

POSITION PAPER:

An international mechanism for confronting the crisis of detention and enforced disappearance in Syria



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عائلات
من أجل الحرية
FAMILIES FOR
FREEDOM

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The following position paper was prepared by ten associations and organizations representing families of victims and survivors of detention and enforced disappearance in Syria, namely: Caesar Families Association, Families for Freedom, the Coalition of Families of Persons Kidnapped by ISIS-Daesh (Massar), Ta'afi Initiative, Hevdesti (Synergy) Association for Victims, the Association of Detainees and the Missing in Sednaya Prison (ADMSP), Adra Detainees Association, Families of Truth and Justice, Release Me, and lastly the General Union of Detainees. This paper reflects the culmination of an ongoing advocacy tour that these organizations have undertaken in since 2021.

Arbitrary detention and enforced disappearance are intrinsic components of the Syrian regime's use of repression and intimidation and other parties to the conflict throughout the country. Moreover, constitute one of the main causes of asylum and displacement as well as an obstacle to safe, dignified and voluntary returns of Syrians to their homeland. In any conflict, enforced disappearance is one of the most important obstacles to peace and a challenge to genuine transitional justice afterwards. Addressing this crisis in Syria would therefore contribute to solve one of the country's most pressing and intractable problems, one that continues to inflict unimaginable suffering on Syrians both at home and abroad.

This paper aims to summarize our position as organizations of survivors and families of victims and confront the crisis of enforced disappearance in Syria by establishing an independent international humanitarian mechanism tasked with revealing the fate of the forcibly disappeared and detained by various parties to the conflict in the country.

Background

Arbitrary detention and enforced disappearance are defining features of the ongoing conflict in Syria. According to the Syrian Network for Human Rights (SNHR), the number of forcibly disappeared civilians in Syria has exceeded 100,000 since the onset of the conflict in 2011. Although all conflict parties have resorted to detention and enforced disappearance as a primary tool of repression in their respective areas of control, the Syrian regime remains responsible for the vast majority of the crimes of enforced disappearance. According to SNHR's reporting, no less than 102,287 people were forcibly disappeared between March 2011 and August 2021, including 2,405 children and 5,801 women. The Syrian regime is responsible for 84.8% of all enforced disappearances in that period, while ISIS and Hay'at Tahrir a-Sham are responsible for 8.4% and 2% respectively. SNHR's reporting meanwhile states that other armed opposition factions are responsible for 2.5% of disappearances, while the Syrian Democratic Forces (SDF) are responsible for 2.2%.¹

In this context, it is vital that a special international mechanism is formed to uncover the fate of those forcibly disappeared in Syria, discover the whereabouts of the survivors before securing their release, determine grave-sites of deceased victims, identify their remains and handing them over to their families with dignity. These steps should be undertaken in parallel with all other efforts aimed at bringing peace, ending the conflict, and holding perpetrators accountable.

¹ SNHR, '[The Tenth Annual Report on Enforced Disappearance in Syria on the International Day of the Victims of Enforced Disappearances](#)', 30 August 2021.

International efforts related to detention and enforced disappearance in Syria

For nearly 10 years, international efforts to address detention and enforced disappearance in Syria have failed to reach solutions.

At the international level, the UN Security Council sought to develop a roadmap for resolving the conflict in Syria through the so-called Geneva process and Security Council resolutions such as Resolution 2139 (2014) and Resolution 2254 (2015).² Since the early years of the conflict, international initiatives have included clear demands for the release of detainees and the disclosure of the fate of the missing and disappeared—for example, paragraph four of former Syria envoy Kofi Annan's six-point Syrian peace plan stipulated the need to immediately release detainees, disclose all detention centers, and ensure prompt communication and access regarding those detainees.³

Early attempts by regional actors also failed to yield results. At the Arab level, the League of Arab States sent a delegation of Arab observers to monitor the situation in Syria and learn about the reality of detainees in Syria in 2011. The delegation then submitted a technical report to the Arab League, which responded by issuing a resolution outlining an initiative to solve the crisis in Syria—this included calls to release detainees and disclose the fate of the forcibly disappeared.⁴

