



CAESAR
FAMILIES
ASSOCIATION
رابطة عائلات قيصر



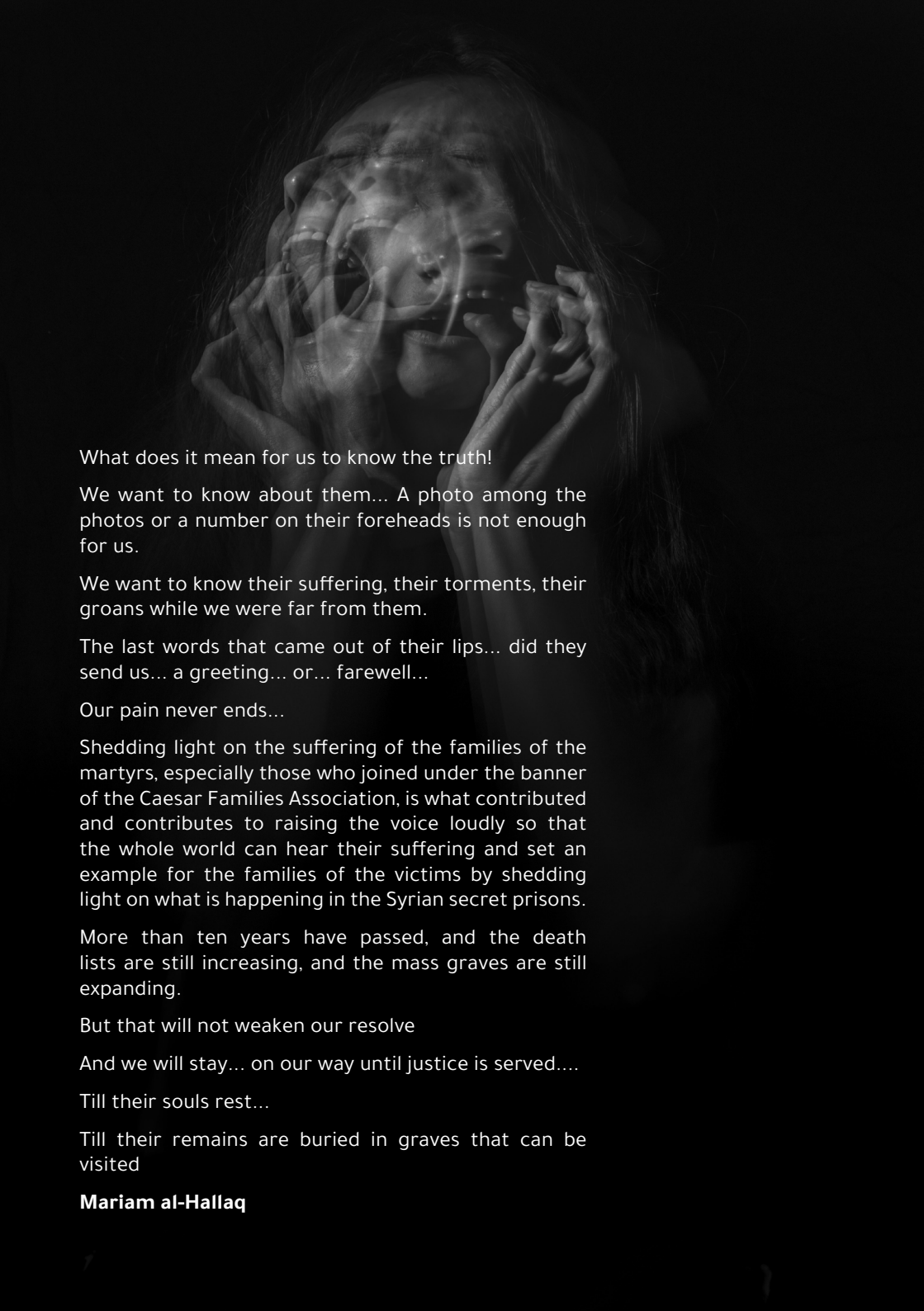
المركز السوري للإعلام وحرية التعبير
Navenda Sûriyayî ya Ragihandîni û Azadiya Derbirîni
Syrian Center for Media and Freedom of Expression

Prison without Bars

22 faces of Caesar photos...
and the tragedy continues



image by: Paul Wagner / The Syria Campaign



What does it mean for us to know the truth!

We want to know about them... A photo among the photos or a number on their foreheads is not enough for us.

We want to know their suffering, their torments, their groans while we were far from them.

The last words that came out of their lips... did they send us... a greeting... or... farewell...

Our pain never ends...

Shedding light on the suffering of the families of the martyrs, especially those who joined under the banner of the Caesar Families Association, is what contributed and contributes to raising the voice loudly so that the whole world can hear their suffering and set an example for the families of the victims by shedding light on what is happening in the Syrian secret prisons.

More than ten years have passed, and the death lists are still increasing, and the mass graves are still expanding.

But that will not weaken our resolve

And we will stay... on our way until justice is served....

Till their souls rest...

Till their remains are buried in graves that can be visited

Mariam al-Hallaq

ACKNOWLEDGEMENT

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We extend our gratitude to the researchers who have worked on the planning, executing and writing this report:

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CONTENT

Executive summary	5
Introduction	6
Methodology	9
Chapter I. The families of the victims and the ongoing violations	12
Background to Caesar photos	12
Caesar	13
The smuggled photos	14
Time sequence	18
Image Right and Publishing Controls	19
Publishing the photos as seen by the victims' families	22
The impact of violations on the families of the victims	27
The right to know the truth	28
The psychological challenges facing the families of the missing	29
The psychological suffering of elderly mothers and fathers	34
The legal challenges facing the families of the missing	43
The economic challenges facing the families of the missing	49
The social challenges facing the families of the missing	53
Chapter II: A general legal framework on the missing and the dead	58
The missing persons and the dead in international law	58
Protections of the missing and the dead in international law	60
Violations related to the missing persons	61
Death Lists	64
Mass Graves	66
Mass graves in Damascus Countryside Governorate	67
Najha Cemetery, Damascus Countryside	67
Southern City Cemetery, al-Bahdaliyah Cemetery, Damascus Countryside	68
Chapter III. Access to Justice	69
I. International Efforts for the Missing Persons	69
International Commission on Missing Persons	71
International Committee of the Red Cross (ICRC)	72
II. Mechanisms for access to justice	73
Blocked mechanisms to access justice	74
International Tribunal for Syria	75
International Criminal Court	75
Possible mechanisms to access justice	76
Individual complaints under international human rights treaties	78
Individual communications under special procedures of the Human Rights Council	79
Procedure for submitting complaints to the Human Rights Council	81
The International Court of Justice	82
III. Civil Society Efforts - Victims' Families Associations	84
Recommendations	88
To the Syrian government	88
To the international community, the United Nations, and relevant international organizations	91
To Syrian civil society	93

EXECUTIVE SUMMARY

The report, “Prison Without Bars” by the Syrian Center for Media and Freedom of Expression and the Caesar Families Association displays violations of arbitrary detention and enforced disappearance related to torture that leads to death, or ends with execution either outside the law or through summary procedures, or keeps the victims missing. The report examines those violations impact on the families of the victims, by working with a sample of the families in Caesar Families Association, whose loved ones identities were documented by the Association in the photos smuggled by Caesar in 2014. This report provides a picture of the complex, continuous and extended violation that affects the majority of Syrian society. According to the lowest estimates of the number of missing persons in Syria, 100,000 people ¹ have gone missing during the past ten years, i.e. within 3650 days. Approximately 30 victims are documented missing persons daily. Those are not final numbers of the victims of the complex violations, excess of violence and denial of basic rights, the right to life, physical safety and knowledge of the truth and others, primarily practiced by the government.

The report consists of three chapters, the first, titled “The families of the victims and the ongoing abuses” includes a summary of the interviews and questionnaires conducted with 22 representatives of 22 families of victims whose identities were identified in Caesar photos. Following introducing the Caesar photos and the circumstances of their publishing, and determining the nature of the image right and publishing controls of photos of the dead and victims, we present the viewpoint of the families of the victims in publishing the photos, and the psychological impact of publishing the photos of their loved ones for the first time and repeatedly publishing several times before we move on to researching the families’ right to know the truth, then the legal, economic, psychological and social challenges experienced by families as a result of the loss of their children and the challenges that accompanied the journey of searching for their fate in order to identify their identities in the photos and beyond.

Chapter II: “A general legal framework for the missing and the dead” includes a review of the established rules on the missing and the dead in international human rights and humanitarian laws, before moving on to a more specific research to dissect the structure of violations that all fall within the framework of the file of the missing, by defining the violation and the criminal elements of arbitrary arrest, enforced disappearance, torture and extrajudicial killing, in an effort to clarify responsibility and the criminal pattern that is repeated within the framework of a systematic policy that may amount to war crimes and crimes against humanity. And to shed light on the shortcomings and defects that entrench impunity, and protect the perpetrators, which must be corrected in any future legislative process. A separate section has written on the mass graves that are linked to the victims of Caesar photos, in Najha and Bahdaliyah cemeteries. Another section presents

¹ Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, A/HRC/46/54.

the lists of the dead, and the Syrian government's efforts to close the file of the missing or neutralize it from any future settlement or any path to accountability.

In Chapter III, "Access to Justice", we discuss international efforts for the missing, the International Committee for Missing Persons and the International Committee of the Red Cross, and Security Council resolutions related to enforced disappearance and arbitrary detention in Syria and the violations associated with them. We also review mechanisms for access to justice, whether blocked such as the Syrian legal system, and the International Criminal and a Special Tribunal for Syria, or possible mechanisms, such as litigation before European Courts and States that have incorporated the principle of universal jurisdiction in their national legislation. As well as certain human rights complaints procedures to the United Nations such as individual complaints under international human rights treaties, individual communications under special procedures applied by the Human Rights Council and complaints to the Human Rights Council.

The report concluded with a set of recommendations by the Syrian Center for Media and Freedom of Expression, and the Caesar Families Association to the Syrian government and its institutions, which in its general form are directed to any government in Syria now or in the future and to government agencies to deal with the file of missing persons. As well as to the United Nations and its various agencies, the international community and relevant international organizations, and finally to the Syrian civil society within the framework of the efforts in the file of the missing and their families.

INTRODUCTION

In 10 years, not a day passed without 30 names being added to the number of missing persons in Syria

In the context of international understandings and intersections that are redrawing the map of the region, talk escalates from time to time about perceptions and visions to get out of the current impasse in Syria. Depending on their source, these propositions differ in their content, applicability and legal reference, vision of the form and nature of governance in the country, and the mechanisms for sharing influence and interests in it. This is always promoted under claims of political realism, or as the only alternative to the collapse of the remnants of public administration and state institutions. Despite their differences, they agree among themselves on the complete exclusion of the Syrian people, their aspirations, their rights, their status, and their future role. They also agree on ignoring the political transition towards a democratic system that meets the demands of freedom and dignity and aspiration to meet the values of our times. They also agree on ignoring accountability, and the files of missing persons and detainees by all parties to the conflict, led by the Syrian government. Although it is one of the necessary conditions for the success of any solution or reconciliation at the national level. Ignoring or

dropping one of them is enough to empty any solution of its content, and turn it into a tool of power to bind society and control it again. It is not possible to talk about consolidating or restoring civil peace without addressing the issue of the missing and forcibly disappeared. The issue that affects a significant proportion of Syrians victims of the violation of enforced disappearance are multiplied against their families and continues, even if their deaths are known and documented with photos, as the case with the victims in the Caesar photographs.

Twenty one faces out of the thousands that appeared in Caesar photos were enough to show a series of massive violations of human rights and the values of freedom and human dignity. Whether by arbitrary arrest, enforced disappearance, death due to torture, or extrajudicial execution. Since the seventies of the last century, these crimes have constituted the tools of power to terrorize society, take revenge on opponents, and eliminate and annihilate them, in an effort to establish a republic of fear. In an effort to consolidate its rule with the policy of subjugation and intimidation, which emptied the scene of any political force, as it led to the dwarfing and shackling the components of society, and the dissemination of fear that ruled even the hearts and minds of the individuals. These crimes escalated in the face of the revolution in 2011, when extrajudicial executions were applied on an unprecedented scale to get rid of opponents or suspected of opposing the authority, whose numbers reached terrifying levels. In addition to the number of victims, the conditions of detention and the torture practices that were applied to all detainees on a continuous and systematic basis, in an environment that lacks the minimum requirements for life. They were crammed into tiny and crowded spaces, deprived of food, water, and medicine, and denied medical care. This means a decision has been made to indirectly kill the largest number of them throughout Syria, which negates the hypothesis of individual mistakes, and confirms that these practices are carried out systematically, with a decision and follow-up from the top of the pyramid of power. Thus, they may amount to war crimes and crimes against humanity, which are not subject to a statute of limitations, and no immunity may be invoked for their perpetrators.

While the torments of the disappeared, missing and detainees end with death, they continue and persist in endless cycles for their families, by the ongoing violation of their right to know the truth, knowing the fate of their loved ones or how they died, identifying the perpetrators in preparation for accountability. It also violates their right to receive the body of their deceased and bury it according to the social and religious principles followed. In addition to the effects left by enforced disappearance and then death in detention on their economic, social and cultural rights, and the challenges posed by the lack of legal status for the missing, whose existence and non-existence are denied at the same time by the authority. This impact family members at all levels, and is associated with psychological pain and uncertainty. The report on Syria submitted to the United Nations Committee against Torture in 2012 considered this situation as systematic torture against the victim's family, whose daily interactions with the government administration institutions and everything related to their missing loved one become a series of

suspicious, accusations and the absence of rights as well, in which the authorities who are supposed to protect them and their rights are complicit.

The photos, each of which conceals dozens of stories and continuous torments, also include accurate testimony to the nature of the state in Syria, and its structure which is based on the authorities' partnership in the machine of repression to protect the ruling system. The military institution, which is supposed to be loyal to the people, and whose military doctrine is to preserve the integrity of the state against any external aggression or threat, has preserved the legacy of the "Army of the Levant" and its military doctrine directed at putting down the revolutions against the French occupation. The Baath Party coup re-drafted the military doctrine to defend the ruling military security system. As for the judiciary, which any deviation from its neutrality gives an indication of the spread of tyranny and oppression in society, it has been completely fused with the executive authority, in a security state that wastes the two basic values of the rule of law: the value of justice based on the objectivity of legal rules and the transparency of litigation, and the value of equality based on the courts' abstention from discrimination between citizens for whatever reason. The flawlessness of legal system reached its maximum in the exceptional judiciary that violates the most basic requirements of a fair trial, such as the military field courts to which tens of thousands were referred during the revolution. At the forefront are the medical, relief and media activists, most of whom have been sentenced to death based on confessions extracted under duress and under torture in the branches of the security agencies. In turn, the security agencies gripped all walks of life, and invested in the details of the legislative structure, to immunize themselves from accountability for the crimes committed by their members and their followers in the performance of the tasks assigned to them, in consolidation of the state of impunity that has lasted for decades and turned all of Syria into a large prison and an arena for executions, a small part of which was documented in the Caesar photos. These photos added 11,000 executions to numbers of the victims of chemical attacks, explosive barrels and destroyed cities with their hospitals, schools and squares. In addition to the hundreds of thousands of human rights violations that continue against the families of the victims, which we try to present in this report.

METHODOLOGY

The report, “Prison Without Bars” by the Syrian Center for Media and Freedom of Expression-SCM and the Caesar Families Association-CFA is one of the fruits of the cooperation between the Center and the Association. This report comes within the framework of the efforts of the Syrian civil society in the file of the missing and the disappeared in Syria, to investigate the ongoing violations against them and the rights of their families, which began with violations of arbitrary arrest or enforced disappearance and continued throughout their absence and even after knowing their identities among the photos of the victims whose deaths were documented in the prisons of the Syrian government in the so-called Caesar photos. In order to get out of the theoretical framework towards a greater understanding of the needs of the victims’ families and addressing the challenges facing their members, the report team relied mainly on data collection techniques: the questionnaire and personal interviews. A team from CFA and SCM interviewed 20 representatives of the families of the victims whose identities were confirmed in leaked photos, out of 22 families that responded to the questionnaire, which was prepared specifically for the report. For technical reasons and others related to the unwillingness of their members, two families refused to be interviewed, and it was sufficient to include their answers in the questionnaire. In parallel with collecting data, the literature related to detention and disappearance in Syria was reviewed throughout the reporting period, which helped in analysing and interpreting data at each stage and its use, in order to discuss results and build recommendations.

