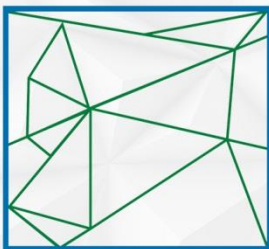


Syria: National Laws Fall Short of Preserving the Rights of Missing Persons and Supporting their Families



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The Syrian legislation fails to offer Justice to missing persons and victims of enforced disappearance and to reveal the truth of their whereabouts

1. Background:

In a historic step in late June 2023, the United Nations General Assembly adopted a resolution establishing the "New Independent Institution on Missing Persons in the Syrian Arab Republic"¹ to clarify the fate and whereabouts of missing persons and to support the right of families to know the truth.

This decision was a culmination of the efforts of victims' groups (VGs) and civil society organizations (CSOs) that worked diligently to urge the member states of the United Nations (UN) to vote in favor of establishing the Independent Institution.²

In his report submitted in August 2022, the Secretary-General of the UN recommended that member states consider establishing a new large-scale body specifically dedicated to missing persons, describing it as a keystone on the way to solve the issue of missing persons in Syria.³

Moreover, the Independent International Commission of Inquiry on the Syrian Arab Republic (CoI) submitted several reports on enforced disappearance and missing persons in Syria,⁴ and recommended the establishment of a mechanism with an international mandate to work on the file of missing and disappeared persons in the Syrian conflict.⁵

The decision to establish the Institution stipulates that the latter shall ensure the full and meaningful participation and representation of victims, survivors, and the families of missing persons and that it shall engage with women's organizations and other CSOs in a regular and sustained manner. Also, the Institution shall apply a victim- and survivor-centered approach, shall be inclusive of families, shall be guided by the principles of gender inclusivity, non-discrimination, independence, impartiality, transparency, and confidentiality of sources and information, and shall apply the standard of presumption of life.

Moreover, under the resolution, the Secretary-General is requested –in consultation with the full and meaningful participation of victims, survivors, and families– to develop, within 80 working days, the terms of reference of the Independent Institution.

In the voting session, the representative of Syria opposed the decision, stating that it was a "politicized" move aimed at Syria. He claimed that Syria is "keen to deal with this

¹ United Nations General Assembly. A/RES/77/30 on 5 July 2023.

² Civil Society Organizations Urge UN Member States to Vote in Favor of Independent Institution on Missing Persons in Syria. Syrians for Truth and Justice. 25 June 2023. Accessed on 31 July 2023.

<https://stj-sy.org/en/civil-society-organizations-urge-un-member-states-to-vote-in-favor-of-independent-institution-on-missing-persons-in-syria/>

³ United Nations General Assembly. A/76/890 on 2 August 2022.

⁴ United Nations General Assembly. A/HRC/46/55 on 11 March 2021.

⁵ Syria's Missing and Disappeared: Is There a Way Forward? The Independent International Commission of Inquiry on the Syrian Arab Republic. 17 June 2022. Accessed on 31 July 2023.

https://www.ohchr.org/sites/default/files/2022-06/PolicyPaperSyriasMissingAndDisappeared_17June2022_EN.pdf

humanitarian issue”.⁶ However, it is worth mentioning that Syria has not ratified the International Convention for the Protection of All Persons from Enforced Disappearance.⁷ Further, the Syrian law does not explicitly include the crime of enforced disappearance.

The exact number of missing persons in the Syrian conflict is still unknown. However, more than 100,000 missing persons in Syria are documented since the beginning of the conflict.⁸ Many families of detainees and forcibly disappeared persons have obtained information about the death of their relatives, through other survivors, Caesar photographs, or death certificates,⁹ but most of the families did not receive the bodies and did not know the true causes of death (if it actually occurred). Moreover, many mass graves were not dealt with appropriately, which hindered the identification of the remains. In addition, during their asylum journeys, several displaced Syrians were missed.

2. Missing Persons in the Current Syrian Legislation:

Syrian law does not include any explicit reference to enforced disappearance. However, the first paragraph of Article No. 33 of the Syrian Constitution¹⁰ states that “Freedom shall be a sacred right and the state shall guarantee the personal freedom of citizens and preserve their dignity and security”.