In 2017, Russia, Iran and Turkey established the Astana process, on the basis of which a working group was established for the missing and detained.⁵

The international community has also made efforts to secure accountability for the perpetrators of major crimes in Syria. Arbitrary arrest and enforced disappearance are undeniably serious crimes that must be prosecuted, and their perpetrators held accountable. For example, in 2016, the UN General Assembly approved the establishment of the international, impartial and independent mechanism to assist in the investigation and prosecution of persons responsible for the most serious crimes classified under international law committed in the Syrian Arab Republic since March 2011.⁶

For 10 years, civil society organizations have exerted tremendous efforts to challenge the crime of enforced disappearance in Syria by working to reveal the fate of the missing, release detainees, and hold perpetrators of crimes accountable—including

² UN, '[Security Council Adopts First-Ever Resolution on Persons Reported Missing during Armed Conflict, as Speakers Call for Greater Political Will to Address Problem](#)', 11 June 2019.

³ For more information, see: UN Security Council, '[Resolution 2042 \(2012\) adopted by the Security Council at its 6,751st meeting, on April 14, 2012](#)', 2012.

⁴ For more information, see: UN Secretary-General, '[Letter dated 24 January 2012 from the Secretary-General addressed to the President of the Security Council](#)', 2012.

⁵ *Arabi21*, '[Astana 8 concludes with the formation of two working groups for "the detainees and the missing"](#)' (Arabic), 22 December 2017.

⁶ UN, '[International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011](#)', undated.

through accountability efforts based on universal jurisdiction in some European countries—in parallel with tireless efforts by both the International Committee of the Red Cross and the International Commission on Missing Persons.

Nevertheless, these efforts have failed to address, not to mention halt, the endemic practices of arbitrary detention, enforced disappearance, and torture.

The need for an international mechanism

Clearly, it's time for a different approach. This failure to achieve results, despite longstanding efforts at local, regional and international levels, demonstrates that new solutions need to be sought; Current approaches have already proven their limitations!

We, therefore, as associations representing victims and survivors suggest the establishment of an independent international mechanism of a humanitarian nature to confront the crisis of detention and enforced disappearance in Syria. This mechanism would aim to find solutions where other initiatives have failed by unmasking the fate of the detainees and forcibly disappeared using multiple methodologies to collect information; releasing survivors or, in the event of their death, finding and recovering their remains; confirm the identities of the deceased and then ensuring the handover of these remains to victims' families.

Releasing detainees, revealing the fate of the forcibly disappeared, and handing over the remains of the deceased to the families would constitute a first step towards accomplishing justice for the victims, enhancing their right to truth and knowledge and contributing to the consolidation of peace efforts in Syria.

The scale of the problem is vast. The approximate average family size in Syria is five people,⁷ meaning that for every forcibly disappeared person in Syria there are at least 12 first-degree relatives (father, mother, two brothers, a wife, and two sons) suffering from the daily torture of not knowing the fate of a detained or disappeared loved-one, according to the Working Group on Enforced or Involuntary Disappearances. This corroborates Article (1) of the Declaration on the Protection of All Persons from Enforced Disappearance, which states that the “anguish and sorrow” of families to know the truth about the fate and whereabouts of the disappeared reaches the threshold of torture for those left to live with its impacts.⁸ As such, we estimate the number of *direct* victims of enforced disappearance to include the disappeared *but also* their families—meaning that the scourge of detention and disappearance in Syria has directly impacted at least 1.2 million Syrians, far exceeding the meagre, conservative estimates that usually only account for the 100,000 civilians disappeared since 2011.

⁷ The League of Arab States & the Syrian Arab Republic, '[Family Health Survey in the Syrian Arab Republic – 2009](#)' (Arabic), 2011.

⁸ Para. 4 in UN Human Rights Council, '[General Comment on the Right to the Truth in relation to Enforced Disappearances](#)' in 'Report of the Working Group on Enforced or Involuntary Disappearances', 26 January 2011, A/HRC/16/48, p.4.

Uncovering the fate of the forcibly disappeared means stopping the pain of thousands of Syrian families and allowing them to move from a state of *unknown waiting* to a state of *natural waiting*, grief and lamentation.