The questionnaire was based on the results of successive meetings between members of CFA (the victims’ families) and SCM. The meetings included closed questions and specific options, providing an accurate framework and definition of the victim and the impact of the disappearance on family members, allowing statistical results to be drawn. After that, personal interviews were conducted with a set of open questions, which were answered through a direct meeting with a representative of the family, to comprehend the disappearance incident, and the developments that accompanied it until finding the photos of the disappeared within leaked photos, and to identify the challenges facing family members due to the absence of the victim, and those resulting from the identification in the photos later. The structured interview model was adopted, that is, asking the same questions in the same manner and arrangement to all participants, as it is more practical in nature, and is characterized by accuracy and ease of control, in order to reach quantitative data and represent it with a numerical representation that presents correct ratios and performs the intended purpose in the research. Psychologists formulated specialized questions, and edited general questions, to avoid any additional negative impact of the interviews on the participants, which might impede the psychological recovery process or delay its beginning, and thus weaken their ability to face social, economic, administrative and legal challenges, and their ability to participate in the efforts made in the file the missing. The voice of the victims’ families and their insistence on demanding their rights and the

rights of their children, was the reason for keeping this file present, and forcing the authority to deal with it in countries that witnessed armed conflicts or were under dictatorial regimes.

All interviews with representatives of 20 families were conducted between 12 May 2021 and 30 November 2021. The names of the vast majority of participants were withheld at their request or based on the assessment of CFA and SCM team that revealing them would jeopardize the families security. The testimonies were edited in order to ensure that any indication of the identity of the families was excluded, and to focus only on the effects of the violation and the facts actually related to it. The interviews were conducted after clarifying to the participants their purpose and stressing the confidentiality of the personal data collected, and the right of the participants to withdraw at any time if they did not wish to continue. SCM also obtained the participants' written consent to use the information they provided in the report. SCM did not provide any material or in-kind compensation or any form of promises to the participants. A team of staff and volunteers who were specially trained to conduct interviews and were followed up at all stages of data collection, to ensure adherence to the professional rules and regulations governing scientific research that impose professional and ethical obligations and responsibility in transcribing processes. Complete impartiality and objectivity in the process of asking and selecting questions and taking into account the mental health of the participants was also emphasized. Participants were provided with a copy of an awareness brochure on enhancing psychological resilience after conducting an interview. The brochure is issued by the Center for Victims of Torture. SCM also provide participants with a list of specialists and psychotherapists in case they felt the need to speak with a specialist after the interview.

The sample participating in the questionnaire and interviews ²

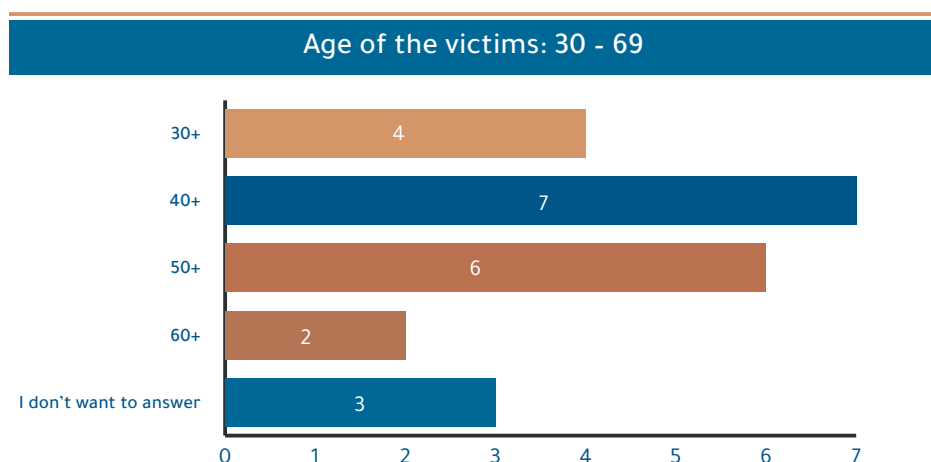
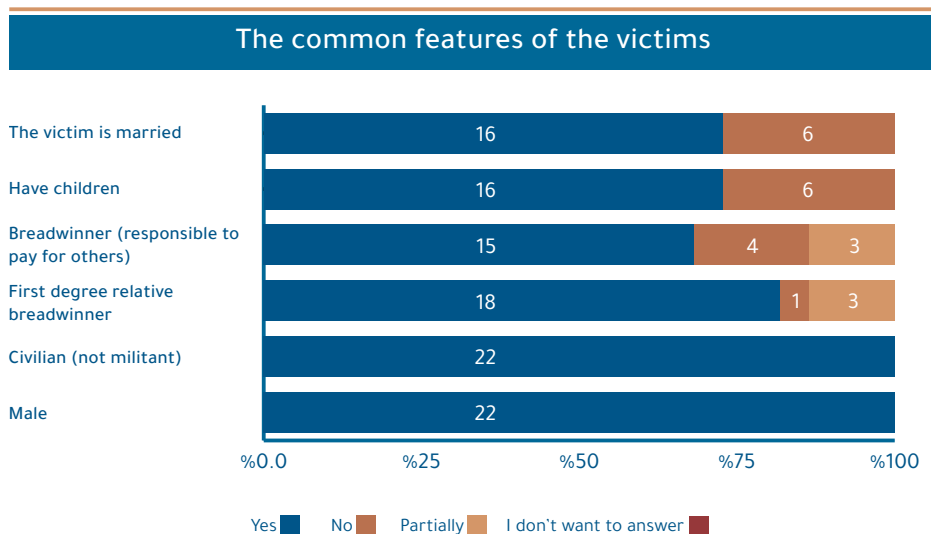
- 22 families form CFA. Each family was represented by one of its members to participate in the report.
- Gender distribution: 8 women and 14 males.
- 22 residents outside Syria, 3 of whom hold the nationality of the country in which they reside, and one case is without official papers. In addition to 18 who have legal residence permits (refugee - temporary protection - work residence).
- 6 participants are first degree relatives of the victim, 13: second-degree, and 3 victims' wives. ³
- Only one of the participants receives regular psychological support.
- 7 of the participants expressed reservations about declaring their identities publicly and any media appearances, out of fear for their relatives in Syria.
- 22 participants are sufficiently familiar with the use of communication media.

² This information is provided by the Coordination and Communication Department of the Caesar Families Association.

³ In addition to the aforementioned information, it is worth noting that two members of the Association identified two other victims who appeared in the Caesar photographs, but did not talk about them in the report, given that they are third-degree relatives.

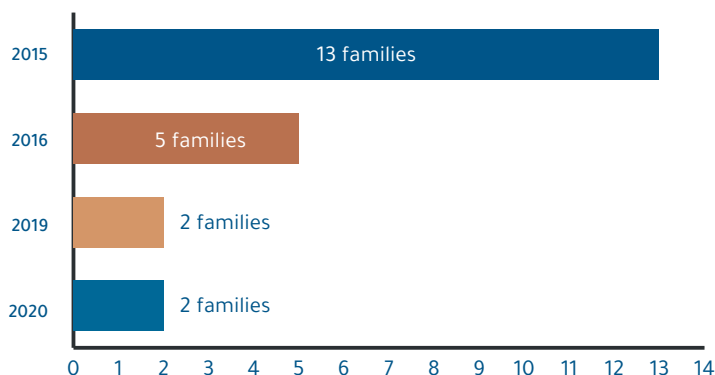
- 20 participants are sufficiently familiar with the use of e-mail, filling out electronic forms and resending them.
- 22 have the full ability to communicate, reading and writing in Arabic (the mother tongue).

Common features among the victims: Despite the social, economic and regional differences (countryside/city), common features can be observed among the victims:



CHAPTER I. THE FAMILIES OF THE VICTIMS AND THE ONGOING VIOLATIONS

The year the victim was identified in Caesar photos



Background to Caesar photos

The popular uprising in Syria, which began in mid-March 2011, led to a significant escalation in the policy of enforced disappearance by the Syrian security agencies. With every wave of protests and demonstrations in various areas, the security agencies launched arrest campaigns in residential houses, universities, institutes, schools, workplaces, mosques, places of worship, and checkpoints. These campaigns were accompanied by field executions since the early days of the demonstrations in Daraa, the beginning of the revolution. The number of the killed kept rising until the refrigerators for the dead in military hospitals were filled in record time. That prompted the officials to throw the bodies in different places, including car parks. Within weeks or days, deaths began among the detainees, due to torture, prison conditions, or the absence of medical care. The bodies were collected in trucks after their numbers exceeded a certain limit to be transported to mass graves.

Once, a Shaweesh ⁴ told me that they were asked to bring a blanket and go upstairs. Upon our arrival, they were surprised by one of the detainees covered in blood and swimming in a pool of blood, as he had been severely tortured, and hit with a hammer on different areas of his body, especially the head area, until he died. From the testimony of a former detainee in Branch 215 to VDC.

Testimonies and sources intersect on how to deal with the incident of the death of the detainee/disappeared, where the jailer orders other prisoners to transfer the body on a blanket and place it in a military vehicle, in preparation for its transfer

⁴ Shawish" or "forced worker": a detainee "during the period of the revolution" whose detention period was a year or more, and he has many tasks in addition to distributing food and hygiene. For example he move the bodies of detainees who died under severe torture. <https://www.vdc-sy.info/index.php/ar/reports/1380463510#.YfQJ0erMK3B>

to a military hospital, where the bodies coming from various security branches are collected in a place used as a mortuary. As well as in other places for this purpose as a garage yard. In Damascus and Damascus countryside governorates, most of the bodies of the victims were collected in the mortuary of Mezzeh Military Hospital (Hospital 601), and in Tishreen Military Hospital to be numbered with three numbers. The first is the number of the deceased prisoner given to him during his detention, the second is usually the number of the branch or headquarters in which they died, and the third is linked to a number in the death report of the forensic doctor. After that, the body is photographed, accompanied by its numbers, by the so-called Judicial Evidence Office of the Military Police Department. Finally, the body is placed in white plastic bags and then loaded into military trucks and transported to unknown places.

Caesar

In August 2013, a person defected from the military police in Syria and he was nicknamed Caesar to conceal his identity. Carrying with him 55 thousand photographs of 11,000 dead people, which he collected by during his work in photographing deaths among the military before 2011. His mission was to photograph those who died in a murder, suicide, drowning, traffic accidents and fires. After the protests his mission was turned to photograph the bodies of civilians. In his book, Caesar talks about the beginning of documenting the dead in the protests in Syria: (A colleague of mine returned from a mission to photograph the corpses of protesters from Daraa Governorate ⁵: We were in the first weeks of the revolution in March or April 2011. He told me, crying: "The soldiers insulted the corpses. They stomped on them with their boots screaming and cursing." My colleague didn't want to come back, he was afraid. So, I had to go, I saw things for myself. The officers said these were "terrorists." But they were simply protesters. The bodies were lined up in the morgue of Tishreen Military Hospital, which is not far from the headquarters of the Military Police. At first, the name was placed on each corpse. After some time, about a few weeks or a month, the corpses had no names, only numbers. In the morgue of Tishreen Hospital, a soldier took them out of the refrigerators, he puts them on the ground so we can photograph them, and then puts the bodies back in the refrigerators.

The defected official who succeeded in preserving and smuggling evidence was identified by French journalist Garance Le Caisne in her book [Operation Caesar](#) At the Heart of the Syrian Death Machine, ⁶ as follows: " My name is Cesar. I used to work for the Syrian regime. I was a photographer in the military police in Damascus. I will tell you about my work before the revolution, and during the first two years of it. But I cannot talk about everything because I am afraid that the regime would identify me through the information that I reveal. I am a refugee in Europe. I am afraid that they may find me, eliminate me, or harm my family."

⁵ Daraa governorate borders Damascus countryside governorate, as well as cities like al-Sanamayn, Ghabagib are closer to Damascus than it is to Daraa.

⁶ Parts of "Operation Caesar - At the Heart of the Syrian Death Machine", Al-Araby Al-Jadeed, <https://english.alaraby.co.uk/analysis/operation-caesar-syrian-regime-crimes-exposed>

In an interview with the Guardian newspaper Caesar explains why the Syrian authorities document the crimes, which now constitute incriminating evidence:

The intelligence and security agencies don't collaborate. They don't know what the others are doing. Each one is responsible for its own organisation and works to serve its own interests. For 50 years, the military police have recorded the details of accidental deaths involving the military, in case it's needed for the military courts. The regime documents everything so that it will forget nothing. Therefore, it documents these deaths. The photos are useful for judges and investigators. They complete their dossiers. If one day the judges have to reopen cases, they'll need them. After the start of the revolution and during the war, we simply kept to the same routine. And the regime never imagined that one day our work might be used against it.

The security agencies feel invulnerable. They can't imagine that one day they will be called to account for their abuses. They know that great powers support the regime. And they never thought that these photos would get out and be seen by the wider world.

The smuggled photos

The photos that Caesar succeeded in smuggling contain no less than 11,000 bodies, the absolute majority of which are males, and only one woman was identified, while 100 bodies seemed to belong to minors under the age of eighteen. The photos represent a partial sample of the deaths that took place in detention centers and security branches in Damascus governorate and its countryside and was transferred to Tishreen Military Hospital in the Qaboun neighbourhood and 601 Hospital in the Mazzeh neighbourhood only.

Caesar was able to copy and smuggle them and they were not damaged during the transport and smuggling process. They do not include all the deaths that were transferred to the aforementioned hospitals within 27 months. According to the analysis and sorting of the numbers on the photos, the largest number of bodies are of detainees from Branch 215 of the Military Intelligence Division in Damascus, known as the Raid and Storming Brigade, which is located in the capital, Damascus, in the Kafr Sousa neighbourhood. According to the international team of experts that prepared the first report on the leaked collection of Caesar's photos, Caesar was able to get the photos out of Syria and copied onto CDs and small storage units before he defected from the Syrian government. The photos were handed over to the Syrian National Movement, an opposition political grouping. The movement's members formed the "Syrian Association for Missing and Conscience Detainees," which received the photo files. In March 2015, according to a Human Rights Watch report titled "[If the Dead Speak](#),"⁷ the photos are divided into 3 categories:

⁷ If the Dead Could Speak: Mass Deaths and Torture in Syria's Detention Facilities, 16 December 2015, Human Rights

- **The first category of photographs, 28,707** images, are photographs of people Human Rights Watch understands to have died in government custody, either in one of several detention facilities or after being transferred to a military hospital. What distinguishes this batch of photographs is that all the bodies in them have identification numbers, typically three separate numbers, either written directly on the body or on a paper that is placed on the body or held in the photograph frame. There are multiple photographs of each body, typically four to five but ranging between three to more than twenty. SAFMCD,⁸ which reviewed the entire collection and logged the photographs by individual body, found that these 28,707 photographs correspond to at least 6,786 separate dead individuals each with their own unique identification numbers.
- **The second category of photographs** are images of dead army soldiers or members of the security forces. These photographs were also taken in the morgues of military hospitals. However, unlike the first batch, the cards on these photographs include the name of the person who died, and sometimes the date of their death. In many cases, their name is prefaced by the word *shahid*, or martyr, in Arabic, as well as by their military rank. In addition to the cards, their name, the word *shahid*, and their military rank also often appear in the file name.
- **The third category of photographs** was taken of corpses in the aftermath of attacks or clashes with armed opposition factions, the aftermath of explosions and assassinations of security officers, and explosions that took place through car bombs.

Watch, <https://www.hrw.org/report/2015/12/16/if-dead-could-speak/mass-deaths-and-torture-syrias-detention-facilities>

8 Syrian Association For Missing And Conscience Detainees, an association that seeks to take care of the affairs of missing persons and prisoners of conscience in Syria as a result of the ongoing conflict, including documenting the numbers of missing persons, their areas, the date of they went missing and the party responsible for their kidnapping.

Communicating with the families of the missing and providing them with material and moral support. <https://safmcd.com/home>

Most of the cases of death under torture who appeared in Caesar photos was mainly in the headquarters of the security services, and in some military bases affiliated with the Department of the Army and the Armed Forces. Mostly in these branches:

	Branch number	Branch name	Affiliation	Location
1	215	Raid company/ branch	Military Intelligence Directorate	Kafar Sousah, Damascus
2	227	District Branch	Military Intelligence Directorate	Al Mazzeh, Damascus
3	248	Investigation Branch	Military Intelligence Directorate	Kafar Sousah, Damascus
4	216	Patrols Branch	Military Intelligence Directorate	Al-Qazzaz, Damascus
5	291	Administrative Branch / Headquarters Branch	Air Force Intelligence Directorate	6th May Street, Damascus
6	235	Palestine Branch	Military Intelligence Directorate	Al-Qazzaz, Damascus
7	220	The Front/Sasa	Military Intelligence Directorate	Sasa, Damascus countryside
8	293	Security / Investigation / Officers' Affairs	Military Intelligence Directorate	Damascus
9	261	Homs Governorate Branch	Military Intelligence Directorate	Homs
10	295	Raid and Storming Branch	State Security	Najha, Damascus countryside
11	294	Information branch	Military Intelligence Directorate	Adnan Al Malki Street, Damascus,
12	251	Internal branch	State Security	Baghdad Street, Damascus
13	General Intelligence Directorate	State Security	State Security	Kafar Sousah, Damascus
14	Republican Guard	Republican Guard	The Syrian Arab Armed Forces	Damascus
15	Regiment 274	transport regiment	The Syrian Arab Armed Forces	Eastern Damascus countryside

The photos show the widespread violations of human rights that amount to war crimes in Syria, despite the authorities denying their authenticity. The Ministry of Justice in the Syrian government, without conducting any formal investigation or discussing the evidence, issued a statement denying the validity of the first report issued on the subject of the photos in its entirety. Describing it as “baseless” and “politicised”, and “lacks objectivity and professionalism, and as a compilation of photos of unidentified people, a number of whom have been proven to be foreign terrorists of multiple nationalities who fell while attacking military points and civilian facilities, and some of them are civilians and military personnel who died as a result of being tortured and killed by armed terrorist groups on the pretext of their loyalty to the state,” while the loyalist media discourse denied that the photos were originally taken in Syria.

