

SYRIAN LEGISLATION RELATED TO MISSING PERSONS TOWARDS THE ADOPTION OF A LAW ON MISSING AND DISAPPEARED PERSONS IN SYRIA

I. INTRODUCTION AND BACKGROUND

1. This paper reviews the current landscape of Syrian legislation related to missing persons and provides as an initial step a framework on provisions needed for a future law aimed at revealing the fate of the missing and disappeared and guaranteeing the rights of their families, particularly during the transitional and post-conflict phase. This law should include, for example, a prohibition of discrimination and should provide material and moral support for victims and their families as well as guidelines on investigating the circumstances of disappearances.
2. This paper also elaborates on the legal complications and difficulties faced by the victims' families, including managing the missing person's property, obtaining a death certificate, and obtaining a divorce by the spouse of the missing person (and thus the possibility of remarrying). These complications arise from the shortcomings of unjust and outdated Syrian legislation and the systematic use of enforced disappearances by the ruling authority. While this paper does not focus necessary on legal reforms to current Syrian legislation, it presents the current legal landscape and the de facto practices that have led to the crisis of missing and disappeared persons in Syria.
3. This paper also excludes the issue of detention centers, security services and exceptional courts, which are primarily responsible for the practice of enforced disappearances¹. Indeed, this paper assumes a political transition in Syria whereby the new ruling authority will bring about comprehensive reform in the penitentiary system². This paper also excludes the issue of mass graves, which will be addressed separately by the PCG.

II. CURRENT SYRIAN LEGISLATION AND DE FACTO PRACTICES

4. The fate of the vast majority of detainees and persons forcibly disappeared in Syria is still unknown. This is despite the fact that some families of victims have obtained information indicating that their loved ones have died, either from prison survivors, through death certificates issued at the civil registry offices, or through the "Caesar" photographs that document the cases of thousands of detainees killed under torture and inhumane treatment³. The bodies of the majority of victims of enforced disappearances have never been returned to their families and the truth and

¹ For more on systematic violations committed by the Syrian security services, such as arbitrary detention, enforced disappearances, torture, death under torture and mass executions, see Policy Coordination Group for Syria's Missing and Disappeared Persons, Syria: Towards Addressing the Issue of Missing Persons, Report to the United Nations on the Universal Periodic Review of the Syrian Arab Republic, 40th Session - July 2021, p. 3 ff. available at: <https://www.icmp.int/wp-content/uploads/2021/09/universal-periodic-review-Syria-missing-persons-15-july-2021-english.pdf>

² The PCG plans to address in a separate paper the shortcomings of the Syrian criminal justice system, including the legislation that has sanctioned the widespread use of enforced disappearances, as well as the lack of judicial independence, violations by the security services, and the inhumane situation in detention centers.

³ For information on Caesar Photographs, see the report of Human Rights Watch, If the Dead Could Speak: Mass Deaths and Torture in Syria's Detention Facilities, December 2015, 88 p, available at: https://www.hrw.org/sites/default/files/report_pdf/syria1215web_0.pdf

circumstances of their death have not been established.⁴ Syria is also full of mass graves that have either not yet been discovered or professionally exhumed⁵, precluding the identification of the victims and the return of their remains to their families. Many Syrians have also gone missing on migration routes, and the remains of those deceased have not been found nor did the fate of those living reveal⁶. Serious human rights violations continue to be committed by the Syrian security services, exceptional courts and other de facto authorities.⁷ Indeed, Syrian legislation has sanctioned both authoritarianism and the widespread use of enforced disappearances.⁸

5. Investigating the fate of the missing, especially the forcibly disappeared, in Syria is considered extremely dangerous and complex for families⁹, particularly due to the weakness or absence of institutions for missing persons, the lack of clear legal and judicial procedures, and the fact that Syrian security services continue to commit systematic human rights violations with complete impunity. The massive destruction of parts of Syria and ongoing conflict have also resulted in the displacement of millions of Syrians, limiting their access to state institutions, including Sharia courts, prisons and detention centers. This has complicated the process of searching for their missing relatives. Families of the missing have also been subjected to severe harassment, and even arrests and extortion when searching for their loved ones.¹⁰ Syrian authorities have also used detention and enforced disappearances to obtain financial gains. Families of detainees are often required to pay bribes to intermediaries and officials, including security agents, judges and military personnel, to obtain information, visit, or release the forcibly disappeared. Unfortunately, even after paying huge sums of money, most families receive incorrect information or no information at all.¹¹
6. Families of victims face serious challenges in managing the assets and property of the missing as judges sometimes refuse to assign a legal representative or agent for the missing person¹². The complexities faced by families of the missing further increased with the issuance of Circular No. 30 by the Syrian Ministry of Justice on 16 September 2019¹³, which requires a person to obtain a security clearance before applying for a power of attorney for an absent or missing person. There are also numerous Syrian laws that violate property rights and may affect the property of missing

