

SYRIA: TOWARDS ADDRESSING THE ISSUE OF MISSING PERSONS

SUBMISSION FOR THE UNIVERSAL PERIODIC REVIEW - SYRIAN ARAB REPUBLIC 40TH SESSION - JULY 2021

I. INTRODUCTION

1. Following ten years of conflict in Syria where all parties have engaged in egregious human rights violations, the Syrian government remains the main perpetrator of persons going missing.¹ With an estimated 100,000 missing² - mostly at the hands of the Syrian government – the situation of the missing and disappeared in Syria is among the most pressing and difficult issues facing the country. Despite the issuance of multiple amnesties, including most recently Decree No. 13 in 2021 which orders the release of thousands of ‘criminals’, the Syrian authorities have failed to abide by their own decrees and release the majority of political detainees or even engage in meaningful efforts to reveal the fate or circumstances of the tens of thousands of detainees and disappeared.
2. The Syrian authorities continue to engage in the enforced disappearance, mass executions and torture of detainees and have indeed ‘sanctified’ their crimes through both laws and military courts that lack even the basic due process and fair trial guarantees. It is of utmost precedence that the issue of the missing and disappeared be addressed not as a bargaining chip, but rather as a matter of non-negotiable human rights priorities.

II. SYRIA'S OBLIGATIONS UNDER INTERNATIONAL LAW AND COOPERATION WITH HUMAN RIGHTS MECHANISMS

2.1. Follow-up to the 2016 Universal Periodic Review

3. Since the previous Universal Periodic Review in 2016, the Syrian government has failed to make tangible progress in addressing the issue of the missing. The majority of the accepted recommendations which the Syrian government claimed were “ongoing” in their implementation including that “the places of detention and detainees, their legal status and the charges against them, are being reported by the concerned authorities”³, were not adhered to by the Syrian government. Most of the detainees remain forcibly disappeared, with no information on their fate being provided to their families. The same also applies to the recommendations on Syria's accession to the optional protocols to international conventions and the International Convention for the Protection of All Persons from Enforced Disappearance as well as the creation of a human rights institution in accordance with the Paris Principles.⁴ None of this has not been achieved to date.

¹ OHCHR, Disappearance and detention to suppress dissent a hallmark of a decade of conflict in Syria – UN report, 1 March 2021 available at : <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=26811&LangID=E>.

² Andreas Kleiser (Editor), Global Report on Missing persons 2021, The International Commission on Missing Persons, 2021, p. 14.

³ Human Rights Council, thirty-fourth session, Agenda Item 6, Universal Periodic Review, Syrian Arabic Republic, A/HRC/34/5/Add.1, 13 March 2017, p. 6.

⁴ *Id.*, p. 3.

4. In the previous review, the Syrian authorities claimed that Syrian law guarantees “the principle of public hearings, the right of appeal and the right to a fair trial.”⁵ However, as will be seen below, this is not being applied in reality. The Syrian authorities have also failed to respond to a series of recommendations calling for an end to torture, arbitrary detentions, enforced disappearances and extrajudicial executions as well as recommendations to reveal the fate of the disappeared, to offer redress for certain enforced disappearances and summary executions, and to investigate those involved in such violations.⁶ Responding to Luxembourg’s recommendation, which called for “an end to enforced disappearances and torture in all places of deprivation of liberty, as well as extrajudicial executions,” the Syrian government stated that Decree 20/2013 punishes the perpetrators of kidnappings. Yet Decree No. 20 applies to non-governmental bodies while the recommendation was specific to the Syrian government.⁷
5. Despite Syria’s accession to most international human rights treaties, the Syrian government has failed to cooperate with human rights mechanisms and the special procedures system, including the Working Group on Enforced or Involuntary Disappearances.⁸ Nor does cooperation take place between the Syrian government and the Independent International Commission of Inquiry on the Syrian Arab Republic, as “the Syrian government has yet to allow the Commission to undertake investigations inside the country.”⁹

2.2. Security council resolutions on Syria

6. The preamble to the United Nations Security Council Resolution 2254¹⁰ on a political settlement of the situation in Syria states that “the primary responsibility to protect the population” lies with the Syrian authorities. The resolution also demands “that all parties immediately comply with their obligations under international law, including international humanitarian law and international human rights law as applicable.”¹¹ The resolution, in paragraph 12, further calls on all parties in Syria to “release any arbitrarily detained persons, particularly women and children,” which has not been achieved thus far.
7. Resolution 2254 adds that free and fair elections, pursuant to a new constitution, should be held under the supervision of the United Nations, and that a political transition must be achieved.¹²

⁵ *Id.*, p. 7.

⁶ Human Rights Council, thirty-fourth session, Agenda Item 6, Universal Periodic Review, Syrian Arabic Republic, A/HRC/34/5, 27 December 2016, p. 29.