The Syrian government’s denial was met by the acknowledgment by many neutral parties of the credibility of the photos and their value as criminal evidence. After six months of scrutiny and review, Human Rights Watch confirmed on December 16, 2015 the authenticity of the photos, which was announced by the US Federal Bureau of Investigation, as well as reports issued by the Office of the German federal investigation. The German Koblenz court used Caesar photographs as evidence in the trial against officers in the “Al-Khatib Branch”, Anwar Raslan and Iyad Al-Gharib. The court relied on a forensic expert to analyse the photos,⁹ who stated after displaying the photos in the court that all the security branches of the Assad regime adopt torture and killing in a systematic manner.

In addition to being evidence before the German judiciary, the Caesar Law for the Protection of Civilians in Syria of 2019, which is known as Caesar Law was one of the direct results of the smuggled photos. The law that the administration of US President Barack Obama suspended and refrained from approving it, and the Senate and the House of Representatives alternately obstruct it, until 2020 when it was approved and came into effective.¹⁰ It was the fruit of the efforts of the Syrian lobby in the United States of America, and Syrian and international organizations around the world that worked to push towards drafting a law that imposes sanctions on all those dealing with the Syrian government, whether military or mercenaries, and anyone who provides financial or technical support or information that helps rehabilitate or expand local production of gas and oil or its derivatives, and provides aircraft, parts, or aviation-related agencies for military purposes in Syria. The law also imposes sanctions on Syrian military and civilian officials involved in human rights violations, and aims to paralyze the joints of power in Syria and tighten the noose on its movement, as well as by imposing restrictions on the Central Bank of Syria, and placing restrictions on the movement of economic exchange and supplies that the Syrian government obtain from its allies.

9 The Syrian Center for Media and Freedom of Expression (SCM) welcomes the conviction against former security officer Anwar RASLAN, <https://scm.bz/en/scm-statements/scm-koblenz-trail-anwar-raslan-conviction-en>.

10 Caesar Syria Civilian Protection Act, <https://2017-2021-translations.state.gov/2020/06/17/caesar-syria-civilian-protection-act/index.html>

The law, despite its success in restricting the authority in Syria and its allies, is an expression of American policy rather than an abstract text upon which judicial rulings and decisions are based. The law allows the American president to lift sanctions in case the Syrian government gets serious about negotiations, or for reasons related to US national security. It is also subject to exceptions and fluctuations surrounding the decision or political orientation, in contrast to the stability contained in the legal rules. The current US administration has approved exceptions to extend the Egyptian gas pipeline to Lebanon through Jordan, and US Treasury exemptions were issued to facilitate “early recovery” in Syria.

Time sequence

June 2013, Caesar succeeded in escaping from Syria, after organizing a fake funeral for him,¹¹ carrying with him 55 thousand photos of 11 thousand dead, including at least 6786 who died in detention.

After leaving Syria for France, he moved to the United States.

20 January 2014, CNN and the Turkish Anadolu Agency published in separate reports a set of photos leaked by Caesar. After that, a special British commission of inquiry was formed to confirm later that the photos were authentic and had not been altered.¹²

April 2014, Caesar photos were presented at an informal meeting of the UN Security Council. The Permanent Representative of France to the United Nations presented a letter to the Security Council including a medical report to indicate the validity of the Caesar Photos.¹³

July 2014, Caesar presented his testimony before the Committee on Foreign Relations of the US Congress.

October 2014, the Holocaust Memorial Museum in Washington hosted an exhibition of Caesar portraits.

March 2015, the Syrian Association for Missing and Conscience Detainees published 6796 photos by Caesar on its new website.

December 2015, Human Rights Watch published the report “If the Dead Speak: Mass Death and Torture in Syrian Detention Facilities.”

September 2016, the jury of the German Nuremberg Prize for Human Rights decided to award its prize to the Syrian photographer “Caesar”, and the reasons for its decision stated that he wanted with these photographs that documented

11 A camera that defected from the regime.. Who is Caesar, who the law punishing al-Assad bears his name? <https://www.alhurra.com/syria/2020/06/16/%D8%A2%D9%84%D8%A9-%D8%AA%D8%B5%D9%88%D9%8A%D8%B1-%D8%A7%D9%86%D8%B4%D9%82%D8%AA-%D8%A7%D9%84%D9%86%D8%B8%D8%A7%D9%85-%D9%87%D9%88-%D9%82%D9%8A%D8%B5%D8%B1-%D9%8A%D8%AD%D9%85%D9%84-%D9%82%D8%A7%D9%86%D9%88%D9%86-%D9%85%D8%B9%D8%A7%D9%82%D8%A8%D8%A9-%D8%A7%D9%84%D8%A3%D8%B3%D8%AF-%D8%A7%D8%B3%D9%85%D9%87%D8%9F>

12 brief report by Human Rights Investigation presenting the report of Carter-Ruck investigation notes: <https://humanrightsinvestigations.org/2015/12/17/new-human-rights-watch-report-and-the-caesar-photos/>

13 Letter of the Permanent Representative of France to the United Nations: <https://undocs.org/en/S/2014/244>

human rights violations would not remain unpunished.

September 2016, former US President Barack Obama blocked the Caesar Civilian Protection Bill from reaching the House of Representatives. The bill was under drafting immediately after Caesar's testimony in 2014.

In 2016, a detailed report on Caesar photos was issued by the Syrian Association for Missing and Conscience Detainees (an amended version was issued in 2020) under the title "The Devil You Don't Know."¹⁴

17 December 2019, the US Senate approved the US Department of Defense budget for 2020, which included the "Caesar Act to Protect Syrian Civilians" after more than five years of writing and drafting it.

2020, Caesar appeared again in the US Congress to testify before the Senate Foreign Relations Committee.

December 2020, the Syrian Association for Missing and Conscience Detainees updated the number of Caesar photos to become 6860 photos¹⁵.

In 2021, the Syrian Association for Missing and Conscience Detainees updated Caesar's photos on its website, bringing the number of published photos to 6859.¹⁶

2021, the work to draft the legislation of Caesar's Law-2 started in preparation for submitting it to the House of Representatives in the US Congress, and it includes a more stringent and harsh formula on the Syrian government and its allies, whether they are individuals or entities.

Image Right and Publishing Controls

German journalist Simon B. Plazert, in his study on German and Spanish newspapers dealing with images of violence, and the professional rules that must be followed when publishing images of violence, said: "It is always about context and that there is no magic solution to dealing with these images. Sometimes it is important to publish images of violence in order to document the horrors of war."

Before examining the effects of violations on the families of the victims, and the effects of publishing pictures in the manner in which they were carried out, it is necessary to determine the nature of the right to the image, and who has this right in relation to the photographs of the dead. It is the topic that is at the heart of the ongoing legal debate, both in terms of acknowledging the existence of the right to the image, as a new right added to the range of rights known in the law, or in terms of the way it is exercised and protected. About the nature of this right, two trends emerged that classify the first right in the image as the right to property, given that a person is the owner of his body, and the three components that confer on him the right of ownership, from use, exploit and dispose of. Thus, they have the

14 The Devil You Don't Know, the Syrian Association for Missing and Conscience Detainees, <https://safmcd.com/article/view.php?id=454>

15 See: <https://web.archive.org/web/20150323150405/https://safmcd.com/martyr/category.php>

16 Syrian Association For Missing And Conscience Detainees, <https://safmcd.com/home>

right to their image as a reflection of that.¹⁷ Some French courts have taken this direction by saying: "Every person enjoys, in relation to his image and its use, the right of absolute ownership, and no one else has the right to dispose of it without his consent. Every attack on a person's right to own his image is considered a mistake that requires compensation." As for the second trend, the right to the image such as a personal right, which is inherent in the human personality, and it is absolute right that is invoked by all and do not accept seizure or disposal. They are also rights that are not subject to statute of limitations, or acquired by possession. This is what French, Jordanian and Egyptian legislation has settled on for example. The French legislator recognized, according to the right of any person to respect their private life, the respect of their image right is inherent in this right.¹⁸ It is also confirmed by jurisprudence that the image right is closely related to the right to private life and that it is one of the applications, but the most important.¹⁹ This gives an important advantage to the person whose right is infringed, given that the assault here is of a criminal nature compared to the rules of civil liability that require proving both the fault, the damage, and the causal relationship between them. Also, it is a comprehensive protection other than the civil protection that comes exclusively after the publication or use of the image.

The French legislator also considered that the protections and penalties associated with the image right apply to the dead as well as the living, as the right to human dignity that extends beyond death. In the case of pictures of victims of wars and conflicts, the image right comes within the framework of the protection established for the dead in international humanitarian law and the rules for respecting the bodies of victims and how to deal with them. While some argue that the photos of the victims are available or permissible according to the topic and the benefit of the publication, given that the journalist's task is to publish news and facts objectively, and therefore should not deal with the feelings of the viewer, listener or reader. While supporters of the publication ban see that its goal exceeds respecting the dead aims to prevent its effects on the living. Publishing pictures of the dead, corpses and shocking images is a taboo in the press, because it represents a violation of the sanctity of death, and its negative effects to the feelings of the public, and the families of the owners of the published images, regardless of the news value of the image, and because the repetition of displaying images victims create a state of dulled feelings and aversion without providing an added value in the media.

Regardless of the controversy over the publication of pictures of victims and their legal and moral controls, the emergence of social networks has completely changed the rules and mechanisms of control. What appears to be a boom in the spread of painful pictures and recordings that include scenes of torture and murder on an ongoing basis, because every Facebook page or Twitter account appears as a mini-media that is free from the controls and principles of the profession. The only controller of what is published on it is its owner, whether they adhere to certain

¹⁷ See the right to photograph and its protection in Iraqi Legislation.

¹⁸ Hussam Al-Din Kamel Al-Ahwani: "The Right to Respect for Private Life. The Right to Privacy. A Comparative Study." Para. 95, p. 145.

¹⁹ Seagee J., op.cit., p8.. Banach A-S, Le droit à l'image, la prevue d'Internt , op.cit., p.8

journalistic values or not, which doubles the social and moral responsibility that must surround dealing with images of victims in the Syrian case and similar cases. This entails the moral responsibility of the holder of the images of the victims to refrain from converting them into a commodity, or dissipating their meaning, and to contribute to preserving the entity of the subject of the image as a “victim” of a crime, and provides it with preservation reasons, and to preserve the sanctity of the subject of the image in order to present it as evidence in a fair trial with legitimacy. There is no difference in this between a “victim” who acts in his own image, and a holder of the image of a “victim” who wants the world to witness the crime. Here the story of each individual victim belongs to the common right of the whole country.

the way the media handled the images was very problematic. On social media it was even worse, especially in two regards. The first was the disrespect for the feelings of the victims’ families, by exposing them to such harsh and harrowing pictures at all times. The second was the irresponsible use of the photos in terms of identifying people hastily or inaccurately, without the possibility of being certain. A while ago, a member of the Association found that the photo documented as showing her brother was presented on social media as though it were someone else. This hurt her deeply.

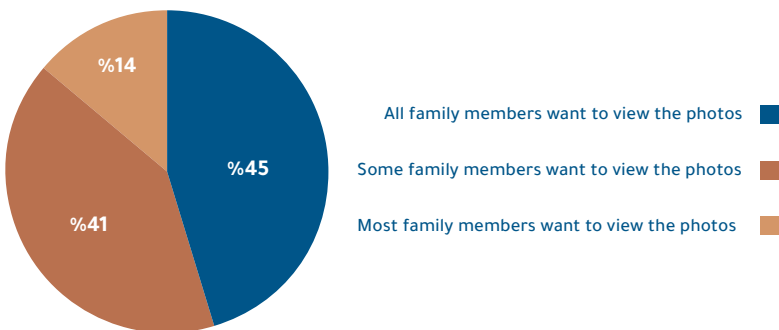
The premature and impulsive mismanagement of the photos has weakened the credibility of what should be professionally considered evidence. We saw how a photo was said to depict Adnan al-Zeraei, then the claim was retracted. The same thing happened with Hussein al-Harmoush. This demagoguery is dangerous; it undermines the pictures’ critical credibility and clarity, and desecrates them along with the privacy of the victims, our martyrs.²⁰

20 Fighting for graves we can visit, 9 July 2020, Yassin Swehat, AlJumhuriya.net, <https://www.aljumhuriya.net/en/content/fighting-graves-we-can-visit>

Publishing the photos as seen by the victims' families

Since they were first published, Caesar photos have turned into a media material that has been reported by some networks and pages on social media. Sometimes aimlessly and perhaps with a desire to provoke and attract views, in addition to its spread or some of it in the international and Arab media, in the absence of any plan for publication or legalization to access the images that are basically criminal evidence or at least legal documents for trials. Perhaps the goal behind the decision to publish the way in which it was done, is to create a feeling of shock in the world public opinion, pushing it to pressure their governments to intervene in Syria, which did not happen, but rather caused confusion to photos as documents, without weakening the aforementioned authenticity and value as criminal evidence.

Family members were asked if they want to view the victim's photos and not only hear about



When the families of the victims were asked about their assessment and opinion on publishing, the participants agreed that the photos should not be used for personal financial benefits or fame, and that the aim of publishing the images in advocating the cause of justice for the victims and their families should be respected. They expressed the need to deal with the photos according to the individuality of their owner, not to be treated in bulk. Behind every photo lies a unique and distinguished story of a person and family. They also said that publishing the photos should be by specialized groups only so that its purpose is achieved, and these groups can take into account the way in which the families of the victims will be informed and share the pictures. The unorganized publishing caused a lot of pain to many families and those close to the victims. Greater respect must be shown for the desire of families who do not want to publish the photos of their loved ones. All participants in the survey also confirmed that the repeated publishing of the photos without their knowledge. Even the first time, before their photos rights were established, they learned by chance that there were photos published and that it was possible

that one of the photos belong to loved ones.

M. Sh. says:

I am not at all comfortable when it is published, and I prefer that it not be used as material except in the context of my legal rights and with experts. I see that the publishing process is harmful for several reasons. For me, this is not a picture of my father and I do not like to remember him in this way and I do not like to remember the extent of the suffering he went through. Every time I see the photo I imagine the extent of the pain he went through and the feeling will not be comfortable for me at all .. I like to imagine my father in a beautiful picture.. and when we want to talk about him in public, we choose certain pictures of him that befit him.

Th. K., the wife of one of the victims talked about the feelings she had after recognizing her husband in the photos:

People recognized the victim's photo before us, his family saw it. I remember that it was Mother's Day and we were visiting Bludan and people started stopping my daughters who were young and asking: Are you sure that your father is the one in the photo? The girls did not know anything, because I did not tell them anything and I myself did not know anything. I heard that there were photos published, but no one told me to see them and search for them. When this happened, I was shocked, I know nothing and I do not know what to say to my daughters. The time was not in our favour, and it affected me and the girls a lot, I am the wife of a martyr, is it possible that I was the last person who knew about the photo! It would have been better if a psychologist from the association that published the pictures contacts me or talks to someone close to me to convey the idea to me little by little so that I can understand the matter myself, and be able to communicate it to my daughters. It required introductions; the introductions are very important.

Opinions also varied regarding publishing, between those who believe that their publication should be banned because viewing them is a painful process that harms the recipient, and another believes that this ugliness must be shown to be evidence and documentation of the government's brutal crimes.

