

Arbitrary Deprivation of Truth and Life



An accurate, transparent,
and non-discriminatory
approach must be adopted by
the Syrian State when issuing
“death statements”

Canada Fund For Local Initiatives

الصندوق الكندي لدعم المبادرات المحلية


Canada



20 MAY 2021

Arbitrary Deprivation of Truth and Life

An accurate, transparent, and non-discriminatory approach must be adopted by the Syrian State when issuing “death statements”

Syrians for Truth and Justice, through the support of the Canadian Government and the Canada Fund for Local Initiatives, conducted over 120 interviews with Syrians who were attempting to file cases before Syrian courts. Working with a network of field researchers in Damascus, Southern Syria, Northeastern Syria, and Northwestern Syria, we interviewed Syrians about the legal struggles they faced to better understand the challenges of the Syrian legal system and the hurdles average Syrians must overcome to achieve justice.

Global legal experts analyzed and commented on the challenges Syrians raised in their testimonies and their analyses, along with testimonials, are published in a series of five reports covering the subjects of:

- 1.Statelessness and the deprivation of citizenship
- 2.Violations to housing, land, and property rights
- 3.Violence against women
4. The issuance of death certificates for people missing or killed during the conflict
5. Family rights over neglected or orphaned children

We hope these reports will shed light on the challenges Syrians face daily to achieve fundamental human rights like housing, safety, and dignity, and that the recommendations included within will inspire Syrian and global communities to work together to create a justice system accessible and accountable to every Syrian.

Executive Summary

Hostilities forced Samar al-Hasan, 40, and her family to flee their home in Ma'arrat al-Nu'man city and settle in a makeshift camp in Harem city, within rural Idlib province. Before the family fled, Samar's husband was killed in a regime rocket attack on their neighborhood. Now, Samar lives with her children in her family's tent, unable to afford taking care of her children or herself without help. One source of her financial troubles is the Syrian government's refusal to give Samar her husband's death statement, a document which would allow her and her children to access her husband's will. The wrinkles on Samar's forehead speak of her suffering since her husband's death in 2018. Even as she wistfully recalls for Syrians for Truth and Justice the comfortable years she spent in Ma'arrat al-Nu'man with her husband, she knows they will never return.

A "death statement" formally documents the death of a person. Obtaining a death statement allows a widow to remarry – if she wishes – after the passage of her "Iddah".¹ A death statement is also required to initiate a 'determination of heirship' procedure by the deceased's heirs (incl. the wife, children, parents, and siblings).

In Syria, "death statements" are distinct from "death certificates". A *death certificate* is the document that confirms the occurrence of death, issued by the responsible local authorities or the institution in which the death took place, such as hospitals and prisons, or by the "Mukhtar" – the village or district chief, who keeps a local civil registry. In contrast, a *death statement* is a legal document issued by the Civil Registry office, where the deceased's records are kept, after recording the death on the basis of the submitted death certificate.

The Syrian government institutions, who are legally and officially authorized to issue death documents have been using death statements to blackmail the families of deceased Syrians emotionally and financially, especially those who were killed by the regime, died in detention, or perished in opposition-held areas. The Syrian government practices a similar double standard when handling the bodies of the deceased, discriminating on the basis of the deceased's affiliation and the circumstances of their death. The government quickly and easily returns the bodies of those who die for the regime, while burying the bodies of those who are accused of opposing the regime and die in government prisons – naturally or under torture – in unmarked, and often unidentified, mass graves.

The head of the Civil Affairs Directorate of the Ministry of Interior in Syria, Ahmed Rahal, [stated](#) on 8 August 2018 that the Syrian government documented 32,000 deaths between January and August 2018, and 68,000 deaths in 2017. Rahal confirmed that the Directorate registers deaths without inspecting their causes and circumstances. Later, on 14 November 2020, Ahmed Rahal

¹ The 'Iddah' is a waiting period of four months and ten days that a Muslim woman observes after the death of her husband.

gave an additional statement in which he [declared](#) the registration of 47,000 deaths throughout 2019, and more than 35,000 deaths from the beginning of 2020 until September the same year.

With the rising death toll in Syria, STJ believes that an accurate, transparent, and non-discriminatory approach must be adopted by the State when issuing death statements and certificates without hiding or altering the truth. The families of deceased Syrians should not be forced to choose between receiving a falsified, untrue, or incomplete death document or not receiving one at all.

STJ calls upon the Syrian government to issue death statements for all dead persons including those killed inside and outside its prisons. The Syrian government must provide the families of those who are already listed as dead in the Civil Registry with death statements and disclose the circumstances of their deaths occurring within its custody, without concealing the crimes and violations against them. Furthermore, the international community should also pressure the Syrian regime to open its prisons and detention centers to the UN as well as other concerned international human rights and humanitarian organizations to properly identify detainees, stop torture and executions, and end enforced disappearances in Syria.

Methodology and Challenges

The following report is the result of STJ's pursuit documenting the struggle of particular Syrian communities to obtain death statements for their loved ones – an issue we have been monitoring since 2011. We support our research with statements from the relatives of missing and forcibly disappeared people from the provinces of Dara'a, Hama, Idlib, As Suwayda, Damascus, and al-Qunaitra. The majority of the witnesses we interviewed confirmed that the Syrian authorities refused to issue them death statements for their dead. The government does not declare the deaths which occur in its jails and conceals the bodies of those who die or are killed there, burying the bodies of the detainees in mass graves along with the truth of their death. Authorities refuse to inform the families of the deceased where their graves are and provide no information about the circumstances of their loved one's death, which is often brought on by systematic torture, starvation, and deadly diseases spread inside Syrian detention centers.

