



## **Disclaimer**

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## **About the Author**

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## **Illustrations**

We thank the Syrian artist Najah al-Bukai for the reproduction of his artwork in this report. Al-Bukai studied at the Beaux-Arts at Damascus University and in Rouen, and taught at the Arab University in Damascus. He was detained several times for his participation in the peaceful protest movement, most recently in 2014. During his detention he witnessed the brutal treatment of the intelligence agencies first-hand, which he later captured in a series of artworks some of which are reproduced in this report.

## **Acknowledgments**

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**“Every detainee is a human soul with a full life to live.  
We’re not talking about numbers.  
We’re talking about humans, about our sons, about our loved ones.”**  
*Fadwa Mahmoud, Families for Freedom*

**“When we escaped detention, we took on the responsibility,  
as survivors, to be the hope of those left inside.  
As victims’ associations, we are both rights holders and active agents.”**  
*Ahmad Helmi, Ta’afi Initiative*

**“We know from the experiences of other countries that the  
only way to even a minimally acceptable solution  
involves addressing the humanitarian issue of the detainees.  
Otherwise there will be no lasting peace, no solution, and no stability.”**  
*Khalil Alhaj Saleh, Coalition of Families of Persons Kidnapped by ISIS (Massar)*

**“Detainees are a humanitarian issue, not a negotiating card.  
A solution for the detainees must be the foundation of any solution for Syria.”**  
*Mariam Alhallak, Caesar Families Association*

**“Knowing the truth, the whole truth, will enable us to move forward  
to a future Syria and address the violations of the past.”**  
*Diyab Serrih, Association of Detainees and Missing Persons in Sednaya Prison (ADMSP)*

## FOREWORD

We are five associations of Syrian victims, survivors and their family members who have suffered immeasurably from the crimes of arbitrary detention, enforced disappearance, torture and many other detention-related abuses. Like the families of the countless Syrians who have been disappeared by all parties to the conflict since 2011 and before, we still suffer the daily pain of not knowing the fate of our loved ones, as well as other forms of hardship resulting from their absence.

As victims and survivors, we have rights. We have therefore developed the [Truth and Justice Charter](#), where we lay out our vision and demands for truth, justice and the role we must play in rebuilding our country. We have clear and achievable demands, accompanied by measures to make our vision a reality.

We must know the truth about the fate of our loved ones. Those still alive must be released immediately. We want to receive the remains of those who have lost their lives, to give them a dignified burial and enable us to grieve in peace. And we want guarantees that this will not happen again to prevent others suffering what we have suffered. We have been working tirelessly for these simple aims.

But despite years of activism, documentation and international outcry, there is still no effective body or institution that can help us discover the fate of our missing daughters, sons, spouses, parents and siblings. We therefore requested Professor Dr Jeremy Sarkin to study the available options for a new mechanism dedicated to this purpose. Through this study, we seek to lay out ways forward in order to turn the support we have received from international actors into concrete action. We now call for international cooperation to establish a mechanism to search for the missing and disappeared in Syria, drawing on the ideas outlined in this study. After ten years of conflict, detention and disappearance, it is time to act.

- [Association of Detainees and Missing Persons in Sednaya Prison \(ADMSP\)](#): an independent mutual solidarity association seeking to uncover the truth and deliver justice to former political detainees and ensure the release of those who are still in detention. It also works on revealing the fate of missing and forcibly disappeared persons in Syria in general and in Sednaya in particular.
- [Caesar Families Association](#): a group of families that have lost their loved ones under torture or as a result of extra-judicial execution while in detention. These families identified their relatives in the infamous Caesar photos which were leaked by a Syrian regime defector. CFA aims to unify the families' voices, demanding truth, justice, and restitution for the victims of torture and enforced disappearance in Syria.
- [Coalition of Families of Persons Kidnapped by ISIS \(Massar\)](#): a group of family members of those abducted by ISIS during its control over Syrian territory. It seeks to reveal the fate of people kidnapped by ISIS and to deliver justice to them. It also aims to assist families of kidnapped persons in the process of seeking reparation.
- [Families for Freedom](#): a Syrian movement led by Syrian women who lost members of their families as a result of arrest or enforced disappearance. It seeks to put an end to the enforced disappearance and arbitrary detention committed by the Syrian regime and all other parties to the conflict.
- [Ta'afi Initiative](#): a Syrian victim-led and victim-centred initiative and network that supports and protects victims of detention, torture, and enforced disappearance upon their release and settlement at a safe location, so that they can continue to peacefully support human rights change in Syria and pursue justice and accountability.

## INTRODUCTION

This study is about finding a way to deal with the large number of people who have been forcibly disappeared and arbitrarily detained in Syria since the start of the uprising in 2011. Estimates vary, but the Syrian Network for Human Rights (SNHR) says at least 150,000 people have been forcibly disappeared or have suffered arbitrary detention in Syria since 2011 – around 0.7 per cent of the country's pre-war population of around 22 million.<sup>1</sup>

The UN Human Rights Office has stated that “tens of thousands” have been arbitrarily detained or suffered an enforced disappearance but stresses the lack of access to the country makes it “difficult to establish with any precision the number of missing men, women and children”.<sup>2</sup> Others believe the true number to be much higher and emphasise that tens of thousands of people were victims of such practices even before the war in Syria.

These numbers refer to people who have been disappeared directly or been taken into custody by the regime and then disappeared in the massive detention system that operates in Syria, or by other parties (including other states) to the conflict that have carried out similar acts, albeit to a far lesser extent. Of all the humanitarian crises crying out for attention in Syria, enforced disappearances and arbitrary detentions are routinely mentioned but more routinely ignored.<sup>3</sup>

Since the beginning of the Syrian conflict in 2011, numerous gross human rights violations have been carried out in violation of international humanitarian and human rights law. The regime, but other actors as well, have used a variety of illegal tactics, particularly against civilians, whom they often perceive as their opponents.<sup>4</sup> The people have endured massive human rights abuses, including torture, cruel and inhumane treatment, as well as other atrocities.

In this regard it has been correctly observed that “Syrian society has suffered from many types of violations, some of which constitute crimes against humanity and war crimes, but the crime of enforced disappearance practiced by the Syrian regime ... is classified as the most powerful and sadistic weapon of war. The scale of the record of enforced disappearance compared to the population in Syria is horrific and devastating, constituting a crime against humanity committed by the ruling authorities.”<sup>5</sup>

**1-** In a recent report, SNHR reported that between March 2011 and August 2020, at least 148,191 had been disappeared or detained. See SNHR (2020) *The Ninth Annual Report on Enforced Disappearance in Syria on the International Day of the Victims of Enforced Disappearances; There Is No Political Solution without the Disappeared*, 30 August 2020, available at: <https://bit.ly/3vPrBHC> (last accessed 4 May 2021).

**2-** UN Human Rights Office of the High Commissioner, *Statement of the United Nations High Commissioner for Human Rights Michelle Bachelet* (11 March 2021), available at: <https://bit.ly/3eqqGaP> (last accessed 4 May 2021). Hereafter: OHCHR (2021).

**3-** Simmons, A. (2017) *Tracing Syria's forced disappearances*, Al-Jazeera, 2 March 2017, available at: <https://bit.ly/2RzOWQw> (last accessed 4 May 2021).

**4-** UN Human Rights Council (2020) *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, UN Doc. A/HRC/43/57, 28 January 2020, para.38, available at: <https://undocs.org/A/HRC/43/57> (last accessed 4 May 2021).

**5-** SNHR (2019) *Enforced Disappearance Is the Regime's Most Painful and Brutal Weapon*, 31 August 2019, available at: <http://sn4hr.org/blog/2019/08/31/54185/> (last accessed 4 May 2021).

The practice of enforced disappearance systematically and on a widespread basis has already been extensively documented by the United Nations Commission of Inquiry on the Syrian Arab Republic (COI).<sup>6</sup>

This study investigates the situation concerning the conflict in Syria in general on arbitrary detentions and enforced disappearances. It discusses the general processes that have been set up to deal with Syria. It then reviews which mechanisms deal with disappearances and detentions in Syria that are available for families to report to and the limited role those institutions have played so far, before offering options for the creation of a new mechanism dedicated to finding out what happened to Syria's disappeared and detained.

<sup>6</sup>- UN Human Rights Council (2019) *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, UN Doc. A/HRC/42/51, 15 August 2019, available at: <https://undocs.org/A/HRC/42/51> (last accessed 4 May 2021). See also UN Human Rights Council (2019) *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, UN Doc. A/HRC/40/70, 31 January 2019, available at: <https://undocs.org/en/A/HRC/40/70> (last accessed 4 May 2021).

# EXECUTIVE SUMMARY

## Report Aims

This project emerged out of a request by the following five Syrian organisations representing survivors and victims who have suffered at the hands of various perpetrators in Syria:

- [Association of Detainees and Missing Persons in Sednaya Prison](#)
- [Caesar Families Association](#)
- [Coalition of Families of Persons Kidnapped by ISIS \(Massar\)](#)
- [Families for Freedom](#)
- [Ta'afi Initiative](#)

This report aims to put the goals of the five groups at its heart and ensure that any mechanism set up to deal with the disappeared and detained is victim-centred and focuses on getting the detained released, locating detention facilities, finding the remains of those who are no longer alive and beginning the process of finding out what happened to them.