In turn, F.D. says:

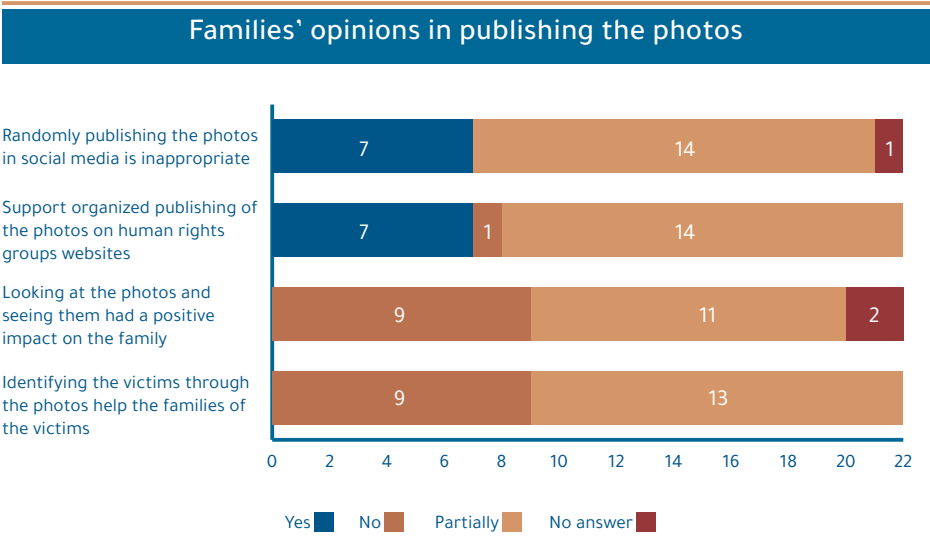
If I did not have this photo, I would not be able to do anything about my brother's issue. Even I could have been able to file a legal case. The same photos were painstakingly accepted by the Germans. These victims were detained while they were innocent civilians at the checkpoints, a civilian who carried two kilos of tomatoes, one kilo of cucumbers and two bundles of bread. They took him and killed him! No, sir, I am in favour of publishing these photos a million percent so that the entire universe knows the scope of crimes. They denied chemicals and barrels, and accused us of taking narcotic pills. With these pretexts, the regime is fighting terrorism and terrorists, right..and these? They are 11 thousand names, I said, you regime said that they died. Well, where did they die? How did they die? The photos of these victims are the strongest evidence against the regime. We must bear the scenes and the tragedy, and we have God. Let them be published. It is impossible, there is only this solution to describe the event, for speaking about it is not as seeing it. The regime considers the people is ISIS, the Free Army are terrorist groups, the children who died are supporting terrorism, and the popular incubator for terrorists as the regime described it. All doors are closed... But until today the regime has not been able to justify these photos and has not been able to claim that these were killed by the terrorists.

W.D.:

For the relatives of the victim, the photos of the dead are always in their minds, whether they are published or not, and they will be happy when the criminals are held accountable. The photos should remain a witness to the regime's criminality. Most of the families of the martyrs know that publishing the photos leads to hold the criminals accountable, and this will make the families bear the pain of publishing.

The views of the representatives of the families, who participated in the report, in the issue of supporting/opposing publishing the photos differed depending on the extent to which the family has overstepped the psychological impact of the death of their loved ones or of recognizing them in the photos. Their opinions also varied according to the circumstances in which family members lived, such as their exposure to raids, subsequent danger, displacement, or the loss of a social support group. All of which seemed to have a negative impact on overcoming the matter. There was a positive correlation between the degree of information that the family had access to about the victim, such as the location of the body, the date of death, or how they died, and their ability to deal with the event and the pain. There was also a negative correlation between the ability of each interviewee to deal with the traumatic incident and the number of other difficulties faced,

such as moving to a new country, being responsible for conveying the news to the rest of the family, or being personally exposed to the experience of arrest, and of course the nature of their relationship with the victim. That is publishing the photos is a personal issue and varies within members of the same family.



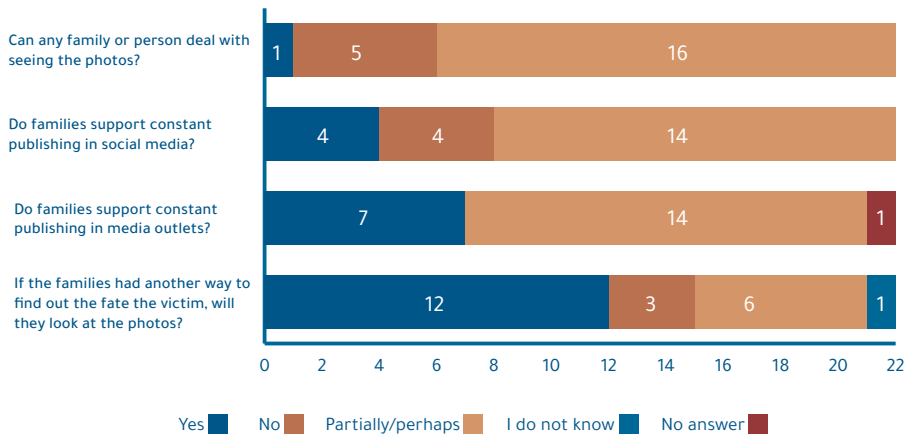
Th. K., a victim’s wife found her husband’s photos among Caesar photos. She said in her testimony:

After I saw my husband’s photo, I went out to my sister and showed her the photo. Without telling her anything, she said: “This is Abu Abdo sleeping.” I told her: No. I told her what happened. So she screamed and collapsed. She said: “No.. No.. No.. They are lying to you; it is not him.” On the way, I saw my sister’s husband. In the same way, he also confirmed it, and asked why he is having dust on him. I told him the truth. He said: “No.. No.. Not him.” I did the same thing with my second sister. I visited her on my way and she confirmed: “He is Abu Abdullah.. Who sent it to you?” I told her, “It’s a photo of him and he is a martyr”. She threw the phone. None of my family objected to my actions or my travel, because the rumor that I would be arrested again had spread and it was no longer possible to stay in the country.

Random publishing is harmful. At least, the human condition should be respected. The people who choose to publish the photos have the right to do so, but we must respect the wish of those who do not want to publish them. Whoever publishes just to achieve a media scoop or increase Likes and viewers... I do not think that there is more despicable than such exploitation. There are families and loved ones who suffer because of them behind this is the photos."

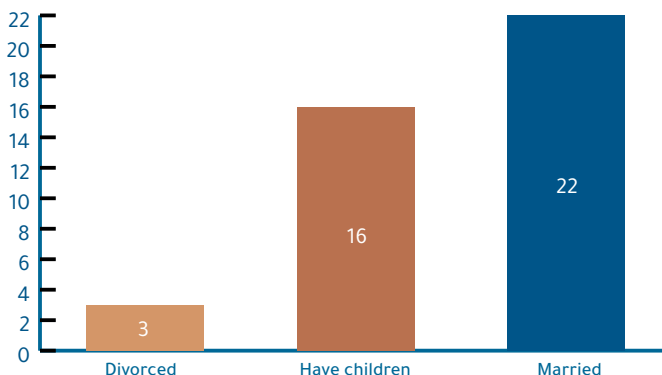
Testimony of a victim's sister Gh. Kh.

Families' opinions in publishing the photos



The impact of violations on the families of the victims

Social situation of the missing persons



Gh. Kh., a victim's sister: "We still use their jokes and phrases among us. In every joy we feel that something is missing. We still cook their favourite foods."

F.D., a victim's brother: "I lost something from myself and my life, and it is cannot compensated, they gouged out my eye. My brother means everything to me, and they took my brother, they took something from me."

The crime of enforced disappearance not only violate the basic rights of the disappeared person, but also extends to the economic, social and cultural rights of members of their family. Article 24 of the International Convention for the Protection of All Persons from Enforced Disappearance states that "victim means the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance".²¹ This includes the family that suffer in many ways. Among the most important economic, social and cultural rights of victims and their families that are violated by enforced disappearance are the right to protection and assistance to the family, the right to an adequate standard of living, the right to health, and the right to education.

Enforced disappearance violates the following civil or political rights:

- The right to recognition as a person before the law. The right to liberty and security of person.
- The right not to be subjected to torture or to cruel, inhuman or degrading

²¹ International Convention for the Protection of All Persons from Enforced Disappearance, <https://www.ohchr.org/en/hrbodies/ced/pages/conventionced.aspx>

treatment or punishment.

- The right to life, in cases where the disappeared person is killed.
- The right to identity, and the right to a fair trial and judicial guarantees.
- The right to an effective remedy, including reparation and compensation, for victims and their families.
- The right to know the truth for the families of the disappeared.

The right to know the truth

According to Article 32 of Additional Protocol I to the Geneva Conventions: “the activities of the High Contracting Parties, of the Parties to the conflict and of the international humanitarian organizations mentioned in the Conventions and in this Protocol shall be prompted mainly by the right of families to know the fate of their relatives.” The United Nations Human Rights Committee has recognized that this right applies to violations of human rights in general after what was confined to enforced disappearance. The nature of violations committed during periods of mass violence by state agencies and under its auspices, and their temporal and spatial scope led to the adoption of a broader interpretation of the concept of this right to include, but not limited to, the rights of the families of the victims of extrajudicial executions, arbitrary detention, sexual violence and torture, sham trials and condemned laws that violate the concept of justice such as anti-terror laws. This includes knowing the full truth regarding the violations, the backgrounds and circumstances surrounding them, who participated in them, as well as their causes. The right to know the circumstances of the violations and the identity of those responsible for them is not limited to the victims or their families only, but it is the right of all members of society to know the truth that forms part of the national memory, which should be immunized with knowledge and disclosure against any kind of manipulation in the narrative of historical events. Which guarantees collective recognition of violations and informing survivors and future generations of the events during which they suffered. This represents the only entrance to reconciliation and transitional justice, restoring trust between the elements of society, preventing future violence and turning the page of the past and reconciling with it without erasing it or trying to forget it.

Not knowing the fate of a family member generates severe suffering on various levels, while the families of the missing are desperately trying to search for their missing relatives, not knowing whether they are alive or dead. This makes it often impossible for them to move forward in building their lives. and overcome the various long-term consequences of the disappearance of loved ones, which continues even after verifying their death sometimes in the event that they did not die in accordance with the legal, administrative and social practices. Families remain in a cycle of uncertainty in the face of legal, administrative and social challenges arising from the violation. According to the participants of the families of the victims, the harshest thing their members are going through

is the violation of their right to know the truth about what happened to their loved ones, the circumstances of the killing and the fate of the body to a degree that puts knowledge of the truth at the forefront of their needs. According to the results of the questionnaire, a demand was made to obtain the complete and uncompromised truth about the fate of their loved ones and the conditions that accompanied them during detention, and to reveal the perpetrators who caused their death. In addition to the places of burial. The main demands of the families were to “know circumstances and causes of death” and to search for their burial places and to “know the truth” which was always mentioned before any other type of demands. They also expressed their fear that compensation could be used in exchange for truth, especially in the absence of any effective mechanism to search for the missing/dead.

“When anyone family member objects that the photo is not of my father, I would say to them: In case he is not, tell me where he is now and give me any news about him.”

H. The brother of one of the victims whose body photos appeared in Caesar photos.

The psychological challenges facing the families of the missing

It is not easy to talk about the psychological effects of people exposed to trauma in general, but when the situation and circumstances in which the individual lives are complicated and many problems and contradictions overlap with them, the description of the psychological situation becomes more difficult. This was the case for representatives of the families of the victims and the family members behind them because of the complexity behind each story and the pain that words fail to describe. The interviews showed that all members of the families of the missing were deeply affected, not only on the emotional and psychological levels, but also on the social level. Their description of the difficulties they face, the efforts they made to overcome them, and the way they endured the loss of a relative was painful and touching.

Their suffering was not the result of a single incident, but rather a series of events that began with the events of the Syrian revolution and reached its climax at the moment of disappearance of their loved ones, then seemed to have no end. Their suffering was embodied in sleep disturbances, recurring nightmares associated with the deceased, and severe bouts of sadness that may reach sudden crying spells. They also show extreme emotion, tension and anxiety over simple things that did not affect them previously, in addition to physical pain that has no medical diagnosis, but is of psychological origin. Happy moments are no longer complete for them. They saw that their suffering is directly related to the uncertainty of the fate of the dear missing and what followed. Psychological effects can be divided into three stages:

The first stage

Where the journey of their suffering began with psychological distress from the moment the victim went missing. They lived through the duality of possibilities, assumptions and feelings. Sometimes they have thoughts that the missing is still alive, so they suffer from not knowing where he is being held, thinking about his conditions of detention, his state of health. They imagine which form of torture their loved ones were subjected to, whenever they hear some form of torture in the media sources or from the elsewhere.

Yasmine, a victim's sister: "When I received news of torture in detention centers and what they practiced, I read a little and could not bear to continue reading. Description of starvation, murder, flaying, and rapes. Imaging that a person dear to you was going through all of this was a devastating feeling."

Sometimes they have thoughts that their loved ones possibly died. So, they experience the pain of losing him once and for all, and the bitterness that their best wishes for their dear and beloved deceased (son, father, or husband) are to be dead! The pain of anticipating the news of their death and that this news would become good news for them, and that the best wishes for their dear missing loved ones would be that his body would not be mutilated or not show signs of severe torture if their photos were found among Caesar photos.

Yasmine continues: "Even if he comes out, he will emerge as he lost mind, detached from reality, or a semi-human being... semi-alive. It is impossible for a healthy person to come out, it is impossible... but if he dies, he will have rest... end of torture."

F.D., a victim's brother, tells us about his condition as he flips over Caesar photos:

In addition to feeling the tragedy of the people, I watched death moment by moment as I flipped the photos and asked myself: When will I see my brother dead and how did they kill him?... I swear to God Almighty, I say: God, if there is a photo of him, I wish that they did not gouge out his eye or mutilated his face. I watch my brother's death and wait for his photo to appear."

Additionally, some members of the families of the missing persons had personally experienced arrest, which increased their feelings of pain about what the missing person might suffer from in his arrest:

I myself was arrested, so before I knew about the photo, I was hoping that the news of his death would reach me and that he was no longer detained, because I experienced and tasted what I cannot describe to you. I could hear my son's footsteps walking on the sidewalk above me and I am below him, telling my partner in prison that they are my son's steps. And when I received the news and saw his photo, I consoled myself by remembering what was happening in prison in terms of torture, and that his personal desire was "God, I would rather over arrest because it is more merciful."

N., the wife of one of the victims.

All of them were aware that they themselves were also at risk, and that they might meet the same fate at any moment, and that the search for the truth might expose them to more dangers, which made them live with feelings of fear and anxiety for themselves or for a new person missing from the family. They are like all the Syrian people who have suffered from the scourge and consequences of the Syrian conflict (the revolution) from displacement, persecution, and later from the pressures related to asylum in a foreign country and a new culture. However, above all, they had to deal with the image of their deceased among Caesar photos of those who died under torture.

W.D.: "After it was confirmed that my brothers are in the Air Force branch, and after the authorities notified the family that they were threatened with arrest, the family had to leave all its property behind and we left the country as quickly as we could and dispersed in different countries." He added: "No sane person can willingly go to the regime."

The second stage

When the news of publishing Caesar photos began to spread and they saw the photos or were informed of a photo of their missing loved ones, the symptoms varied among the participants in the personal interviews, some of whom expressed severe difficulties in concentrating.

"When I received the photo, I was shocked and lost for four or five months, unable to comprehend anything around me. I reached the point of losing focus in my work as. I sell Tannoor bread, the customer gives me 10 pounds and I give him back 20 pounds!"

R. Kh., a victim's son when he was only eleven years old.

The photo of the missing person did not arrive as one photo of a single person to verify it for all families. Many had to search among the large numbers of the photos to search by themselves for the photo of their loved ones. They had to endure all the painful feelings and harsh scenes in the displayed photos for a long time before they reached the photos of their loved ones.

Gh.Kh: When the Caesar photos appeared, I desperately wanted to know and confirm or deny the matter. I started looking at the photos the first day, but I was very tired and could not sleep. It was tiring and painful to see a huge number of photos of the dead and they do not relate to you and you are not supposed to check them. But, because my brother is detained and his appearance may have changed, I had to check closely all the photos to make sure of his appearance after the change. Each photo bears the possibility that it is him. Checking all the photos pictures was painful.

Aside from thinking of people I know of their arrest, and perhaps the photos belong to them. I imagine the rest of my detained brothers are in these conditions, so I no longer search. It was a very difficult feeling to walk in a branch to ask about my brother and imagine that his body was under my feet. After a while I received my dead brother' photos. A close friend of his, who is a doctor, found them. I saw the main photo and was unable to order the rest of the photos.