This paper reflects on the Syrian government's refusal to issue death statements to certain people who died during the war, and highlights the impact of this arbitrary act on the families of the deceased. Without confirming the death status and obtaining official death statements, families are unable to move forward not only emotionally, but legally. For example, we highlight the cases of women who find themselves in a particularly vulnerable position after being denied their husband's death statement, often being denied access to their husband's will or being unable to marry again.

STJ's field researchers faced numerous challenges while collecting the information and the testimonies recorded in this paper, among them the tense security situation across Syria, in

addition to the Covid-19 crisis and the subsequent restrictions imposed on some of the targeted regions, all of which limited the movement of the team.

Introduction

This paper underlines why families need to obtain documents proving the death of their loved ones. The failure to access a death statement affects:

- A. **The deceased's wife:** if she wishes to remarry, Syrian law requires the widow to present a death statement to the sharia court after the passage of her “Iddah” (restricted by Article 123 of the Syrian Law of Personal Status to four months and ten days based on Islamic Law).² Additionally, the wife is required to conduct the dissolution of the marriage transaction, legally termed as the break-up of a marital union, at the Civil Registry where her records are kept.
- B. **The deceased's heirs:** the Syrian Law of Personal Status of 1953 states that those entitled to inherit the property of the deceased are his sons and daughters, wife/wives, and parents. In the event the deceased has no children, the inheritance passes down to his wife/wives, parents, brothers, and sisters. The heirs cannot initiate the “determination of heirship” procedure without obtaining a death statement for the deceased. Consequently, they cannot access the deceased's estate, including his money, real estate, vehicles, and pension.

Syria needs an inclusive, accurate, and non-discriminatory approach when issuing death certificates and death statements; however, today how an individual dies determines whether their family receives a death statement or not. Since the war began, concealing the true circumstances of an individual's death has become a requirement for receiving a death document. Several witnesses confirmed to STJ that competent Syrian authorities required them to sign papers claiming that terrorist groups were responsible for killing their loved ones rather than the Syrian government. After most of the deceased's families refused, they were denied death documents.

The Syrian uprising led to the death of thousands throughout Syria. Many were killed while taking part in peaceful protests and the military operations which followed, and others while in custody. In order to accurately record how they died and where they were buried, as well as provide their families some measure of justice and peace, STJ recommends:

² The amended Syrian Personal Status Law of 2020, the Syrian Lawyer Club, 15 March 2019, <https://www.syrian-lawyer.club/%D9%82%D8%A7%D9%86%D9%88%D9%86-%D8%A7%D9%84%D8%A3%D8%AD%D9%88%D8%A7%D9%84-%D8%A7%D9%84%D8%B4%D8%AE%D8%B5%D9%8A%D8%A9-%D8%A7%D9%84%D8%AC%D8%AF%D9%8A%D8%AF-pdf/> (last accessed: 6 March 2021).

Recommendations

1. To call on the UN Security Council to push for a radical political solution in Syria. The Security Council must ensure a transition to a democratic system that involves all Syrians and respects UN decisions while pursuing accountability and truth-seeking processes.
2. To bring the army and the security services under the full authority of the Syrian constitution and law, and ensure they are subjected to judicial scrutiny, as well as that of the incoming elected government, which is meant to both exercise authority and be accountable to the Syrian people through Parliament.
3. To compel require the Syrian government to issue death statements for all Syrians who died in its prisons or in hostilities, without obscuring the true cause of their death or any human rights violations they may have suffered.
4. To pressure the Syrian authorities to open its prisons and detention centers to the UN as well as other concerned international human rights and humanitarian organizations to properly identify detainees, stop torture and executions, and end enforced disappearances in Syria.
5. To compel the Syrian government to disclose the location of the burial sites of those who died within its custody to their families and allow those families to retrieve their dead's remains and rebury them in accordance with the customs and precepts of their religions.

How People Died During the Syrian War

Hundreds of thousands of Syrians have died during the ongoing Syrian conflict at the hands of varying perpetrators and circumstances, complicating the procedures of issuing death documents. However, as the Syrian government is the only party legally authorized to issue official papers, it has refrained from giving death documents to families whose loved ones were killed by it, or who died while fighting for other parties to the conflict. Refusing to issue needed death documents to the families of its victims or opposing parties, the government has the power to not only humiliate the families, but blackmail them emotionally and financially.

Syrians Denied Liberties, Lives, and Futures

While freedom is a natural law which cannot be modified, repealed, or restrained by humans, it is not absolute. States maintain their people's freedoms within a legal framework. This provides state authorities with the power to deprive a person who commits a crime from his/her liberty. However, holding a person arbitrarily constitutes a violation to domestic and international laws. When authorities conceal the whereabouts of the people they arrest, or deny holding them in custody, it constitutes the crime of '[Enforced Disappearance](#)' according to the International Convention for the Protection of All Persons from Enforced Disappearance.