This is not to discount long-term justice goals such as prosecutions. As the five groups state in their Truth and Justice Charter launched on 10 February 2021: “We... differentiate between short-term justice and long-term justice. In the short term there are immediate measures that must be taken to put a halt to ongoing violations and alleviate the suffering of survivors, victims and their families. In the medium- to longer-term we have additional demands to ensure comprehensive justice and non-repetition of the crimes we have suffered and continue to suffer from.”<sup>7</sup> Accountability must eventually take its course, but the victims’ immediate priority is finding out the fate of their loved ones.

In setting out the case for establishing a new mechanism to find Syria’s disappeared and detained, this report seeks to shed light on the nature and extent of enforced disappearances and detentions in Syria since 2011 and examines what help is currently available to survivors and family members. It briefly reviews the lessons learned from how survivors and victims were traced in other conflict zones before setting out options for setting up a new mechanism within the UN, EU or other country blocs.

## Definitions of Enforced Disappearance and Arbitrary Detention in International Law

Syria has not acceded to the UN International Convention for the Protection of All Persons from Enforced Disappearance (ICED).<sup>8</sup> Therefore, the definition in the Declaration on the Protection of all Persons from Enforced Disappearance<sup>9</sup> and how the UN Working Group on Enforced or Involuntary Disappearances (WGEID) defines it becomes important.

<sup>7</sup> For more on short term and long-term goals, see *Truth and Justice Charter: A Common Vision on the Question of Enforced Disappearance and Arbitrary Detention in Syria by Syrian Victims’ and Family Members’ Organisations*, available at: <https://www.impunitywatch.org/truth-and-justice-charter-syria> (last accessed 6 May 2021).

<sup>8</sup> UN General Assembly (2007) *International Convention for the Protection of All Persons from Enforced Disappearance*, UN Doc. A/RES/61/77, 12 January 2007, art. 1.1, available at: <https://bit.ly/3nVSpDg> (last accessed 4 May 2021).

<sup>9</sup> OHCHR (1992) *Declaration on the Protection of all Persons from Enforced Disappearance Adopted by General Assembly resolution 47/133 of 18 December 1992*, 18 December 1992, available at: <https://bit.ly/2R0rMRA> (last accessed 4 May 2021).

The WGEID defines an enforced disappearance as occurring when there is a deprivation of liberty against the will of the person, if there is involvement of state officials - directly, indirectly or by acquiescence - and there is refusal to acknowledge the deprivation of liberty or if the fate or whereabouts of the disappeared person is concealed.<sup>10</sup> For a case to be defined as an enforced disappearance it usually needs some connection to state action but at times simply some connection to the state - such as acquiescence by the state to the conduct of an organisation - is sufficient.

The Rome Statute of the International Criminal Court (ICC)<sup>11</sup> permits any political organisation to be prosecuted if they have committed widespread and systematic disappearances that reach the level of crimes against humanity, as is the case in Syria.

It should be noted that even if crimes against humanity have not been committed by non-state actors their conduct is still covered by laws on abduction, assault and kidnapping, including within the Syrian penal code.

An enforced disappearance can overlap with an arbitrary detention. Arbitrary detentions are unlawful in terms of a variety of international treaties and other laws. International law is clear on the right to the truth as far as enforced disappearances are concerned and dictates there must be investigations into those who have been disappeared and that the truth has to be sought.

Enforced disappearance and arbitrary detentions are also found in international humanitarian law, although those terms are not used. On detentions, there are specific provisions in the Geneva Conventions and the Additional Protocols dealing with detentions under international humanitarian law. A variety of provisions provide for safeguards for detention during non-international armed conflict including Common Article 3 and Article 5 of Additional Protocol II.

There is no direct mention of enforced disappearances in the Geneva Conventions or Additional Protocols but the International Committee of the Red Cross (ICRC) Study on Customary International Humanitarian Law<sup>12</sup> finds that a prohibition against enforced disappearances is a norm of customary international law in both international and non-international armed conflict<sup>13</sup> and thus contends: "Enforced disappearance is prohibited."<sup>14</sup>

**10-** UN Human Rights Council (2010) *Report of the Working Group on Enforced or Involuntary Disappearances Addendum Best practices on enforced disappearances in domestic criminal legislation*, UN Doc. A/HRC/16/48/Add.3, 28 December 2010, available at: <https://bit.ly/3bbRKS2> (last accessed 4 May 2021).

**11-** UN General Assembly, *Rome Statute of the International Criminal Court* (last amended 2010), ISBN No. 92-9227-227-6, 17 July 1998, art. 7(2)(i), available at: <https://bit.ly/3xVALE2> (last accessed 4 May 2021).

**12-** Henckaerts, J. M. (2005) *Customary international humanitarian law: Volume 1, Rules* (Vol. 1). Cambridge University Press, available at: <https://bit.ly/3f3TdC3> (last accessed 4 May 2021). See also *Customary IHL Database*, available at: <https://ihl-databases.icrc.org/customary-ihl/eng/docs/home> (last accessed 6 May 2021).

**13-** *Ibid.*, Rule 99.

**14-** *Ibid.*, Rule 98.

## Methodology

The methodology followed to conduct the Study was firstly a literature review to get a full understanding of the extent of the issues and to come up with the best strategy to deal with these matters. There is a lot of useful and recent information written by a variety of organisations about these issues.

Secondly, interviews and discussions were held with a variety of people who are knowledgeable about the situation regarding Syria in general and the disappeared and detained specifically, including the ICRC, the International Commission on Missing Persons (ICMP), the UN Working Group on Arbitrary Detention (WGAD), the UN Working Group on Enforced or Involuntarily Disappearances (WGEID), the UN International, Impartial and Independent Mechanism (IIIM), a variety of international lawyers, people who have worked on these issues in a variety of settings and countries, a number of academics, a number of Syrian organisations, international and domestic human rights organisations, and others. The five organisations who requested this study were consulted throughout the process.

Next, a lengthy questionnaire was sent to Syrian documentation organisations to measure the extent of the information they have collected, how many people they have details for, the type of information they have on these people and how that information is collated and systemised. Then analysed were the means available – and their limitations – for the families of the disappeared and detained to obtain information, truth delivery and redress. Again, readings and discussions were held with other groups involved in the work to understand what exists and their limitations.

In this way, the roles played by a variety of institutions including the UN Commission of Inquiry on the Syrian Arab Republic (COI), the IIIM, the WGEID, the WGAD, the ICMP and the ICRC were explored to understand what these institutions do at present and to understand what cooperative role these processes could provide to a future mechanism.

## Recommendations

This report argues that a new mechanism should be created as a matter of urgency and that it should immediately start work on identifying ways to get the detainees released from custody and find information on others who were detained but whose whereabouts is unknown.

To do this and provide the families with access to the truth, the mechanism must search for information on detainees and the disappeared including collecting and collating all information that is already widely available but not used for this purpose.

The report argues a mechanism could be set up by the UN, by the EU or by a number of states. If created outside the UN, the mechanism should have a board made up of representatives of the ICRC, the ICMP, the WGEID, the WGAD and a representative or two from Syrian groups elected annually to represent victims and survivors. Such a board could still help to make it more skilled, representative and legitimate regardless of whether it was created by the UN or not.

As noted in the aims, it is hugely important to the families that any newly created mechanism focuses on getting the detained released, locating detention facilities, finding the remains of those who are no longer alive and beginning the process of finding out what happened to them rather than pursuing prosecutions and other longer-term justice processes. It must be stressed that this type of process is also more likely to get support from a multitude of relevant actors. Uncovering the truth can lead to justice in a variety of ways, not least that the information collected can be useful at a later date – if so desired – for other justice purposes.

## SYRIA: SITUATION SUMMARY



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### Enforced Disappearance and Arbitrary Detention in Syria

Approximately 150,000 people, perhaps more, have suffered enforced disappearance or arbitrary detention in Syria since 2011, according to the SNHR. Most were detained or disappeared by the Syrian regime, but other actors have also been involved including armed groups such as ISIS.

In the Syrian context, the majority of detentions are also disappearances but those documenting events in Syria do not always count detentions as enforced disappearances. In addition, many of the belligerent groups operating in Syria have operated detention facilities that few detainees walk out of alive.

The Syrian government has used enforced disappearances and detentions to silence political opponents since well before the war began in 2011. Both are also used to spread fear among the families and friends of the people disappeared<sup>15</sup> and to control people who demonstrated against the government.<sup>16</sup>

According to an Amnesty International report published in 2015, the Syrian government is responsible for disappearing “large numbers of peaceful opponents of the government, including demonstrators, political activists, human rights defenders, media workers, doctors and humanitarian aid workers”.

<sup>15</sup>- UN Human Rights Council (2013) *Without a trace: enforced disappearances in Syria*, 19 December 2013, para. 12, available at: <https://bit.ly/3xVF5Di> (last accessed 4 May 2021).

<sup>16</sup>- *Ibid.*, para. 17.

