



**Request for a Statement by the Special Rapporteur on
Torture in Relation to the International Court of
Justice Order on the Indication of Provisional
Measures in The Netherlands/Canada vs. Syria Case**

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Truth and Justice Charter



1. Background of the Case

- On June 8, 2023, Canada and the Netherlands jointly lodged an application with the International Court of Justice (ICJ) to commence proceedings against the Syrian Arab Republic. The application pertains to Syria's international responsibility for its "gross and systematic failure" to fulfil its obligations to prohibit torture and other forms of cruel, inhuman, or degrading treatment or punishment (ill-treatment) under the Convention against Torture (CAT).
- The Netherlands and Canada also requested the Court to indicate provisional measures. These include, among others, an immediate cessation of torture, ill-treatment, and arbitrary detention, granting access to detention facilities, enhancing detention conditions, prohibiting the destruction of evidence, and disclosing the locations of burial sites. Furthermore, they have requested that Syria submit regular reports to the Court on all measures taken to implement the provisional measures, starting no later than six months from their issuance and every six months after that, pending the resolution of the dispute.
- On November 16, the ICJ delivered its order indicating two provisional measures. The first one indicates that Syria shall take all measures within its power to prevent acts of torture and ill-treatment and ensure that its officials, as well as any organisations or persons which may be subject to its control, direction or influence, do not commit any acts such acts. The second one stipulates that Syria shall take all measures to prevent the destruction and ensure the preservation of evidence. In reaching its order, the ICJ considered various reports by the United Nations Commission of Inquiry on Syria (COI), which concluded that there were "reasonable grounds to believe that the Syrian Government continued to commit acts of torture and ill-treatment".
- While victims' groups have explicitly welcomed the order, viewing it as "a definitive indication of the atrocious acts of torture perpetrated by the Syrian government," they have voiced concerns about its apparent limitations in addressing the gravity of enforced disappearance as a form of torture.¹ This is mainly because the order lacks specificity in outlining specific measures for the Syrian Government to implement in preventing torture and preserving evidence.

2. Persistent Torture Despite ICJ Case and Provisional Measures' Order

- Torture in Syria has persisted after the filing of the ICJ case. From June 8, 2023, the date when the Netherlands and Canada filed the case and requested provisional

¹ Truth and Justice Charter Group, "Statement On ICJ's order to Prevent Torture in Syria", available at: <https://hevdesti.org/en/statement-on-icj-order-to-prevent-torture-in-syria/>

measures, until the public hearing on October 10, 2023, at least 15 deaths due to torture by the Syrian authorities were documented.²

- After the ICJ issued its order on provisional measures on November 16, 2023, torture in Syria persisted. In February 2024, the OHCHR published a report detailing the human rights violations faced by Syrians upon their return to Syria after fleeing the country. The report concludes that many Syrian returnees are subjected to grave human rights violations, including arbitrary detention, torture, restrictions on freedom of movement, inadequate housing, and violations of property rights. The OHCHR obtained several testimonies from returnees to areas under the control of pro-government forces who reported being subjected to torture and ill-treatment while in detention and being detained until visible wounds and traces of physical harm disappeared before being brought before a judge or released.³ For instance, this report documented a case concerning a returnee detained in a pro-government facility in Damascus. It revealed that the individual had suffered severe beatings during detention. Only after receiving an intensive course of cortisone and other medications to treat bruises and other evidence of torture for several weeks, he was permitted to appear before a judge (in this instance, a military judge).⁴
- The latest report issued by the COI on February 9, 2024, covering the period from July 1 to December 31, 2023, affirms the government's ongoing practice of arbitrary detention, enforced disappearance, torture, and ill-treatment, as well as deaths in government custody, including those in the infamous Sednaya Military Prison, confirming ongoing patterns of crimes against humanity.⁵ For example, the COI documented the case of a man who had returned to the Syrian Arab Republic as part of a government-endorsed "reconciliation" initiative. According to the report, the man was last seen alive but "cadaverous" in Saydnaya military prison by his family in late 2023. Subsequently, an intermediary informed the family of his death; however, they were unable to obtain any official confirmation regarding the man's death or current location.⁶ Similarly, on February 22, 2024, the Syrian Network for Human Rights released a statement documenting the killing of at least 16 individuals due to torture since the ICJ's order.⁷ This highlights the persistent and systematic use of torture in Syria despite the ICJ case and the issuance of the court's order on provisional measures.