⁷ The text of the Decree is available in Arabic at <https://www.syrian-lawyer.club/%D8%AA%D8%AC%D8%B1%D9%8A%D9%85-%D9%88%D8%B9%D9%82%D9%88%D8%A8%D8%A9-%D8%AE%D8%B7%D9%81-%D8%A7%D9%84%D8%A3%D8%B4%D8%AE%D8%A7%D8%B5/>

⁸ Syrian Network for Human Rights, Brief Reports, SNHR Receives Notification from the UN Working Group on Enforced or Involuntary Disappearances That It Submitted Eight Cases, Provided by SNHR This Year, to the Syrian Regime, 29 June 2020, p. 7, available at https://sn4hr.org/wp-content/pdf/english/The_Syrian_Network_for_Human_Rights_receives_a_message_from_the_United_Nations_Group_on_Enforced_Disappearances_en.pdf

⁹ Independent International Commission of Inquiry on the Syrian Arab Republic, official website: <https://www.ohchr.org/AR/HRBodies/HRC/IICISyria/Pages/AboutCoI.aspx>

¹⁰ Resolution adopted on 18 December 2015 in pursuing a political settlement of the situation in Syria.

¹¹ *Id.*, para. 13.

¹² Paragraph 4 of the resolution.

However, in violation of this resolution, the Syrian authorities announced in late May 2021 that Bashar al-Assad had won a new presidential term in sham elections that were not internationally recognized. This was a great disappointment to many Syrians, particularly to families of the forcibly disappeared who yearn for political change and the formation of transitional justice mechanisms that reveal the fate of the disappeared, release political detainees, hold perpetrators accountable and compensate victims.

8. United Nations Security Council Resolution 2139 of 22 February 2014 also strongly condemns “the arbitrary detention and torture of civilians in Syria, notably in prisons and detention facilities, as well as the kidnappings, abductions and enforced disappearances.”¹³ It also demands “the immediate end of these practices and the release of all arbitrarily detained persons starting with women and children, as well as the sick, wounded and elderly people, including United Nations and humanitarian personnel and journalists.”¹⁴ Nevertheless, there is no indication that the issue of the missing is being addressed. Indeed, the Syrian authorities’ systematic practice of detention and enforced disappearance is ongoing.

III. THE SITUATION OF THE MISSING AND DISAPPEARED IN SYRIA

9. All parties to the conflict, including notably ISIS, Jabhat al Nusra, the Syrian Democratic Forces and Armed Opposition Groups, have disappeared persons. Yet the Syrian authorities remain the main perpetrator of persons going missing. The causes of the over 100,000 missing and disappeared are numerous, but they can be summarized into four general trends: (1) enforced disappearances and arbitrary detentions; (2) death under torture and mass executions; (3) ‘settlements’ and forced displacement; and (4) the ongoing conflict. In addition, families have little recourse due to weak legal protections and institutions when their relatives have gone missing and are often left with no other options than to pay exorbitant bribes in hopes of obtaining even the slightest information.

3.1. Enforced disappearances and arbitrary detentions

10. As discussed in more detail in Section 4, the Syrian government has put in place laws and judicial bodies to provide legal cover for its crimes in arbitrarily detaining and disappearing tens of thousands of political dissidents, human rights defenders, lawyers, journalists, activists and humanitarian workers. The Syrian authorities have even detained and disappeared persons based on their place of original residence (if they are from areas that rebelled) or if they are related to individuals wanted by the state. Yet many of these laws go against the non-derogative *jus cogens* norms that protect the most fundamental principles. More often, though, the Syrian authorities have acted extrajudicially in disappearing and arbitrarily detaining individuals while providing no information to family members on their fate or whereabouts.¹⁵
11. According to the Association of Detainees & the Missing in Sednaya Prison (ADMSP), detentions and enforced disappearances peaked in 2012-2013, with Sednaya Prison being the primary location where detainees were disappeared. The Syrian Arab Army was responsible for one-third of the

¹³ Paragraph 11 of the resolution.

¹⁴ *Id.*

¹⁵ *Id.*

detentions followed by the Military Security Division (responsible for 18% of cases) followed by the Air Force Intelligence Administration and the Political Security Division (totaling 5%). Half of those detained were taken at checkpoints within government-held areas or during battles, as individuals sought to flee.¹⁶

12. More often than not, once detained or disappeared, families lost contact with their relatives and were not provided information on their whereabouts. Indeed, only 4% of those detained and forcibly disappeared were allowed visitors while over one-third of the families were told by the arresting parties that they had no record of the detainee.¹⁷ In some cases, families learned the fate of their relatives through a death notification in the civil registry while an estimated 3% learned the fate upon receiving a death certificate.¹⁸ To this date, the vast majority of the forcibly disappeared remain unaccounted for. Indeed, the Syrian authorities continue to use detention and enforced disappearances to debilitate the population to submission.