The same report continues: "As the conflict evolved, so too did the government's strategy. It forcibly disappeared those it considered to be disloyal, such as defectors, as well as government employees or soldiers who were believed to be considering defection. The government also began forcibly disappearing family members of individuals wanted by the security forces, usually in an effort to dissuade these wanted individuals from continuing their political activism or military activities."<sup>17</sup>

Those searching for detained and disappeared friends and relatives were frequently further victimised after being forced to pay bribes to officials to find out what happened to their loved ones but then seldom received any helpful information, a December 2020 report by the Association of Detainees and Missing Persons in Sednaya Prison notes.<sup>18</sup>

Relatives were caused further pain and distress when in 2018 the Syrian government registered hundreds of disappeared and detained people as dead and released their death certificates without even notifying the families. Some deaths have been proven incorrect as people who had been certified dead were later found to be alive. For others no reliable evidence of death was given, and human remains are rarely returned.<sup>19</sup>

In addition, women have been disproportionately affected as both detained and relatives of detainees and disappeared who are then confronted with a male-dominated state apparatus in a society that remains profoundly patriarchal.

The COI has pointed to a consistent and countrywide pattern of abuse in which people have been unlawfully detained and disappeared.<sup>20</sup> Detainees are held captive without any hope of legal recourse or access to due process, are routinely subjected to various forms of brutal and sadistic torture, and are subject to exceptionally squalid, overcrowded and unsanitary conditions in detention centres, resulting in countless deaths.<sup>21</sup> Summary killings are also common. The remains of victims who perish a custodial death<sup>22</sup> are almost never returned to their relatives, nor are the circumstances of their deaths revealed.<sup>23</sup>

**17-** Amnesty International (2015) 'Between Prison and the Grave' - Enforced Disappearances In Syria, MDE 24/2579/2015, 5 November 2015, available at: <https://www.amnesty.org/en/documents/mde24/2579/2015/en/> (last accessed 4 May 2021).

**18-** Association of Detainees and the Missing in Sednaya Prison (2020) *Forcibly Disappeared in Syrian Detention Centers*, December 2020, available at <https://bit.ly/3b5riAf> (last accessed 4 May 2021).

**19-** Independent International Commission Of Inquiry On The Syrian Arab Republic (2018) *Detention In The Syrian Arab Republic: A Way Forward*, 8 March 2018, available at: <https://bit.ly/3vNCKbY> (last accessed 4 May 2021). Hereafter: *Independent International Commission Of Inquiry On The Syrian Arab Republic* (2018).

**20-** UN Human Rights Council (2019) *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, UN Doc. A/HRC/40/70, 31 January 2019, available at: <https://undocs.org/A/HRC/40/70> (last accessed 4 May 2021).

**21-** UN Human Rights Council (2016) *Out of Sight, Out of Mind: Deaths in Detention in the Syrian Arab Republic*, UN Doc. A/HRC/31/CRP.1, 3 February 2016, available at <https://bit.ly/3xWGVxl> (last accessed 4 May 2021). Hereafter: *UN Human Rights Council* (2016).

**22-** *On the information that emerged on mass graves in the Damascus suburbs during the Koblenz trial see El-Hitami, H. (2020), Syria: A Spotlight on A Bureaucracy of Mass Killings*, Justice Info, 15 September 2020, available at: <https://bit.ly/2QSjQC1> (last accessed 4 May 2021).

**23-** *UN Human Rights Council* (2016), *supra* note 21.

Many cases that have gone through Syrian courts are arbitrary detentions as cases are ruled on without any fundamental basic guarantees. Moreover, field military courts, the Supreme State Security Court and the Counter Terrorism Court routinely carry out unfair trials without much criminal procedure and hand down harsh punishments including the death penalty.<sup>24</sup> Many cases have not even gone through any court process.

There are hundreds of detention facilities where detainees or disappeared persons are kept. “Each of Syria’s four intelligence agencies — military, political, air force and state security — has local branches across Syria. Most have their own jails;”<sup>25</sup> the New York Times reported in 2019. Some of these places are secret.

Non-state groups including ISIS, armed anti-government forces and Jabhat Al-Nusra<sup>26</sup> are also alleged to have detained and committed extensive numbers of disappearances, albeit to a far lesser extent than the government. Still, prior to their military defeat, ISIS was responsible for the disappearance of thousands of people in Syria. Dozens of mass graves have been found in areas that ISIS used to control and so, in the eastern part of the country, some processes to begin exhumations have already begun but they appear to be somewhat haphazard and uncoordinated.

The atrocities committed by all parties to the conflict have been well documented, which is important from the point of view of searching for the disappeared and those in detention. In addition to records kept by official mechanisms detailed in the next section of this report, Syrian groups like the Violations Documentation Center in Syria (VDC), which is the documentation arm of the Syrian Center for Media and Freedom of Expression (SCM), the Syria Justice and Accountability Centre (SJAC), the Syrian Network for Human Rights (SNHR), Syrians for Truth and Justice, the Syrian Institute for Justice, Human Rights Guardians, the Syrian Archive, the Association of the Detainees and Missing in Sednaya Prison (ADMSP), Urnammu, Justice for Life and others have been collecting information. So too have international NGOs Amnesty International and Human Rights Watch, among others.

However, they have been doing this to some degree only and not to the extent that a new mechanism could and should. The role of the various organisations has been useful, but their information is scattered between them. There may be some duplication and in other cases the information appears to be limited.

Of course, millions of Syrians, many of whom are the families of detainees or disappeared or have knowledge about them, are another major source of information. Hundreds of relatives and former detainees have started to organise and establish their own associations to advocate for detainees and the missing.

<sup>24</sup>- Megally, H. and Naughton, E. (2020) *Gone Without a Trace: Syria’s Detained, Abducted, and Forcibly Disappeared*, International Center for Transitional Justice, May 2020, available at: <https://bit.ly/3tIsXbm> (last accessed 4 May 2021).

<sup>25</sup>- Barnard, A. (2019) *Inside Syria’s Secret Torture Prisons: How Bashar al-Assad Crushed Dissent*, The New York Times, 11 May 2019, available at: <https://nyti.ms/3epW1dy> (last accessed 4 May 2021).

<sup>26</sup>- UN Human Rights Council (2016), *supra* note 21.

This documentation must be used not solely for future prosecutions but also to uncover the truth so families finally find out what happened to their relatives.<sup>27</sup> There will be no sense of justice served at any time if the fate of disappeared and detained relatives and friends remains unknown. Similarly, if we are to respect the considerable risks taken by civil society organisations from Syria in collecting this data, it must surely be used for humanitarian purposes too.

## Official Processes and Mechanisms Working on Syrian Issues

There have been various international efforts to address the Syrian conflict and related issues including arbitrary detention and the disappeared, but none have so far been able to make any real progress for a variety of reasons.

### a) The UN-led Geneva talks and the Astana process

The UN has taken a number of steps to try and resolve the conflict, including setting up the Geneva talks. Another mechanism to deal with conflict has been the Astana peace process led by Russia, Iran and Turkey. These two processes have been the main procedures used to try to resolve the conflict in Syria.

The first round of Geneva talks, held in June 2012 and initiated by the then UN peace envoy for Syria Kofi Annan, led to the agreement on the need for a transitional governing body<sup>28</sup> that would become known as the Geneva Communiqué. The demand for a ceasefire was seen as essential to, among many issues, the quick release of arbitrarily detained people (including sick people and political activists), the delivery of a list of each place where people were being held, access to these places, speedy replies to all written appeals for information and the release of such persons.<sup>29</sup>

However, in the absence of any progress, Russia, Iran and Turkey sponsored a series of parallel peace talks in Astana in 2017.<sup>30</sup> The Syrian government and armed opposition groups (except ISIS and Kurdish forces) took part in negotiations.<sup>31</sup> While the Geneva talks sought a political agreement, the main objective of the Astana process was to reach a military settlement between the government and armed groups.<sup>32</sup>

**27-** See *Truth and Justice Charter: A Common Vision on the Question of Enforced Disappearance and Arbitrary Detention in Syria* by Syrian Victims' and Family Members' Organisations, available at: <https://www.impunitywatch.org/truth-and-justice-charter-syria> (last accessed 6 May 2021).

**28-** UN General Assembly (2012) *Identical letters dated 5 July 2012 from the Secretary-General addressed to the President of the General Assembly and the President of the Security Council: Final communiqué of the Action Group for Syria*, UN Doc. A/66/865-S/2012/522, 6 July 2012, art.9(a), available at: <https://www.peaceagreements.org/viewmasterdocument/784> (last accessed 4 May 2021).

**29-** *Ibid.*, art.5.

**30-** *Joint Statement by Iran, Russia, Turkey on the International Meeting on Syria in Astana, 23-24 January 2017*, p.1, available at: <https://www.peaceagreements.org/viewmasterdocument/2092> (last accessed May 4 2021).

**31-** Idris, I. (2017) *Stabilization in Syria*, K4D helpdesk, 20 June 2017, p.5, available at: <https://bit.ly/3nS2FfO> (last accessed 4 May 2021).