Tackling one of Syria's most intractable challenges would represent a bold step towards a more sustainable potential peace in Syria. Likewise, the existence of a mechanism to reveal the fate of the missing and forcibly disappeared would ensure the non-recurrence of the crime of enforced disappearance—in addition to revealing the fate of detainees and forcibly disappeared persons, the mechanism would also go further than previous initiatives to document the horrific crime of enforced disappearance in Syria and prioritizing the dismantling of the entire system of detention as a prerequisite for resolving the conflict. Entrenching the crimes of detention and enforced disappearance in the collective memory of the Syrian conflict would also help to prevent its reoccurrence in the future.

How the proposed mechanism would work

The proposed independent international mechanism should be humanitarian in nature, with a global mandate to work on uncovering the fate of the forcibly disappeared, determining their whereabouts, and handing over their remains.

The mechanism should be international for both practical and legal reasons. Addressing the problem of enforced disappearance is a basic responsibility of the state, but it is also the responsibility of the international community. As such, the international community has taken a number of steps to forbid enforced disappearance.

On December 18, 1992, United Nations General Assembly Resolution 47/133 adopted the Universal Declaration for the Protection of All Persons from Enforced Disappearance. The declaration argued that enforced disappearances undermine the rule of law and violate the most profound values of human rights, while describing enforced disappearance as a crime against human dignity as well as a violation of the UN's charters that states may not commit for any reason whatsoever.⁹ Enforced disappearance is considered a crime in international law, which stipulates that a person has the inherent right to be recognized as a person before the law. The international community later continued its efforts to combat enforced disappearance. On December 20, 2006, the UN approved the final version of the International Convention for the Protection of All Persons from Enforced Disappearance. By 2019, 98 countries had signed and 62 countries ratified the convention.¹⁰ Resolution 2474 on persons missing as a result of armed conflict added another international legal instrument related to the crime of enforced disappearance.¹¹

⁹ UN General Assembly resolution 47/133, '[Declaration on the Protection of All Persons from Enforced Disappearance](#)', 18 December 1992.

¹⁰ UN General Assembly, '[International Convention for the Protection of All Persons from Enforced Disappearance](#)', 20 December 2006.

¹¹ UN, '[Security Council Adopts First-Ever Resolution on Persons Reported Missing during Armed Conflict, as Speakers Call for Greater Political Will to Address Problem](#)', 11 June 2019. **Error! Hyperlink reference not valid.**

Even with these instruments in place, the process of revealing the fate of the missing and disappeared will be long and complex, especially in cases where perpetrators used advanced means to conceal the traces of their crime by destroying the bodies of the forcibly disappeared and complicating investigations (for example by burning corpses, using lime, or throwing corpses into wells or pits such as the Al-Hota pit used by ISIS).¹²

This, therefore, requires the use of multiple techniques and methodologies and concerted efforts by all available international and local organizations to contribute to this work within a unified, international framework. In addition, given the size and complexity of the crisis in Syria, it is impossible for a single party, regardless of its capabilities, to adequately respond to the situation. This confirms the need for an international mechanism under the umbrella of the UN.

The mechanism will also help to intensify existing efforts to uncover the fate of the disappeared in Syria while avoiding crucial information being lost. A centralized reference-point for revealing the fate of the disappeared will alleviate the suffering of the families of the missing and disappeared, many of whom have lost track of the multiple decentralized initiatives already in place, let alone the different methodologies and approaches in use. This mechanism would therefore provide a 'single location' for families to submit and follow up on their claims.

We hope that the establishment of a new mechanism will rebuild people's confidence in existing mechanisms and institutions. It is important to clarify here that Syrians do not currently have a unified or clear authority specialized on the Syrian issue to which they can refer when reporting the disappearance of their relatives. There are four different actors that can provide support regarding Syria, namely:

- The International Committee of the Red Cross;
- The International Commission on Missing Persons;
- The Working Group on Arbitrary Detention;
- And the Working Group on Enforced or Involuntary Disappearances.