3.2. Death under torture and mass executions

13. Death under torture and mass executions are common occurrences in both official and makeshift detention centers. Amnesty International estimated that between the start of the popular uprising in March 2011 and 2016, more than 17,000 detainees had been killed in state custody, while Syrian groups estimate the number to be higher.¹⁹ The large majority of those executed while in regime detention remain unaccounted for.
14. Only following the publication of over half of the 53,275 digital photos – codenamed ‘Caesar photos’ – containing approximately 11,000 brutally tortured and mutilated bodies, did hundreds of families learn the tragic fate of their relatives.²⁰ Many of those families had spent months or years searching for news of their relatives, paying large bribes to middlemen and government employees. According to those interviewed by Human Rights Watch, only two eventually received death certificates stating the cause of death as heart or respiratory failure. None have received the bodies of their relatives.²¹
15. In recent years, the Syrian authorities have begun listing individuals formerly detained or forcibly disappeared as deceased in the civil registry. As of August 2020, there have been 991 documented

¹⁶ Association of Detainees & the Missing in Sednaya Prisons, Forcibly Disappeared in Syrian Detention Centers: Research about the Details of the Process of Forced Disappearance and the Fate of the Victims, December 2020 available at: <https://admsp.org/wp-content/uploads/2020/12/Forcibly-Disappeared-in-Syrian-EN.pdf>

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ NPR, Amnesty International: Over 17,000 People Have Died in Syrian Detention Centers, 18 August 2016 available at: <https://www.npr.org/sections/thetwo-way/2016/08/18/490475772/amnesty-international-over-17-000-people-have-died-in-syrian-detention-centers>.

²⁰ Human Rights Watch estimated that 28,707 images are photographs of people killed while in government custody corresponding to approximately 6,786 dead individuals. The remainders of photographs are of dead army soldiers or members of the security forces. Human Rights Watch, *If the Dead Could Speak: Mass Deaths and Torture in Syria’s Detention Facilities*, 16 December 2015 available at <https://www.hrw.org/report/2015/12/16/if-dead-could-speak/mass-deaths-and-torture-syrias-detention-facilities>.

²¹ Human Rights Watch, *Syria: Stories Behind Photos of Killed Detainees: Caesar Photos’ Victims Identified*, 16 December 2015 available at <https://www.hrw.org/news/2015/12/16/syria-stories-behind-photos-killed-detainees>.

cases of families learning the fate of their relatives through the civil registry.²² Between October 2019 and November 2020, Syrians for Truth and Justice estimated that 370 detainees were reported dead in the civil registry from Deir ez-Zor.²³ Between August 2018 to October 2020, 54 detainees from Daraa and Quneitra were reported dead in the civil registry and between December 2018 and February 2019, approximately 700 families from Hama and Idlib received death certificates of their detainee relatives.²⁴

16. Generally, families did not receive notification of this registration and only learned the fate of their detainee relative when proactively checking the civil registry. They were also not given the bodies or details of the burial location, leaving the fate of the victims unresolved. For many deceased detainees, their time of death was shortly after being taken into custody. While the cause of death was almost always listed as a heart attack or respiratory failure, the reality is that their death was more likely the result of the Syrian authorities' systematic use of torture and executions as heavily documented by survivors, human rights organizations and even defectors like Caesar and most recently, the 'gravedigger'.
17. In September 2020 during the trial of former Syrian intelligence officers in Koblenz, Germany, a witness codenamed 'gravedigger' provided a multi-hour testimony on the thousands of former detainees he buried in mass graves in and around Damascus. After being recruited by a member of the Syrian intelligence in 2011, the 'gravedigger' formed a team of 10-15 men who would escort multiple trucks – each affiliated with a specific security branch or detention center – loaded with anywhere between 300-700 corpses to mass graves in al-Qatayfah north of Damascus and al-Najha to the south four times a week. The bodies could only be identified by the numbers etched on their chests or foreheads and exhibited severe signs of torture and mutilation – similar to the corpses pictured in the infamous Caesar photos. Upon reaching the mass graves, the bodies were dumped in 6 meter deep by 100 meter long pits with each pit taking approximately 150 truck trips to fill.²⁵ At one point, the gravedigger estimated that over one million corpses could be buried in the mass graves.²⁶

²² The Syrian Network for Human Rights, The Ninth Annual Report on Enforced Disappearance in Syria on the International Day of the Victims of Enforced Disappearances; There Is No Political Solution without the Disappeared, 30 August 2020, p. 11, available at: https://sn4hr.org/wp-content/pdf/english/The_Ninth_Annual_Report_on_Enforced_Disappearance_in_Syria_on_the_International_Day_of_the_Victims_of_Enforced_Disappearances_en.pdf

²³ Syrians for Truth and Justice, My Mother still Hopes He's Alive: Dozens of Syrian Families Told their Detained Loved Ones are Dead, 1 February 2021 available at: <https://stj-sy.org/en/my-mother-still-hopes-hes-alive-dozens-of-syrian-families-told-their-detained-loved-ones-are-dead/>.

²⁴ Syrians for Truth and Justice, New Notifications Declare Dead Hundreds in Syrian Security Services' Detention Facilities, 18 June 2019 available at: <https://stj-sy.org/en/new-notifications-declare-dead-hundreds-in-syrian-security-services-detention-facilities/>.