**32-** *Ibid.*

In 2017 the Astana talks centred on humanitarian issues and the Syrian opposition stressed the detainee issue, criticising Iran and the Syrian government for hindering the formal process of releasing detainees. Despite these accusations, the sponsoring states emphasised the need for progress on this particular issue as key to generating confidence between parties.<sup>33</sup> The round of talks held in Astana in March 2018 tackled the release of captives and hostages, along with de-escalation zones, the violations of the ceasefire and the forced migrations from Ghouta and Homs to northern Syria. Moreover, the discussions concerning the release process of detainees were also debated.<sup>34</sup>

However, while the Astana and Geneva peace efforts have sought to address the issue of detainees and disappeared, they have treated them, so far, as though it were simply a prisoners of war problem. There have been a number of prisoner exchanges for combatants, but the majority of those arbitrarily detained or forcibly disappeared have been civilians who have not taken part in armed combat.

Both processes have led to about 110 people being released by 2018, it seems in total. These have, however, been well connected persons or specific persons negotiated by the parties who were involved in the conflict. There has seemingly been no progress on missing persons including the disappeared and the detained.

At the end of 2017, a working group on detainees and the missing was set up involving Russia, Iran, Turkey, the ICRC and the UN.<sup>35</sup> Its creation was announced after a meeting between Staffan de Mistura, UN Syria envoy between 2014 and 2018, and Sergei Lavrov, the Russian foreign minister. The group is supposed to engage in efforts to secure the release of detainees and exchange information to build confidence between negotiating parties. It does not, however, have the directive and technical organisation to actually do any searching for the missing in general, and the disappeared and detained specifically. It did not meet for months during the COVID pandemic.

Progress has stalled as the working group has worked on a “one for one” detainee exchange basis, which can only really work for prisoner of war type exchanges rather than political detainees who represent the majority of the disappeared and detained. The current UN Syria envoy, Geir Otto Pedersen, has emphasised that progress must be made on the issue of the detainees and missing and also made it clear that this is not only a prisoner of war issue.<sup>36</sup> However, it should be noted that the UN and the ICRC have made some progress with the creation of databases for the missing.

**33-** “Not surprisingly, the joint statement from the guarantor states emphasised” the need for the conflicting parties to take confidence building measures, including the release of detainees/abductees and the handover of the bodies as well as identification of missing persons, to create better conditions for political process and lasting ceasefire.” See Satubaldina, A. (2017) Latest Syrian peace talks in Astana focus on humanitarian issues, *The Astana Times*, 2 November 2017, available at: <https://bit.ly/3enokcG> (last accessed 4 May 2021).

**34-** “The necessary conditions to determine the release process of captives and hostages were also discussed.” See Aydoğan, M. (2018) First day of 9th round of Astana talks completed: Turkey, Russia, Iran held bilateral, trilateral meetings on de-escalation zones and release of detainees, *Anadolu Agency*, 14 May 2018, available at: <https://bit.ly/33AWWBT> (last accessed 4 May 2021).

**35-** UN Security Council (2019) 8493rd Meeting, UN Doc. S/PV.8493, 27 March 2019, available at: <https://bit.ly/3b8L2D7> (last accessed 4 May 2021).

**36-** UN Special Envoy for Syria (2020) Security Council Briefing on the Situation in Syria by Special Envoy Geir O. Pedersen, 23 July 2020, available at: <https://bit.ly/3f3MibM> (last accessed 4 May 2021).

## **b) The Independent International Commission of Inquiry on the Syrian Arab Republic (COI)**

As a response to the horrific abuses occurring in the country, the COI was set up on 22 August 2011. The COI's mandate is to investigate suspected violations of international human rights starting from March 2011 in Syria, determine the context under which these crimes were perpetrated and identify those accountable for those actions.<sup>37</sup>

It has developed more than 20 reports, as well as policy papers, on matters concerning human rights violations. It regularly updates the Human Rights Council (HRC) and the UN Security Council, where human rights violations perpetrated by numerous parties, all around Syria, are reported, consistent with the testimony of thousands of victims and witnesses.<sup>38</sup> The COI is not searching for the detainees or the disappeared – it is not mandated to do so. It does however have useful information on these persons. It cooperates with various actors including IJIM, Syrian civil society and others.<sup>39</sup>

## **c) The International, Impartial and Independent Mechanism (IIIM)**

After years of failed negotiations and at least 16 Russian vetoes on resolutions concerning Syria, in 2016 the UN General Assembly adopted Resolution 71/248 and established the IIIM to assist the investigation and prosecution of those accused of committing, since March 2011, the most serious crimes under international law.<sup>40</sup>

The mandate of the IIIM is “to collect, consolidate, preserve and analyse evidence of violations of international humanitarian law and human rights violations and abuses and to prepare files in order to facilitate and expedite fair and independent criminal proceedings, in accordance with international law standards, in national, regional or international courts or tribunals that have or may in the future have jurisdiction over these crimes, in accordance with international law.”<sup>41</sup> It is therefore prosecution focused.

<sup>37</sup>- UN Human Rights Council, Resolution S-17/1, para. 13, available at: <https://bit.ly/3hc5S8y> (last accessed 6 May 2021).

<sup>38</sup>- For more information about the COI, see <https://bit.ly/3tonXTj> (last accessed 4 May 2021).

<sup>39</sup>- See *Independent International Commission Of Inquiry On The Syrian Arab Republic (2018)*, supra note 19. In September 2020, the COI came out in support of setting up a Mechanism to deal with the detainees and the disappeared. See Statement by Mr. Paulo Sérgio Pinheiro, Chair of the Independent International Commission of Inquiry on the Syrian Arab Republic, at the 45th Human Rights Council session, 22 September 2020, available at: <https://bit.ly/3eqrsls> (last accessed 4 May 2021).

<sup>40</sup>- UN General Assembly (2016) Resolution adopted by the General Assembly on 21 December 2016: *International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011*, UN Doc. A/RES/71/248, 11 January 2017, para.4, available at: <https://undocs.org/A/RES/71/248> (last accessed 4 May 2021).

<sup>41</sup>- *Ibid.*

It does not search for or specifically look for information on the disappeared or detained but it has created a central repository of evidence and detailed information of crimes committed in Syria, allowing for the development of a broad portrait of events, towards facilitating prosecution procedures.<sup>42</sup> The IIM is interested, it seems, to do work on the detainees and disappeared and the IIM's October 2020 bulletin is devoted to the topic.<sup>43</sup>

The IIM is also very engaged with various stakeholders including Syrian NGOs.<sup>44</sup> They have established an ongoing process to consult with them which could be used as a role model for engagement of a future mechanism with Syrian civil society, including victim associations.

## Reporting Channels Open to the Families of the Disappeared and Detainees

There are no functioning national-level channels for Syrians to report and seek information about their missing and disappeared loved ones. Indeed, attempting to seek information or make missing persons reports in Syria frequently exposes the family members to risk of detention or other abuses. Some document the instances of arbitrary detention or disappearance with Syrian or international NGOs.

In practice, there are only really four international channels available: the ICRC (missing persons in general), the ICMP (also missing persons in general), the WGAD (cases of arbitrary detention) and the WGEID (cases of enforced disappearance). However, none of these are currently capable of dealing with the persons who cannot be found in Syria.

The ICRC and ICMP work on all such cases regardless of who the perpetrators are or whether the detentions or disappearances happened during peacetime, civil war or international conflict. Neither prioritise detained or disappeared persons. The WGAD and WGEID work in times of peace and armed conflict, but in times of conflict they differ in what they can do, as will be elaborated below. The following examination of each institution shows that little is actually being achieved in practice.

### a) The International Committee of the Red Cross

The ICRC role in international humanitarian law is set out in the Geneva Conventions and it works in most countries on the missing persons' issue. It visits prisons and not only works on the clarification of the fate of the missing person, but also supports their families based on an assessment of their needs. It works on the basis of confidentiality.

In Syria, the ICRC has both a delegation and a sub-delegation in Damascus, sub-delegations in Tartus, Homs and Hassakeh, a sub-delegation and a physical rehabilitation project in Aleppo and an office in Hama.<sup>45</sup> This means it has access to large parts of the Syrian territory.

<sup>42</sup>- IIM - Syria (2018) Bulletin No.1 - November 2018, available at: <https://bit.ly/2RxQlJc> (last accessed 4 May 2021).

<sup>43</sup>- IIM - Syria (2020) Bulletin No.4 - October 2020, available at: <https://bit.ly/3o2mQrp> (last accessed 4 May 2021).

<sup>44</sup>- For more on the IIM's engagement with stakeholders, see <https://iim.un.org/engagement-with-stakeholders/> (last accessed 4 May 2021).

<sup>45</sup>- ICRC (2019) Annual Report 2019 - Volume I, p.479, available at: <https://library.icrc.org/library/docs/DOC/icrc-annual-report-2019-1.pdf> (last accessed 4 May 2021). Hereafter: ICRC (2019).

In its 2017 annual report on Syria, the ICRC noted it had about 10,000 cases of missing persons in Syria in general.<sup>46</sup> This is only a fraction of the total number of people that are missing, and it appears that very little tracing has actually occurred and families have received very little information.

The key role of the ICRC in Syria at the moment is to visit prisons.<sup>47</sup> However, it has only had access to just a few detention facilities and not those where most political detainees are kept. In their 2019 annual report, the ICRC reported that they had been allowed to visit just 14 facilities in Syria and noted: "Thousands of people, however, were still unaccounted for; many of them were alleged to have been arrested or detained in relation to the fighting."<sup>48</sup> There are hundreds of facilities in Syria run by state agents and non-state actors.

