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## Enforced disappearances in Syria: recent developments

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Following the Secretary-General's August 2022 report on missing persons in the Syrian Arab Republic,<sup>1</sup> this note offers updated country information, as well as comments on the new Independent Institution on Missing Persons in the Syrian Arab Republic.

### *Enforced disappearances continue*

According to the International Commission on Missing Persons (ICMP), more than 130,000 people have gone missing in Syria since the beginning of the civil war in 2011.<sup>2</sup> While some have gone missing along migration routes while fleeing the conflict, the significant majority of missing persons are suspected victims of enforced disappearance: in August 2023, the Syrian Network for Human Rights reported that at least 112, 713 of the people arrested in the country since March 2011, including 3,105 children, remained forcibly disappeared.<sup>3</sup> This figure continues to rise: 146 of the 182 cases of arbitrary arrest and detention recorded in January 2024 have been classified as enforced disappearances.<sup>4</sup>

Disappearances have been attributed to various actors—primary among these the Syrian regime—and have frequently ensued in deaths in custody and extrajudicial executions,<sup>5</sup> with the dead often buried in mass graves.<sup>6</sup> In January 2024, the Association of Detainees and Missing Persons of Saydnaya Prison reported satellite evidence of the excavation and levelling of a mass grave near Damascus, a supposed attempt by the State to destroy and conceal evidence of mass graves.<sup>7</sup>

In September 2023, Syrian President Bashar al-Assad issued a decree abolishing Military Field Courts.<sup>8</sup> These courts have been closely linked to gross violations of international law,

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<sup>1</sup> UN General Assembly, *Missing people in the Syrian Arab Republic: Report of the Secretary General* (2 August 2022), UN Doc A/76/890.

<sup>2</sup> International Commission on Missing Persons, *More than 130,000 Missing from the Syrian Conflict with Numbers Still on the Rise* (online, 15 March 2023) <<https://www.icmp.int/news/more-than-130000-missing-from-the-syrian-conflict-with-numbers-still-on-the-rise/>>.

<sup>3</sup> Syrian Network of Human Rights, *SNHR's 12<sup>th</sup> Annual Report on Enforced Disappearance in Syria on the International Day of the Disappeared: Enforced Disappearance is an Ongoing Crime in Syria* (Report, 30 August 2023) <<https://snhr.org/blog/2023/08/30/snhrs-12th-annual-report-on-enforced-disappearance-in-syria-on-the-international-day-of-the-disappeared-enforced-disappearance-is-an-ongoing-crime-in-syria/>>.

<sup>4</sup> Syrian Network of Human Rights, *No Fewer Than 182 Cases of Arbitrary Arrest Documented in January 2024, Including of Eight Children and Four Women* (Report, 2 February 2024) <<https://snhr.org/blog/2024/02/02/snhrs-monthly-report-on-arbitrary-arrests-detentions-in-syria/>>.

<sup>5</sup> Human Rights Watch, *Syria: Families of 'Disappeared' Deserve Answers* (online, 30 November 2022) <<https://www.hrw.org/news/2022/11/30/syria-families-disappeared-deserve-answers>>.

<sup>6</sup> International Commission on Missing Persons, *Addressing the Issue of Mass Graves in Syria*, (online, October 2022) <<https://www.icmp.int/wp-content/uploads/2022/10/pcg-016-1-W-doc-addressing-the-issue-of-mass-graves-in-syria.pdf>>.

<sup>7</sup> William Christou, 'Mass grave 'levelled' by Syrian regime to hide evidence: Saydnaya Detainees Association', *The New Arab* (online, 2 February 2024) <<https://www.newarab.com/news/assad-regime-levelled-mass-graves-saydnaya-detainees>>.

<sup>8</sup> Beatrice Farhat, 'Syria's Assad abolishes notorious military field courts', *Al-Monitor* (online, 4 September 2023) <<https://www.al-monitor.com/originals/2023/09/syrias-assad-abolishes-notorious-military-field-courts>>.



including enforced disappearances: between March 2011 and August 2023, the Syrian regime executed at least 7,872 individuals sentenced to death by these exceptional criminal courts, while a further 24,047 have been disappeared following trial.<sup>9</sup> Although the courts have been disbanded, their rulings remain in effect as of January 2024.<sup>10</sup>

### *Creation of UN body on missing persons*

On 29 June 2023, the UN General Assembly adopted a resolution creating the Independent Institution on Missing Persons in the Syrian Arab Republic (IIMP).<sup>11</sup> The IIMP has two goals: to clarify the fate and whereabouts of all missing persons in the Syrian Arab Republic and to provide adequate support to victims, survivors and the families of those missing'.<sup>12</sup>

Baranowska and Citroni observe that the Resolution is notably silent as to enforced disappearances, referring only to 'missing persons' generally.<sup>13</sup> This lack of distinction is unproblematic under international humanitarian law (IHL), which offers protection to all persons who go missing in contexts of armed conflict. Customary IHL requires that missing persons be accounted for,<sup>14</sup> and extends this protection to the collection and identification of the dead.<sup>15</sup> These rules are reinforced by the customary obligation to respect family life, which requires that families be informed as to the whereabouts and fate of their relatives where such information is available.<sup>16</sup>

But the Resolution's silence as to enforced disappearances as a specific form of violence is concerning given that under international human rights law (IHRL), States owe specific obligations in instances of enforced disappearance that are not necessarily owed with respect to other missing persons.<sup>17</sup> In particular, States are obliged to search for disappeared persons: this obligation arises from the right to life,<sup>18</sup> as well as an emerging 'right to be searched

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<sup>9</sup> Syrian Network for Human Rights, *An Instrument of Death and Disappearance: How the Syrian Regime Uses Military Field Courts Against Activists and Dissidents* (Report, 12 September 2023)

<<https://snhr.org/blog/2023/09/12/an-instrument-of-death-and-disappearance-how-the-syrian-regime-uses-military-field-courts-against-activists-and-dissidents/>>.