²⁵ Asharq al -Awsat, Testimony of Syrian 'Gravedigger' at German Court Rivals Horrors of Nazi Crimes, 14 September 2020 available at <https://english.aawsat.com/home/article/2506791/testimony-syrian-%E2%80%98gravedigger%E2%80%99-german-court-rivals-horrors-nazi-crimes>.

²⁶ القبور تحديتات صادمة.. محقق من الشرطة الجنائية لا يستبعد صحة شهادة حَقَّار, The Levant, 12 January 2021 available at <https://thelevantnews.com/2021/01/%d8%aa%d8%ad%d8%af%d9%8a%d8%ab%d8%a7%d8%aa-%d8%b5%d8%a7%d8%af%d9%85%d8%a9-%d9%85%d8%ad%d9%82%d9%91%d9%82%d9%8c-%d9%85%d9%86-%d8%a7%d9%84%d8%b4%d8%b1%d8%b7%d8%a9-%d8%a7%d9%84%d8%ac%d9%86%d8%a7%d8%a6/>.

18. The gravedigger had continued this work from 2011 until 2017 but confirmed that the crimes he witnessed were still being committed in Syrian detention facilities.²⁷

3.3. 'Settlement' agreements & forced displacement

19. The detention and disappearance of persons in 'reconciled' or 'settled' territories is also a common occurrence and yet another driver of missing persons in Syria. Following Russia's military intervention in Syria in 2015, the Syrian authorities escalated their efforts to reclaim opposition-held areas. After months and sometimes years of brutal sieges and devastating military campaigns using unconventional and indiscriminate weapons, the Syrian military directly or through interlocutors would negotiate a 'settlement' or surrender agreement. The terms of these agreements were comparable from one region to another; individuals would either agree to be forcibly displaced to areas still under opposition control (e.g. Idlib) or else sign a 'settlement' agreement with the Syrian authorities.

20. While the Syrian authorities provided assurances of amnesty, in reality, many of those who remained in the 'reconciled' areas were subjected to arrest, forced military recruitment, arbitrary detention, assassination and enforced disappearance. Indeed, the fear of house raids, arrests and detention caused many of those who had signed 'settlement' agreements to subsequently flee to other parts of Syria or to leave the country altogether.²⁸

21. After the 'settlement' agreement in Daraa, for example, was signed in mid-2018, detentions of people who passed through the military checkpoints deployed near cities and towns increased. Urnammu documented the arrest of 660 people following the 'settlement' agreement in Daraa including Syrian doctors visiting from Gulf countries.²⁹ While some of those detained were subsequently disappeared and remain unaccounted for, others were executed and their bodies were returned to their families.³⁰

22. In rural Homs, Syrians for Truth & Justice recorded up to 160 arbitrary detentions between July and November 2018, contrary to the 'settlement' deal in place.³¹ This was similarly the case in most other 'reconciled' areas throughout Syria.

3.4. Ongoing conflict

23. Basic services in Syria have become a luxury, with water and electricity outages lasting many hours

²⁷ For more details on this trial, see the Syria Justice and Accountability Centre's Trial Monitoring, available at <https://syriaaccountability.org/trial-monitoring/>.

²⁸ Human Rights Watch, Syrian: Detention, Harassment in Retaken Areas: Media, Aid Workers, Activists, and Families Targeted, 21 May 2019 available at: <https://www.hrw.org/news/2019/05/21/syria-detention-harassment-retaken-areas>.

²⁹ For more information, see www.urnammu.org.

³⁰ Syrian Association for Citizens' Dignity 'Reconciliation agreement' in Daraa: Insecurity, continued repression and collective punishment', 7 October 2020 available at: <https://syacd.org/reconciliation-agreement-in-daraa-insecurity-continued-repression-and-collective-punishment/>.

³¹ Syrians for Truth and Justice, Up to 160 Detention Cases Recorded in Northern Rural Homs since July 2018, 7 December 2018 available at <https://stj-sy.org/en/1058/>.

and sometimes days if not weeks. Fuel and bread shortages have resulted in a crisis of monumental scale causing fears of widescale famine. The Syrian pound has lost approximately 99% of its value since 2011, and the prices of even basic food items have skyrocketed. Corruption and bribery are commonplace.

24. Further, men between the ages of 18 and 42 are required to serve in the military for 21 months and often much longer due to a lack of conscripts as a result of mass casualties, desertion, draft dodging and defection of the large majority of eligible young men (only 20-25% of the army remains at present as compared to before 2011).³² Casualties of those in the military are exceedingly high, especially if they lack a *wasta* (personal connections) and are sent to the front lines or come from an area deemed rebellious and thereby black-listed by the regime. With the exemption fee for military conscription at \$8,000 USD, a price that is unattainable for the vast majority of the impoverished Syrian population, flight is often the only option.
25. With life in Syria becoming ever more intolerable, Syrians are more desperate than ever to flee Syria. Yet with regional and European states making official entry for Syrians exceedingly difficult, any attempt to flee Syria becomes that much riskier with higher odds of being killed while on the migratory route or being detained and going missing by the Syrian authorities or other states. There are no known numbers of Syrians that have gone missing while trying to flee from Syria but the number is undoubtedly high as Syrians have often made up the largest population of Mediterranean irregular migrants over the past few years.³³