Before 2018, government hospitals, including the military hospitals of 601, Tishreen, and Harasta, issued death certificates for people who died in them. However, those certificates, though official, were not admitted at governmental institutions, which only recognize death certificates issued by Civil Registries.

As of January 2018, the Civil Registry departments in Syria began updating the data of thousands of people who died in Syrian detention centers. STJ monitored the process closely and prepared several reports on the subject. Our first report, published 18 June 2019,³ revealed that at least 700 death certificates had been received by the Civil Registry departments in the province of Hama in early 2019. The second report, published 1 February 2021, unveiled the secret issuance and registration of tens of death certificates for detainees held by the Syrian security services.⁴

Families often learned about the deaths of their detained loved ones accidentally from employees while conducting regular transactions at Civil Registry departments. However, Syrian authorities refused to grant those families death statements for their dead. One of those family members, Ahmed al-Hamwi, 60, learned about his son's death from an employee at the Civil Registry of Hama but is still unable to obtain a death statement for him. Ahmed told STJ in January 2021:

"A military checkpoint of the Syrian security services arrested my son, 23, on 11 September 2013. He was on his way from Hirbnafsa town, southern Hama, to Hama city to buy tires for our car. Soldiers at the checkpoint took him to an unknown destination. We could not learn his whereabouts or fate. In 2019, I was summoned to the Civil Registry of Hama, where I was told that my son had died in prison of a heart attack."

The head of the Civil Registry of Hama gave Ahmed his son's ID card after verbally informing him about his son's death. Ahmed added:

"On 27 May 2019, I received a phone call from someone telling me to go to the Civil Registry department in Hama. I went there the next morning and waited for two hours to meet the head of the department. The head asked me to have a seat and started talking generally about my son until he reached the news of his death and uttered words that I will remember for the rest of my life. He said that my son died of a heart attack that struck him in prison. However, he did not mention the name of the prison, the date of my son's death, nor the place of his burial."

Shocked by the news, Ahmed al-Hamwi did not think then about requesting a death statement for his son. Later, he returned to the Civil Registry department after his son's condolence ceremony

³ New Notifications Declare Dead Hundreds in Syrian Security Services' Detention Facilities, STJ, 18 June 2019, <https://stj-sy.org/en/new-notifications-declare-dead-hundreds-in-syrian-security-services-detention-facilities/> (last accessed: 6 March 2021).

⁴ "My Mother still Hopes He's Alive": Dozens of Syrian Families Told their Detained Loved Ones are Dead, STJ, 1 February 2021, <https://stj-sy.org/en/my-mother-still-hopes-hes-alive-dozens-of-syrian-families-told-their-detained-loved-ones-are-dead/> (last accessed: 6 March 2021).

to request a statement. However, he was surprised to discover that this simple request would become an insurmountable challenge:

“I met the head of the department and asked him to grant me a death statement for my deceased son. I was shocked by his response. He said that he did not know my son and did not know anything about what I was saying. I tried to remind him about our last meeting 10 days ago and showed him my son’s ID card, which he gave me, but he continued denying seeing me before or knowing anything about my son. I asked him: ‘why don’t you give me a death statement as long as you are sure that my son died naturally?’ He responded by telling me to leave his office.”

Not only did Ahmed al-Hamwi fail to obtain a death statement for his son who mysteriously passed away in one of the government’s detention centers, he was not allowed to retrieve his son’s body or investigate how he died. Ahmed added:

“After I left the head’s office, I walked from one room to another in the Civil Registry telling my story to the employees there in the hope they would help me get a death statement for my deceased son, but it was in vain. After I exited the Civil Registry, one of the employees followed me outside. He told me that the Civil Registry does not issue death statements for those who died in detention centers, on instructions from security services, and that I was asking for the impossible. He said that many others were verbally informed of the deaths of their sons in prison, and were not given their bodies nor death statements – bearing official stamps – for them.”

Ahmed al-Hamwi still refuses to believe that his son has passed away. He and his family are living in the hope that they will meet him someday.

Ahmed’s case is similar to Razan Moussa’s, 26, from al-Qunaitra, who failed to obtain a death statement for her husband. Razan’s husband died in a government-run detention center in 2015. Razan told STJ in December 2020:

“My husband was arrested by the Syrian security services in 2014 while attempting to cross the border into Lebanon illegally to seek work there. We tracked his whereabouts through a military mediator in Damascus, who informed us of his death in prison in 2015.”

Five years later, Razan wanted to remarry and travel. However, the registration of her new marriage required proof of her former husband’s death. She explained:

“In early 2020, I hired a lawyer to register the death of my former husband and thus obtain a death statement for him, so that I could register my new marriage. But that did not work out. The lawyer told me that it is not easy to obtain a death certification for my former husband since his death was unnatural. Consequently, the Civil Registry did not recognize the death of my former husband and the Syriah Court refused to dissolve my former marriage.”