Then, after verifying the photo, they must pass the news on to the rest of the family. A number of participants stated that this moment was one of the most difficult, cruel and painful moments, especially if they had to tell the parents or one of them. Some of them were able within days to convey the news, while others needed months of grief alone to find an opportunity and suitable circumstances to disclose what it had about the deceased, and perhaps years to tell a parent. W.D., a victim's brother tells his experience and his voice has changed from before. His body language was talking about the difficulty of this moment before he uttered any word that describes it. His words are no longer coherent. He presses with his hand and wipes his forehead and face. He may try to gather his experience and turn it into words he can't express or hide tears in his eyes:

The most difficult stage was after my brother and I confirmed the authenticity of the photo and that it belonged to my already arrested brother. How are we going to tell the rest of our brothers and my mother? It took us two days; my mother was by chance with me in Turkey. I could not prepare for the matter. It was a very difficult moment. I told her: Bashar was martyred. She replied: Bashar was my son! She replied: Yes. Yes, your son. He was martyred. I did not know what to tell her!

Gh.Kh., a victim's sister, went through completely different experience which spanned for years. The deceased was not the only absent person in the family. The family had three detained brothers.

Gh.Kh. spoke about her personal experience:

I learned from my detained brother when we visited him for the first time in Adra that my second brother had died... I didn't know how to tell such news to the family. My brother only knew that he was dead and not what happened after that. I didn't want them to think that it is what happened to the rest of my detained brothers. I told my sister, but she was arrested later and I came back as the only one who knows. We did not stop the search process and ask every released person about him. I felt that I was the only one concerned with what all of my parents said when they pray for my brother or when they think that we are going to see him soon. It was hard for me to be emotionally present with them in these moments. It was very tiring to know something and not tell them. Until we arrived in Ireland, my parents didn't know about it yet."

Once again, the ways and mechanisms of coping of the participants are different, as well as the expressions of sympathy that they used with themselves or with their family members to make them easy on them. Once again, the bad became good news because it could be worse, as if what happened was not bad and ugly enough. They also dealt with the disappearance of the previous unknown victim from mitigating the ugliness of the situation in a positive sense or expecting what should not be expected in a normal life that respects human dignity. They maintained their composure in dealing with a new tragedy and a bitter reality in which they have no power.

M. Sh., a victim's brother:

"We imagined that something like this would happen. The news was not as shocking as it was sad and painful, generating a feeling of helplessness. We knew that this would happen and we had nothing to do to prevent this fate from happening."

Yasmine: "When you learn that he died, you say he died, which means he was relieved. He went to God who will deliver justice. This is better than being at the mercy of these torturers."

N., a victim's wife tries to relieve her children of the horror of the news, so she tells them: "I told you a long time ago that your father will not return, but we do not know how we will know if he is dead or alive, and that we expect to find the body in front of our door. I think that this relieved them a little.

My mother used to cry every day. After my brother's wife travelled, and no longer she could see his children. She was more affected and she was suffocated. When the news of the photo reached her, she called me saying: "Congratulations, I have a martyr. Her condition improved after seeing the photo, because she now knows that his torment has stopped and she said: "I am relieved that he is with God now.. now I can sleep comfortably." **A.Gh., a sister of one of the victims.**

F.D., a victim's brother, tries to console himself. He tells himself: "I try to console myself with thinking that my brother loves company. Glory to God! Even when my brother was buried, he was not buried alone. He was buried with 11,000 people and in a mass grave, many Syrians died alone in the sea or burned. God honoured him and he was not buried alone".

The psychological suffering of elderly mothers and fathers

Some of the brothers and sisters of the missing said that the news of the death of their deceased under torture caused one of the parents to suffer a strong shock that led to severe and chronic diseases that caused death shortly after. While others reported that they refused to tell the father/mother because the parents were unable to bear it. Some died without even knowing the fate of their loved ones, while others are still living in the hope of relief for their (deceased) loved ones and meeting him.

The person most affected was my father. As soon as my brother was arrested, he had a stroke and fell into a coma for 7 days, after which he woke up, not knowing anyone and unable to move. He was only a body. He stayed like this for a whole year and then died after that. Everyone was tired emotionally. The house was previously full of laughter and joy, and now it is full of tragedy and a patient was in bed. When my sister visited us, instead of drinking coffee and arguing and laughing, she came to change my father's clothes or remember what happened to my brother, and we cry together." **A.Gh. a sister of one of the victims.**

Kh. S., a victim's brother: "Until this moment we are unable to tell my mother of his death. We are unable to tell her that we have a photo and we are sure of his death. My mother is sick and we do not know how we can tell her this. So we are unable to do much such as obtaining documents (such as death certificate) and she is still hoping that he is alive.

"My mother, despite trying to persuade her not to see the photos, kept 3 or 4 months looking at the photos, but she did not find his photo. She looks at few photos, and she collapses and the search stops. My brother says to her: "Mama, believe me, I saw his photo and you do not need to see it. We told her that Hamza's in photo showed no marks of mutilation." **N. a victim's sister.**

The psychological suffering and negative feelings did not only include adults in families, but rather extended to the children of the missing victims and their young siblings. Children often forget or are considered unaware of what is going on around them, but the questions they ask and the adults, and their looks indicates the opposite, and reveals that what they experienced when they were young is still inside them and has not yet been cured.

F. D.: "His little daughter is now 10 years old. When she sees the children's fathers around her cries and asks: Why do all the children have a father and I don't!" She cries and my mother (grandmother) cries with her. She asks us: Why did he die? Who killed him? We do not have answers to her questions.

Th. K., a victim's wife: "My son asks me in denunciation: Where is Baba? I know that he was martyred, but it reasonable that we do not do a funeral even if he is not present! Where is his grave? Do we not need a grave for him to read Al-Fatihah [prayers] on?" She continues: There are questions that I do not know the answer to, and my husband's family does not accept that the photo is his, so I am unable to perform the funeral and mourning ceremonies."

Other children, the sons and daughters or brothers and sisters of the victims suffer in a different way from memories they did not think existed before, and from past experience, an outside observer may think left no scars in them, so that the present shows a deep crack in a secret hideout awaiting the event that would unleash it. These children lost someone, a father or a brother, before their lives even began with him, and they were deprived of their roles in their lives and their impact on their souls. They lost both positive and even negative influences that might have existed, and they were left with nothing but memories of adults.

N.M. a victim's sister talked about her sister: My younger sister is now 14 years old. She was six years old when my brother was arrested, and before her she was away for four years before, so she doesn't remember him well. What she remembers is the fat brother who plays with her and some features from her imagination. Last year, she expressed that she did not remember him well, not even his voice. We had a video of some events, so we played it to listen to his voice speaking. When she heard his voice, she fainted. She spent two days in the hospital.

M. Sh, a victim's son, talked about his brother: "My younger brother is 8 years old. Last year, he watched a documentary about detainees, so he spent 3 days talking to no one, not eating, but crying. He was isolated in his room. I went to him and asked him, and he told me what he saw it, and that he was in pain from thinking his father went through this."

Other children have come up with their own amazing and creative ways of trying to write the conclusion of a never-ending story and creating answers out of nowhere to questions that their parents did not dare to answer in order to adapt to a life unlike the lives of other children around them. This adaptation is embodied in what the ten-year-old Bishr did, as he chose a rectangular plant pot on the balcony of his house and placed a sign on it, as a tombstone, after returning from visiting his grandfather's grave. He told his mother that he would come here every time and recite Al-Fatihah [prayer] to the soul of his father who died in detention and was deprived of even the right to bury him! Bishr is not the only son who has been denied this right. Eighteen families have stated that they were unable to bury their victims.

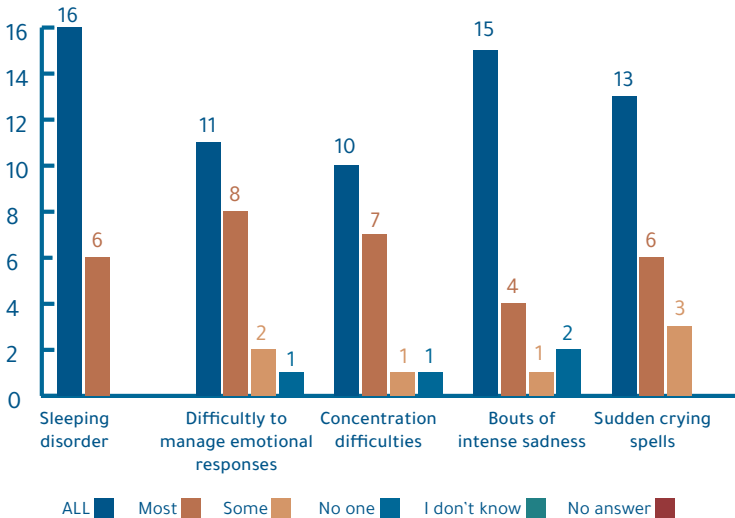
The suffering after the news of death did not stop at the inability to perform the burial ceremony, but rather extended to include mourning ceremonies in some families, either due to the absence of family consensus regarding the death of the victim, displacement, or the successive collective tragedies that struck the family.

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M. Sh.: "There is sympathy from everyone, but it is limited. Unfortunately, there was no room for sympathy with each case because of the large numbers of the missing persons, the chemical [attacks], and people killed under torture. Therefore, there was no room for sympathy with each case as it deserves."

The symptoms that the families suffered for one year after seeing the photos of their dead loved ones



"I like to drink mate, and drink it a lot. Every day, every day, every day I make it and I smell the gas. I remember the sight of my brother's body next to me because it has the same smell."

The description of a victim's brother summarizes the third stage of the psychological suffering of the families of the victims, and embodies that this incident is not like any other incident that will be forgotten by time and becomes just a past or a memory. Rather, there is a continuity of suffering. Grief is constant and not allowed to reach a conclusion, waiting there, in the depths of these bereaved. Grief reappears occasionally. It waits for the time to be alive again, and express itself before it passes.

Diaspora exacerbates this psychological suffocation and continues to freeze the grief instead of ending it for family members. It brings more tragic life.

Yasmine, a victim's sister, recounts her suffocation:

"The least loss was that I am in diaspora. I regret that I am unable to see my family. This is the least crime committed against me. It is a crime and its ongoing. Eid [Islamic Celebration] comes while I am away from my family. They are in these circumstances and this tragedy; I cannot be with them. No matter if my presence was good or bad with my family. Because I also sometimes, but often, feel that I am unable to fill the void that he left."

Then Jasmine nodded her head and disappeared in silence that swallowed the bitterness of her sadness, helplessness, and heartbreak, hiding her longing.

Some of the delayed symptoms appear shortly after the stabilization of the situation of individuals and the departure from public affairs in the diaspora. Individuals begin to emerge from the collective tragedies and realize their individual tragedy. The memories reappear and the feelings that were supposed to accompany them at that time become present here and now. Feelings cannot vanish, but first they must be lived. People go in psychological and emotional situations that are not explained by their surroundings and are not related to the current life situations. He is sad and she is weeping as if the son/father/brother died, but no one died today, they died years ago.

M. Sh.: "The many news and the stressful stories and the recurrence of loss paved the way for accepting news like this. In the same year my cousin and a friend of mine were arrested, my cousin was killed, and my second cousin was also arrested after a short period. Then the chemical attack came, the siege and the death of people from hunger. This left no space for a personal reaction about this event in particular. I feel that my feelings towards the subject began to appear after about 3 or 4 years. The matter is that this person who was arrested and tortured to death is my father. For 4 years, I was forced to occupy myself with the hustle and bustle of life. When I began to feel a little safer and more stable in my life, the psychological gaps and the real effects that this news caused me personally began to appear."

While most of them felt that they had become more emotional and more fragile, it is not possible for everyone to bear such situations, as well as their continuity, intensity and recurrence for several years. The conflicts, repression and feelings of helplessness that may be left behind that turn into outrageous anger and hatred that needs to be directed towards something.

F.D.: "Sometimes, I feel indifference towards the whole life. I am ready to kill a person and I do not care at all. If someone discusses me with 3 words about the issue of Bashar al-Assad, I may cause a massacre of discussion and screaming. I became very nervous and became internally violent, and unable to cope with a long discussion with others. I became very nervous even in everyday matters, I can't bear anyone. With the fourth word from the person in front of me, I will become furious in and say to him: Get out of my head, and start messing things around me. I feel malice and hatred. I wish every shabeeh to see his family and his brothers in the same situation that I saw my brother, and for everyone who harmed people to see his wife and children as I saw my brother. Anything good happens the regime's loyalists can cause me shiver... and destroy my soul."

This crime, which was committed in silence and coldness and in the darkness of the basements and their desolation, not only robbed the lives of the victims, but left behind each victim no less than five bruised persons with undressed wounds, hiding in basements without walls. This time it was not bodies buried under the rubble, but souls walking the earth with determination that is no less than the size of the pain, but it is broken like a mosaic.

F.D.: "I lost something from myself and my life, and it is cannot compensated, they gouged out my eye. My brother means everything to me, and they took my brother, they took something from me. Everything has changed, there is nothing sweet anymore."

A. Gh.: "Life has no taste anymore. How happy we were with the family gathering! We lost the most precious thing in this family. My brother was an exceptional person in our family."

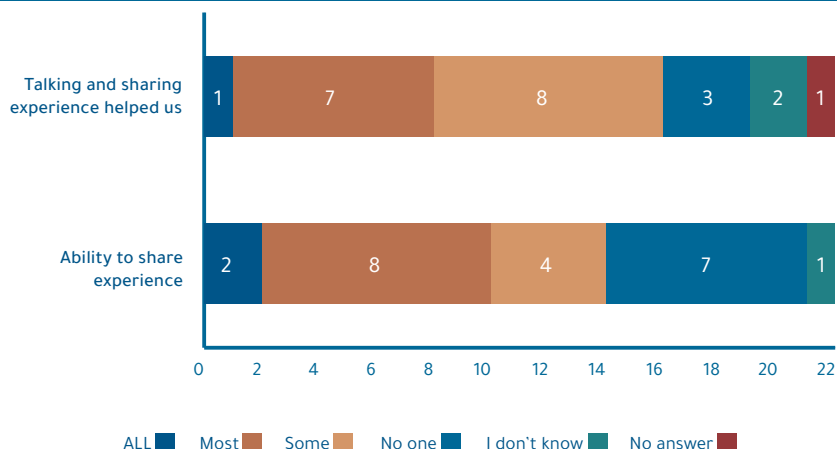
N: "I feel that we are like a vase that you love very much. It fell and broke. You sit to pick it up piece by piece. It is very fragile; anything can break it. But you keep it because you love it. Maybe it is too mutilated. Maybe there is a missing piece. It is no longer as beautiful and sweet as before. It has become our life. They call us survivors. No, we are not survivors, we are just still alive."

Conclusion:

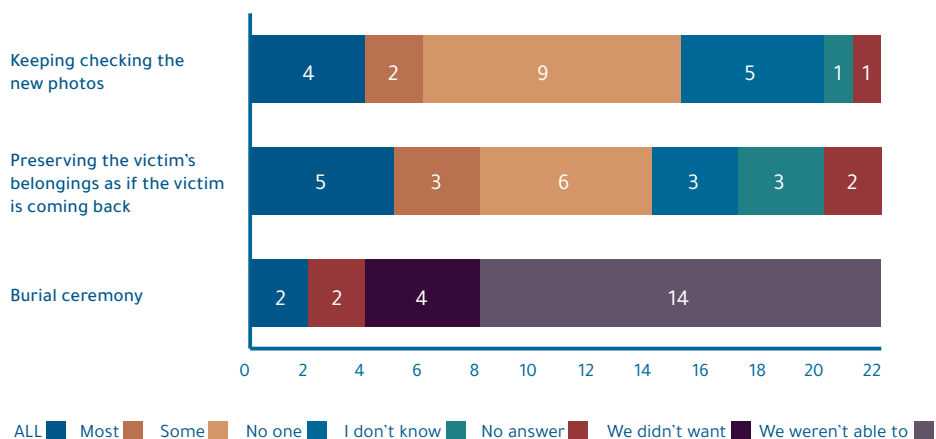
The loss that the families of victims have suffered is not considered a natural loss. This applies to the circumstance of disappearance, searching method and the circumstances of learning about their death. The side conditions experienced by families in terms of limited social support associated to this particular incident, mostly due to the general community's fear of talking about these issues and everyone's preoccupation with the general crisis situations, and the inability and reluctance to hold burial or mourning ceremonies (even without burial), have led to a decrease in the ability of family members to recover and to reach an automatic closure of the relationship with the loved victims to fulfil the recovery process and overcoming the incident.

In the Syrian context, the most prominent issues prioritized, focused on and considered by specialized psychological authorities were the psychological trauma or the problems of fear, loss of safety, depression and loss of meaning, victims of torture and rape. In other words, prioritization of direct crises or pressures that the individual is exposed to. This type of family psychological difficulties experienced by individuals surrounding those who are exposed to a direct crisis - such as the families of torture victims, survivors and those who died under torture - were not noticed. The programs that were offered to them -if offered- were not appropriate to their suffering, which reduced the rate of success and recovery or decreased the rate of continuity and perseverance in receiving the support and required service.