² The Netherlands and Canada intervention (Verbatim Record) during the public sitting held on Tuesday, 10 October 2023, in the Case of the Netherlands & Canada v Syria, p. 28, Para. 14.

³ OHCHR, *"We did not fear death but the life there"*, (February 2024).

⁴ *Ibid.*, para. 88.

⁵ COI report A/HRC/55/64, (February 2024), Para. 56-66.

⁶ *Ibid.*, para. 61.

⁷The Syrian Network for Human Rights, Press Release, 22 February 2024, available at: <https://snhr.org/blog/2024/02/22/three-months-after-the-icjs-ruling-the-syrian-regime-has-blattantly-breached-it-killing-more-syrian-citizens-under-torture/> (Accessed on 30 April 2024)

- Moreover, enforced disappearance persists as both a standalone crime and a form of torture inflicted upon both the disappeared individuals and their families. Throughout the Syrian conflict, thousands have been forcibly disappeared, mainly by the government. As of April 18, 2024, the Syrian Network for Human Rights (SNHR) has documented 112,000 cases of Syrians forcibly disappeared, whose fate and whereabouts are still unknown, leaving their family members in a state of limbo and uncertainty amounting to torture which has continued after the order has been issued.⁸ Since the order, there has been a lack of active efforts by the government to investigate and clarify the fate and whereabouts of the missing, further confirmed by the Syrian government's refusal to engage with the UN's newly established Independent Institution for the Missing People in Syria. Moreover, it has also actively shown a pattern of deliberately exacerbating the suffering of families by concealing information from them, including by issuing death certificates to detainees, providing false information to their families about the cause of death, destroying evidence and manipulating mass grave sites, leaving families unable to retrieve bodies for funeral rituals. The latest report from the COI, published in February 2024, confirms the persistence of this practice.⁹
- A recent example of the Syrian government's destruction of evidence linked to torture, enforced disappearances, and extrajudicial killings is the destruction of a mass grave site in Qatifa, located on the outskirts of Damascus. In January 2024, the Association of Detainees and Missing in Saidnaya Prison reported that in January 2023, the Syrian Government conducted operations to dredge and level the mass grave site in Qatifa, believed to hold the remains of numerous political detainees who were either executed or died under torture in detention centres.¹⁰ By manipulating and failing to preserve the mass grave, the Syrian government has negatively impacted the prospects of effectively exhuming and identifying the buried bodies, ultimately causing irreparable harm to the right to the truth of families and exacerbating their suffering. This instance, though it occurred before the ICJ order on provisional measures, serves as one of many incidents illustrating the Syrian government's active destruction of evidence and concealment of information through the destruction of mass graves. This continues to obstruct the right to truth for families of victims, as the government has not taken any action to preserve mass grave sites after the provisional measures were issued.
- Consequently, families are not only subject to torture as a result of enforced disappearance but also due to the State's failure to fulfil their right to know the truth. The refusal to provide and concealment of information exacerbates the trauma endured by the families, leading to significant suffering that itself amounts to torture.

⁸ The Syrian Network for Human Rights (April 18, 2024), (Accessed on 18 April 2024).

⁹ COI report A/HRC/55/64, (February 2024), Para. 56-66.

¹⁰ Association of Detainees and Missing in Saidnaya Prison, "Recent Satellite Images Expose Land Alterations at Qatifa's Mass Grave in Syria", January 2024 (accessed 05 May 2024), available at: <https://www.admsp.org/en/demolition-of-evidence/>