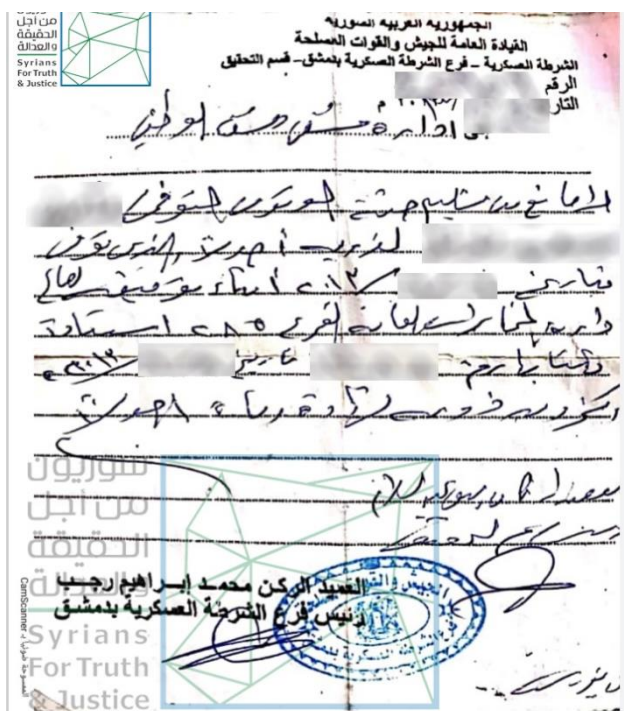
Unlike Razan, one wife of a detainee who died in a government-run detention center managed to obtain a death certificate and statement for her husband by bribing employees in both a funeral

home and the Civil Registry. STJ met the wife, who hails from the province of As Suwayda, in January 2021. She recalled the arrest of her husband, who participated in the peaceful protest movement in Damascus at the beginning of the Syrian conflict, saying:

“My husband was wanted by Syrian security forces for his opposition political activities. He was arrested in al-Mazzeah in November 2012. Since then, we have searched for him everywhere, including in security branches, who did not provide any information related to him and even denied any link at all to his arrest. We turned to many people for help, including the Sheikh Aql of the Druze, to mediate between us and the security services to know the whereabouts of my husband, but to no avail.”

The witness did not receive any information related to her husband’s fate until mid-2013, when a survivor from Branch 285, also known as al-Khatib Branch, told her that her husband had been his fellow inmate. Later that same year, on 24 August, the wife received a note from the Military Police Branch of Damascus instructing her to retrieve her husband’s body from Damascus Hospital.

“The note I received said that my husband died in June 2013 while detained at Branch 285 of the general intelligence. I immediately went to Damascus Hospital – as I was told by the note – but did not find my husband’s body nor a death certificate nor any other paper proving his death. I only found his name listed with five others as dead in the hospital records. An employee in the mortuary room told me that my husband died of a sudden cardiac arrest. He said that they bury corpses coming from the prisons in mass graves after they reach a certain number in the hospital mortuary.”



A formal written note directed from the Military Police Branch to Damascus Hospital allowing the surrender of the body of a man who died while incarcerated in General Intelligence’s Branch 285 to his family. Credit: STJ.

Afterwards, the husband's family tried to obtain an official document proving the death of their son. Both the hospital and the Civil Registry refused to issue them such a document. The hospital even refused to disclose the site of the husband's grave. The wife; however, succeeded in obtaining a death statement for her deceased husband after bribing an employee at the funeral home, allowing her to initiate a "determination of heirship" transaction:

"After my husband's family failed to obtain a death certificate for him, I went to the funeral home and managed to obtain a death certificate for my husband by bribing an employee there, and was thus granted a death statement for him from the Civil Registry."

However, the wife could not complete the "determination of heirship" transaction because security services summoned her to investigate how she obtained a death certificate for her deceased husband. Fearing she would suffer his fate, she fled to Lebanon with her sons and later took refuge in a European country.

The testimonies of Syrians like Ahmed al-Hamwi and Razan Moussa prove that Syrian security services do not abide by what is imposed by the Syrian Civil Code promulgated by Legislative Decree No. 26 of 2007. Article 38 of the Syrian Civil Code stipulates that deaths occurring in prisons and hospitals are registered in the Civil Registry based on death certificates issued by the heads of institutions or their deputies. Additionally, the Code's Article 44 states that no deceased can be buried without a death certificate from a medical source and, in the event the area has no doctors and/or the cause of death is suspect, the mukhtar must collect information on the death and deliver it to the relevant judicial and administrative authorities before issuing the death certificate.

Furthermore, the Syrian security services' failure to surrender the bodies of those who died under in custody to their relatives is only the last injustice committed against those in their jails. Detainees in security services' prisons are killed in diverse ways, including torture, field executions, extrajudicial killings, and under execution sentences issued by exceptional courts, such as Syria's notorious, but now inactive, Supreme State Security Court, and Syria's still active Military Field Courts which have issued the death sentences of tens of thousands of Syrians before and after 2011. We also have evidence that security forces kill their detainees in secret collective hangings carried out under the cover of darkness. Amnesty International has reported that many detainees at Saydnaya Military Prison have been killed after being repeatedly tortured and systematically deprived of food, water, medicine, and medical care. Amnesty confirmed that the bodies of those who are killed at Saydnaya are buried in mass graves.⁵

Article 468 of the Syrian Penal Code criminalizes the violation or desecration of graves. The same article also considers it a crime to bury or cremate an individual without due process or contrary to the laws and regulations related to burial. If the burial or cremation is committed with the intention of concealing death, Syrian law states that the perpetrator should be imprisoned

⁵ Human Slaughter House: Mass Hangings and Extermination at Saydnaya Prison, Syria, 7 February 2017, <https://www.amnesty.org/en/documents/mde24/5415/2017/en/> (last accessed: 6 March 2021).

between two months and two years. In other words, the Syrian government's burial of detainees contrary to religious and legal principles, as well as social customs, violates the Syrian Penal Code and constitutes a punishable criminal offence. In addition, by denying an individual the right to a proper burial and their family's right to bid them farewell, the Syrian government also violates Article 19 of the Syrian Constitution which provides for the maintenance of human dignity for every individual.