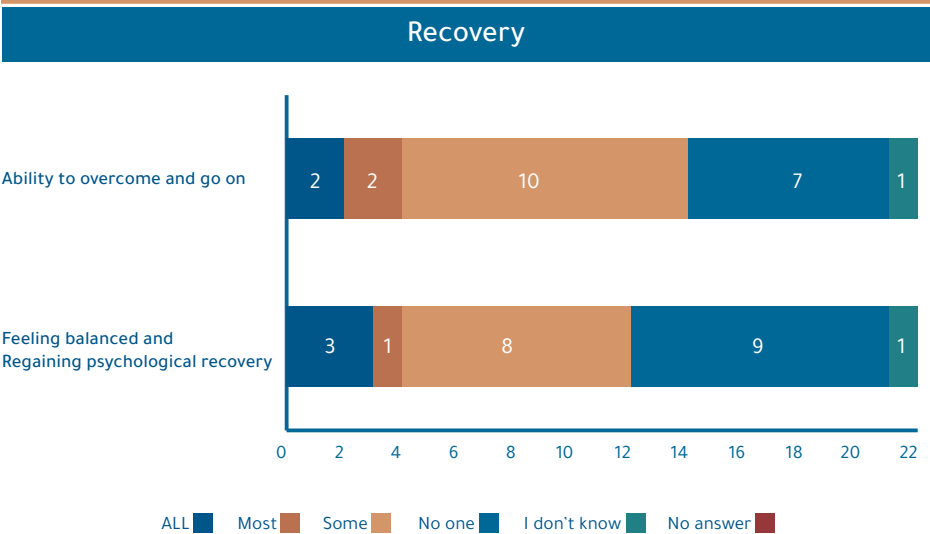
Emotional discharge and the ability to talk and share experience with others



Challenges in behavioral practices impeding psychological recovery between acceptance and denial



Psychological challenges to recovery between acceptance through emotional discharge and the ability to talk and share experience with others and conduct a burial ceremony, as well as denial by preserving the victim's belongings or continuing to search for any information about them and holding on to the hope that they will return.



The social beliefs that are widely prevalent in the Syrian society that are related to psychological services have also caused a significant obstacle to the family's access to these services. Of course, not everyone needs psychological support services, but in the presence of such convictions, the percentage of those in need is actually diminishing. In addition to the shortcomings of specialized psychological programs in general, and the Syrian in particular, on providing the appropriate service for a mysterious loss ²² and a suspended anguish ²³ experienced by members of the families of the victims. Individuals are dealt in isolation from the legal, societal and family circumstances that cause their grief to freeze, delay their recovery, and cause long-term psychological effects and gaps.

Various examples of individuals' convictions in receiving psychological support services:

- Several entities have tried to provide me with support. I attended one session and never believed in it. I did not find that there was any result, so there is no need to waste my time on the subject.
- In my opinion, only me would feel the pain, and I had to repair myself.
- I ask my mother to meet someone (a psychologist), but she refuses. I know that she is broken not only by this story, but she believes that as a person of faith believer she should resort to relieve herself by being patient. She answers me: I pray, pray and read the Quran. She considers that having a psychological problem is related to her weakness of faith, so she restrains herself so as not to collapse.

²² "Trauma (Mystery) continues to be in the present, it doesn't come 'after' anything. A mysterious loss is a traumatic and long-term disabling pattern, not a finished event that is later recollected." The book, Mysterious Loss.
²³ Suspended anguish is a form of frozen sadness associated with conditions of uncertainty that does not reach its climax, which makes the sadness live continuously and repeatedly. The book, Mysterious Loss.

The legal challenges facing the families of the missing

- Article 202 of the Syrian Personal Status Law: “The missing person: is every person whose life or death is unknown, or whose life has been verified, but whose location is not known.”
- Article 203 of the Personal Status Law on the “absentee”: “A missing person is a person who has been prevented by force majeure circumstances from returning to their place or managing their affairs by themselves or by legal representative for more than a year, and thus their interests and the interests of others have been disrupted.”
- Article 205: “The status of being missing ends with the return of the missing person, their death, or being considered dead when they reach the age of eighty, unless it was not due to war operations. If it was due to war operations or similar situations, with death likelihood, it is permissible to rule their death after four years from the date of they went missing.”
- Article 109 of the Syrian Personal Status Law allows the wife, after a year has passed since her husband’s absence, to request for separation through a revocable divorce.
- The property and money of the missing person are untouchable until his death is confirmed, or if the judge rules his death four years after he went missing. The legal representative may dispose of some of the money and the property to spend on the wife and minor children because have the right to alimony from the missing person, both in his presence and absence.
- The money and the property of the missing person are preserved, then can be transferred to the heirs on the date of proving his death, or the date of a judge ruling of his death.
- Article 302 of the Syrian Personal Status Law regulates the right to inherit for the missing person, giving him the right to inherit from others, but his inheritance remains dependent on the condition of verifying his life. The missing is not deprived of the financial rights that will accrue to him as long as his death is not confirmed. The missing person also does not acquire them permanently because he is proven living. His rights will be preserved until proven dead or alive. In the event of his return after proving his death, his inheritance rights shall be returned to him.

One of the aspects of the suffering of the families of the victims is the legal and administrative challenges resulting from the disappearance of their loved ones. Unless their death is officially announced, the family members cannot dispose of the missing person’s property, bank accounts or any transactions. The death certificate is required to be presented in most administrative or legal transactions that are initiated by family members regarding the money and the property of the missing person or obtaining their pension or salaries. The majority of families did not face the problem of managing the property or money of the missing relative if they were young at the time of their disappearance, because they did not have

property, pensions or bank accounts, while they have to deal with the previous complications if the missing person was older.

Twenty out of the participating families said that they are still unable to dispose of the money and the property sets belonging to the missing, such as property and other entitlements such as social security benefits. They are still unable to resolve issues related to divorce or marriage. Some family members, even after identifying the photos, strongly resisted the idea of announcing their missing relative dead in order to solve their administrative problems as they still hope to find him alive. They consider such a procedure as an act of “killing”. Due to the symbolism of the missing relative, they refuse to initiate the transaction and thus the cases remain unresolved, and not followed-up. The decision caused a painful impact. These obstacles are further exacerbated.

I went to the Civil Status Office in Masakin Barzeh in Damascus, and submitted an application for a death certificate attached to the death certificate I obtained from Tishreen Hospital. The official refused at first, but because I was accompanied by one of the [Baath] Party officials who is a relative of mine, the official agreed. But he required two witnesses to the death. I had to use two people who testified that they saw Ayham dead (false testimony). When I went to the Dental Syndicate of which my son was a member, to get compensation, a helpful employee advised me not to mention that my son was arrested or that he was martyred in detention, otherwise I will not receive any of his compensation. Some of his dues were handed over to us in several small payments, but we did not get all of them because we had to leave Syria.

Mariam al-Hallaq, Ayham Ghazzoul's mother.

Even if the family agreed to announce the death of their son, the announcement and confirmation of his identity in the photos is not sufficient to confirm his death, and for the death to have its legal effects, a judicial ruling must be issued or the death should be registered in the civil records. This was confirmed by the Syrian Islamic Council in a fatwa concerning the missing and detainees that appeared in Caesar photos. The provisions related to this:

It is not possible to determine the death of detainees through these photos alone, and it is not possible to issue a general fatwa on the death of all those whose photos were transferred, but the judiciary can take it as a presumption to prove the death along with other clues and evidence if it becomes clear to it. That, and accordingly: it is not permissible for a married woman to consider these photos as a (conclusive) indication of her husband's death, and it is not permissible for her to marry someone else just for that. Also, those photos cannot be relied on in the distribution of inheritance and the like regarding the rulings of the deceased, except after the issuance of a judicial ruling.”

Families also face challenges regarding the registration of births that take place after disappearance, as well as the registration of children in schools, or the issuance of travel documents for the child of the missing person, who is supposed to agree to their children travel on a regular basis. In addition to the legal challenges, those related to the security situation in which families live, and this includes going to government departments that are supposed to provide support and protection, posing a threat to their security and safety simply because they are relatives of the victim or belong to an area or family known to oppose the government. While some chose to search for alternatives to official documents or official ways to obtain them, which made them vulnerable to extortion and exploitation by brokers and government employees cooperating with them.



المجلس الإسلامي السوري
مجلس الإفتاء

بسم الله الرحمن الرحيم

حكم إثبات وفاة المعتقلين من خلال صور (كايسر) المصورة

السؤال: بعد أن خرجت صور الشهاداء التي صوّرتها (الكاميرا) قبل أن يتمكن اعتبار هذه الصور دليلاً على الوفاة؟ بحيث يتوجب عليها صلاة العائين على الميت والرحمة عليه، وإثباته عند الزواج، وتعيين أمواته بين الوفاة؟

الجواب: الحمد لله رب العالمين، والصلاة والسلام على سيدنا محمد وعلى آله وصحبه أجمعين.

ومعاً لما كشفت هذه الصور المصورة إما هو جزء من سيرة من حادثة هذا الظلم، وما يقع على الشعب المجاهد الضحايا من ظلم وبطش، عتيل الله بالخلاص من هؤلاء المجرمين.

أما بالنسبة للمعتقلين والمختطفين، فقد سبق أن صدرت فتوى رقم (60) (حكم زوجة العائين والمفقود) وقد بيّنا فيها أنّ الأصل في المفقود أو المصحوب الذي لم يلقَ أخباره أنه حي، وأن هذا الأصل المستصحب لا يتغير إلا بما يثبت وفاته، من دليل فحتم كشيادة الشهود المتقاة على رؤيته ميتاً، أو استلام الأثرية، أو صدور الأثرية الرسمية بذلك، ونحوها.

وأما الصور المصورة، فإثباتها، ومداخلها، فليس هو، فقد انتفتت كفة العلم على أنها لا تُعدّ دليلاً أو وثيقة قطعية تبيّن حيا الحكم من وفاته أو حيّوها، لكنها فريضة لأصناف ليلية الدلائل والقرائن، ويؤخذ بها للاستئناس والتفوية؛ وذلك لما يمكن أن يردحينا من عدم وضوح أو دقة، فضلاً عن التزوير والتدوير.

وبمع أنه من المخطوطة به صفة هذه الصور (إحداً)، لما أحتج بها عدد من القرائن، كشيادة الشخص الذي قام بتصويرها، وبإرفاقه على وفاته هؤلاء المعتقلين، مع مخته إقامته لدى العاد، وشهادة عدة حيات علنية مخضنة على سجناء، وتوثيق وفاته بعضهم من طريق أرواح الأفيار والشهادات بما يلاقيه المعتقلون في سجون هؤلاء المجرمين، وإلتطاف أخبار عشرات الآلاف منهم منذ سنوات طويلة، إلا أن دلالة هذه الصور على وفاته بعضه فعلا، بدخايل الخطأ من عدم وجودها.

1- عدم وضوح الصور في العديد منها، سواء من ناحية الإضاءة أو زاوية التصوير أو التشويه والتغير الذي لحق بها، ونحو ذلك.

2- إمكانية الخطأ في نسبة الصورة للشخص معين بسبب التشابه في ظروف التصوير، وأحوال العتث.

3- تغير مواقع أكثر الشهاداء بسبب ما لا يلازم من تغليب، مما يجعل التعرف عليهم صعباً أو مستحيلاً أحياناً.



المجلس الإسلامي السوري
مجلس الإفتاء

بسم الله الرحمن الرحيم

تأليف هذا الشئع الشئع المعتقلين من خلال هذه الصور بصورة، كما لا يمكن إصدار فتوى عامة بوفاته جميع من أُلغيت صوره، وإنما يمكن التمسك بالاعتقاد أن يأخذها كقرينة وإثبات الوفاة في جانب القرائن والأدلة الجارية إن أبان له ذلك، وبذلك لا يجوز للمرء المأزوجة أن تعتبر هذه الصور (دلالة) على وفاته زوجة، ولا يجوز لها أن تروح بأمر آخر، ذلك، كما أنه لا يُحتمل على هذه الصور في ترويج الحركات وجودها مما يقتضيه أحكام الميت، إلا بعد صدور حكم قضائي بذلك.

ومن كان لديه مرجح لرجوع هذه الصور لأحد أفرادها، فيمكنه مراجعة إحدى المحاكم الشرعية التي يتولى بها قضائياً لاستصدار قرار بوفاته بذلك، سواء كان في الشمال السوري المحتل، أو في الدول الإسلامية، وما يقوم مقامها في إبرام عقود الزواج والمطالقات ونحوها من المراكز الإسلامية في الدول غير الإسلامية، كما يمكن للمرء المأزوجة من بقاء عقد الزواج من زوجها المفقود أن تراجع هذه المحاكم لمطالقات التفرقة، كما نصت عليه الفتوى المشار لها.

أما إقامة صلاة العائين على الميت، وترجم على المفقود، فلا يُستبعد له ما سبق من صدور الحكم القضائي، وبكفي الظن بالحاصل بضرورة الصور.

نسأل الله تعالى أن يرجم الشهاداء، ويقتل الأعداء، وأن يخلص بأعاليهم ويحضرهم جواراً، والحمد لله رب العالمين.

وقد وقع على الفتوى من أعضاء المجلس العادة العلماء

1- الشيخ أحمد حماد مكي	8- الشيخ عبد العظيم عبد الله	15- الشيخ محمد زكريا المسعود
2- الشيخ أحمد حوي	9- الشيخ عبد الجليل البهاوني	16- الشيخ محمد معاذ الفخ
3- الشيخ أحمد زاهر سالم	10- الشيخ علي ناهض شعوب	17- الشيخ مروان القادري
4- الشيخ أسامة الرافعي	11- الشيخ عماد الدين خبي	18- الشيخ محمد جند
5- الشيخ أمين خالوي	12- الشيخ محمد جدي	19- الشيخ موسى الإبراهيم
6- الشيخ عبد الرحمن بكور	13- الشيخ محمد الرحيني	20- الشيخ موفق العمر
7- الشيخ عبد العزيز الحبيب	14- الشيخ محمد جميل جليل	21- الشيخ ياسر الجايز

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2/2 نسخة

fatwa@sy-sic.com syrianislamiccouncil syrian_ic syrianislamiccouncil

Syrian Islamic Council Fatwa Council Fatwa Number: 35

Date of the fatwa: Monday 15 Dhu al-Qidah 1441 AH, 06 July 2020 BC.

In the name of God, the Most Gracious, the Most Merciful

Ruling on confirming the death of detainees through leaked (Caesar) photos

Question: After the photos of the martyrs leaked by (Caesar) became public; can these photos be considered evidence of death? So that it entails the absentee's prayer for the dead and mercy for him, the end of the marriage contract, and the division of his money among the heirs?

Answer: Praise be to Allah the Lord of the worlds and may the blessings and peace of Allah be upon our master Muhammad and upon all his family and companion.

What these leaked photos revealed is only a small part of the reality of the criminality of this regime, and the injustice and oppression that befall the patient mujahid people, may God hasten salvation from these criminals.

As for the detainees and the kidnapped: Fatwa No. (6) was previously issued under the title: (Provisions of the Wife of the Absent and the Missing), in which we explained that originally the missing or imprisoned person whose news has been cut off is alive, and that this accompanying origin does not change except with evidence that proves his death, such as reliable evidence as the testimony of trusted witnesses to seeing him dead, receiving the body, or issuing official papers to that, and the like.

As for photos and videos: the people of knowledge have agreed that it is not considered evidence or definitive proof on which rulings are based, whether death or otherwise, but it is a presumption that is added to the rest of the evidence and presumptions, and is taken for reference and strengthening, that is due to the lack of clarity or accuracy that may come with it, as well as forgery and alteration.

Although it is certain that photos are true as a whole; When a number of clues associated with them, such as the testimony of the person who photographed them, and his knowledge of the death of these detainees, with his experience and eligibility for this work, and the testimony of several specialized international bodies on its validity, and certainty of the death of some of them through another way, and the frequency of news and observations about what detainees encounter in the prisons of these criminals. And the news of tens of thousands of them has been cut off for many years, but the indications of these photos of the death of a particular person may be mistaken in several ways:

- 1- Lack of clarity in many of the photos, whether in terms of lighting, shooting angle, distortion and change, and so on.
- 2- The possibility of error in the proportion of the photos of a particular person due to the great similarity in the conditions of photography, and the conditions of the bodies.
- 3- The features of most of the martyrs have changed because of the torture they experienced, which makes identifying them difficult or probable.