⁴ The Day After, On the Brink of Despair: Experiences of Families of Persons Forcibly Disappeared by the Syrian Regime, April 2020, p. 13.

⁵ For more information about mass graves in North East Syria, see the report of the International Commission on Missing Persons, "The Missing in North East Syria: a Stocktaking", 25 March 2020, pp. 9 and beyond, 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> See also, Abd al-Razzaq al-Husayn, Mass Graves and the Missing in Raqqa, Jumhuriya, 5 September 2019, available at: <https://www.aljumhuriya.net/ar/content/22258778>

⁶ For more information about the issue of missing migrants, see the website of the International Organization for Migration (IOM)'s Missing Migrants Project : <https://missingmigrants.iom.int/>

⁷ For more on the Syrian legislative framework contributing to enforced disappearances, see Syria: Towards Addressing the Issue of Missing Persons, *op. cit.*, p. 7 ff.

⁸ Abd al-Razzaq al-Husayn, *op. cit.*

⁹ For more on how to search for missing persons in Syria, see On the Brink of Despair: Experiences of Families of Persons Forcibly Disappeared by the Syrian Regime, *op. cit.*, pp. 11-12.

¹⁰ Syria: Towards Addressing the Issue of the Missing, *op. cit.*, p. 7.

¹¹ *Ibid.* see also The Association of Detainees and the Missing in Sednaya Prison: Forcibly Disappeared in Syrian Detention Centers: Research about the details of the Process of Forced disappearance process and the Fate of the Victims, December 2020, p. 4.

¹² The Missing in North East Syria: a Stocktaking, *op. cit.*, p. 18.

¹³ Amended by the decision of the first Shariah law judge in Damascus on 29 September 2021.

persons, including the 'Counter-Terrorism' Law (No. 19 of 2012)¹⁴ and the Property Law (No. 10 of 2018)¹⁵.

7. As men have gone missing at higher rates than women in Syria, wives, sisters, mothers and daughters, are often left with the responsibility of searching for their loved ones and dealing with unclear and complicated legal procedures stemming from the legislative shortcomings, corruption, and the absence of specialized institutions for missing persons.¹⁶ In addition to the psychological pain of losing the breadwinner, and the financial burden of providing for their families, women often endure the difficulty of moving from one governorate to another to inquire about missing persons at various state institutions, including the judiciary, police, security services and the civil registry. They are often subjected to physical and emotional blackmail and sexual exploitation, as well as intimidation and retaliation. Additionally, they face obstacles in seeking to act as legal agents to manage their missing relative's property, or to sue to obtain a divorce¹⁷ or death certificate for the missing person.¹⁸ Syrian women are also subjected to discrimination under Syrian laws, especially in terms of personal status. For example, the guardianship of a minor is entrusted to the father, and in the event of his death or absence, it goes to the agnatic grandfather or the father's relatives, while the mother's rights come last.¹⁹ Women have also been subjected to arrest and enforced disappearances along with their children. Women, who were pregnant when arrested or subsequently raped, have given birth in detention centers without the necessary medical attention or care.²⁰ In addition, many Syrian children have been arrested, forcibly disappeared and even executed by order of the Military Courts. Their bodies are rarely handed over to their families.²¹
8. The current legislative and institutional environment related to missing persons remains inadequate and unfair. These issues are amplified by the absence of a unified, coherent law or set of laws on

¹⁴ This law defines terrorism broadly to include protected human rights activities and peaceful opposition (See Article 1 and 2 of this law). Furthermore, Legislative Decree No. 63 of 2012 allows the Ministry of Finance to seize the movable and immovable properties of persons who fall under the Counter-Terrorism Law.

