminal investigation, after consultation with relatives of the missing persons and in consideration of the best interests of the victims, relatives and society. A report forwarded by the OMP should "provide information relating to the missing person's civil status (such as the name, age and gender of the missing person), the place(s) or district(s) in which the missing person was last seen and the date thereof ...".⁵¹ Where the witness consents, the OMP may inform the relevant authority of details of the witness, in order to enable the authorities to secure a witness statement (OMP Act, section 12(i)).

⁴⁸ Colombia, [Decreto 589 de 2017 \(Abril 5\)](#), Art. 3.

⁴⁹ Colombia, [Decreto 589 de 2017 \(Abril 5\)](#), Art. 5.

⁵⁰ Colombia, [Decreto 589 de 2017 \(Abril 5\)](#).

⁵¹ Sri Lanka, [Office on Missing Persons \(Establishment, Administration and Discharge of Functions\) Act No. 14 of 2016](#), section 12(i).



Peru

Since Law No. 30470 came into force and the DGBPD was created, the latter has been able to establish lines of coordination with the prosecutors' offices, which are still responsible for providing a judicial response in cases of disappearance and enforced disappearance. Coordination between the judicial and humanitarian search processes has been enhanced by directives from the Public Ministry and the Ministry of Justice and Human Rights, which established a three-phase search process: humanitarian investigation, joint intervention and closure of the process.⁵² Stage one, the humanitarian investigation, is carried out by the DGBPD alone and aims to establish the fate of a person who has disappeared. It involves, for example, researching the context of the disappearance, collating information, contacting relatives and local authorities, visiting the area in question, identifying possible current whereabouts or burial sites, as applicable, and collecting biological samples (these are collected from family relatives and from recovered remains, and are used to create genetic profiles for the purpose of identification). Stage 2, joint intervention, entails collaboration between the DGBPD, the Office of the Public Prosecutor and forensic teams with regard to recovery, analysis and identification of remains, where applicable. Stage 3, closure, involves the dignified restoration of remains to families, where disappeared persons have been found to be deceased; or family reunification, where they have been found alive.⁵³ An agreement between the Public Ministry and the Ministry of Justice and Human Rights was signed in 2019 (and updated in 2023) to facilitate the exchange of information and interaction between them, within the scope of Law 30470.

The DGBPD also administers the National Registry of Missing Persons and Burial Sites (RENADE), created by Law 30470, and the Genetic Data Bank (BDG), created by Legislative Decree No. 1398 in 2018. Law 30470 establishes an obligation to share information and systematize it in the RENADE and the BDG. DGBPD is empowered, as part of its activities, to receive anonymous information on the whereabouts of a person or the suspected burial site.

Northern Ireland

During the Troubles in Northern Ireland, 17 people disappeared. Under the Belfast/Good Friday Agreement between the Irish and British Governments signed in 1998 and under legislation enacted in Ireland and the United Kingdom, the Independent Commission for the Location of Victims' Remains (ICLVR) was established. The aim of this process, which is humanitarian in nature rather than a criminal investigation and has been agreed with the individual families of the disappeared, is to receive information that may lead to the location of the remains of victims. All the information obtained is legally privileged, cannot be shared with other agencies and is not admissible as evidence in any criminal proceedings. In addition, there are restrictions on the forensic testing of human remains and other items found. As part of its one-way information-sharing process, the ICLVR has developed and agreed memoranda of understanding with various enforcement agencies instituting very strict rules on the sharing, storage, confidentiality and dissemination of information.

⁵² Peru, [Dirección General de Búsqueda de Personas Desaparecidas](#) and Ministerio Público, Resolución de la Fiscalía de la Nación No. 2042-2024-MP-FN, 20 September 2024.

⁵³ C. Collins (ed.), *An Innovative Response to Disappearances: Non-Judicial Search Mechanisms in Latin America and Asia*, GIJTR, 2022.



Bosnia-Herzegovina

The LMP sets forth the following articles in connection with gathering and sharing information:

- **Article 4 (Obligation to provide information):** the bodies and institutions of Bosnia-Herzegovina, the Federation of Bosnia-Herzegovina, the Republika Srpska and Brčko District of Bosnia-Herzegovina in charge of defence, justice and internal affairs, as well as other bodies in charge of tracing missing persons in Bosnia-Herzegovina, and other entity, cantonal and municipal bodies that, within their competences, resolve cases related to the disappearance of persons in/from Bosnia-Herzegovina ... are obliged to provide families of the missing and relevant institutions in charge of tracing missing persons with available information and to give all necessary assistance to improve the tracing process and the process of resolving cases of disappearances of persons in/from Bosnia-Herzegovina.
- **Article 5 (Exchange of information):** the relevant authorities in Bosnia-Herzegovina, at all levels, shall ... designate relevant bodies, i.e. officials that/who shall cooperate with relevant institutions and bodies in charge of tracing missing persons, and family associations and members of families of the missing, and provide assistance in the realization of the rights of family members of missing persons in accordance with this and other applicable laws in Bosnia-Herzegovina.