For this: it is not possible to definitively determine the death of detainees through these images alone, and it is not possible to issue a general fatwa on the death of all those whose photos have been transferred, but the judiciary can take it as a presumption to prove death along with other clues and evidence if it becomes clear to them, and accordingly: a married woman is not allowed to consider these photos as a (definitive) indication of the death of her husband, and she is not allowed to marry another just for that, and it is not relied on these photos in the distribution of inheritance and the like regarding the rulings of the deceased, except after a judicial ruling is issued to that effect.

And whoever thinks those photos is probably of one of their relatives, they can

refer to one of the Sharia courts in which they trust and its judges to issue a death decision in this regard, whether it is in the Liberated North of Syria, or in Islamic countries and the like in concluding marriage and divorce contracts and other Islamic centers in the countries. It is also possible for a woman impacted by the continuation of the marriage contract with her missing husband to refer to these courts to request separation, as stipulated in the fatwa referred to her.

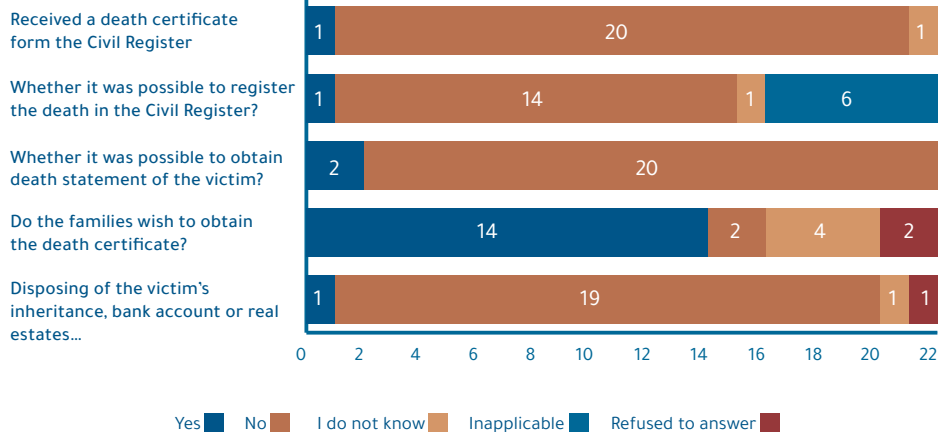
As for performing the absentee prayer of the dead, and praying for mercy for the missing: it is not a condition for the foregoing the issuance of the judicial ruling. The suspicion raised by seeing the photos is sufficient.

We ask God Almighty to have mercy on the martyrs, release the captives, have mercy on their families and compensate them with good. Praise be to God, Lord of the Worlds.

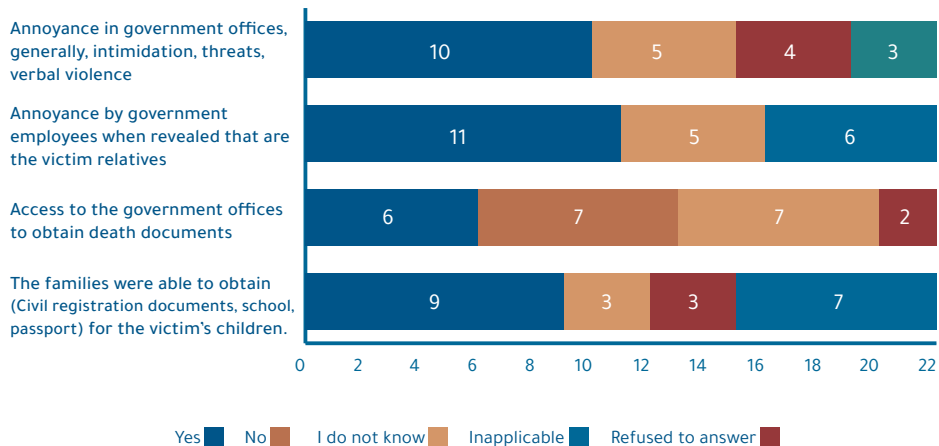
The fatwa was signed by members of the Council, scholars:

- | | |
|-------------------------------------|---------------------------------------|
| 1- Sheikh Ahmad Hamadeen Al-Ahmad | 12- Sheikh Majd Makki |
| 2- Sheikh Ahmed Hawwa | 13- Sheikh Muhammad Al-Zuhaili |
| 3- Sheikh Ahmed Zahir Salem | 14- Sheikh Muhammad Jamil Mustafa |
| 4- Sheikh Osama Al-Rifai | 15- Sheikh Muhammad Zakaria Al-Masoud |
| 5- Sheikh Ayman Haroush | 16- Sheikh Muhammad Muadh Al-Khan |
| 6- Sheikh Abdul Rahman Bakour | 17- Sheikh Marwan Al-Qadri |
| 7- Sheikh Abdul Aziz Al-Khatib | 18- Sheikh Mamdouh Junaid |
| 8- Sheikh Abdul Aleem Abdullah | 19- Sheikh Musa Ibrahim |
| 9- Sheikh Abdul Majeed Al-Bayanouni | 20- Sheikh Muwaffaq Al-Omar |
| 10- Sheikh Ali Nayef Shahoud | 21- Sheikh Yasser Al-Jaber |
| 11- Sheikh Imad Al-Din Kheity | |

Legal Challenges



Legal Challenges



The economic challenges facing the families of the missing

A large proportion of families suffer from poor or no resources in light of the deteriorating economic situation of the Syrians in general, after the transformation of the Syrian economy into a conflict economy in which resources and economic components are harnessed in favor of sustaining violence. This led to the deterioration of the standard of living to unprecedented levels. The disappearance of the breadwinner or one of the family members contributed in the erosion of savings or any available cash, especially with the costs of the family's search for their loved ones, which is surrounded by fraud practices, and exploitation by some lawyers or legal assistants, and even judges, or any of the people who have relations with the security agencies or their affiliates. Ten of the families participating in the questionnaire have incurred large sums of money, and they may have accumulated large debts to secure the release of their loved ones or know their fate, after losing hope of obtaining information or news about them. While 7 of the families incurred medium sums, as families often receive offers such as releasing the detainee, transferring them to a civilian prison, secure visits for them in their place of detention, or retry them in return for bribes without any tangible result.

We were informed of the martyrdom of Ayham by one of the released, and we held the funeral. After several days, one of our acquaintances came out of detention, who confirmed that he was with Ayahm and that he was alive and in good health. So, I searched for the truth, is he (alive or dead). For 17 months, during which I visited the military judiciary and the military police almost daily, during which I was subjected to financial exploitation. Every day I submitted a request to search for my son. The fees were a stamp of 50 Syrian pounds, but they took 250 Syrian pounds, and I was also subjected to taunts, insults and threats. For months in this search, I was also threatened more than once, especially in Branch 248. When I asked the official about his burial place, he replied: If you were not respected lady, old are old, you would have entered here and did not leave.

From the testimony of Mariam al-Hallaq, the mother of the victim: Ayham Ghazzoul

Family members often bear the brunt of the serious economic difficulties that usually accompany disappearances that lead to a change in roles within the family and women are forced to take the place of the disappeared, often the breadwinner, and are forced to enter the labour market to cover family expenses. In a society that does not view women's work with comfort, and without prior experience or social or legal protection mechanisms. They also take the task of dealing with the disappearance of the missing and knowing their fate. In doing so, women may be exposed to harassment, persecution, and degrees of sexual and other forms of violence.

On the impact on the family caused by the absence of the breadwinner, the wife of one of the victims said:

I became involved in trade and took over the shop immediately after my husband's disappearance (I am a Sharia graduate and I have a license in the Quran) to make living for the family.

Why do I stop receiving the goods that my husband had previously ordered?

No one from the family could help us, and it is not in my nature to take something from people. Everyone praised my management of things, and the society's view of me was positive. That our house was our own helped a lot. I alone bore the entire financial and domestic burden for a family of 9. An adult woman and two adults in need of psychological treatment, and 4 young children, in addition to the need to save a reserve amount for any information or matter that might be related to my disappeared husband. I traded clothes, diesel and gasoline, and also worked in the care of an elderly woman.

A victim's son, who was a child under the age of twelve at the time, stated in his testimony that he had to leave school early to support his family:

I was in the fifth grade and succeeded to the sixth and was excelling in school, but with the arrest of my father and the displacement to my grandmother's house, I had to work in selling bread. I buy a loaf of tannour bread for 12 liras and sell it for 13 liras, we were five families in one house and the conditions were difficult. No one can support anyone.

After the bread was cut off, I worked in agriculture to cover expenses during the siege of al-Waer. In the last 3 months, I worked with the Free Army to provide tea and coffee. We registered with an organization in al-Waer neighbourhood that gives salaries to orphans of \$150. We had learned of my father's death at that time and I was trying to work in small businesses or a broker to do something. I worked with everything that is available to me to work with. We left Al-Waer to Jarablus and lived in a camp for a month, then Al-Bab area for a year, then Idlib, and finally Turkey.

In Syria, I did not allow my younger brother to work. I did not want him to taste the humiliation, oppression and difficulties of life. Especially, that if he had no support, people would take advantage of him and oppress him. In Gaziantep, we worked with our relatives, we learned the profession and we work with our dignity now.

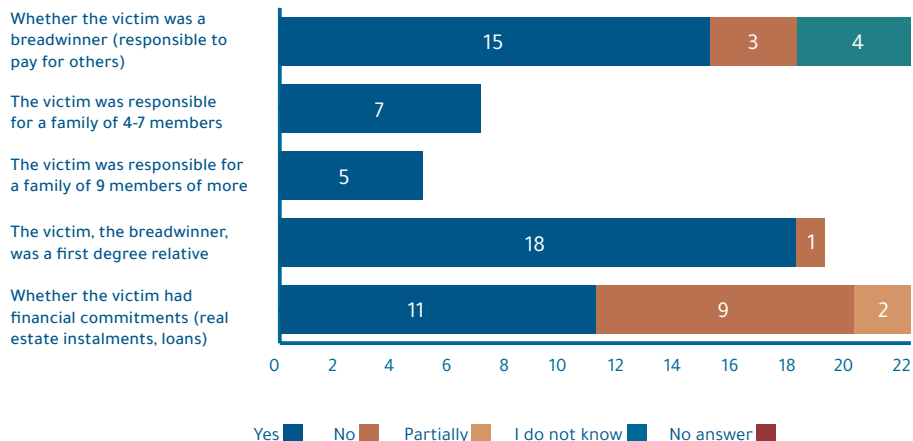
Regarding the continuity of his role changing to become the father of the family despite the passage of years, he said (he is in his early twenties):

“I got married, but I do not accept to live in a separate house, and my mother is not ready for that, she says to me: “Your little brother considers you like his father. I feel responsible, I feel that I have grown up before my time. I feel responsible towards my brother, his work and his expenses. I am preoccupied by him going out and coming back, his studies. Everything is on my shoulders. I am not like those of my age who are only busy messing around.”

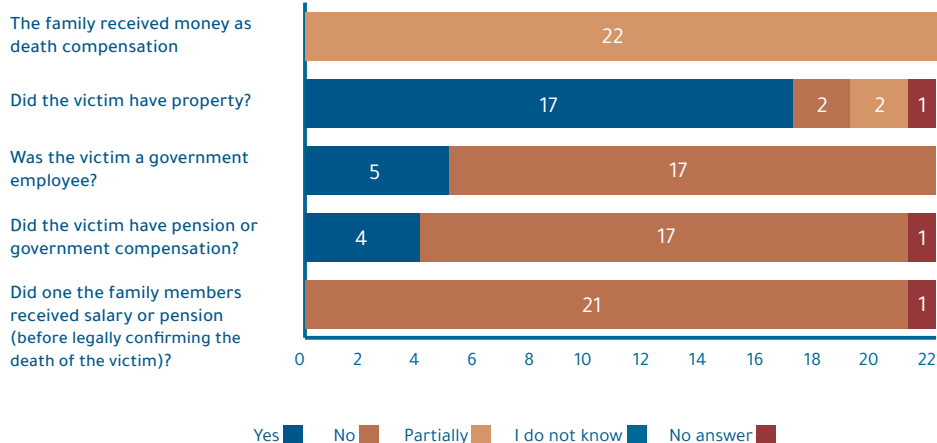
Some families who participated in the questionnaire were forced to flee from Syria as a result of the security pressures and the permanent risks of arrest, which also required paying sums of money to smugglers to reach countries where there are no support programs for refugees or newcomers sometimes. Which means incurring additional expenses to secure and furnish the house. The absence of any support and social protection represented by the extended family and the environment inside Syria, the absence of legal protection in neighbouring countries, whether in the camps or outside them, and the absence of stable legal conditions doubled the difficulty of finding work and securing life requirements in the first period at least.

Although defining the economic problems faced by families after many years of the disappearance/being missing/death of a relative remains difficult within the limited framework of this assessment. However, based on the questionnaire and interviews with the families of the victims, all families experienced financial difficulties. 19 out of 22 families paid to know the fate of their loved ones. 10 of them described the sums that were paid as big, and 15 families stated that the victim was the breadwinner for the entire family. While 4 families stated that the victim was involved in supporting the family, leaving lack of or low income. The loss of the breadwinner has severe impacts on the rights of family members. For example, the disappearance of the breadwinner has prevented the best opportunities for educating the children, and the disappearance of a potential breadwinner, especially the son who could have helped his parents in old age, impact the economic situation of the parents today. Also, according to the questionnaire, 11 of the victims had financial obligations (paying a loan - financial instalments, etc.) whose payment constituted an additional challenge for them.

Economic Challenges



Economic Challenges



The Syrian government uses the violations of the deprivation of liberty within a political and economic orientation by allowing the spread of corruption and extortion as a decision it has taken to amend its system in light of changing circumstances. The arbitrary nature with which the arrests are carried out and the huge numbers of detainees confirm their use by the government as an economic means to support its policies, as it enabled the security agencies members to get rich and ensured their loyalty without any financial burdens. The absence of the

legality of the detention and any fair trial guarantees, in addition to the frequent news of the death of detainees due to torture, push the families of the disappeared or the detained to pay large sums of money to obtain information about their loved ones, and they may even borrow or sell the house and others. While the widespread corruption in the security sector and judicial institutions such as the Anti-Terrorism Court and others appears to be an indication of the disintegration of the state, it is in fact a decision from the top of the pyramid to support the structures of the illegal economy, which has become a major source of income in light of the deteriorating economic conditions in the country.

This is what was confirmed by Amnesty International in its report on enforced disappearance in Syria in November 2015 that “the state is profiting from widespread and systematic enforced disappearances amounting to crimes against humanity” through “an insidious black market in which family members desperate to find out the fates of their disappeared relatives are ruthlessly exploited for cash”, and that “middlemen or brokers are paid bribes ranging from hundreds to tens of thousands of dollars, by family members desperate to find out the whereabouts of their loved ones or whether they are even still alive.”²⁴

The social challenges facing the families of the missing

In terms of relations with the environment and the social effects of the disappearance or arrest of a family member and then knowing his death through the Caesar photos, the reactions and the nature of receiving the news and dealing with the family varied according to the environment to which the victim belongs, the social environment and the forces controlling the area. In most of the areas and environments opposed to the government, an atmosphere of supportive societal acceptance and positive evaluation of the detainee's experience prevailed, considering it synonymous with struggle and victory for human values, while the death is described as martyrdom, which eased many life obstacles for the families of the martyrs through much-needed psychological and social support.

When the family learned of the death, the entire Moadamiya was under the control of the opposition, and everyone loved the victim and offered good condolences to the family. The family did hold funeral because it did not want to cut off hope. The honourable and honest people recognize that our family is a symbol of sacrifice and steadfastness in this revolution, and this alone is enough to help the family be that patient. Many people are appreciative of this sacrifice. Some of our distant cousins who hate the family because of their attitudes on the pretext that they were hurt, these people Gloat over such news.

From the testimony of J. M.

²⁴ Syria: State profits from crimes against humanity as policy of enforced disappearances drives black market, 5 November 2015, Amnesty International <https://www.amnesty.org/en/latest/news/2015/11/syria-state-profits-from-crimes-against-humanity-as-policy-of-enforced-disappearances-drives-black-market/>

The family was residing in Derek al-Deir camp. When the news arrived, the people of the camp set up a mourning tent, and accepted condolences. After that, my father went to Mohassan, which was under the control of the organization [ISIS-Islamic State of Iraq and the Levant], and they found the same feelings. I heard statements such as (God willing, you are faithful people who have given a lot for the sake of Syria in a tone of solidarity and pride, while the tone of pity is somewhat harmful, and it rarely happened to me. As for the relatives, but those residing in Damascus, we did not receive any reactions or condolences from them, and we were told by those who left later that what prevented them was fear.

Yasmine's testimony

Some families, although they are in opposition and supportive environments, did not receive any form of social support or sympathy and condolences due to the situation in some besieged areas that are subjected to continuous bombardment, and some of their people are killed daily. This turned shifted focus from the issue of detainees and the disappeared, which has become marginal in a society that struggles to survive daily.