3.5. Weak legal protections and institutions for missing persons

26. In Syria, there are few legal protections or institutions for the missing and their families. Rather, the laws focus on courts issuing judgments declaring the missing person dead following the passage of a certain period of time or else appointing legal representatives to oversee the affairs of the missing. In addition, procedures to determine the location of the missing, including detainees and the forcibly disappeared, are murky and unclear and rely on trial and error with various ministries, prisons and the civil registry (to see if the person is listed as deceased) and large bribe payments.³⁴ Most often, as noted above, these efforts lead nowhere and families are left without answers.
27. Yet even the search for the missing in Syria is exceedingly dangerous for families of the missing. Largescale displacements have left millions of Syrians far from their homes and areas of original residence with limited access to government institutions, including prisons and detention centers. In addition, judges, court employees and police have often refused to provide support to families of detainees, fearing the repercussions in doing so. Families of the missing have faced severe harassment and even detention in their search for their relatives. Others have lost access to the missing's assets and properties as a result of the Counterterrorism Law (Law No. 19/2012) that defines terrorism to include human rights activities and dissent and Decree 63/2012 that allows the

³² The Tahrir Institute for Middle East Policy, TIMEP Brief: Conscription Law, 22 August 2019 available at: <https://timep.org/reports-briefings/timep-brief-conscription-law/>.

³³ Missing Migrants IOM, Mediterranean Irregular Migrants: Syria Now Top Sending Country, available at <https://missingmigrants.iom.int/mediterranean-irregular-migrants-syria-now-top-sending-country>.

³⁴ ICMP, Missing Persons in North East Syria: A Stocktaking, 25 March 2020 available at: <https://www.icmp.int/wp-content/uploads/2020/05/icmp-gr-mena-065-6-w-doc-stocktaking-missing-persons-in-north-east-syria.pdf>.

Finance Ministry to seize both movable and immovable properties of persons who fall under the Counterterrorism Law.³⁵

28. The Syrian authorities use the detention industry to make profits off of victims. Families of detainees are routinely forced to bribe officials, including security personnel, judges and members of the military, to be allowed to obtain information on the detainee, visit them or win their release. Sadly, even after the payments of exorbitant bribes, families are often provided with false information or no information at all.

IV. THE SYRIAN LEGISLATIVE FRAMEWORK REINFORCING ENFORCED DISAPPEARANCES

4.1. Decrees fostering security services violations

29. The Syrian authorities, particularly through their military and security branches, have committed crimes against humanity and war crimes, including enforced disappearances, arbitrary detentions, torture, death under torture, sexual violence and executions without legal guarantees or due process.³⁶ The security services fall under the authority of multiple actors, including the military and armed forces (Air Force Intelligence and Military Intelligence), the Ministry of Interior (Political Security), and the President (General Intelligence Directorate).³⁷ As such, these security services violate the Syrian government's obligations under international law and also under some Syrian legislation in force, including the current Syrian Constitution of 2012³⁸ and the Criminal Procedure Code of 1950.³⁹
30. Yet problematically, security services are granted immunity from prosecution through the adoption of decrees that reinforce the culture of impunity and allow for the continuation of these violations. Legislative Decree No. 14, which established the State Security Department,⁴⁰ gives immunity to the staff of the department for crimes committed while on duty. Article 16 of the Decree states, “no legal action may be taken against any employee of the department for crimes committed while carrying out their designated duties or in the course of performing such duties except by an order issued by the director.” Decree 64/2008 further prohibits the prosecution of “officers, non-commissioned officers, any member of the internal security forces, political security and customs police, for crimes committed while carrying out their designated duties,” except in cases where prosecution orders are issued by the General Command of the Army and Armed Forces.⁴¹

31. Decree No. 55 of 21 April 2011 added a paragraph to Article 17 of the Code of Criminal Procedure to

³⁵ *Id.*

³⁶ Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, Human Rights Council, forty-sixth session, AHRC/46/55, 11 March 2021, p. 26.

³⁷ For more details, Maan Talaa, “Syria's Security Services and the Necessities of Structural and Functional Change”, *Omran for Strategic Studies*, Turkey, 14 July 2014, opt. cit., p. 9 ff.

³⁸ See, for example, Articles 50, 51, 53 and 54.

³⁹ See, for example, Articles 17, 25, 49, 104 and 105.

⁴⁰ Issued on 25 January 1969.

⁴¹ Article 1 of the Decree. Officers and military personnel are not prosecuted before the military court for crimes committed in the course of performing their duties before obtaining a prosecution order from the army command. For more, see Articles 52, 53, 54 and 55 of the Military Code of Criminal Procedure promulgated by Legislative Decree No. 61 of 1950.

authorize “the judicial police or delegates”, including the security services, to detain suspects “for up to 60 days,” during which time detainees are isolated from the outside world, and thus exposed to the violation of their fundamental rights.⁴² Although this authorization is limited by the decree to a narrow set of crimes,⁴³ including those that undermine internal and external state security and public safety, the security services rely on this decree to hold detainees for long periods of time, even in cases of minor criminal offenses such as drug trafficking.