The relevant authorities in Bosnia-Herzegovina, on the basis of previous and new requests for information, are responsible for: collecting and verifying all relevant information and facts, quoting all sources that have been checked in the process of establishing such information concerning the disappearance of a missing person, consulting all official documents and materials within their respective institutions and submitting a written notification of the documents consulted and the findings to both the applicant/enquirer and relevant institutions in charge of tracing missing persons.

The provisions of the Law on Administrative Procedure in Bosnia-Herzegovina (*Official Gazette of Bosnia-Herzegovina* No. 29/02) shall apply to information requests, including the provisions on deadlines for lodging a complaint in case of an unsatisfactory answer, or initiation of an administrative dispute in the case of “silent administration”.

All new information that may facilitate the tracing or identification of a missing person must be subsequently noted/accepted and investigated ...

- **Article 6 (Obligation to exchange and cooperate):** the relevant authorities in Bosnia-Herzegovina are mutually obliged to exchange information pertaining to the tracing process and determining the fate and identity of missing persons.

In order to improve the tracing process, the relevant authorities in Bosnia-Herzegovina shall cooperate particularly, but not solely, with the ICRC, the ICMP, the Missing Persons Institute and the Red Cross Society of Bosnia-Herzegovina, in accordance with their respective mandates.

- **Article 23 (Protection of data):** the data from the Bosnia-Herzegovina Central Records on Missing Persons (abbreviated to CEN) shall be made available to all levels of authority, in compliance with established regulations and standards on data protection.

The regulations/manner of managing the database, entering data, exchange and usage of data, and particularly their verification, is regulated in detail by the Bosnia-Herzegovina CEN Book of Rules ... Cooperation with other competent authorities in Bosnia-Herzegovina that have data relevant to tracing missing persons is regulated under a special agreement that establishes the mode of cooperation and all other important issues.

Persons who are engaged/involved in managing and handling personal information related to confidential data on biological, hereditary, physical and genetic properties and medical data on a missing person are obliged to keep the information confidential and handle it in accordance with established rules for protection of such information, i.e. in accordance with the Law on Protection of Personal Data (Official Gazette of Bosnia-Herzegovina No. 32/01).

The rules on the protection of data shall be regulated in detail by the Book of Rules, as referred to in paragraph 2 of this article. Regarding the main institutions involved in this matter, a study conducted by swisspeace found the following:⁵⁴

MPI:

- receives information through families of missing persons, eyewitnesses, archives, etc.
- receives information reported anonymously
- adds data to and manages the CEN (information is partially shared with the public)
- shares all information that could be useful for exhumations with the Prosecutor's Office of Bosnia-Herzegovina (except the name of the person who provided the information to the MPI, which can be withheld)
- regularly exchanges information internally and with the State Investigative and Protection Agency's TERRA Operative Team and the Prosecutor's Office of Bosnia-Herzegovina
- notifies the families about successful DNA matching processes
- can offer a reward for reporting the location of a mass grave (but doesn't really do so in practice).

State Investigative and Protection Agency (SIPA):

- provides support in criminal investigations, especially when they involve serious violations of IHL
- assists in locating mass graves (also by sharing information)
- reports to the Prosecutor's Office of Bosnia-Herzegovina anything that could be of relevance for evidence collection
- regularly exchanges information internally and with the Prosecutor's Office of Bosnia-Herzegovina and the MPI.

Court of Bosnia-Herzegovina:

- issues exhumation orders (in this sense, it contributes to the exchange of information)
- has a policy of anonymization regarding indictments (e.g. the names of those convicted and references to the crime scene are not included in the indictments).

⁵⁴ A. Srovin Coralli, [Coordination Between the Search and Criminal Investigations Concerning Disappeared Persons. Case Studies on Bosnia and Herzegovina and Mexico](#), swisspeace, Bern, June 2021, pp. 33–34.

Prosecutor's Office of Bosnia-Herzegovina:

- is limited by the Court of Bosnia-Herzegovina's anonymization policy (cannot share certain information on indictments)
- receives information on the need for an exhumation from the MPI, or in the course of a criminal investigation
- regularly exchanges information internally and with the SIPA's TERRA Operative Team and the MPI
- coordinates the exhumation process (in this sense, it contributes to the exchange of information)
- may share information received from the MPI with the SIPA, or with local police, to verify its accuracy
- shares information received from the MPI with the Court of Bosnia-Herzegovina whenever it is convinced that an order for exhumation needs to be issued.

ICMP:

- receives information (on locations of mass graves) reported anonymously through its website
- manages Site Locator, an application for reporting the locations of mass graves
- adds data and manages the database on missing persons' relatives (information that, in principle, is not publicly available)
- is in charge of DNA testing and matching
- issues a final report about the results of the DNA matching process
- collects and stores information on missing persons for the Database of Active Missing Persons.