## **b) The International Commission on Missing Persons (ICMP)**

The ICMP was set up after the conflict in the former Yugoslavia and was initially focused on Bosnia and Herzegovina (BiH) before expanding into other areas of the Balkans and then working globally. It has worked with judicial entities such as the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Court (ICC), with international agencies like Interpol and international organisations such as the ICRC.<sup>49</sup> It is helping the BiH authorities with unidentified remains and provides access to DNA testing and matching equipment for the identification of bodies all over the world.<sup>50</sup>

The ICMP has collected requests from families but has had a limited role so far in searching for the missing in Syria. It has a Syria-MENA programme that was launched in 2017 that is mainly supported by the European Union. As it is focused on the future when operating in Syria becomes possible, it is now working with civil society organisations and the families of the missing in general to develop advocacy strategies and to gather information that can be applied as part of a systematic programme to account for the missing. The ICMP has noted that its Identification Data Management System (iDMS) can contribute to the construction of an integrated repository of data for locating and identifying the missing in Syria.

In May 2019, the ICMP began a process to devise policy to account for the missing in Syria. They plan to launch technical processes, including collecting DNA reference samples.<sup>51</sup>

<sup>46</sup>- ICRC (2017) *Annual Report 2017 - Volume I*, p.491, available at: <https://www.icrc.org/en/document/annual-report-2017> (last accessed 4 May 2021).

<sup>47</sup>- ICRC (2020) *COVID-19 In Syria: ICRC Continues Assisting Millions and Adapts To Combat The Virus*, 28 April 2020, available at <https://bit.ly/3nYAuvQ> (last accessed 4 May 2021).

<sup>48</sup>- ICRC (2019), *supra* note 45.

<sup>49</sup>- For more information about ICMP, see <https://www.icmp.int/about-us/partners/> (last accessed 4 May 2021).

<sup>50</sup>- ICMP (2019) *Sweden Supports ICMP in Bosnia and Herzegovina*, 2 April 2019, available at: <https://bit.ly/33kOOoT> (last accessed 4 May 2021).

<sup>51</sup>- ICMP (2020) *Accounting for Missing Persons is an Investment in Peace: Policy Process with Syria Organizations and Families of the Missing*, 21 July 2020, available at: <https://www.icmp.int/wp-content/uploads/2020/10/Report-English.pdf> (last accessed 4 May 2021).

### **c) UN Working Group on Arbitrary Detention (WGAD)**

Set up in 1991, the Working Group acts on individual complaints as well as allegations regarding any UN member state. They send communications under the WGAD regular procedure leading to an opinion to states or those in transitional authority but do not send these to non-state actors. However, when an arbitrary detention is perpetrated by a non-state actor, they hold states responsible where there is sufficient control over the actions of the non-state actors (i.e., when they are acting on behalf or with the support of a state). Thus, they would not have the ability to deal with cases of arbitrary detention perpetrated by non-state actors in Syria that are not under the control of the state. However, they can and do work on cases in Syria that emerged after 2011.

The WGAD has not been able to do much to remedy the situation in Syria and its recent reports do not include many cases from Syria because very few cases are reported to it.

This Working Group can at any time appoint one of its members as a rapporteur on specific issues of interest.<sup>52</sup> The WGAD has in its working methods a section dealing with coordination with other human rights mechanisms and could participate with any future new mechanism.

### **d) UN Working Group on Enforced or Involuntary Disappearances (WGEID)**

Set up in 1980, the WGEID has two mandates: ensuring compliance by states with the Declaration on the Protection of all Persons from Enforced Disappearance and taking cases from families of the disappeared to determine their fate and whereabouts, of which it has had about 55,000 cases.

The WGEID examines reports of disappearances received from relatives of disappeared persons or human rights organisations acting on their behalf on a purely humanitarian basis, irrespective of whether the government concerned has ratified any relevant human rights treaty. It acts as a channel of communication between the families of disappeared persons and governments. The WGEID does not judge, issue sanctions, or carry out searches, exhumations or identifications. It is essentially a means to exchange information between families and a state.

<sup>52</sup>- UN Human Rights Council (2017) *Methods of work of the Working Group on Arbitrary Detention*, UN Doc. A/HRC/36/38, 13 July 2017, available at: <https://undocs.org/en/A/HRC/36/38> (last accessed 4 May 2021).

Today, the WGEID is the only international organisation specifically taking cases of enforced disappearances from Syria as the country has not ratified the International Convention on the Protection of All Persons from Enforced Disappearances. While it works with the Syrian regime on cases that are connected to the state, the WGEID has recently begun to collect cases committed by non-state actors. The role of the WGEID has, however, been generally limited from 2011 to 2020. Over the period of the conflict the WGEID has only sent two General Allegations (reports on violations and requests for a response on what is being done about them) to Syria: one in 2011 and one in 2019. Only the 2011 allegation was responded to. Problematically, this Working Group has only ever had 435 cases from Syria since it began work in 1980.<sup>53</sup> This might be partly explained by underreporting of cases to the WGEID, as well as insufficient resources and outreach to solicit submissions.

The WGEID itself does not search for the disappeared. It simply transmits cases of people reported to it to the state concerned. It then depends on the state reacting and setting in motion processes to search for the person concerned.

A process set up by the WGEID in the 1990s as a result of the war in the former Yugoslavia might be relevant for Syria. At that time more than 11,000 cases of enforced disappearances had been reported to the WGEID from Bosnia. As they had so many cases, the WGEID sought assistance from the UN. In 1994, a Special Process on Missing Persons in the Territory of the former Yugoslavia was established by the Commission on Human Rights. Crucially, this occurred during the conflict. There was therefore a joint mandate of an Expert of the WGEID, Manfred Nowak, and the Special Rapporteur on the Situation of Human Rights in the territory of the former Yugoslavia, Mr. Tadeusz Mazowiecki.<sup>54</sup> This is an important precedent for a similar process that could be established in Syria in the future.

<sup>53</sup>- UN Human Rights Council (2019) *Report of the Working Group on Enforced and Involuntary Disappearances*, UN Doc. A/HRC/42/40, 30 July 2019, p.28, available at: <https://undocs.org/A/HRC/42/40> (last accessed 6 May 2021)

<sup>54</sup>- Sarkin, J. et al. (2014) *Bosnia and Herzegovina Missing Persons from the Armed Conflicts of the 1990s: A Stocktaking*, ICMP, October 2014, available at: <https://bit.ly/2Rt74jY> (last accessed 4 May 2021). Hereafter: Sarkin, J. et al. (2014).

## LESSONS LEARNED FROM OTHER CONFLICT ZONES



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Any new mechanism must make use of past experience in tracing the disappeared and arbitrarily detained in conflict zones. For this report, we have chosen to examine countries where different mechanisms were set up specifically to trace the missing/disappeared, with varying degrees of international involvement.

The countries chosen have also endured conflicts that involve unresolved disputes over territory, similar to the situation in Syria, even if fighting has ceased.

### a) Bosnia and Herzegovina (BiH)

The breakup of the former Yugoslavia spawned massive conflicts in the region. One of those occurred between 1992 and 1995 in BiH involving Bosnian Muslims, ethnic Croats and ethnic Serbs in which about 31,500 people disappeared.<sup>55</sup>

In 1996, former US President Bill Clinton established the International Commission on Missing Persons (ICMP) in Sarajevo to work on the Bosnian situation.<sup>56</sup> The ICMP now has an international focus and is headquartered in The Hague. It has an office in Sarajevo (its previous headquarters). The ICMP is administered by a board of commissioners and has a number of committees who specialise in particular fields.<sup>57</sup>

<sup>55</sup>- See generally about the numbers, Sarkin, J. et al. (2014), *ibid*.

<sup>56</sup>- *ibid*

<sup>57</sup>- For more on the governance of ICMP see <https://www.icmp.int/about-us/governance/> (last accessed 4 May 2021).

As a crucial part of the ICMP's work, DNA-based identifications of victims – matching human remains with family members – constitutes a significant aspect of ICMP's identification procedure. This process has led to identifying close to 90 per cent of the predominantly men and boys who disappeared as a result of the genocide in Srebrenica, Bosnia and Herzegovina<sup>58</sup> including about 26,000 people from the country as a whole who disappeared and have subsequently been found in mass graves and identified.<sup>59</sup>

The main lesson to be learned here is that the sooner work begins the better – even if the conflict is still ongoing. Starting tracing efforts earlier reduces the risk of evidence and graves being tampered with or compromised as has unfortunately frequently been the case including, for example, in Lebanon. International pressure and involvement also played a positive role and combined with starting early on finding the disappeared and detained also served to reassure family members.

## b) Cyprus

Divided between Greek Cypriot and Turkish Cypriot communities, Cyprus experienced inter-communal fighting between 1963 and 1964 and a subsequent conflict in 1974, which resulted in its invasion by Turkey following a military coup. These events had a massive negative effect on the country as more than 2,000 people<sup>60</sup> were disappeared, although the term “missing” is used in Cyprus. Their families were left with no answers.