People Killed in Bombardments, Hostilities, and Assassinations

While Syrian authorities refused to issue statements to those the State imprisoned, they refused to do the same for people killed as a result of bombardments, hostilities, or in assassination and kidnapping operations. STJ has been monitoring these cases for the past several years. Most recently, on 21 May 2020, STJ published a report describing the emotional and financial struggles of families in southern Syria after Civil Registries refused to grant them death statements for their dead.⁶

Monitoring similar cases in 2021, STJ met Samar al-Hasan, 40, lost her husband when an airstrike struck their city of Ma'arrat al-Nu'man, in southern Idlib, in February 2018. The attack was conducted by regime forces and tracked by opposition researchers, which recorded the number of casualties. The Civil Registry department of Hama refused to grant Samar a death statement for her deceased husband. Thus, Samar and her sons were unable to initiate a determination of "heirship" procedure which allows them to access their inheritance. Samar said that not obtaining a document verifying her husband's death, and thus being denied access to his will and their inheritance, lead her family to poverty and deprivation.

In January 2021, Samar al-Hasan told STJ about her attempts to obtain a death statement for her deceased husband. Samar went to the Civil Registry of Hama because the governmental institutions in Idlib were all closed after the province came under the opposition's control. Samar said:

"I tried for three months in vain to obtain a death statement for my husband through brokers. I decided to go to the regime-held province of Hama myself. I arrived there in June 2019 and headed directly to the Civil Registry department. There, I met the employee in charge of Idlib's affairs. I told him what I came for and he asked me to present my husband's ID card and our family book, and I did. Then, he asked when and how my husband died. When I told him, he became nervous and told me to leave the room immediately with the tone of a security man. While leaving, I asked him when I should return. He answered: 'I do not know... maybe next week'."

Samar left for Ma'arrat al-Nu'man, but she did not give up. Ten days later, she returned to Hama to try again:

⁶ Southern Syria: Thousands of Survivors Fail to Register their Dead Relatives, STJ, 21 May 2020, <https://stj-sy.org/en/southern-syria-thousands-of-survivors-fail-to-register-their-dead-relatives/> (last accessed: 6 March 2021).

“When I arrived in Hama, I waited three days to meet the same employee in the Civil Registry. When I entered his room and reminded him of my case, he asked me to close the door and phoned a person, asking him to come. After 15 minutes, a colonel arrived. The colonel started asking me questions related to my husband, like what was his job and if he was a terrorist. I was afraid as I answered him. After a long discussion in which I was the weaker party, the colonel said to the employee: ‘This woman is lying’. The colonel asked him not to give me a death statement and to confiscate my husband's ID card.”

Samar tried offering the Civil Registry employee a bribe in exchange for granting her a death statement for her husband, but her attempt failed:

“I went back to the same employee two days later and offered him a sum of money in exchange for giving me the document. He responded: ‘are you crazy? The Civil Registry cannot issue a death statement for your husband because he is a terrorist’. I replied: ‘no, he is not’. The employee then said: ‘I advise you to leave Hama, as you may be arrested if your name is circulated at the checkpoints. And even if it is right that your husband is a civilian and killed by an air strike, his name was circulated on pro-armed opposition group media outlets as someone killed by government forces. How can we give a death statement to a terrorist?’.”

Without her husband's death statement, Samar and her sons could not access his will nor their inheritance. In early 2020, Samar fled with her children to makeshift camps in Harem city, in northern rural Idlib, after Syrian government forces took over Ma'arrat al-Nu'man.

In a similar case, Mona Mohammed, 40, lost her husband in a car bombing in Dara'a in 2017. The Civil Registry of Dara'a refused to grant Mona a death statement for her husband.⁷ As a result, Mona was unable to register the birth of her youngest daughter, nor receive her inheritance from her husband. STJ met Mona in December 2020, who told us:

“In 2019 I asked the mukhtar for a death certificate for my husband. He refused to issue me one, arguing that my husband's death was unnatural. Therefore, I filed a lawsuit before the Syriah Court to confirm the death of my husband, in mid-2019. However, the judge rejected the case for the same reason.”

As a result, Mona's 5-year-old daughter is now stateless. In addition, Mona cannot sell land registered in her husband's name, since she could not complete a “determination of heirship” procedure without his death statement.

Missing Persons

A missing person is a person whose whereabouts are unknown to his/her relatives and/or who, on the basis of reliable information, has been reported missing in accordance with the national legislation in connection with an international or non-international armed conflict, a situation of

⁷ Government institutions were re-operated following a settlement agreement concluded between the Syrian government and the opposition under Russian auspices in 2018.

internal violence or disturbances, natural catastrophes, or any other situation that may require the intervention of a competent State authority⁸.

The Syrian conflict is full of cases of enforced disappearances, mainly carried out by the Syrian government and its allied militias, as well as terrorist groups like Hay'at Tahrir al-Sham (HTS) and the Islamic State (IS). In many cases, the perpetrators are unknown — thousands of Syrians have left their homes and never been heard from again.