¹⁵ For more information, see The Day After, HLP Working Group - 2020 Research, The Reality of Housing, Land and Property Rights in Syria, April 2021, p. 134, Available at: <https://tda-sy.org/wp-content/uploads/2021/04/HLP-EN.pdf> Similarly, the Ministry of Finance can also seize the funds of persons who have not completed the mandatory military service, according to Law No. 35 of 2017. See International Commission on Missing persons, 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>

¹⁶ See below.

¹⁷ Article 109 of the Personal Status Law has given the wife of missing persons the right to seek separation a year after her husband's absence. This requires complex legal procedures, including the need for the wife to obtain a police report or an official record stating his status as missing. See Missing Persons in North East Syria: A Stocktaking, op.cit. p. 22.

¹⁸ Female-headed households are especially vulnerable. Women's names are often excluded from documents pertaining to housing, land, and property, and as a result they face challenges to secure or prove inheritance rights or marital status. See Joint Submission for the 3rd Cycle of the Universal Periodic Review for the Syrian Arab Republic, 12 November 2021, point 11, available at: <https://cihrs.org/syria-universal-periodic-review-must-center-the-rights-of-the-detained-the-disappeared-and-their-families/#PDF>, quoted from the Independent International Commission of Inquiry on the Syrian Arab Republic, Death Notifications in the Syrian Arab Republic, 27 November 2018, p.3-4, available at:

https://www.ohchr.org/Documents/HRBodies/HRCouncil/ColSyria/DeathNotificationsSyrianArabRepublic_Nov2018.docx.

¹⁹ In this context, Article 172 of the Syrian Personal Status Law states that "The father and otherwise the agnatic grandfather shall have exclusive guardianship in regard to safeguarding, disposing of and investing the property of a minor", which is also confirmed by Article 170 of this law. The Personal Status Laws of non-Muslim communities also discriminate against women. According to Article 82 of the Personal Status Law of the Syriac Orthodox church, guardianship is not granted to the mother, except after it was granted to "the grandfather, then the brother of legal majority and afterwards the uncle and the cousin."

²⁰ Urnammu, Forgotten Children, May 24, 2018, p. 15, available at: <https://www.urnammu.org/wp-content/uploads/2018/05/FORGOTTEN-CHILDREN-July-EN-2.pdf>

²¹ Ibid, p. 11.

missing persons in Syria. Instead, concerns are addressed in an ad hoc fashion through deficient and disjointed legal articles spread across several laws, including the Personal Status Law and the Civil Code, which were issued decades ago and lacked the necessary protections. These laws also do not take into account the events of the past decade.

9. For example, the Syrian Civil Code in legislative decree No. 84 of 1949 Article 34 states that: "The provisions established in special laws shall apply to the missing and absent. If no provision is prescribed in special laws, then the provisions of the Islamic Sharia shall apply."²² The Syrian Personal Status Law No. 59 of 1959 also provides a set of relevant texts, including the definition of the missing person, who is considered "any person whose life or death status is unknown, or who is alive, but whose location is unknown."²³ This law adds that "a missing person is declared dead due to military operations or similar situations stipulated in the military laws in force four years after the date of his disappearance."²⁴ Legislative Decree No. 15 of 2019 further confirms in its first article this four-year period, as it states that "a missing person who disappeared after 15 March 2011 due to war or war operations or by a terrorist gang or hostile elements is deemed a martyr four years after their disappearance, following the issuance of a death verdict." This decree also grants rights and privileges to a category of missing persons whom the Syrian authorities consider "martyrs".²⁵
10. Syria requires legislative reform to eradicate legal texts unfavorable to the rights of the missing and their families, as well as a comprehensive law that addresses the issue of the missing and forcibly disappeared, as has been done in other post-conflict countries, such as Bosnia and Herzegovina²⁶. The issue of missing persons, including disclosing the fate of the missing, holding perpetrators accountable and compensating victims, is an essential pillar in transitional justice and necessary for a sustainable peace.