3. Legislative Reforms Related to Torture in Syria

- Before the issuance of the order, the government introduced two specific pieces of legislation: the New Anti-Torture Law and legislation related to the abolition of Field Military Courts. While an analytical assessment of legislative reform concerning torture may seem beyond the scope of this paper, we believe these laws are closely related to the ICJ case and to the question of whether the Syrian government's existing legislation enables the government to effectively implement the provisional measures in accordance with standards enshrined by the Convention. The Syrian Government explicitly presented these legislations in its submission to the Human Rights Committee during the Fourth Periodic Review in January 2024 as part of its integral legal framework for human rights protection in Syria.¹¹
- The Anti-Torture Law of March 29, 2022, was enacted despite the Syrian government's consistent claims that existing domestic legislation adequately criminalises torture. This law was issued while formal negotiations between the Netherlands and Canada, on the one hand, and Syria, on the other, pursuant to Article 30(1) of the CAT, were ongoing. The Syrian government has promoted this law as a tool for protecting human rights in Syria. At first glance, this law appears to be in line with the CAT as it provides a comprehensive definition of torture, mirrors the CAT definition and aggravated penalties for perpetrators. However, despite its enactment, torture victims seeking justice and reparation still encounter significant obstacles due to the immunity granted to state officials under Syrian law. This renders the law practically unenforceable, presenting the most significant barrier to preventing torture, including enforced disappearance as a form of torture against the families of the disappeared.¹²
- Moreover, the law is inadequate in addressing the widespread and systematic use of torture in Syria. Given that Syria has not ratified the Rome Statute of the International Criminal Court and its Penal Code does not recognise torture as a crime against humanity or war crime, this adds further challenge to preventing torture in Syria and implementing the first provisional measure. In this regard, it is important to mention that the Human Rights Committee has sought information from the Syrian Government regarding measures taken concerning the Anti-Torture Law No. 16 and its application to prevent torture and ensure investigations, prosecutions, and reparations for victims. However, the Syrian government did not offer a clear

¹¹ Responses of the Syrian Arab Republic to the list of issues relating to its fourth periodic report, CCPR/C/SYR/RQ/4, para. 4.

¹² For an in-depth analysis of this law, see SLDP & Diakonia report *"No Justice for Torture in Syria: A Victim Rights-Based Analysis of the 2022 Anti-Torture Law"* (November 2023), available at: <https://sldp.ngo/en/blog/1551>.

response; instead, it merely listed articles of this law without addressing concrete actions taken to tackle the systematic use of torture and ill-treatment in Syria.¹³

- Consequently, this law alone is insufficient to prevent torture in Syria. If the Syrian government genuinely intends to prevent torture, this legislative measure must be accompanied by concrete actions. These include allowing humanitarian organisations access to detention centres, releasing all arbitrarily detained individuals, providing information on the fate of disappeared persons to alleviate the suffering of their families, repealing all immunity provisions that prevent the prosecution of state officials responsible for torture, and implementing comprehensive institutional and security reforms. However, the government has failed to take any such actions. Therefore, there are legitimate concerns that this law may be utilised as part of the government's propaganda, portraying it as having undertaken legislative reform aimed at preventing torture in Syria.
- Furthermore, on September 3, 2023, the Syrian government issued Decree 32, repealing Decree No. 109 of 1968 and its subsequent amendments related to establishing Military Field Courts in Syria. While abolishing these courts may seem positive due to their history of suppressing human rights defenders and political dissidents, concerns arise regarding potential impunity and loss of crucial evidence. Trials held in these courts were marked by arbitrariness, secrecy, disregard for the right to a fair trial, and dependence on confessions obtained through torture. Individuals tried before these courts were often subjected to forced disappearances and ultimately sentenced to death. Of particular relevance to the ICJ case is that Decree 32 provides for transferring ongoing cases to the military judiciary for prosecution, leaving past cases, court records and archives unaddressed. The lack of clarity regarding the fate of records and archives could lead to the destruction of evidence concerning the involvement of these courts in grave human rights violations, including extrajudicial executions, torture and enforced disappearance. This might hinder the implementation of the second provisional measure, intended to prevent the destruction of evidence and subsequently impact the families' right to know the truth.
- In sum, this paper does not expect the Special Rapporteur to address these two pieces of legislation from an analytical point of view or evaluate their compliance with Syria's international obligations under the CAT. Addressing their deficiencies could potentially be undertaken in a separate communication by the Special Rapporteur. However, we firmly believe that these laws are significantly relevant to the implementation of both provisional measures ordered by the court and, therefore, cannot be disregarded when discussing the implementation of these measures.

4. Need for Unified Efforts to Monitor the Implementation of Provisional Measures

¹³Human Rights Committee, CCPR/C/SYR/Q/4, para. 13; CCPR/C/SYR/RQ/4, para. 40-42.