Theoretically, this article is supposed to be a constitutional guarantee against enforced disappearance as a form of deprivation of freedom, dignity, and security. In addition, the restrictions on the arrest and detention of individuals in the Constitution constitute a form of judicial guarantee to prevent enforced disappearance. According to Article No. 53 of the Constitution, no one may be investigated or arrested, except under an order or decision issued by the competent judicial authority; and any person who is arrested must be informed of the reasons for their arrest and their rights, and may not be incarcerated in front of the administrative authority except by an order of the competent judicial authority. Accordingly, given that the key element for determining the state of enforced disappearance is placing the person who is deprived of freedom outside the protection of the law, we can rely on the aforementioned articles to contend that law must protect persons deprived of their liberty in any case.¹¹

⁶ General Assembly: the 85th plenary meeting, the 77th session. The General Assembly voted on a contentious resolution that created a new mechanism to respond to the missing persons crisis in Syria. UN Web TV. 29 June 2023. Accessed on 31 July 2023. <https://media.un.org/en/asset/k1m/k1mc0uh159>

⁷ International Convention for the Protection of All Persons from Enforced Disappearance. United Nations. Accessed on 31 July 2023. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-all-persons-enforced>

⁸ UN chief calls for new tool to find 100,000 ‘disappeared’ Syrians. UN News. 28 March 2023. Accessed on 7 August 2023. <https://news.un.org/en/story/2023/03/1135127>

⁹ Syria: Arbitrary Deprivation of Truth and Life. Syrians for Truth and Justice. 20 May 2021. Accessed on 4 August 2023. <https://stj-sy.org/en/syria-arbitrary-deprivation-of-truth-and-life/>

¹⁰ The Syrian Constitution. Decree No. 94 of 2012. Syrian e-Gov Web Portal. Accessed on 7 August 2023. <https://egov.sy/page/en/137/0/Constitution.html>

¹¹ Syria: Input to the Committee on Enforced Disappearances and the Working Group on Enforced or Involuntary Disappearances’ Joint Statement on the Notion of Short-Term Enforced Disappearance. Syrians for

While the Syrian legislation lacks special provisions on enforced disappearance, it includes several dispersed articles on missing persons. These articles focus mainly on the definition of a missing person, the procedures and period necessary to announce their death, and on appointing their legal representatives. In addition, in Syria, there are no official mechanisms or public entities responsible for searching for missing persons or providing information to their families.

Article No. 34 of the Syrian Civil Code, Legislative Decree No. 84 of 1949, is an example of legal articles that deal with missing persons. It states that “The provisions established in special laws apply to the missing and absent persons, and when they do not exist, then the provisions of Islamic law apply”.¹²

Further, Article No. 202 of the Personal Status Law No. 59 of 1953¹³ states that “A missing person is every person whose life or death is unknown, or whose life is certain but whose place is unknown”. Moreover, Article No. 203 adds that “An absent person is considered as a missing person if they are prevented by force majeure circumstances from returning to their place or managing their affairs by themselves or by a representative for a period of more than one year which disrupts their interests or the interests of others”.

Furthermore, according to Article No. 205 of this law, the status of missing ends either with the return of the missing person, or by their death. It also ends by a court decision when they reach eighty years. However, the same article includes an exception that considers a missing person dead after four years from the date of their missing in case of military operations or similar cases stipulated in the military laws and in which death is probably certain.

In addition to the previous legal provisions, Legislative Decree No. 15 was issued in 2019, adding two articles to Military Service Law and Internal Security Forces Military Service Law and amending two articles of Military Pensions Law and Internal Security Forces Military Pensions Law.¹⁴ This Decree defines a missing person as “A military person whose life and death are uncertain, or their life is verified but their whereabouts are unknown due to war, military operations, and similar situations, or at the hands of a terrorist gang or hostile elements, or because of regular service”.

The Decree stipulates that the missing person whose disappearance is verified after 15 March 2011 due to war or military operations or at the hands of a terrorist gang or hostile elements, is considered a martyr four years after their disappearance.

Moreover, this Decree distinguishes between the families of civilian missing persons and those of the military because it grants the latter the same privileges and rights of martyrs. It

Truth and Justice. 24 July 2023. Accessed on 3 August 2023. <https://stj-sy.org/en/syria-input-to-the-committee-on-enforced-disappearances-and-the-working-group-on-enforced-or-involuntary-disappearances-joint-statement-on-the-notion-of-short-term-enforced-disappearance/>

¹² The Syrian Civil Code, Legislative Decree No. 84 of 1949. The website of the Syrian Parliament. Accessed on 01 August 2023. <http://www.parliament.gov.sy/arabic/index.php?node=201&nid=12162&ref=tree&>

¹³ The Syrian Personal Status Law No. 59 of 1953. The website of the Syrian Parliament. Accessed on 01 August 2023. <http://parliament.gov.sy/arabic/index.php?node=201&nid=11333&ref=tree&>

¹⁴ Legislative Decree No. 15 of 2019. Syrian e-Gov Web Portal. Accessed on 7 August 2023. <https://www.egov.sy/law/ar/309>

gives a military's family the right to benefit from the salary of their missing relative one year after the date of missing which is not available to civilians.

In addition to the aforementioned laws, several circulars were issued by the Ministry of Justice related to missing and absent persons, including Circular No. 30 of 2021 that stipulates the need to obtain "necessary security approvals"¹⁵ as an essential condition for issuing powers of attorney for absent or missing persons, which violates the rights of their families and infringes Syrian law and Constitution.¹⁶

Regarding the assets and money that a missing person receives through inheritance, Article No. 302 of the Syrian Personal Status Law clarifies that their share is suspended for them until their fate is clarified. However, if the life of a missing person is verified after a court decision of death, the missing person can only take what is left of their share with other inheritors.