III. A LAW ON MISSING PERSONS FOR SYRIA

❖ **In addition to reforming Syria's current legislation to guarantee the rights of the missing and their families, the PCG calls for the adoption of a law on missing persons as part of any future political settlement and transitional period that takes into account at least the following:**

11. Include definitions that guarantee the rights of the families of victims and affected persons and help prevent the recurrence of violations. For example, it should include a definition of "enforced disappearance" as defined by the Rome Statute of the International Criminal Court²⁷ and the International Convention for the Protection of All Persons from Enforced Disappearance.²⁸ The law

²² Article 44 of the Syrian Civil Code, No. 84 of 1949, adds that "the domicile of the minor, the forbidden, the disappeared and the absent is the domicile of those who legally represent them."

²³ See Article 202.

²⁴ Article 206, paragraph 2.

²⁵ The full text of this law is available at: <https://www.egov.sy/>

²⁶ The Law on Missing Persons in Bosnia and Herzegovina was adopted on 21 October 2004. See also the Lebanese Law No. 105 on the Missing and Forcibly Disappeared, which was passed by the Lebanese Parliament on 18 November 2018.

²⁷ It was adopted in Rome on 17 July 1998 and Syria has not yet acceded to it.

²⁸ Article 2 states that "For the purposes of this Convention, 'enforced disappearance' is considered to be 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

should extend the definition of “victims” to the relatives of the missing up to the second degree, their adopted children, and persons who were under the responsibility or care of the disappeared person.

12. Include the creation of a Missing Persons Commission that establishes procedures that are clear, simple and efficient to support and coordinate with relevant State bodies in the investigation of the fate and circumstances of missing and disappeared persons inside Syria and Syrians missing outside of Syria. This Commission will also support in the prosecution of individuals responsible for the disappearance of persons, and implement other transitional justice measures including reparations and memorialization. This Commission, as well as the relatives of missing persons or their legal representatives, should have the right to access all information held by State institutions in the central registry of missing persons,²⁹ which the Commission will help create in cooperation with all relevant governmental and non-governmental bodies. The Commission will follow a victims-based approach³⁰, and should open up branches in all Syrian governorates and outside the Syrian territory to facilitate contact with victims and their families. The Commission should be impartial and independent and have constitutional weight to ensure the effectiveness of its work³¹.
13. Elaborate as much as possible on the duties of the different State institutions, including taking all necessary measures to remove obstacles in the effective investigation of the fate and circumstances of the disappearances. This should include the obligation of these institutions to provide the families of the missing and other relevant actors with all necessary information and resources. Families should always be the holders of the information on their missing relatives, with the ability to access and update that information as needed. Families of the missing should also be guaranteed the full protection and preservation of their data in accordance with international standards.
14. State institutions should be responsible for issuing certificates on the status of the missing as well as other legal and identification documents, without procedural and bureaucratic hurdles.³² The law should also ensure that any arbitrarily confiscated assets are returned to their owners, including the property and assets of the missing person and their families lost pursuant to the Social Insurance Law and counter-terrorism laws³³.
15. The proposed law must prohibit discrimination in the implementation of its provisions, whether on the basis of race, color, sex, language, religion, sectarian affiliation, social origin, religious, philosophical or political beliefs, sexual orientation, economic status, physical and mental disability,

law.” The Rome Statute extends this definition to include the forcible disappearance of persons by any political organization. In its article 7, paragraph 2, (i), it states that the enforced disappearance of persons means “the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.” The PCG favors the extended definition of “enforced disappearance”.

²⁹ These records are also referred to as a "central database" that contains information on the missing.

³⁰ See PCG, Ethical Charter: Data Collection and Documentation of Syria's Missing, 30 August 2021, available at: <https://www.icmp.int/wp-content/uploads/2021/07/ethical-charter-data-collection-and-documentation-of-syrias-missing-15-july-2021.pdf>

³¹ For more information on this Commission, see the full text of the constitutional paper available at: <https://www.icmp.int/wp-content/uploads/2022/01/constitutional-paper-on-the-issue-of-missing-persons-in-syria-22-december-2021.pdf>

³² The legal vacuum created by the absence of a death certificate jeopardizes the family members' rights to housing, land and property. See Joint Submission for the 3rd Cycle of the Universal Periodic Review for the Syrian Arab Republic, *op. cit.*, point 11.

³³ See above.

or otherwise. It must also provide for the equal treatment and rights of all persons, regardless of the status of the missing person as a military personnel or civilian.