- The ICJ's provisional measures order underscores the critical importance of international law in preventing torture and protecting victims of such grave crimes, sending a clear message that the international community will not tolerate the Syrian Government's ongoing systematic use of torture and ill-treatment. However, despite six months having elapsed since the provisional measures were issued, the Syrian Government continues to extensively employ torture, with thousands of lives at stake in Government detention centres. Additionally, by abolishing the Field Military Courts without clarifying the fate of prior cases and the records and archives of the courts, it has likely eradicated evidence associated with torture and enforced disappearances. Consequently, the government not only fails to act to prevent torture and preserve evidence but also persists in its utilisation of torture and the destruction of evidence.
- In this regard, the Special Rapporteur on Torture plays a significant role in providing guidelines and recommendations to the Syrian government. Given the Special Rapporteur's official capacity as a UN expert on the issue of torture, their expertise and guidance can significantly assist in facilitating and monitoring the Syrian government's compliance with the ICJ's orders and international legal obligations under the CAT. This is particularly crucial due to the lack of specificity and clarity in the ICJ order regarding concrete examples of the measures that the Syrian government shall undertake to prevent torture and preserve evidence. These recommendations may include, but are not limited to, the following:
 - ❖ The Syrian Government must provide comprehensive and detailed information outlining the specific measures undertaken since the provisional measures were issued to prevent torture committed by its officials and preserve the evidence.
 - ❖ The Syrian Government must provide a comprehensive plan outlining how it will effectively implement the Anti-Torture Law No. 16 of 2022 to prevent torture. This plan should specifically address the long-standing and systematic use of torture, which amounts to crimes against humanity and war crimes, and the ongoing immunity against state officials likely responsible for torture. It should include measures to ensure accountability for past violations, prevent future abuses, and provide redress to victims.
 - ❖ The Syrian Government must publicly disclose the records and archives of the abolished Military Field Courts. They form a crucial part of the evidence concerning torture and enforced disappearance and are indispensable for ensuring accountability, providing redress for victims, and delivering truth to affected families.
 - ❖ The Syrian Government must prevent and investigate enforced disappearance and clarify the fate and whereabouts of the disappeared and the outcomes of related investigations. This should involve locating and preserving mass graves, disclosing information on detainees' causes of death, conducting forensic examinations of human remains and burial sites, providing information on the return of remains to families if deceased and ensuring the transparency of these findings. In this regard,

the Syrian Government must collaborate with the UN Independent Institution on Missing Persons in Syria and facilitate its work to determine the fate and whereabouts of all missing persons in the country; this is essential to prevent further torture endured by the families of the disappeared.

- ❖ The Syrian government must improve detention conditions, release all arbitrarily detained persons, close secret detention centres and facilities affiliated with the intelligence services, and restrict detention to regular centres subject to judicial oversight. Additionally, the government must ensure immediate access to independent monitoring in all places of detention, especially in facilities like Saydnaya prison and those under the control of intelligence services.
- ❖ The Syrian Government must provide statistics on individuals deprived of liberty disaggregated by age, sex, and nationality. This data should include the number of individuals in pretrial detention, instances of death in detention facilities, the causes of death, and the outcomes of any investigations into these deaths.
- ❖ The Syrian Government must provide disaggregated data on the measures taken to facilitate complaints by victims' families, conduct investigations, pursue prosecutions, and impose penalties. Furthermore, it should outline its efforts to prosecute perpetrators of such violations and ensure effective remedies for victims' families.

Submitting Organisations

1. Syrian Legal Development Programme (SLDP)
2. Syrian British Consortium
3. Dawlaty
4. Syrian Center for Media and Freedom of Expression
5. Syrian Network For Human Rights (SNHR)
6. The Day After (TDA)
7. Justice for Life (JFL)
8. Families of Truth and Justice
9. Amal Healing and Advocacy Center
10. Baytna pour le soutien de la société civile
11. Truth and Justice Charter
12. Caesars Families Association (CFA)
13. Release Me
14. Families for Freedom

15. Ta'afi
 16. Synergy Association for Victims
 17. Coalition of Families of Persons Kidnapped by ISIS (Massar)
 18. General Union of Detainees
 19. Syrians for Truth and Justice (STJ)
 20. Syrian Forum USA (SFUSA)
 21. Women Now for Development (WND)
 22. Free Syrian Lawyers Association (FSLA)
 23. Lawyers and Doctors for Human Rights (LDHR)
 24. Syrian Expatriates Medical Association (SEMA)
 25. Human Rights Guardians
 26. Women's Organization for Transitional Justice
 27. Access Center for Human Rights (ACHR)
 28. Adalaty
 29. Musawa
 30. Dar Alsharq Organisation
 31. Their Voices Team - فريق أصواتهم
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