<sup>10</sup> Syrian Network for Human Rights (n 4), 1.

<sup>11</sup> United Nations General Assembly, *Resolution adopted by the General Assembly on 29 June 2023 on the Independent Institution on Missing Persons in the Syrian Arab Republic*, 5 July 2023, UN Doc A/RES/77/301.

<sup>12</sup> *Ibid* [2].

<sup>13</sup> Grażyna Baranowska and Gabriella Citroni, 'The UN Independent Institution on Missing Persons in the Syrian Arab Republic: A marathon, a sprint, or a hurdle race?', *EJIL:Talk!* (online, 7 July 2023)

<<https://www.ejiltalk.org/the-un-independent-institution-on-missing-persons-in-the-syrian-arab-republic-a-marathon-a-sprint-or-a-hurdle-race/>>.

<sup>14</sup> International Committee of the Red Cross, *Customary International Humanitarian Law Database: Rule 117. Accounting for Missing Persons* <<https://ihl-databases.icrc.org/en/customary-ihl/v1/rule117>>.

<sup>15</sup> International Committee of the Red Cross, *Customary International Humanitarian Law Database: Rule 112. Search for and Collection of the Dead* <<https://ihl-databases.icrc.org/en/customary-ihl/v1/rule112>>;

International Committee of the Red Cross, *Customary International Humanitarian Law Database: Rule 116. Accounting for the Dead* <<https://ihl-databases.icrc.org/en/customary-ihl/v1/rule116>>.

<sup>16</sup> International Committee of the Red Cross, *Customary International Humanitarian Law Database: Rule 105. Respect for Family Life* <<https://ihl-databases.icrc.org/en/customary-ihl/v1/rule105>>.

<sup>17</sup> Baranowska and Citroni (n 14).

<sup>18</sup> Human Rights Committee, *General Comment 36: The right to life* (3 September 2019), UN Doc CCPR/C/GC/36, [58].



for'.<sup>19</sup> This obligation to search continues even where the disappeared person dies incommunicado, with a view to locating and returning their remains.<sup>20</sup>

Moreover, in addition to disappeared persons, IHRL recognises their relatives and other persons adversely impacted by their disappearance as 'victims', and has required States to take steps to fulfil these persons' right to know the truth (regarding the fate of the missing persons).<sup>21</sup> There is a wealth of jurisprudence corroborating the position that where the right to know is denied, the suffering endured by families can amount to inhuman treatment,<sup>22</sup> as well as violating the right to private and family life.<sup>23</sup>

The IIMP's terms of reference are yet to be clarified. The importance of distinguishing enforced disappearances from other types of cases in Syria has been stressed by UN experts.<sup>24</sup> Baranowska and Citroni concur, advocating the explicit reference to enforced disappearances in the IIMP's terms of reference, so as to ensure that the rights of disappeared persons and their families are not undermined.<sup>25</sup> They also observe a potential barrier to the IIMP's operation: it has been created against the will of the Syrian State—a first amongst UN initiatives concerning missing and disappeared persons. The consequent lack of (or at least limitation in) access to detention centres and mass graves will make the clarification of the fate and whereabouts of disappeared persons extremely difficult, and ought to be accounted for in the IIMP's development.<sup>26</sup>

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<sup>19</sup> International Convention for the Protection of All Persons from Enforced Disappearance ('ICCPED'), Article 24(3). For more, see Maria Clara Galvis Patiño, 'Rights Related to Enforced Disappearance: New Rights in the International Convention for the Protection of All Persons from Enforced Disappearance', in Andreas von Arnould, Kerstin von der Decken and Mart Susi (eds), *The Cambridge Handbook of New Human Rights: Recognition, Novelty, Rhetoric* 413-436.

<sup>20</sup> Committee on Enforced Disappearances, *Guiding principles for the search for disappearance persons* (9 May 2019) CED/C/7, Principle 7. See also Grazyna Baranowska, 'Advances and progress in the obligation to return the remains of missing and forcibly disappeared persons' (2017) 99(2) *International Review of the Red Cross* 709-733.

<sup>21</sup> ICCPED Article 24(1), (2); UN General Assembly, *Right to the Truth: Report of the Office of the High Commissioner for Human Rights* (7 June 2007), UN Doc A/HRC/5/7.

<sup>22</sup> See e.g., *Velasquez-Rodriguez v. Honduras (Merits)*, Inter-American Court of Human Rights, 29 July 1988.

<sup>23</sup> See e.g., *Zorica Jovanović v Serbia* (21794/08), European Court of Human Rights, 26 March 2013.

<sup>24</sup> Office of the High Commissioner for Human Rights, *Syria: UN experts urge General Assembly to address plight of the missing and forcibly disappeared* (online, 19 June 2023) <<https://www.ohchr.org/en/press-releases/2023/06/syria-un-experts-urge-general-assembly-address-plight-missing-and-forcibly>>.

<sup>25</sup> Baranowska and Citroni (n 14)

<sup>26</sup> *Ibid.*