ICRC:

- analyses information and documents obtained from international archives (ICTY/ MICT, UN, UNHCR, European Community/Union Monitoring Mission held by the European External Action Service, etc.) and shares (analytical reports) in confidence with the MPI on condition that they are used only for the clarification of the fate/ whereabouts of missing persons.

Police:

- cooperates with the SIPA and the Prosecutor's Office of Bosnia-Herzegovina and regularly shares information with them.

Forensic experts:

- are bound by exhumation orders issued by the Court of Bosnia-Herzegovina (note: it could not be ascertained definitively how information among forensic experts is shared).

Private persons:

- can report information regarding missing persons to the MPI, the Prosecutor's Office of Bosnia-Herzegovina, any Police agency and the ICMP, as well as anonymously through the website of the ICMP and over the phone to the MPI
- must report locations of mass graves (failure to do so constitutes a criminal offence).

5.3 Domestic legal and policy framework

Effective coordination between the search and criminal investigations should be governed by a comprehensive domestic legal and policy framework that assigns responsibility to institutions to carry out their work in a manner that facilitates coordination between the search and the criminal investigation (and other legally authorized investigations, such as factual death investigations). This framework should promote “cooperation and collaboration among all state bodies and also with other states and international agencies”.⁵⁵ This means that states may be required to create a new law for the new mechanism and amend the existing legal and policy framework, in view of the new legal reality of the search mechanism created, to ensure complementarity and avoid duplication of functions.

Issues to be considered in the policy and legal framework to enhance coordination:

Crimes

- All relevant crimes that can result in persons going missing, such as enforced disappearances as a continuous offence, kidnapping, abduction, extrajudicial killings, murder, etc., must be proscribed under the domestic law and a general duty to report them included.

Staffing

- States should ensure that the search mechanism and law enforcement authorities are headed by individuals with the same administrative rank to ensure independence and curb the possibility of one institution exercising pressure over the other.
- They should further ensure that staff working for the search mechanism has equivalent qualifications to those of forensic services and law enforcement authorities more generally, to prevent the probatory value of the evidence they collect being compromised.

Discovery of remains

- States should introduce a general obligation to report the discovery of remains to state authorities. It is important that the state is aware of the discovery of such remains, which requires competent authorities to initiate an investigation into the cause of death, any crimes that may have occurred and the identity of the deceased.

Management of remains and biological samples

- Where remains and associated finds are recovered or biological samples obtained, and where they are not immediately investigated, or if an investigation into remains was halted or delayed owing to administrative or financial hurdles, policy and legal frameworks should ensure that the remains are stored in a manner that enables them to be investigated at a later date (including over the longer term) by the search mechanism, the law enforcement authorities, or other competent authorities.

Investigation of remains

- States should introduce a general obligation to identify unidentified human remains, ensure the dignity of the dead, inform the families concerned and adapt all practices related to the discovery, reporting, excavation, exhumation, analysis and storage (including long-term storage) of the remains accordingly.
- They should further ensure that there is a general obligation to establish the cause and manner of death whenever human remains are investigated.
- Institutions authorized to carry out analyses of remains and other forensic testing should, as appropriate, have the independence required to ensure trust in their findings.

⁵⁵ OHCHR, [Guiding Principles for the Search for Missing Persons](#) (CED/C/7), Geneva, 28 August 2019, Guiding Principle 3.

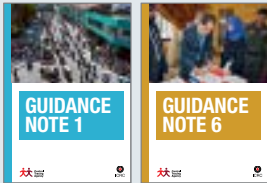
- All relevant institutions should be mandated to ensure respect for relevant rights, including the right to know the fate and whereabouts of missing persons, the right to know the truth, the right to an effective remedy and the right to justice.

Places of detention

- In cases where the search mechanism has the power to search in places of detention, ensure that other state institutions who have the authority to search or monitor places and conditions of detention (for example, law enforcement authorities, national human rights institutions) complement the efforts of the search mechanism.



For further information, refer to the following guidance notes:






International Committee of the Red Cross

The ICRC helps people around the world affected by armed conflict and other violence, doing everything it can to protect their lives and dignity and to relieve their suffering, often with its Red Cross and Red Crescent partners. The organization also seeks to prevent hardship by promoting and strengthening humanitarian law and championing universal humanitarian principles.

Central Tracing Agency

For the past 150 years, the ICRC's Central Tracing Agency has been helping people separated from their loved ones. We are entrusted by the Geneva Conventions as a neutral intermediary to assist parties and remedy family separation and disappearance in armed conflicts. In addition to helping people separated from their loved ones in times of conflict, the Central Tracing Agency coordinates global efforts by the International Red Cross and Red Crescent Movement to protect and restore family links, search for and identify missing people, protect the dignity of the dead, and address the needs of families of missing people.

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