Between 1975 and 1978, the UN General Assembly adopted three resolutions on the “missing” in Cyprus, aimed at creating an investigatory entity to tackle the crisis. Subsequently, two additional resolutions were adopted and eventually, in 1981, the Committee on Missing Persons (CMP) was founded by the leaders of the Greek Cypriot and Turkish Cypriot communities, under the auspices of the UN.<sup>61</sup> It took more than six years to establish the Cyprus process.

The CMP is composed of three members: one representative from each of the Greek Cypriot and Turkish Cypriot communities and a third member nominated by the ICRC and appointed by the UN Secretary-General.

<sup>58</sup>- ICMP (2020) ICMP briefs international community in Bosnia and Herzegovina on efforts to account for the missing ahead of 25th commemoration of Srebrenica, 20 May 2020, available at: <https://bit.ly/2PUXIMO> (last accessed 4 May 2021).

<sup>59</sup>- Sarkin, J. et al. (2014), *supra* note 54.

<sup>60</sup>- Sarkin, J. and Baranowska, G. (2018) Why enforced disappearances are perpetrated against groups as state policy: overlaps and interconnections between disappearances and genocide, *Católica Law Review II*, no. 3, November 2018, pp. 11-50, available at: <https://revistas.ucp.pt/index.php/catolicallawreview/article/view/9098> (last accessed 4 May 2021).

<sup>61</sup>- See UN General Assembly Resolution 33/172 (1978), UN General Assembly Resolution 34/164 (1981), and UN General Assembly Resolution 37/181 (1982), available at: <http://www.cmp-cyprus.org/content/origins> (last accessed 4 May 2021).

The CMP focused on agreeing on a composite list of missing persons - essential in all searches. A somewhat controversial aspect of the CMP is that it does not seek or attribute responsibility for the death of missing people nor the circumstances. It is purely humanitarian and works similarly to the ICRC. It does, however, maintain a list recording each missing person and every available detail concerning their disappearance or probable condition.

By February 2020, of the approximately 2,000 disappeared, 1,208 people's remains have been exhumed and 974 have been positively identified. This is more than 40 years after the conflict ended.

Efforts to trace the disappeared in Cyprus teach us the importance of international involvement and pressure in providing neutral mediation to overcome negotiation blocks and maintaining momentum, even in a process that is mainly bicomunal.

The UN General Assembly's role in Cyprus shows there is a precedent for it to help establish such mechanisms – including a hybrid/semi-international one such as the CMP. It also demonstrates that continued international involvement can lead to the exchange of information, even if progress is slow.

### **c) Armenia - Azerbaijan**

The dispute between Armenia and Azerbaijan over the Nagorno-Karabakh region is somewhat useful to look at to learn lessons for a Syrian process. The war between the two states over this disputed region ended in the early 1990s – that is three decades ago – but resumed in 2020 after lingering tensions between Armenia and Azerbaijan boiled over. This animosity has been an obstacle to dealing with people who went missing nearly 30 years ago. Between all the parties to the conflict, it is believed there are about 5,000 people<sup>62</sup> missing from the 1990s, not including those who went missing in 2020.

The role of the ICRC has been essential in moving the process forward. They have delegations in the countries and transfer information between them. This allows the search to occur which would not otherwise be the case.

In Azerbaijan, the number of missing persons registered by the State Commission for Azerbaijan alone is 3,888. The main governmental body dealing with the issue of missing persons is the State Commission on Prisoners of War, Hostages and Missing Persons of the Republic of Azerbaijan. Armenia also has a commission as does Nagorno-Karabakh.

<sup>62</sup>- ICMP, Nagorno-Karabkh, available at: <https://bit.ly/3vMwAIR> (last accessed 4 May 2021).

An international working group on searching for missing people in the area of conflict and the exchange of hostages was established in the 1990s but does not seem to have operated over the last decade or so. It consisted of civil society representatives from Germany, Russia and Georgia. In spite of these processes to try and move the search forward, very few people have been found in the approximately 30 years since the conflict. The critical obstacle remains a lack of cooperation between all the parties.

The Armenia-Azerbaijan conflict demonstrates that international support without a neutral international mechanism can in some cases only achieve so much. To make real progress, a dedicated, humanitarian mechanism that is able to operate as a trusted, impartial mediator over an extended period of time is essential.

#### **d) Georgia**

In Georgia, the ICRC counts 2,353 people missing as a result of the conflicts over the territories of the Abkhazia and South Ossetia in the 1990s and 2008.<sup>63</sup> There are various processes to deal with the missing from Georgia and the ICRC has played a crucial role in dealing with missing persons since 2004, as has the Georgia Red Cross Society.

The first process that deals with the missing, at least in part, is the Geneva International Discussions (GID) and the Incident Prevention and Response Mechanisms (IPRM) on security and stability and the return of internally displaced persons and refugees, commenced on 15 October 2008 in Geneva. It is an international process co-chaired by the Organization for Security and Co-operation in Europe (OSCE), the European Union (EU) and the UN. This gives it status. The process involves representatives of Georgia, Russia, Abkhazia, South Ossetia and the United States and the fact that a variety of international actors are involved means that momentum is maintained to keep the dialogue open, but still there are obstacles because of the tense relationships between the parties. The talks have witnessed little progress in recent years and deal with the missing as just one of several files relevant to stability in the region.

At the national level in Georgia there are two coordination mechanisms to deal with the missing. A bipartite mechanism focused on the 1992-1993 conflict and after (with Georgian and Abkhaz participants) and a tripartite mechanism with South Ossetian, Russian and Georgian participants focused on the 1989-1992 and 2008 conflicts in South Ossetia.<sup>64</sup> The ICRC chairs both, which met twice in 2019. They are meant to coordinate activities as far as the search for missing people and have succeeded in opening some mass grave sites.

<sup>63</sup>- ICRC (2020) *Georgia: Remains of 13 people, considered missing due to 1992-1993 conflict, identified*, 11 August 2020, available at: <https://bit.ly/3urXdCB> (last accessed 4 May 2021). Hereafter: ICRC (2020).

<sup>64</sup>- ICRC (2016) *Georgia/South Ossetia: Tenth meeting held to seek ways forward on issue of missing persons from conflicts of 1990s and 2008*, 16 December 2016, available at: <https://bit.ly/3hc6ISK> (last accessed 4 May 2021).

Another process, this time domestic, in Georgia was the establishment by government decree in 2019 of the Inter-Agency Commission on the Search for and Reburial of Missing People from Armed Conflicts. Its job is to coordinate the work internally in Georgia concerning the search for missing persons. It is in its early stages of its work.

Despite the existence of multiple institutions addressing the disappeared issue, the remains of just 563 people have been found and 191 identified as of late 2020.<sup>65</sup> The case of Abkhazia and South Ossetia demonstrates that piecemeal efforts are less likely to succeed, even with international involvement to push them forward, and that dealing with the missing must be prioritised as early as possible, with dedicated attention, in order to achieve results.

<sup>65</sup>- ICRC (2020), *supra* note 63.

## THE CASE FOR URGENTLY CREATING A NEW MECHANISM



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Only when the fate of the more than 150,000 Syrians that have been disappeared or detained is known will relatives and friends believe that justice might be served. It is to this end that the five Syrian groups representing victims and survivors who commissioned this report have put the following demands at the centre of their Truth and Justice Charter: “An immediate release of detainees and revealing the fate of the forcibly disappeared, [...] returning the remains of those killed under conditions of enforced disappearance and detention[.]to their families to ensure a proper burial”.

Above all else, they want answers. Most do not know the fate and the whereabouts of their detained and disappeared relatives and cannot get any information about them. International law is clear on their right to find out what happened to their loved ones but the organisations that would normally provide information to the families, such as the WGEID, the WGAD, the ICMP and ICRC, aren’t sufficient for a variety of reasons.

These include disjointed or piecemeal work with no one organisation taking the lead, a mismatch between the scale and severity of the issue in Syria and their programmes, insufficient coordination between the various actors involved, no centralised information/data, no consolidation of resources or their work is not specific enough to the issue of detention and enforced disappeared in Syria. Relatives have no single, clear interlocutor to deal with.

The UN High Commissioner for Human Rights Michelle Bachelet also joined the call for the creation of an independent mechanism with an international mandate in March 2021 in a statement released to mark the 10th anniversary of the conflict.<sup>66</sup>

<sup>66</sup>- OHCHR (2021), *supra* note 2.

“Enforced disappearance is a continuous crime that has an appalling impact on the individual whose fate is unknown, and on their family, causing continuing trauma,” Bachelet said, before urging all parties to the conflict – and those with influence over them – to immediately release the arbitrarily detained.

In addition to calling for the Syrian government to reveal where detainees are kept, allow communications between detainees and their families and immediately release those arbitrarily detained, Bachelet said: “If an individual has died, then their body or remains should be returned to their family, in accordance with international law and in full respect of the deceased and their loved ones.”

The sheer scale of the numbers of disappeared and detained ought to mean that a process is put in place as soon as possible. The failure to tackle detentions and disappearances fuels the conflict – and deepens the damage to the Syrian community – because they are connected to a range of other violations including widespread torture, sexual abuse and many extra-judicial killings and executions.

Critically, people continue to die in detention and the longer the process takes to collect information to search for them and then try to get them released, the more difficult it will become to find people alive.