However, none of these institutions are capable of dealing with the issue of disappeared alone, which reiterates the need for an international mechanism that combines all efforts under one umbrella. UN High Commissioner for Human Rights, Ms. Michelle Bachelet, emphasized this point in her March 2021 statement regarding the need to establish an international mechanism to reveal the fate of missing persons in Syria.¹³

Considering the levels of political polarization in Syria, the mechanism must also be humanitarian in nature. The independence of this mechanism and its global competence will provide it with the ability to gain trust and also gather expertise and resources under a single framework, led by international players who have not sufficiently coordinated efforts in advance. It will also facilitate the process of sharing data with the mechanism and allow it to communicate with all public officials and de facto authorities,

¹² Human Rights Watch, '[Syria: ISIS Dumped Bodies in Gorge](#)', 4 May 2020.

¹³ UN Human Rights Council, '[Syria: Truth and justice needed more than ever after 10 years of conflict – Bachelet](#)', 11 March 2021.

either independently or officially, to provide and collect information on the forcibly disappeared with the aim of revealing their fate.

Timeframe

It is crucial to establish this mechanism as soon as possible.

The mechanism must work to reveal the fate of the forcibly disappeared while they are still alive rather than waiting for their deaths. Searching for the bodies of the deceased and identifying the remains and handing them over to the families will only become more difficult with time due to the struggle in collecting pre-mortem data as a result of the decomposition of the bodies and/or the deliberate or unintentional manipulation of burial sites. At the same time, though, the need to investigate the fate of the disappeared and victims' right to knowledge will not diminish with time—in fact, quite the opposite. Past conflicts have demonstrated that ignoring this question altogether actually perpetuates conflict. Meanwhile, the process of searching and discovering the fate of the disappeared will depend heavily on certificates and on memory—both with their own temporal expiration dates—again pointing to the urgency of the issue as it stands now.

In the past, the fate of the disappeared and victims' right to know has been ignored or sidelined once a conflict ends, with victims instead compensated with some formal accountability and reparations and memorialization programs on the premise that economic and social recovery and the transition towards peace are of paramount importance to post-conflict contexts. History has proven this to be a failure, with the fates of many around the world still unknown until now. However by creating an international mechanism with global competence, the fate of the disappeared and the right to know remain protected clauses even after a peace deal is signed because of the availability of resources and strategies. This in turn ensures sustainable peace long after a conflict ends.

Challenges & opportunities for the mechanism given current political realities

A mechanism can, of course, develop plans and strategies, survey and determine the known and potential locations of detention sites used by all parties to the conflict, find locations, maps, satellite images, identified and unrecognized individuals and collective burial places, and collect, compare and analyze data, evidence and testimonies with the aim of revealing the fate.

Most of the data collected in Syria was collected in order to identify perpetrators and hold them accountable; information was never processed, and questions never asked that could have helped to reveal the fate of the disappeared. For example, the famous witnesses at the Koblenz trial, known as 'the gravedigger', was interrogated for accountability purposes to identify crimes and their perpetrators, whereas there was no effort to obtain information in his possession regarding the locations of mass graves, their dimensions, and other post-mortem details crucial to identifying remains. In addition, ISIS members in the custody of the SDF or those returned to the countries of origin were never interrogated for information that could have revealed the fate of those disappeared by ISIS.

It is hoped that with appropriate pressure on all actors in Syria, this mechanism will gain access to all mass graves as well as known and secret detention centers used by all parties to the conflict, in order to reveal the fate of those disappeared persons who are still alive and also identify the remains of the deceased and hand them over to their families.

Even if this mechanism is unable to work directly on Syrian territory, it will be able to work from outside the country and provide some answers to the families of the disappeared. The existence of the mechanism *per se* will pressure the different parties participating in the political process grant the mechanism access to Syrian territory as and when that is possible. But perhaps most importantly, it will guarantee the right of knowledge and truth to Syrian victims and ensure that this right will not be forgotten or sidelined when the conflict ends.

Participating institutions

1. Adra Detainees Association
2. Association of Detainees and the Missing in Sednaya Prison (ADMSP)
3. Caesar Families Association
4. Coalition of Families of Persons Kidnapped by ISIS-Daesh (Massar)
5. Families of the Missing for Truth and Justice
6. Families for Freedom
7. General Union of Detainees
8. Hevdesti (Synergy) Association for Victims
9. Release Me
10. Ta'afi Initiative