

BEFORE IT IS TOO LATE

A Joint Document on the Issue of Detention in Syria

A group of Syrian human rights organizations

Brief Edition

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What?

Before It is Too Late is a framework document that examines the various aspects of the issue of detention in Syria and offers practical proposals on how to address this issue within a set of legal and human rights parameters. It is a living, non-final document and a joint national project which shall not be owned or used by any single party; rather, it is a joint project intended to serve detainees in Syria.

Why?

This document provides a modest reference for Syrian and non-Syrian politicians, legal and human rights experts and all those concerned with detention in Syria on various political and legal levels. This document has come in response to the urgent need for an informed vision which dispels the ambiguity surrounding the issue of detention in Syria, simplifies the complexities, and communicates the voice of detainees families and the Syrian society at large to the public sphere in a view to offer some expertise that may contribute to addressing this issue. For that end, in the various phases of developing this document, the working group was keen on including the necessary simplified legal background on the one hand and making use of the practical field experience on the other.

Who we are?

We are a group of Syrian human rights organizations which have worked jointly on developing the first edition of this document. We seek to include more organizations in order to develop this document in future editions so as they are more comprehensive and informative.

Introduction

Despite the great complexity of the conflict in Syria, its protracted nature, transformation and multiplicity of actors, the issue of detention can be said to be one of the most complex and critical aspects of this conflict.

Notwithstanding the stalemate in the course of political settlement to the conflict in Syria, addressing the issue of detention is so urgent it cannot be delayed. The idea of this document is an attempt to develop a reference document for detention in Syria tackling the various aspects of detention in Syria as well as exploring the approaches that may be effective in addressing it.

This document is the product of more than four months of joint efforts by Syrian human rights organizations who wanted, through this initiative, to contribute to illuminating the long road towards resolving the issue of detention in Syria. These joint efforts date back much longer as these organizations took part in forming common ground among civil society organizations working on the issue of detention as well as coordinating policies and positions at different turning points. This effort shall continue to develop this document and issue new editions as it is a living non-final document and an open project for legal and human rights experts, activists and politicians concerned with detention in Syria who would like to join this project and adopt this document, offer feedback to enrich it or contribute to future editions. This edition focuses on state responsibility regarding detainees and the violations perpetrated against them while recognizing violations perpetrated by other parties in the context of the conflict which shall be addressed in details in future editions.

Purpose

This document aims at providing a reference for Syrian and non-Syrian politicians, legal and human rights experts and all those concerned with detention in Syria on various political and legal levels. This document has come in response to the urgent need for an informed vision based on technical legal knowledge on the one hand and practical field expertise on the other. This comes against the backdrop of tackling the issue of detention in various

political tracks and fora. It is hoped that this document would offer help to all those working on this issue to ensure that it is addressed within unified parameters regardless of the bodies or tracks in which it is addressed.

This Document:

- ✓ Provides an overview of the issue of detention from various angles
- ✓ Indicates relevant international laws and resolutions
- ✓ Reviews the history of the issue of detention in parallel with political tracks so far
- ✓ Summarizes obstacles and challenges
- ✓ Proposes strategies and appropriate approaches
- ✓ Examines the position of detainees in the anticipated peace agreement
- ✓ Is a living document which shall be reviewed and developed continuously

This document is NOT:

- × A detailed legal reference
- × A final unmodifiable strategy
- × A substitute for continuous coordination and joint action among all stakeholders in parallel with political tracks

Legal Background

This section addresses detainees in international law and legal rules applicable in Syria including:

- The International Covenant of Civil and Political Rights
- The Universal Declaration of Human Rights
- The Geneva Conventions
- The Convention Against Torture
- The customary rules of the international human rights and humanitarian laws

It further explores some of the relevant international bodies such as:

- The Working Group on Arbitrary Detention
- The Working Group on Enforced or Involuntary Disappearance
- The UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- The UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Execution
- The International Committee of the Red Cross

In addition, this section summarizes how the issue of detention was tackled in Security Council resolutions on Syria, particularly UNSCRs 2041 (2012), 2118 (2013), 2139 (2014), 2191 (2014) and 2254 (2015) as well as UNSCRs 2268 (2016), 2332 (2016) and 2401 (2018).

Detainees in the Syrian Law

The Syrian government uses the law itself to violate the most basic rights and freedoms. It gives security personnel immunity against prosecution for crimes committed in the course of upholding their duties, impede the independence of the judiciary, undermine the separation of powers all through passing laws and legislative decrees that promote impunity and unleash the power of oppressive apparatuses.