4.2. Death penalty in Syrian legislation

32. A number of Syrian laws allow for the death penalty in violation of the provisions of Article 6 of the International Covenant on Civil and Political Rights, as interpreted by the Human Rights Committee.⁴⁴ According to this interpretation, states that have not yet abolished this inhumane punishment can only apply it to punish the most serious crimes, including premeditated murder.⁴⁵ Yet these laws have been used to justify the execution of thousands of missing Syrians, including political dissidents.
33. The Syrian Penal Code⁴⁶ prescribes the death penalty not only for premeditated murder, but also for any deliberate act of arson if it results in the death of a person or damage to public or private funds,⁴⁷ and for crimes of treason which have been interpreted very broadly since they apply not only to those who bear arms against Syria in the ranks of the enemy but also to those who conspire with a foreign State with a view to inciting it to commit aggression against Syria. It also prescribes the death penalty for any act of aggression designed to provoke civil war or intercommunal strife, and for those who join “illicit associations”.⁴⁸ Such language contains broad notions that are applied to any dissident of the Syrian regime.
34. The Syrian Military Penal Code⁴⁹ also prescribes the death penalty in many cases, including for any military person who commits the crime of fleeing to the enemy (Article 102), who escapes before the enemy in implementation of a conspiracy in wartime (Article 103), who refuses to obey the order to attack the enemy or rebels (Article 112), in case of disobedience and instigation thereof before the enemy (Article 113), and for any military person who communicates or gives the enemy a password or secret information on military actions and participates in conspiracies (Article 155).⁵⁰
35. Other laws provide for the death penalty for political crimes, such as Article 9 of the Law No.

⁴² The text of the Decree is available in Arabic at: <https://groups.google.com/g/syrianlaw/c/XjhkLTJEggY>

⁴³ Articles 260 to 339 of the Syrian Penal Code.

⁴⁴ Human Rights Committee, general comment No. 36 of the Human Rights Committee, Article 6 of the International Covenant on Civil and Political Rights, sixteenth session, 1982, available at <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsrdB0H115979OVGG-B%2bWPAXhNI9e0rX3cJImWwe%2fGBLmVrGmT01On6KBOqgmXPNiJrLLdefuuQjN19Bgor%2fs93rKPWbCbgoJ4dRgDoh%2fXgwn>

⁴⁵ *Id.*

⁴⁶ Issued by Legislative Decree No. 148 of 1949, amended by Legislative Decree No. 1 of 2011. Available in Arabic at: <https://learningpartnership.org/sites/default/files/resources/pdfs/Syria-Penal-Cade-1949-Arabic.pdf>

⁴⁷ For more information, see Articles 574 and 577 of the Syrian Penal Code.

⁴⁸ For more information, see Articles 264, 266, 298 and 305 of the Syrian Penal Code.

⁴⁹ Issued pursuant to Legislative Decree No. 61 of 1950, available at <https://www.refworld.org/docid/58a5e1b34.html>

⁵⁰ Articles 154, 156, 158, 159 and 160 of this law also provide for the death penalty. Most of the amnesty decrees issued by the Syrian authorities excluded these articles.

52/1979 on the Security of the Arab Socialist Ba'ath Party, which provides for the arrest and, in some cases, death penalty for any act intended to prevent the Ba'ath Party from carrying out its functions. Counter-Terrorism Law No. 19/2012, which the Syrian government uses to crack down on opponents, also provides for the death penalty in several of its articles, including the fifth and sixth articles, which exclude all amnesty decrees.

36. After the start of the Syrian popular uprising in 2011, the Syrian authorities relied upon these laws to execute thousands of Syrians because they refused to participate in the regime's military campaigns against civilians, or because they defected or joined the ranks of opposition factions. In fact, in Syria, unlike many countries in the world, there is no right to conscientious objection, which is the right to refuse to conduct hostilities or use force for the purpose of killing because such acts contradict the principles and beliefs of the objector.

4.3. Legislation violating the rights to freedom of expression and assembly

37. Hundreds of thousands of Syrians have been subjected to arbitrary detention followed by enforced disappearance for political reasons relating in particular to the exercise of the rights to freedom of expression and assembly. Syrian legislation systematically violates these rights.
38. Counter-terrorism Law No. 19 /2012 paved the way for enacting Law No. 22, which established a special court with jurisdiction over terrorism cases. This court is specifically focused on suppressing opponents of the ruling regime, including peaceful activists,⁵¹ in the absence of fair trial guarantees. Law No. 19 contains political terms and broad notions that penalize even those who exercise their legitimate political rights, including the right to freedom of opinion and expression. The politicization of Law No. 19 appears, in particular, in the text of Article 2, which refers to the term “conspiracy” without defining it or explaining its meaning throughout the law. The third paragraph of Article 3 also explicitly provides for increasing the severity of punishment “if the purpose of establishing the terrorist organization is to change the regime of the state or the structure of the state.” As for Article 8, it targets consumers of information by punishing “anyone who distributes publications or information stored in any form with the intention of promoting the means of terrorism or terrorist acts, and the same penalty shall apply to anyone who manages or uses a website for this purpose.”