The lack of clarity on where people are and if they are alive or not continues to cause families and friends a great deal of suffering. They need to know that this issue is being taken seriously, that action is being taken and that they will get answers. They have the right to know what happened to their loved ones and to be able to bury them according to their traditions to bring closure and solace where possible.<sup>67</sup>

The current situation is excruciating for them. There is a need for a visible and accessible “one-stop-shop” process for them that would also facilitate their participation. There is a need to simplify and centralise the search process. A new dedicated mechanism would ensure effective coordination and harmonisation of the work.

The Syrian situation is unique and needs a tailored and specific solution to address the scale and gravity of the problem in an efficient manner. Tracing the disappeared and detained is vital to Syria’s future and this must be addressed if any kind of lasting peace is to emerge. It therefore deserves political and financial investment by the international community, which will be small in comparison with the cost of doing nothing or the overall cost of humanitarian aid now granted to Syria.

## **What Could a New Mechanism Achieve Now and in the Future?**

First and foremost, the new mechanism must immediately start investigating and tracing the disappeared and detained in order to secure the release of those who are still alive.

It must also establish a victim-centred approach ensuring strong collaboration with Syrian victim associations and broader civil society - offering a fresh start for Syrians who feel let down by the international community over the past decade.

<sup>67</sup>- Sarkin, J. (2011) *Keep on Investigating until there is Clarification: Interview with UN Chair-Rapporteur Jeremy Sarkin on Disappearances in Nepal*, INFORMAL Journal Nepal, 2011.

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A new mechanism will also immediately start collating existing information from bodies that have worked directly or indirectly on this topic (WGEID, WAGD, ICMP, ICRC, IIM, COI and Syrian civil society) and collect new information from family members. It will coordinate between various actors involved in the issue of disappeared and missing and gather existing and new information about - and map - places of detention and mass grave sites in Syria.

From the outset, the new mechanism will maintain contact with family members to keep the files on the forcibly disappeared and arbitrarily detained up to date while also providing or referring them to services (such as legal and psychosocial support) to help address the impact of the person's absence, with a gender-sensitive approach.

The new mechanism will also help to keep the issue of the disappeared and arbitrary detention on the political agenda with the benefit of being an impartial international entity that collects information from all parties to the conflict. This will also discourage the practice of enforced disappearance while the conflict is ongoing.

In the longer term, the process to deal with detainees and the disappeared in Syria could in fact be the beginning of the process to deal with the missing in general. This is because all people that are missing, including people who were killed on the battlefield, those who cannot be found as a result of internal displacement and those who went into exile will need to be searched for.

The fact that there are so many victims means many families seek answers. However, it is of critical importance to bear in mind the experience of other processes, which indicate that even in the most advantageous circumstances, with adequate resources, political will and cooperation, these processes take decades to achieve many positive results.

Access to the information should not be too difficult as this report has already noted that a great deal of data has already been collected. Information from all the sources can be collected and reviewed, people in places outside of Syria can be interviewed, facial recognition software can be used for the photographs and videos that exist. Already there is access to parts of eastern Syria. Relatives can begin providing various types of ante-mortem information including medical, dental and other available records as well as background information about each person.

Eventual access to prisons and places of detention in Syria is important, yet much can be done without such access. Exhumations are taking place in parts of Syria that are not controlled by the government but there ought to be a more systematic approach, which a new mechanism could coordinate.

As far as accessing official state documents are concerned, it would be most useful but unlikely that the state will provide them at any point in time. However, much exists already outside the country through the different official and non-official organisations documenting the conflict.

## ENTITIES THAT COULD SET UP A NEW MECHANISM

### UN Options

At this juncture, a body that has international stature with a purely humanitarian mandate is necessary to fulfil the wishes of the families to begin the process of finding their loved ones. Which UN entity establishes the new mechanism is important given that will determine how much authority and power it has, with the UN Security Council wielding the most, followed by the General Assembly, the HRC and the OHCHR. Any process chosen should be participatory for the families.

A number of organisations within the UN have created processes in the past to deal with human rights violations in Syria but they have generally been fact-finding. They have not had additional powers or mandates to do other things such as determine fate, help with releases, return remains, excavate mass graves and systematically investigate disappearances at such a scale, which is needed in the case of the Syrian detainees and disappeared. Even the IIM cannot do anything beyond collecting information or evidence and sharing it with prosecutors who may then decide to take action.

The problem is that only the Security Council has coercive powers to obligate states to cooperate and enforce resolutions. That said, the Security Council, the General Assembly, the Human Rights Council, the Secretary-General and the UN High Commissioner for Human Rights have set up processes with useful powers in the past.

The Cyprus CMP is an example of the UN General Assembly being involved in a process to create a searching mechanism. The Security Council has also set up the Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL (UNITAD) in Iraq, though crucially with the permission of the Iraqi state, which is highly unlikely to be forthcoming in Syria.

#### a) The Security Council

In terms of the UN Charter, the Security Council has primary responsibility to maintain international peace and security.<sup>68</sup> It has the authority to take collective action in response to a threat of peace, a breach of peace or an act of aggression. It has enormous powers to take a variety of actions including the use of force and the right to demand access to a state.

However, member states are constantly vetoing proposed action, as Russia has no fewer than 16 times on Syria. Creating a new mechanism via the Security Council is therefore probably unlikely but may be something that is attempted simply to encourage other states and/or blocs to take action. The fact that the Security Council adopted in 2019 its first ever Resolution<sup>69</sup> on Persons Reported Missing during Armed Conflict may mean that there is greater pressure on it to take action to deal with this issue in Syria. Creating a new mechanism through the Security Council would be best in terms of what it could do and the cooperation it could receive.

<sup>68</sup>- UN Security Council, *Functions and Powers*, available at: <https://www.un.org/securitycouncil/content/functions-and-powers> (last accessed 4 May 2021). See also *United Nations, Charter of the United Nations*, 24 October 1945, 1 UNTS XVI, art. 1, available at: <https://www.un.org/en/about-us/un-charter/chapter-1> (last accessed 6 May 2021).

<sup>69</sup>- UN Security Council (2019) *Resolution adopted by the Security Council at its 8543rd meeting, UN Doc. S/RES/2474 (2019)*, 11 June 2019, available at: [https://undocs.org/s/res/2474\(2019\)](https://undocs.org/s/res/2474(2019)) (last accessed 4 May 2021).

## b) The General Assembly

The General Assembly has a variety of powers including to hold discussions and make recommendations on any matters within the scope of the UN Charter. Article 10 of the UN Charter allows it to “discuss” and make “recommendations” regarding “any questions or matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter.” Article 22 in turn empowers it to “establish such subsidiary organs as it deems necessary for the performance of its functions.”

Thus, a proposal for the General Assembly to establish a mechanism such as the IIIM with the mandate to find the whereabouts of the detained and disappeared in Syria has a basis in law. There is precedent in the Assembly’s establishment of the United Nations Relief and Work Agency for Palestine Refugees in the Near East which is done by resolution for three years at a time.<sup>70</sup>

The General Assembly did establish the IIIM to assist in the Investigation and Prosecution of Those Responsible for the Most Serious Crimes under International Law committed in the Syrian Arab Republic since March 2011 and so it could set up another body working on Syria. However, there will be a need to get many states to support such a process to get through the General Assembly which will take time. While only the Security Council can force Syria or any other state to work with it, this may nevertheless be an alternative option to the Security Council.

## c) The Human Rights Council (HRC)

The HRC has established a number of commissions or fact-finding processes in recent years. In 2011, it established the COI for Syria.

It can request that the High Commissioner appoints a group of experts to investigate matters, as occurred with Yemen in 2017. The same year, it also asked for a group of international experts to investigate and establish the truth about violence in the Kasai region of the Democratic Republic of Congo. Sometimes the HRC requests the Office of the High Commissioner to dispatch a mission to investigate a matter which it does using OHCHR staff. Generally, these processes have very limited mandates and are restricted to fact-finding and making recommendations. Thus, the HRC really only appoints processes that collect evidence and make recommendations.

However, the HRC did follow the lead of the General Assembly in setting up the IIIM when it established the Independent Investigative Mechanism for Myanmar.<sup>71</sup> It also gave it authority to build case files that it could hand over to prosecuting authorities in other jurisdictions, whether national, European, international or hybrid.

<sup>70</sup>- Pursuant to UN General Assembly Resolution 302 (IV) Assistance to Palestine Refugees, UN Doc. A/RES/302 (IV), 8 December 1949, available at: <https://bit.ly/3tpBV7t> (last accessed 6 May 2021).

<sup>71</sup>- The Independent Investigative Mechanism for Myanmar was established in September 2018 through UN Human Rights Council resolution 39/2. See UN Human Rights Council (2018) Resolution on the Situation of human rights of Rohingya Muslims and other minorities in Myanmar, UN Doc. A/HRC/RES/39/2, 27 September 2018, available at: <https://bit.ly/2PVOvO3> (last accessed 6 May 2021). The IIIM states that its role is to “is to collect, consolidate, preserve and analyse evidence of the most serious international crimes and violations of international law committed in Myanmar since 2011. It is further mandated to prepare files in order to facilitate and expedite fair and independent criminal proceedings, in national, regional or international courts or tribunals that have or may in the future have jurisdiction over these crimes.” For more information on the IIIM, see: <https://iimm.un.org/mandate-and-establishment/> (last accessed 6 May 2021).