This section reviews the history of repeated and systematic legal violations since the beginning of the Baath rule and imposing the state of emergency, the malicious accusations and loose legal texts by which Syrian

political prisoners are tried. In addition, it tackles the extraordinary courts which do not uphold the guarantees of fair trial as well as the laws and decrees that preclude criminal accountability and which promote a culture of impunity.

Detention and the Political Track: A historical review

Although no significant progress has been made in the issue of detention in the different political tracks to resolve the conflict in Syria, almost all these tracks have tackled the issue. These include the Geneva Communiqué, all negotiation sessions held in Geneva as well as the Astana track, activities of the civil society support room established in the course of the intra-Syrian talks in Geneva.

As we embark on developing a new vision for the issue of detention, we realise the importance of making use of lessons learned from past experiences, particularly in terms of building confidence and then taking all measures necessary to ensure the safety of detainees.

Methods of Circumventing the Issue of Detention in Syria

The Syrian government deliberately uses procrastination and denial to evade international agreements concerning humanitarian issues in general and detainees in particular. In an attempt to align itself with the global counter-terrorism policy and to restore its legitimacy internationally, the Syrian government used various approaches affecting the essence of the issue of detention in Syria or the tracks in which it is addressed during negotiations. These include:

1. Denial of the presence of prisoners of conscience and branding them with terrorism
2. Utilizing extraordinary courts for 'security reasons'
3. Demanding lists of detainees names from the opposition
4. Transforming the issue into prisoner exchanges and ignoring legal protections of civilian detainees
5. Excluding many detainees from amnesty decrees

Detainees in Peace Agreements

This section reviews experiences of other countries such as Colombia, Bosnia and Herzegovina and Palestine and the lessons learned from their experiences in integrating issues of detention in peace agreements.

Proposed Approach

Detention in Syria must be addressed very carefully and cautiously to develop strategies to counter the Syrian government's tactics, duly prioritize the issue of detainees and work with the international community to pressure the Syrian government to meet its international obligations.

General Objectives

- As many demands as possible shall be fulfilled and the release of detainees shall be sought before reaching the end-state political arrangements in Syria and regardless of negotiations around them.
- The end-state political arrangements shall include the terms and guarantees necessary to fulfil all that is not achieved during negotiations
- A practical and legal mechanism must be founded to disclose the fate of missing and forcibly disappeared persons to alleviate the burden on the nascent new state, meet the needs of victim families and guarantee their right to truth.
- The foundations for accountability and transitional justice mechanisms must be laid.
- Drastic structural transformation must be introduced to the legal and security system to put an end to human rights violations and impunity and ensure non-repetition.
- Legal and practical mechanisms to rehabilitate survivors, integrate them into society, engage them in justice mechanisms and enable them to play an active role in the future of their country must be guaranteed

General Principles

- The issue of detainees is a humanitarian non-negotiable issue.
- Fulfilling urgent basic rights is not a substitute to long-term strategic rights and obligations
- There is no peace without justice and no justice without accountability

Recommendations on Most Vulnerable Detainees

The requirements of most vulnerable detainees, including women, children and persons with special needs, can be categorized into two levels:

- Urgent measures
- Long term demands

General Recommendations

- **Establishing a timeframe**
 - **Urgent demands:** These include the most urgent immediate needs that must be addressed by means of confidence building or establishing good faith among the parties. No advanced steps shall be taken before these demands are met.
 - **Medium-term demands:** These include the detailed steps that would address the various aspects of detention as much as possible before reaching, or regardless of, progress towards the end-state political arrangements. Work on these measures may take place in parallel with the political track.
 - **Long-term demands:** These include the structural drastic changes needed in the legal system and the structures that perpetuate impunity. This is necessary to ensure human rights are upheld, penal institutions are reformed and the rights of victims of war are guaranteed including those of detainees and forcibly disappeared persons so that such changes and guarantees are enshrined in the end-state political arrangements.
- **Utilizing the leverage of sanctions**
- **Utilizing the leverage of reconstruction**

General Parameters for Detention-related Provisions in end-state political arrangements

Provisions related to detainees must fulfil the following criteria:

- Using clear and specific language to avoid multiple interpretations and ambiguity
- Defining detainees who must be released using specific criteria rather than numbers
- Introducing guarantees regarding detainees who remain in prisons, detention facilities and secret detention centers when the final agreement is signed and in the first days of transition
- Respecting relevant international laws

This is the collaborative work of:

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