Article 202 of the Syrian Personal Status Law defines a missing person as: “a person who is not known if alive or dead or who is confirmed as alive but his/her whereabouts are unknown.” Under this Article, those held by Security Services are considered missing. Article 205 of the same law determines when the state of enforced disappearance ends: “if the missing person; returned, confirmed as dead, reached the age of eighty while disappeared (in this case the person presumed dead), being considered killed in hostilities after four years of disappearance, as stipulated in the military laws in force.”

The disappearance and the unconfirmed death of somebody have the same impact on his/her family. In both cases, families of the victims remain concerned about his/her fate and cannot access his/her will. However, Article 109 of the amended [Syrian Personal Status Law](#) No. 59 of 1953 gives the wife of the victim the right to file a suit for separation (judicial divorce) after one year of her spouse's absence or in the case he was sentenced to more than three years' imprisonment. This kind of “judicial divorce” is founded on the belief that a spouse's absence harms his wife.

Wardah Khalil, 45, from the city of Qamishli/Qamishlo, is married to a man who has been missing for nearly ten years. However, his family refuses to request a death statement for him. The family argues that this procedure would make them lose the hope of meeting him again.

Wardah told STJ:

“I was living with my husband and five children in Adra town in rural Damascus. My husband used to work as a day laborer in a factory in Adra. In 2012, when the conflict raged in our area between the regime forces and the opposition's, I fled with my children to the city of Qamishli. Shortly after, we lost contact with my husband who remained in Adrah, and since then we have been searching for him in vain.”

Wardah gave up hope of her husband's return ten years after his disappearance and considered obtaining a presumed death statement for her husband. However, her husband's family categorically rejected the idea. They argued that registering their disappeared son as dead without proof would socially stigmatize them.

⁸ International Day of the Disappeared 2012, ICRC, 27 August 2012, <https://www.icrc.org/ar/doc/resources/documents/faq/missing-persons-faq-2012-08-27.htm> (last accessed: 6 March 2021).

The Deprivation of Liberty According to Syrian Law

It is internationally known that arbitrary arrests and detentions became common practices in Syria after the Assad regime came to power. These practices have increased markedly since the onset of the Syrian uprising in 2011 and became omnipresent after the peaceful protest movement turned into an armed conflict. Most victims of arbitrary arrests and detentions who were snatched from their homes, offices, and streets have vanished without a trace and are considered forcibly disappeared. In a 2011 report, Amnesty International concluded that the Syrian government carried out an orchestrated campaign of enforced disappearances. At the beginning of the crisis, it arrested and forcibly disappeared large numbers of peaceful opponents of the government, including demonstrators, political activists, human rights defenders, media workers, doctors, and humanitarian aid workers.⁹

The prevalence of arbitrary detentions and enforced disappearances epitomizes the current lawlessness in Syria as security forces ignore both Syrian and international laws.

For example, the [Syrian Constitution of 2012](#) states:

Article 33 (1): “Freedom shall be a sacred right and the state shall guarantee the personal freedom of citizens and preserve their dignity and security”

Article 51 (1): “Punishment shall be personal; no crime and no punishment except by a law”.

Article 53 (1): “No one may be investigated or arrested, except under an order or decision issued by the competent judicial authority”.

Article 54: “Any assault on individual freedom, on the inviolability of private life or any other rights and public freedoms guaranteed by the Constitution shall be considered a punishable crime by the law.”

Furthermore, Article 555 of the Syrian Penal Code of 1948 prescribes a penalty of detention for a period of six months to two years for anyone who deprives another person of his/her personal liberty. In the event the period of deprivation of liberty exceeds a month or is accompanied by physical or mental torture, the penalty shall be a three-year imprisonment with hard labor, in accordance with Article 556 of the Penal Code.

Furthermore, Article 357 of the Penal Code states: “any public official who arrests or detains a person in circumstances other than those provided for by law shall be liable to a term of imprisonment with hard labor.” Article 358 of the same code says: “Any warden or guard of a prison or a disciplinary or reform institution, and any official vested with their powers, who admits a person into the institution without a judicial decision or warrant, or who retains a person therein

⁹ Between Prison and the Grave, Amnesty, 2015, <https://www.amnesty.org/download/Documents/MDE2425792015ENGLISH.PDF> (last accessed: 6 March 2021).

for a period longer than that ordered, shall be liable to a penalty of detention for a term of one to three years.”

Consequently, the Syrian government’s arbitrary prolonged detention of large numbers of Syrians, as well as the concealment of their whereabouts, constitutes a violation of the Constitution the government itself drafted, as well as the Syrian Penal Code.