3. The Need to Adopt a Law on Missing and Disappeared Persons in Syria:

There is a vital need to adopt a national law on missing persons in Syria because current dispersed provisions do not do justice to the victims and their families, nor do they allow them to enjoy their rights including the right to truth. These provisions do not impose any obligation on the Syrian government and its institutions to clarify the fate of missing persons despite its responsibility for the disappearance of most of them.

Since the current Syrian government is unwilling to solve the issue of enforced disappearance and missing persons in Syria, STJ believes that any new law on missing persons should establish principles that improve the process of tracing them and ensure that their family members have access to social and basic human rights.

Moreover, STJ believes that the proposed law, if adopted, should include a clear, comprehensive, and detailed definition of both missing and forcibly disappeared persons that aligns with the definition stated in the International Convention for the Protection of All Persons from Enforced Disappearance of 2006 and in the Rome Statute of the International Criminal Court (ICC).¹⁷ Furthermore, the definition of victims should be extended to the relatives as well. In this context, STJ calls on the new International Institution to pressure the Syrian State to join the International Convention for the Protection of All Persons from Enforced Disappearance and to ratify the Rome Statute of the ICC. Also, to cancel law provisions that create a fertile environment for enforced disappearances, like Decree No. 14 of 1969 which provides for establishing the State Security Department and Decree No. 69 of

¹⁵ A Facebook post published on 15 September 2021 on the official page of the Syrian Ministry of Justice on the platform. Accessed on 01 August 2023. <https://www.facebook.com/MOJ.SYR/posts/2646250975681744>

¹⁶ Syria: The Ministry of Justice Newly Requires Security Clearances for Receiving Powers of Attorney for Missing and Absent Persons. Syrians for Truth and Justice. 22 October 2022. Accessed on 01 August 2023. <https://stj-sy.org/en/syria-the-ministry-of-justice-newly-requires-security-clearances-for-receiving-powers-of-attorney-for-missing-and-absent-persons/>

¹⁷ Rome Statute of the International Criminal Court. Accessed on 01 August 2023. <https://www.ohchr.org/en/instruments-mechanisms/instruments/rome-statute-international-criminal-court>

2008 which confers immunity against prosecution to political security, police, and customs officials for crimes committed while on duty.

The proposed law must also recognize the right of families to know the truth about the fate of their missing relatives and their location if they are alive. Otherwise, if the death is approved, the families have the right to know its reasons and circumstances and the location of the bodies, to recover the remains, to give a proper burial, to perpetuate the memory of the victims, and to preserve the collective national memory.

Moreover, the required law should recognize the right of families to have access to accurate updated information and to be able to obtain the necessary legal and identification documents without discrimination on any basis like gender, religion, affiliation, political belief, etc...

In order to improve the process of tracing and finding missing persons, the required law should include the establishment of an independent national institution that works on the cases of the disappeared and missing persons and cooperates with the VGs, the International Committee of the Red Cross (ICRC), and the International Committee on Missing Persons (ICMP). It is essential to ensure that this institution works outside the control of the executive authority.

Moreover, the proposed law must include punitive provisions to hold perpetrators of the enforced disappearances accountable. The penalty should be aggravated if a perpetrator abuses their public position or authority, or if the crime is accompanied by sexual violence or torture or if a victim is minor.

The proposed law shall also punish those who exploit, physically or morally, the victims' families or use the information of missing persons for financial gain. Further, it should punish the tampering with mass graves or evidence that contributes to identifying the remains, especially if the tampering aims to hide evidence that helps identify those responsible for the mass graves.

Finally, STJ emphasizes that solving the issue of the missing and forcibly disappeared persons in the Syrian conflict is the first step to acknowledge the occurrence of violations that led to their disappearance, a way to achieve transitional justice, a means of reparation and remedy, and the path to sustainable peace in Syria.



About Us:

Syrians for Truth and Justice (STJ) is a nonprofit, nongovernmental organization monitoring human rights violations in Syria. Founded in 2015, STJ has been based in France since 2019.

STJ is an impartial and independent Syrian human rights organization operating across Syria. Our network of field researchers monitor and report human rights violations occurring on the ground in Syria, while our international team of human rights experts, lawyers, and journalists gather evidence, examine emerging patterns of violations, and analyze how violations break domestic Syrian and international law.

We are committed to documenting violations of human rights committed by all parties in the Syrian conflict and elevating the voices of all Syrians victimized by human rights violations, regardless of their ethnicity, religion, political affiliation, class, and/or gender. Our commitment to human rights monitoring is founded on the idea that professional human rights documentation meeting international standards is the first step to uncovering the truth and achieving justice in Syria.



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