It could set up a new mechanism as a special procedure mandate, some of which have powers beyond what commissions do, such as the WGEID and WGAD. Thus, such a mechanism could then do more than solely fact-finding and making recommendations.

#### **d) The Office of the High Commissioner for Human Rights (OHCHR or UN Human Rights Office)**

The UN Human Rights Office has also created processes to investigate issues including in Syria via the 2011 OHCHR Mission to the Syrian Arab Republic to Investigate Alleged Violations of International Human Rights Law.<sup>72</sup> Over the last 10 years OHCHR has created various processes to examine events in a number of countries. The OHCHR could do so again, and it could be connected to the COI in some way. However, OHCHR mechanisms are fact-finding in nature.

#### **e) The UN Secretary-General**

The UN Secretary-General has in the past also created processes, many of which have been centred on fact-finding in relation to issues concerning UN property or about UN personnel (such as peace-keeping).

However, some have a narrow view of when the Secretary-General may create a process while others believe there to be implied powers allowing the Secretary-General to get advice from whomever they chose to exercise their responsibilities under the UN Charter. This view sees the Secretary-General as able to use their powers under Article 99 to create fact-finding processes or commissions to present a situation to the Security Council that may require the council's intervention.

The Secretary-General has set up several such inquiries. Many were created when the state requested assistance, or the Security Council or General Assembly mandated the Secretary-General to do so. However, their powers have been limited as was the case for the 2010 Secretary-General's Panel of Experts on Accountability in Sri Lanka. Set up to examine issues arising from the last stages of the war, the panel was asked to assess the "nature and scope of alleged violations" and not fact-finding or investigating.<sup>73</sup> Thus, the Secretary-General chose to give it a limited mandate.

However, context is important. The present Secretary-General may be reluctant to take action and might therefore be unwilling to establish such a process. It may, however, be something that is attempted if getting the other processes to create a mechanism does not work.

<sup>72</sup>- UN Human Rights Council (2011) Resolution on the current human rights situation in the Syrian Arab Republic in the context of recent events, UN Doc. A/HRC/RES/S-16/, 29 April 2011, available at: <https://bit.ly/3xPSr46> (last accessed 4 May 2021).

<sup>73</sup>- UN Secretary-General (2011) Report of the Secretary General's Panel of Experts on Accountability in Sri Lanka, 31 March 2011, available at: <https://bit.ly/3bb347R> (last accessed 4 May 2021).

## EU/Other Country Options

While it is potentially possible to establish the mechanism via one of the UN processes, there are difficulties with each. Another way to establish such a mechanism could be by establishing a treaty by the EU or a number of states.

The EU has been involved in the setting up of a court to prosecute crimes committed in the 1999 Kosovo war, the Specialist Chambers and Specialist Prosecutor's Office. In addition, the EU Council – which represents member state governments – established an inquiry into atrocities committed during the conflict between Russia and Georgia in 2008.<sup>74</sup>

In addition, the EU and the UN co-chaired the fourth Brussels Conference on Supporting the future of Syria and the region in June 2020. In total 57 states and other international organisation including EU and UN agencies participated.<sup>75</sup> More than 1,400 organisations were consulted in the process leading up to the conference. This must mean that at least some of them want to do more on Syria. The conference “called on all parties to the conflict to take urgent measures to prevent any new disappearances, notably of persons deprived of their liberty. It [the conference] called for the establishment of mechanisms to clarify the fate and whereabouts of all missing persons, without distinction. Participants also stressed the need to support the families of those unaccounted for and the need to deal with the past.”<sup>76</sup>

Of significance, this was the fourth such conference indicating a long-term commitment by participants, including the many states that have participated, to find ways to deal with Syria. Others could play a part as well including the Arab League, the Organisation of Islamic Cooperation (OIC) and the Gulf Cooperation Council (GCC).

A number of states – including European nations – have for years been indicating their commitment to being involved in solving the situation in Syria.

<sup>74</sup>- European Union: Council of the European Union (2008) Council Decision 2008/901/CFSP of 2 December 2008 concerning an independent international fact-finding mission on the conflict in Georgia, 2008/901/CFSP, 2 December 2008, available at: <https://bit.ly/2Rypqcm> (last accessed 4 May 2021).

<sup>75</sup>- European Union: Council of the European Union (2020) Brussels IV Conference on ‘Supporting the future of Syria and the region’: co-chairs’ declaration, 30 June 2020, available at: <https://bit.ly/3h8MaKX> (last accessed 4 May 2021).

<sup>76</sup>- Ibid

## How a New Mechanism Could be Structured

If the mechanism were to be established by the UN, then its set up may be determined by precedent. Thus, it could have three people as commissioners if established by the HRC. It could have one head as is the case for the IIIM. The length of the mandate and what it does would also be determined by the mandating body. The mandating body could also take from the suggestions below to use the expertise, legitimacy and roles of the specific institutions that are already working in the areas of missing persons, arbitrary detentions and enforced disappearances.

If the mechanism were to be created outside the UN, then it could be a long-term project-based initiative run jointly by the five following institutions: the ICRC, ICMP, WGAD, WGEID and representatives of Syrian civil society organisations. The four international institutions would not be participating directly in the mechanism but would set out policy and guide the organisation. So, a representative of each would serve on the board of the mechanism. In addition, there would be one to two representatives of a Syrian organisation representing victims and survivors.

Syrian civil society is vital to the success of any such mechanism with representatives from Syrian organisations serving on a rotational basis for one to two years. The representative(s) of Syrian organisations could be determined by the other four mandates each year, after consulting Syrian organisations or through a vote in a consultative process of Syrian organisations, similar to that which exists with the IIIM where Syrian organisations meet with the mechanism periodically for two-way communication and dialogue.

The role of the ICRC and ICMP will be crucial as both have mandates, skills and experience to assist in the search for missing persons. They have a high-level of expertise in-house from various conflicts, including post-conflict. They are working on missing persons in the Syria context, presumably with limited resources. Both organisations predominantly cooperate with states and will also be able to assist with exhumations and identifications when the opportunity arises.

Similarly, the WGEID and WGAD have particular roles and expertise on disappearances and arbitrary detentions. They already do some work on Syria. There may be some push back on the ability of the working groups to participate in such a mechanism but there is no real reason that they cannot do so. In fact, their working methods are about cooperation.

Being involved in the mechanism would not raise capacity or resource issues for any of the organisations, as the new mechanism would have its own funding, staff, and own work - which would not impact the work of each organisation. The ICRC, ICMP, WGAD, WGEID and Syrian groups would sit on a board and undertake a supervisory role. The daily work of the mechanism would be under the direction of an executive director, some of which could feed into the ICRC, ICMP, WGAD and WGEID.

The results that emanate from the mechanism might see more work flowing to the five institutions which they would need support for. If the mechanism receives funding, then the upshot would be that there would likely be concomitant funding later to support the four international institutions, as well as the Syrian participant groups.

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The mechanism should be victim-centred and prioritise determining the fate and whereabouts of the detainees and disappeared and where possible securing their release. It would therefore follow a strictly humanitarian approach and implement lessons learned from the Syrian context as well as from other conflicts. Countries should finance and commit to the entity publicly and thereby reassure Syrian civil society actors. A trust fund for the mechanism would have to be established, to which states can contribute through multi-annual voluntary contributions and later, if established by the UN, become part of regular UN budgeting.

States should ensure that they cooperate with the entity. Other actors (international organisations, NGOs, etc.) should and will cooperate with the entity. The entity should help incentivise cooperation with it by all Syrian actors by putting in place all necessary procedures and practices to facilitate such cooperation.

The mechanism should start working as soon as possible. It should bring together information on disappeared and detained persons that already exists and receive/acquire new information, such as petitions from family members or any relevant data that may provide information about the whereabouts of those missing. The mechanism would provide a single-entry point for family members and would be promoted accordingly.

The mechanism would closely liaise with other existing entities (such as the COI, IIM, etc.) to avoid any duplication, to access existing data sets, to make use of synergies and to assist other entities in the implementation of their respective mandates and vice versa. However, it is clear that this organisation will not overlap with the COI or IIM as far as its purpose is concerned, as its goal is to find those detained and disappeared and provide information to their families. A key component is also to secure releases. It will be solely humanitarian in focus.

The mechanism would cooperate with technology companies to make progress on automated searches while developing procedures to safeguard those affected. It would also begin humanitarian dialogues with actors in Syria, including the state, to receive information and to secure the release of persons in detention.

For this project to become a reality, states, international organisations, Syrian and international NGOs as well as other civil society actors should commit to supporting the mechanism. A designated conference should be organised as soon as possible to promote it as a victim-centred mechanism. It could include a pledging component for funding and cooperation.

## CONCLUSION



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The situation in Syria is unique. While processes have seldom been put into place during a conflict, this is now necessary because of the very large number of arbitrary detentions and disappearances over a long period of time. Securing the release for those still in detention is critical given the treatment they have to endure. Providing some support to the families to assist them is crucial. This has not yet been forthcoming.

There are many who want results, states included. The mechanism could immediately begin collating all existing information to find the detained and the disappeared and the missing. This information should not remain unused; that would be an insult to the needs and rights of the victims.

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