16. The provision of material, moral and social support remains one of the most important pillars of the law on missing persons, and must be provided to two categories of persons or bodies. The first is to the family members³⁴ of the missing or forcibly disappeared person, in order to compensate them in proportion to the damage they have suffered. In this context, the State must ensure that these persons receive certain benefits, which may include preference in education, employment, access to health care or a monthly sum to those in urgent need of support. In addition, the State should be responsible for any burial cost if the missing or disappeared person has been found dead. The second category is to family associations and relevant civil society organizations. The State should support their programs and projects aimed at determining the fate of the disappeared, preventing the recurrence of violations and assisting victims, as well as any other memorialization efforts. In addition, special care must be given to women, children and other vulnerable and affected groups in the proposed law.
17. In addition to the implementation of international resolutions related to the missing and disappeared³⁵ in the Syrian conflict,³⁶ international expertise and knowledge should be called upon for the effective investigation into the fate and circumstances of the missing. In this context, the law should include provisions for cooperation with international bodies, including the International Commission on Missing Persons (ICMP), the International Committee of the Red Cross (ICRC), and United Nations bodies working on Syria in the fields of human rights and international humanitarian law.³⁷
18. Given the regional and international nature of the Syrian conflict, and the many parties involved which has resulted in missing persons of various nationalities, the law must also include principles for cooperation with other governments in the investigation of the fate and circumstances of missing persons. Such cooperation is useful in providing the necessary support to national institutions concerned with investigating the fate of the missing in Syria, as well as Syrians missing outside of Syria.³⁸
19. This law should include a chapter on punitive provisions to hold the perpetrators of the crimes of abduction and enforced disappearances accountable, including any person who covers up the crime of enforced disappearance or hinders access to information necessary to reveal the fate of the missing or the circumstances of their disappearance, or any person who deliberately provides false information in bad faith³⁹. The penalty for the crimes of enforced disappearance and abduction should be applied against the perpetrator, instigator, accomplice and intervener. The penalty should be aggravated if these persons have abused their public position or authority to commit said

³⁴ This also includes persons who were under their responsibility or care, as indicated above.

³⁵ See, for example, UN Security Council Resolution 2474 of 2019 on persons missing as a result of armed conflict, S/RES/2474 (2019).

³⁶ For more information on these decisions, see Syria: Towards Addressing the Issue of the Missing Persons, *op. cit.*, pp. 2-3.

³⁷ Such as the Working Group on Enforced or Involuntary Disappearances, the Independent International Commission of Inquiry on the Syrian Arab Republic, the 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.

³⁸ In this context, a radical reform of the Syrian diplomatic corps and the Syrian Ministry of Foreign Affairs must be undertaken in order to help Syrian embassies and diplomatic missions play their role in the search for missing Syrians outside Syria.

³⁹ The law should provide for the abolition or commutation of the penalty in the event that the person concerned proceeds to cooperate in the investigation of the missing or prosecution of other responsible parties.

crimes,⁴⁰ or if the crime of enforced disappearance is accompanied by sexual or gender-based violence, or if it is committed against a minor or a physically-disabled person.

20. The required law should also provide for the punishment of those who seek material or immaterial gain in facilitating the investigation of the fate of missing persons, and those who expose those seeking such information to any form of intimidation, ill-treatment or material or moral extortion, as well as those who withhold information from them without legal justification. Those who misuse or divulge data on missing persons to parties other than the parties concerned and who intentionally or negligently destroy evidence should also be punished by this law.
21. Finally, the law on missing persons must include a clear indication of its commitment to the most important international human rights instruments, including the two International Covenants on Human Rights,⁴¹ the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, as well as the International Convention for the Protection of All Persons from Enforced Disappearance. In this law, reference should also be made to the most important international instruments relating to gross human rights violations, including the Rome Statute of the International Criminal Court, the Convention on the Prevention and Punishment of the Crime of Genocide, and the Geneva Conventions and their additional protocols. The law must also include a provision ensuring that its texts are interpreted in accordance with the provisions of these instruments. In addition, should Syrian laws fail to address any issue related to the missing and disappeared, Syrian courts should turn to international law on the matter.

⁴⁰ An order or instruction from a superior official or any exceptional procedures or circumstances may not be invoked as a justification of enforced disappearance.

⁴¹ The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).