Cited Violations According to International Law

International law enshrines human rights through International Humanitarian Law (IHL) – also known as the Law of Armed Conflict – and International Human Rights Law (IHRL). International Humanitarian Law applies to international and non-international armed conflicts and makes an important distinction between the two. International Humanitarian Law seeks to limit the effects of armed conflict by protecting persons who are not or no longer participating in the hostilities (e.g., civilians and fighters wounded or captured as prisoners of war) and restricting the means and methods of warfare. IHL rules are based on treaty obligations as well as customary norms known as Customary International Humanitarian Law. The treaty law contains rules stipulated in related international treaties, such as the Hague Conventions, the Geneva Conventions, and the Additional Protocols,¹⁰ which are binding on their signatory States. However, Customary IHL consists of rules that come from a general practice accepted as law and is universally binding.¹¹

It is important first to classify the conflict – international or non-international – in order to determine the applicable set of IHL rules and provisions. This determines the rights and obligations of the parties to the conflict and helps define the legal characterization of the committed violations more precisely. Notably, laws applied to a conflict define only bilateral relationships among its parties, even if the conflict has more than two parties. In other words, it is possible to have several parallel conflicts at the same time in the same geographical area; those conflicts may entail different types and thus different applicable laws. For instance, there are several parallel international as well as non-international conflicts in Syria. The Syrian state is involved in several armed conflicts of different classification at the same time, and the relation between the Syrian state and the other party in each conflict is governed by different set of rules, depending on the classification of that specific conflict.

The IHRL is dedicated to the protection of individuals, and certain groups, from abusive practices that may be committed against them by their governments. The IHRL is more complex and detailed than the IHL in terms of the rights stipulated, the obligations of the contracting parties, the implementation, and the follow-up mechanisms. The IHRL is based on a set of international and regional conventions and treaties, which in most cases oblige the signatory states to include rights stipulated in the IHRL within their domestic laws to ensure their practical and effective

¹⁰ For the texts of those treaties see: <https://www.icrc.org/ar/ihl-treaties>

¹¹ For more info see: <https://ihl-databases.icrc.org/customary-ihl/eng/docs/home>

implementation.¹² Importantly, IHRL is applicable at all times, in peace or war, with few exceptions. Although it is possible to temporarily suspend or derogate from some IHRL in some extreme emergencies and armed conflicts, a state cannot do so with certain fundamental rights that must be respected under all circumstances. These include the right to life, the prohibition of torture and other cruel, inhuman, or degrading treatment or punishment, the outlawing of slavery or servitude, the principle of legality, and the right to freedom of thought, conscience, and religion.¹³ The non-derogability of such rights under IHRL does not contradict any other legal paradigms, including the law of armed conflict. In fact, IHRL and the law of armed conflict complement each other, as they both seek to protect human beings and preserve their safety and dignity.

The present report provides irrefutable proof of the Syrian regime's involvement in committing crimes and violations of rules of both IHL and IHRL. We studied the testimonies and evidence attesting to the actions of the Syrian regime against detainees and their families in light of international law, and concluded that the present report provides irrefutable proof of the Syrian regime's commission of crimes and violations of the aforementioned legal paradigms, which we explore in the following paragraphs.

In most the recorded cases the victims were unarmed civilians who were not parties to any armed conflict and had not participated in hostilities. The detentions and arrests carried out by the regime against those victims were politically motivated and arbitrary, as they were lacking a clear legal basis. They also did not follow the rules of due process, and didn't respect the procedural safeguards set forth in international treaties to comply with principle of the rule of law. Hence, such practices constitute violation of the victims right to liberty and personal security provided for in several international treaties and documents, including the Universal Declaration of Human Rights, Articles (3) and (9),¹⁴ as well as the International Covenant on Civil and Political Rights of 1966 (ICCPR), Article (9).¹⁵ Moreover, not providing legal guarantees or a fair trial for the detainees violate Articles 10 and 11ⁱ of the Universal Declaration of Human Rights, as well as Article 14 of the ICCPR.

¹² The Foundation of International Human Rights Law, UN, <https://www.un.org/en/about-us/udhr/foundation-of-international-human-rights-law#:~:text=The%20Universal%20Declaration%20of%20Human,binding%20international%20human%20rights%20treaties>. (last accessed: 6 March 2021).

¹³ IHL and human rights law, ICRC, 29 October 2010, <https://www.icrc.org/en/document/ihl-human-rights-law> (last accessed: 6 March 2021).

¹⁴ According to the Universal Declaration of Human Rights, Article (3): "Everyone has the right to life, liberty and security of person"; and Article 9: "No one shall be subjected to arbitrary arrest, detention or exile."

<https://www.un.org/en/about-us/universal-declaration-of-human-rights>

¹⁵ The International Covenant on Civil and Political Rights of 1966, Article 9 (1), states the following: "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."

<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

Furthermore, the treatment of those detainees in the regime's custody undoubtedly qualify as torture, and thereby constitute a violation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, which defines torture in Article 1 as:

"Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."¹⁶

The rules of international law, be it treaty or custom and regardless of any circumstances, absolutely forbid all forms of torture and inhuman treatment. Article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, to which Syria is a party, clearly states that "no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture." Such conduct is absolutely prohibited under IHL and constitute a violation, regardless of whether it is committed in international or non-international armed conflict;¹⁷ it is also considered to be a war crime.¹⁸

In addition, the inhuman and degrading treatment, punishment, and discrimination that the families of detainees are subjected to is also considered a violation of the Convention against Torture, as is clear in the previous definition of torture. Witnesses' testimonies clearly indicate that the regime is systematically punishes the families whose loved ones have been detained, forcibly disappeared, or deliberately killed by the regime. The regime's acts of reprisal include preventing families from contacting their loved ones or knowing their fate. Families were also denied obtaining any official document related to their loved ones, including death documents, which allow them access to their right to inheritance. Consequently, families have been arbitrarily and collectively punished; they were not only denied access to the truth behind the loss of their loved ones, but also deprived of some of their most fundamental rights and stripped of their human dignity with no effective remedy available.¹⁹

¹⁶ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, Article 1, <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>

¹⁷ The Fourth Geneva Convention states, common Article 3 and Article 147, https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.33_GC-IV-EN.pdf

¹⁸ The Rome Statute of 1988 of the International Criminal Court, Article 8 (2) (a) (2), and 8 (2) (c) (1), <https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf>

¹⁹ International Covenant on Civil and Political Rights, Articles 2, 6, 7, 14, UN, Office of the High Commissioner, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> (last accessed 6 March 2021).