4.4. Military field courts

39. Military field courts⁵² are among the most prominent bodies responsible for persons going missing in Syria. They have issued death sentences against thousands of Syrians⁵³ in secret trials that lack legal procedures and fair trial guarantees, including the right to a public hearing, the right to a

⁵¹ See Human Rights Watch, Syria: Counterterrorism Court Used to Stifle Dissent, June 2013, available at: <https://www.hrw.org/ar/news/2013/06/25/250229>

⁵² Constituted by Legislative Decree No. 109 of 17 August 1968, published in the Official Gazette of 1968 No. 38, p. 12542.

⁵³ For more information, see Riad Ali, محاكم الميدان العسكرية : محاكم أم جرائم؟, Syrian Legal Forum/Arab Reform Initiative, 12 February 2018, available at <http://www.syrianlegalforum.net/publications/view/32>

defense and the right to an appeal.⁵⁴ These death sentences are also carried out in secret, and the bodies of the victims are rarely handed over to their families or their fate revealed. Even children have not been spared death sentences, and some remain unaccounted for.⁵⁵

40. Each court is composed of three officers who are not required to hold law degrees.⁵⁶ The court and public prosecutor may derogate from the principles and procedures in the current legislation, including legal protections.⁵⁷⁵⁸ Both military personnel and civilians are tried, whether as perpetrators, accomplices or interveners,⁵⁹ before these military courts which have jurisdiction over a wide range of crimes, including military crimes that were committed during wartime or military operations and internal disturbances,⁶⁰ or crimes that the Minister of Defense decides to refer to these courts at his discretion.⁶¹ The Minister of Defense and Head of State also have the right to annul sentences after their ratification,⁶² in clear violation of the separation of powers.

V. THE IMPACT ON WOMEN

41. While men make up the largest number of the missing, the Syrian authorities have also detained women for their activism or as hostages linked to opposition activists or fighters who were subsequently subjected to enforced disappearances and even sexual violence.⁶³ Detainees include pregnant women who gave birth in detention centers or military hospitals where basic health care is non-existent and hygiene is minimal, putting both the newborn and mother at risk. Consequently, there have been several cases where newborns have died within days of birth or miscarriages due to poor sanitary conditions in detention facilities and the lack of adequate medicine and food.⁶⁴ The suffering of women does not usually end with their release, though, as the social, economic, and psychological impact of detention is very significant, and can include dismissal from educational institutions, divorce and ostracization by both family and community.

42. Women whose family members have been arrested or disappeared also face social stigma; they are subjected to social isolation that they impose upon themselves out of grief or that others impose on them out of denunciation. This often leaves women with the responsibility of searching for the

⁵⁴ Article 6 of Decree No. 109 states that their sentences are not subject to any form of appeal. The verdicts are, however, only implemented upon approval of the Minister of Defense, with the exception of the death penalty, which must be ratified by the Head of State, according to Article 8 (a) of this Decree.

⁵⁵ Urnammu, *Forgotten Children*, May 24, 2018, p. 11, available at <https://www.urnammu.org/wp-content/uploads/2018/05/FORGOTTEN-CHILDREN-July-EN-2.pdf>

⁵⁶ See Articles 3 and 4 of Legislative Decree No. 109.

⁵⁷ Article 5 of Decree No. 109.

⁵⁸ Under Legislative Decree No. 12/30 of 15 January 1969, which made the first amendment to the system of this court.

⁵⁹ Pursuant to the provisions of Article 50 of the Military Penal and Criminal Procedure Code.

⁶⁰ The jurisdiction of these courts was expanded under the third amendment to their Statute to include crimes committed “in the event of internal disturbances,” according to Legislative Decree No. 32 of 1 July 1980.

⁶¹ See Article 47 of the Military Penal and Criminal Procedure Code issued by Decree No. 61 on 27 February 1950.

⁶² According to Article 8 (b) of the above-mentioned Decree No. 109.

⁶³ Syrian Network for Human Rights, *On the International Day for the Elimination of Violence against Women: Ninth Annual Report on Violations against Females in Syria*, 25 November 2020, p. 9 ff, available at:

https://sn4hr.org/wp-content/pdf/english/On_the_International_Day_for_the_Elimination_of_Violence_against_Women_Ninth_Annual_Report_on_Violations_against_Females_in_Syria_en.pdf

⁶⁴ *Id.*, p. 10.

disappeared or dealing with the legal procedures, as male relatives fear detention should they inquire on the fate of the disappeared. To this end, women endure the ordeal of repeatedly traveling to Damascus from different governorates to get answers from the courts and military police. In doing so, they are often subjected to material and emotional blackmail by middlemen, and sometimes to sexual exploitation by influential people or those posing as influential people.