The International Committee of the Red Cross (ICRC) affirms the necessity of respecting family life; according to the Customary IHL, Rule 105 : “Family life must be respected as far as possible...collected practice shows that respect for family life requires, to the degree possible, the maintenance of family unity, contact between family members and the provision of information on the whereabouts of family members.”²⁰ Furthermore, customary Rule 123 states that “the personal details of persons deprived of their liberty must be recorded”²¹ by the actor that carried out the arrest. This Rule complements Rule 98: “Enforced disappearance is prohibited,”²² and Rule 117: “Each party to the conflict must take all feasible measures to account for persons reported missing as a result of armed conflict and must provide their family members with any information it has on their fate.”²³ Furthermore, Customary IHL recognizes the right of detainees, even if they were enemy soldiers, to contact their families in Rule 125: “Persons deprived of their liberty must be allowed to correspond with their families.”²⁴

As for the cases of death in detention, more accurately, the willful killing of detainees through torture, starvation, unlawful executions etc., constitute a clear violation of those detainees’ right to life which they legally should not be arbitrarily deprived of.²⁵ Article 3, common to the four Geneva Conventions of 1949, states that all detainees have the right to life and personal integrity and freedom from all forms torture and degrading treatment.²⁶ The same Article also affirms that detainees have the right to be brought before regularly constituted courts afforded all judicial guarantees.²⁷ IHL explicitly affords such protections to all the detained persons and members of armed groups involved in non-international armed conflicts, and the violation of the provisions of this article constitute a war crime. Additionally, the aforementioned practices by the Syrian regime are also considered a violation of several rules contained in the Additional Protocol II, of 1977, as many of its rules are of customary nature that are universally binding²⁸.

In addition to violating detainees’ right to life, the regime has also consistently violated the detainees’ right to die with dignity. The international community recognizes that there is a special

²⁰ The Customary International Humanitarian Law, ICRC, <https://www.icrc.org/en/doc/assets/files/other/customary-international-humanitarian-law-i-icrc-eng.pdf> (last accessed: 6 March 2021).

²¹ Ibid.

²² Ibid.

²³ Ibid.

²⁴ Ibid.

²⁵ International Covenant on Civil and Political Rights, Article 6, UN, Office of the High Commissioner, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> (last accessed: 6 March 2021).

²⁶ “Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949.” International Committee of the Red Cross, <https://ihl-databases.icrc.org/ihl/WebART/375-590006>, (last accessed: 17 May 2021).

²⁷ Ibid.

²⁸ “Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II).” United Nations Human Rights Office of the High Commissioner, <https://www.ohchr.org/en/professionalinterest/pages/protocolii.aspx> (last accessed: 17 May 2021).

sanctity for dead bodies which should not be violated even in extreme states of emergency such as war, regardless of the deceased's political affiliation. Under international humanitarian law, the respect for the dead during armed conflicts is of customary nature, and is universally binding on all parties to the conflict. For instance, Customary IHL²⁹ offers the following minimum standards:

Rule 112: "Whenever circumstances permit, and particularly after an engagement, each party to the conflict must, without delay, take all possible measures to search for, collect and evacuate the dead without adverse distinction."

Rule 113: "Each party to the conflict must take all possible measures to prevent the dead from being despoiled. Mutilation of dead bodies is prohibited."

Rule 115: "The dead must be disposed of in a respectful manner and their graves respected and properly maintained."

Rule 116: "With a view to the identification of the dead, each party to the conflict must record all available information prior to disposal and mark the location of the graves."

These legal rules are the minimum standards of humane treatment which are afforded to enemy soldiers; however, the Syrian regime has not provided them to its own people. Instead, the regime's disregard for basic moral and human values, notably the systemic killings and burials it practices against detainees, echo the violations committed by the Nazi regime in the first half of the past century.

The evidence presented in this report and similar publications³⁰ by civil society and humanitarian organizations demonstrate that the Syrian regime has not only arbitrarily deprived individuals of their right to life, but also deprived them of their right to die with dignity. In doing so, the regime has trampled fundamental human and moral values.

²⁹"Customary IHL: The Dead." IHL Database, ICRC, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_cha_chapter35, (last accessed: 17 May 2021).

³⁰ "Syria: Human Slaughterhouse: Mass Hangings and Extermination at Saydnaya Prison, Syria," Amnesty International, 7 February 2017, <https://www.amnesty.org/en/documents/mde24/5415/2017/en/>, (last accessed: 17 May 2021).



Our team of researchers and volunteers at Syrians for Truth and Justice are dedicated to uncovering human rights violations in Syria. Believing that diversity has historically defined and benefitted the country, we work everyday to promote inclusivity and justice to ensure that all Syrians are represented, and their human rights secured.