VI. POLITICAL PROCESSES DEALING WITH THE MISSING AND DISAPPEARED

43. Unfortunately, the matter of detention and enforced disappearance has been used as a bargaining chip in political negotiations despite being fundamentally a humanitarian and human rights matter. To date, there has not been any formal process focused on the systematic release of detainees. Despite multiple UN resolutions (UNSCR 2139, 2165, 2191, 2258, 2332) demanding that states use their influence to advance the early release of those arbitrarily detained, political negotiations on the matter have reached a stalemate with little being done on the matter.
44. Within Syria, armed state and non-state actors have engaged in unofficial prisoner exchanges. Outside of Syria, there have been a few individual efforts by political leaders, including the special envoys resulting in the release of a small number of high profile detainees.⁶⁵ Only the Astana process – a military process – has developed a ‘mechanism’ for addressing the matter of detention. Yet this mechanism falls far short of what is required under international law and indeed has only enabled non-transparent prisoner swaps.
45. On the eighth round of Astana in December 2017, the Syrian parties and their international guarantors (Turkey, Iran, Russia) agreed to the formation of a ‘Working Team’ focusing on detainees and missing persons. Yet, the mechanism has lacked transparency or any promise of accountability, and instead has fueled additional corruption and extortion with families paying large sums of money to put their relatives on the exchange lists.⁶⁶
46. In general, the detainees released were either relatives of the armed groups, individuals arrested for minor charges, individuals detained for reasons unrelated to political dissent and individuals detained for only short periods. At times, the Syrian authorities failed to release individuals selected by the Working Team and released others.

VII. RECOMMENDATIONS

7.1. Related to international bodies and instruments

- Implement the United Nations Security Council resolutions, including the immediate release of all persons arbitrarily detained, through a special mechanism established to

⁶⁵ UN News, UN rights chief calls on Syria to release detainees, describes ‘grim’ conditions, torture, 19 February 2015 available at <https://news.un.org/en/story/2015/02/491472-un-rights-chief-calls-syria-release-detainees-describes-grim-conditions-torture>.

⁶⁶ Enab Baladi, Under ‘Astana’: How is Russia manipulating the issue of detainees?, 5 September 2019 available at <https://english.enabbaladi.net/archives/2019/05/under-astana-how-is-russia-manipulating-the-issue-of-detainees/>.

implement this measure;

- Fully cooperate with and facilitate the work of United Nations bodies, including the special procedures system and the Independent International Commission of Inquiry on the Syrian Arab Republic as well as any relevant international mechanism established to reveal the fate of those detained and disappeared;
- Accede to the International Convention for the Protection of All Persons from Enforced Disappearance, the Rome Statute, the Optional Protocols to the International Covenant on Civil and Political Rights and the Optional Protocol to the Convention against Torture, and lift the reservation to Article 20 of the Convention.

7.2. Related to domestic matters

- Put an end to the systematic practice of torture, inhumane treatment of detainees, and extrajudicial and mass executions, as well as the practice of enforced disappearances and other forms of physical and psychological violence;
- Release all political detainees in Syria, especially humanitarian, human rights and civil society activists, women, children, sick people, and those detained following 'settlement' agreements;
- Search for and provide information to the families on the fate of those disappeared by any other party to the conflict in areas that the Syrian authorities reclaimed following 'settlement' agreements;
- Immediately release all information held by the Syrian authorities on the locations and names of all detainees in Syria, including the fate of all those who died while in detention. In addition, hand over the bodies of the deceased to their families with the details of their death, and ensure accountability and reparations for the victims;
- Establish an independent and impartial judicial body to investigate war crimes and crimes against humanity, including the systematic practice of enforced disappearances and use of torture, and hold those responsible to account;
- Abolish all laws and decrees that contradict the International Bill of Human Rights, including those that violate the right to freedom of expression and assembly as well as those relating to the immunity of the security services, their non-subordination to the judiciary, and their non-adherence to the human rights guarantees of detainees and prisoners;
- Abolish all special courts and diminish the role of military courts to ensure that civilians are not tried before it. Ensure military courts' compliance with legal procedures and fair trial guarantees;
- Apply a moratorium on the death penalty as a first step towards its abolition, or at

minimum, apply it only to the most serious crimes involving premeditated murder;

- Transfer oversight of the prison administration from the Ministry of Interior to the Ministry of Justice and place all detention and custody centers under impartial and independent supervision. Take all legislative and practical measures to ensure compliance with the UN Standard Minimum Rules for the Treatment of Prisoners;
- Cooperate with all relevant stakeholders, including primarily the families of the victims, to facilitate the process of locating the remains of the missing and returning them to their families, while ensuring the safeguarding of evidence for accountability purposes, along with detailed information on the circumstances and causes of death;
- Immediately provide families of the missing with the bodies and circumstances of death for those registered as deceased in the civil registry as well as those who were issued a death certificate;
- End forced conscription and guarantee the right to conscientious objection. In addition, end the prosecution of military deserters and release those who have been detained.

VIII. CONTACT

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