As for the families that remained in the areas of full government control, namely in the city of Damascus in particular, their members were subjected to social stigmatization, regardless of the support of the extended family or the close social circle. Forms of stigma appeared in schools and in the workplace, which prompted some participants to remain completely silent about the disappearance of their loved ones in the beginning, for fear of social stigma, which they could not avoid when revealing the identity of the victim through photos, which the authorities resort to as a means of social control. Society's stigmatization of opponents in Syria was enough to sow fear and prevent many from expressing their opinions since the sixties of the last century. The Baath [Party] and then the family's seizure of power. The forms of stigmatization ranged from accusations of retrogression, then being agents for the Iraqi Baath, and Israel, and then accusations of extremism and the [Islamic] Brotherhood, agents for Western embassies, and finally the accusation of terrorism or stigmatizing the opposition with religious extremism and terrorism.

The social stigmatization is the most prominent social punishment applied by society against its members. But, in countries ruled by authoritarian regimes for decades, social stigmatization turns into a punishment applied by the authority that determines the value system that governs society. That is, it defines the morals of a society, and what its members should follow or avoid. The crisis of stigmatization does not only lie in its ability to implant isolation and anxiety in the heart of the stigmatized. It charts the behaviour of those stigmatized and may make them behave as the stigmatizing society expects them to do. Stigma includes threats, aversion, disregard for and stereotyping of others. The stigmatiser resorts to this behaviour to enhance self-esteem, enhance control, and relieve anxiety, as

comparing oneself with others who are less fortunate or on the weaker side of the equation increasing the individual's sense of superiority, and thus enhances the person's self-esteem and confirms the correctness of their choices.²⁵ That is evident in the pro-government environments that link their loyalty to the values of patriotism against the treachery of opponents. In doing so, they are not only satisfied with justifying abuses of authority, but rather goes beyond to blame the victim.

The events covered by this report belong in most of the period after 2013, that is, at the stage when signs of societal turmoil began to appear clearly in the Syrian society, which has turned into a turbulent and anxious society in which the level of violence and aggression rose, and the normalization with the culture of death is fuelled by scenes of death and abuse spread in social media and news reports. In an aggressive political and social context, the vertical division in society reached in its fullest form. Therefore, some families whose representatives participated in the questionnaire faced a completely hostile environment, whereby political affiliation took precedence over any previous relationships and ties such as neighbourhood or friendship.

When the photo was circulated among the relatives, there was sympathy. But because our house was in an area inhabited by mostly pro-regime officers, because my father was a retired officer, and despite the presence of friendship for more than 15 years, none spoke to my family and no one came to console them. None offered even words of condolence. On the contrary, they avoided the family, and even stopped replying greetings. This increased my family's psychological suffering. My father, who had also lost his brother in detention, and a several of his family members could not bear the psychological pressure and began to speak and express his annoyance, which made the intelligence agencies come to ask about him. My mother asked the guard of the building that when someone comes to ask about my father to tell them that he was crazy and lost his mind because of his son's death. The neighbours became very bad. Personally, I received condolences from those close to me and there was sympathy, but from my friends inside Syria I did not receive any consolation because of their fear of the regime, and even most of them, after I posted my brother's photos on Facebook, unfriended and blocked me.

From the testimony of H. B.

In general, the fear of the security forces and the consequences of showing any sympathy or support for the families of the victims remained the main element controlling the society's behaviour towards them. 55 thousand photos of at least 6786 detainees killed under torture, and all the cruelty that the photos show of mutilated bodies and the numbers they bear that showed unsuspecting presumption of what is happening in the basements of the security services, and the absolute international inability to hold anyone accountable, contributed to the intimidation of those remaining in Syria. They are convinced that there is no

25 Dr. Ezz El-Jon Boudgha, 'Social Stigma and its repercussions on the prisoner's family', University of Oum El Bouaghi, Journal of Human Sciences, 2020 Vol. 7 Issue 3, p. 660.

one to protect them from the tyranny of the authority, whatever their political affiliation and convictions were. Some members of the extended family had exaggerated reactions that are strange to Syrian society, including the culture of respect for death and the absolute prohibition of gloating about it, because they felt that begin a relative of the victim might put them in danger, and perhaps accountability or suspicion. Therefore, their reactions were under the weight of disavowal, avoiding the evil of suspicion, accountability, investigation and arbitrary arrest. Especially, since the Syrian memory retains cases of collective punishment, in the eighties of the last century, and the exclusion of people from work or from a certain privilege simply because one of their relatives is a political prisoner or a prisoner of opinion. These are the cases that pushed some families in the eighties to announce their repudiation of one of their sons in an effort to protect the rest.

A. Gh., a victim's wife, who was distinguished by her composure, ability to handle matters and accepting all the challenges she faced, tells us about her experience:

A word I will never forget was from the son of my husband's brother. I talked about my husband everywhere, and I published his photo in Facebook. He said to his aunt, denouncing me: "My uncle's wife caused us headache talking about her husband, as if she is only whose husband was taken!" For me, yes, no one was taken but my husband, for me he is the whole world. This word hurt me even though it came from a young man. My children still do not communicate with him even though they were friends before.

All of us as a family participated in the revolution. The rest of the family who did not participate in the revolution no longer communicates with us, even before the incident of my brother's photo in 2013. Our city was divided and the front line turned areas for loyalists and other areas for revolutionaries. The neutral person was in contact with my mother only as a relative without even asking about us, as her children, because we are activists. When we got the news of my brother's martyrdom, we were in Turkey and we held a funeral. Those who continued to communicate with us were supportive and sympathetic, while the others were indirectly negative. Those in contact with us told us what the people who are still inside Syria said. Phrases such as: "they deserve what happened to them. They are the ones who did it to themselves. His father killed him. They killed him. His father should be blamed. If he did not do what he did, this would not have happened." There are also sympathizers, but they say nothing.

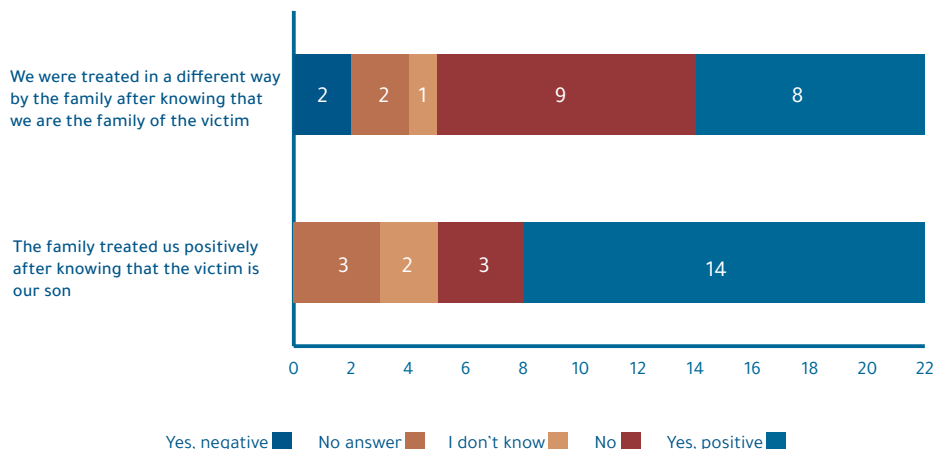
From the testimony of N.

Some of the relatives who are still in Syria offered their condolences through Facebook briefly. Also, those residing in Europe sent their condolences, but the next day they continued their normal lives. Some of those in Syria were afraid to send even condolences. Rather, it we heard that they consider my brother a terrorist. Despite our relationship with them is very strong, I heard from them that my brother is one of the terrorists and that the government is cleansing the country from them.

From the testimony of F.D.

The absence and limitation of social support complicated the suffering, diaspora and sense of redress of the victim's family. The shock of disappearance and its repercussions and the need to deal with the new conditions of the family and its relations with the environment and its position in it affect the structure and function of the family, whose roles include helping its members acquire social skills and effective participation in society. Or what is known as the process of social bringing up, in which the father plays a central role and constitutes in our societies the controlling authority, whose sudden absence affects the young children. Especially since the rest of the family members, for reasons related to the general culture, are not qualified to share the responsibilities that usually belong to the father, and which the mother is unable to carry out. His absence leaves the roles and responsibilities of family members unclear. This will be reflected on the relationships within the family itself, and on the relationships of its members with the environment. Disappearance denies the disappeared person's legal status. It also denies the status or familial status of the wife, who if she does not resort to the option of divorce due to absence, her status remains ambiguous between the wife or the widow. The matter is surrounded by a cycle of lack of understanding of this special situation, and even rejection by society and sometimes harassment. This leads some of the victims' wives to a state of isolation from society, so that their world is gradually reduced to searching for the missing husband, and the daily struggle to meet the needs of their children.

Extended family's behaviour towards the victim's family



CHAPTER II: A GENERAL LEGAL FRAMEWORK ON THE MISSING AND THE DEAD

The missing persons and the dead in international law

International Committee of the Red Cross-ICRC defines missing persons as “those whose whereabouts are unknown to their families and/or who, on the basis of reliable information, have been reported missing in connection with an international or non-international armed conflict, a situation of internal violence or disturbances or any other situation that may require the intervention of a neutral and independent intermediary.” The status of “missing person” is conditioned by:

- Absent from his family and home, in circumstances where the risk of death usually increases, as a result of armed conflict or internal violence or disturbances, natural disasters, displacement or forcible displacement, and state violence.
- Loss of contact between this person and their family members.
- Law does not require a period of time for a person to be considered missing. Rather, it is linked to uncertainty in his family, and their fate becomes unknown and their life or death is not known on the basis of reliable information.

Circumstances resulting in missing persons are varied and include:

- The death of some members of the parties to the conflict in military operations, whose identities are unknown.

- Attacks and mass killings that may lead to severe mutilation of the victims' bodies, which are left among the rubble or buried in mass graves without verifying their identities or notifying their relatives of their deaths.
- Asylum seekers who try to cross to a country and lose contact with their families without news of them afterwards.
- Natural disasters or organized crime.
- Enforced disappearance, extrajudicial execution, and other human rights violations.

The absolute majority of missing persons in Syria fall under the category of human rights violations, for which the Syrian government bears primarily responsibility for their fate. It is not possible to confirm their exact numbers. The government deny the accusations, and adopt pressing charges as the only response to inquiries, appeals and any action regarding the disappeared. It also prevents or restrict the access of international bodies to detention centers. The state structures are collapsed, and repeatedly arrest and release the same prisoners over and over again. All this make it difficult for documentation groups to verify the location and number of detainees in a given period of time and make it impossible to conclude accurate estimates for the number of missing persons. What is certain, however, is that tens of thousands or hundreds of thousands of Syrian men, women and children have been victims of enforced disappearance since 2011.

Some argue that the victims whose photos appeared in Caesar photos cannot be counted as missing, and specifically whose identities have been identified, because the family knew their fate. An opinion that is contradicted by the nature of the right to know the truth, which assumes complete knowledge regarding the enforced disappearance, the backgrounds and circumstances surrounding it, who participated in it, as well as its causes, in a way that ends the uncertainty experienced by families. The families did not know the full truth by simply identifying their loved ones in the photos. It is necessary to formally acknowledge and hand over the remains. Burial ceremonies in accordance with the followed religious and social principles must be conducted, and any legal obstacles caused by the uncertainty on family members must be removed.

The rights of victims' families cannot be reduced to knowing the life or death of their loved ones. Their full rights include the right to redress, the right to justice, and the right to reparation, which collectively constitute the series of rights that make up the path to recovery from the violation, where the right to redress effectively gives victims the ability to defend themselves against violations. The right to know the truth binds the state to investigate human rights violations and reveal the truth to the public. As for the right to justice, it involves a prompt and effective remedy against human rights violations, and the obligation of states to combat impunity and bring perpetrators to justice. The right to reparation guarantees the right to compensation, and restitution if possible, rehabilitation, satisfaction, and guarantees of non-repetition.

The loss resulting from human rights violations involves a violation of several basic human rights, foremost among which is the right to life. Article 3 of the Universal Declaration of Human Rights, and Article 6 of the International Covenant on Civil and Political Rights state that Every human being has the inherent right to life, this right shall be protected by law and that no one shall be arbitrarily deprived of his life. "In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court." Article 30 of the Universal Declaration of Human Rights prohibits any "State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein". It constitutes a flagrant violation of the human rights and fundamental freedoms contained in the Declaration, and the perpetrators must then be prosecuted and held accountable for what they have committed. The International Covenant on Civil and Political Rights has criminalized acts of arbitrary deprivation of life and liberty, torture, cruel or degrading punishment, and inhuman or degrading treatment. It also violates the right to liberty and security of person in Article 9 of the International Covenant on Civil and Political Rights, and the right to a fair trial, which also includes not being subjected to arbitrary arrest or detention in any form, under any circumstances.

Protections of the missing and the dead in international law

The main responsibility lies with the state authorities, to address cases of disappearance and investigate the fate of missing persons. Compliance with international humanitarian law and international human rights law is vital to prevent disappearances, which take place due to violation of international humanitarian law and international human rights law, and lack of respect for the principles of international law which guarantees respect for the safety and dignity of all human beings, including the dead, prisoners and the missing. In armed conflicts, the rules of international humanitarian law contain provisions to help ensure that no person shall be missing. There are two obligations for states in this regard: one of them is of a positive nature, which is the search for missing persons and the disclosure of their fate. The other is to prevent the loss of persons in the context of armed conflicts and security disturbances. It is a commitment of a negative nature to refrain from violations related to the loss of persons, such as enforced disappearances and extrajudicial executions, and of a positive nature by prohibiting these practices and holding accountable and punishing their perpetrators.

The four Geneva Conventions, their two annexes, and customary international humanitarian law contains provisions to respect and protect the dead during international and non-international armed conflicts. Geneva Conventions require the treatment of the dead in a respectful manner, as well as the respect and

maintenance of graves. The Geneva Conventions specify that “the dead must be buried, if possible, according to the rites of the religion to which they belonged and that they may only be cremated in exceptional circumstances, namely because of imperative reasons of hygiene, on account of the religion of the deceased or in accordance with the express wish of the deceased. The Geneva Conventions furthermore require that, in principle, burial should be in individual graves. Collective graves may only be used when circumstances do not permit the use of individual graves or, in case of burial of prisoners of war or civilian internees, because unavoidable circumstances require the use of collective graves”. Additional Protocol I stipulates that the parties must reach agreements to protect and preserve gravesites permanently. Additional Protocol II stipulates the duty to treat the dead in a respectful manner in non-international armed conflicts. It can be said that this rule reflects a general principle of law requiring respect for the dead and their graves.

International humanitarian law imposes an obligation on the parties to the conflict at all times, and after engaging in fighting in particular, to take all possible measures to search, identify and evacuate the dead without unfair discrimination. The agreements establish an obligation on the parties to any dispute to record all data that helps verify the identity of the wounded, sick and dead in their possession. This data includes: the name of the country to which they belong, their personal number or number in the army and squad, first name and surname, date of birth, date and place of capture or death, available information about injuries, illness, or causes of death, and any other information recorded in an investigation card or plate identity. Article 16 of the First Geneva Convention ²⁶ stipulates an obligation to pay due respect to the corpses of persons who died as a result of military actions, belligerent occupation, or during detention. The bodies must be thoroughly examined with a view to ascertaining the state of death, the identity of the deceased verified, each dead person buried in cemeteries that can be inferred later, the establishment of an official cemetery services department to record the data of the dead buried there, and to facilitate the transportation of the bodies to their countries of origin.

Violations related to the missing persons

Enforced Disappearance. The International Convention for the Protection of All Persons from Enforced Disappearance define Enforced Disappearance as: “is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.” The United Nations Declaration on Enforced Disappearance states that,

²⁶ Updated Commentary on the Geneva Conventions of August 12 1949. Volume I

ref. 4268.03. Art. 3 para. 639, <https://shop.icrc.org/commentaires-mis-a-jour-des-conventions-de-geneve-du-12-aout-1949-tome-i.html>

in addition to violating the basic rights of the victim, the crime of disappearance extends to the economic, social and cultural rights of the disappeared and their family members. According to Article 24 of the International Convention for the Protection of All Persons Victims of enforced disappearance “victim means the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance”, including the families.

Disappearance is based on two basic elements: not knowing the place of the disappearance and the identity of the perpetrator of the crime of disappearance. Forced disappearance remains even if the identity of its perpetrator is known as long as the disappearance location is unknown. The crime of enforced disappearance happens whether committed by a person or an armed group, or one of the agents or client workers for the State or one of its affiliate entities or forces that alter the state. The International Convention for the Protection of All Persons obliged States to investigate those responsible for forced disappearances, prosecute or extradite them, including cases committed by persons or groups acting “with the authorization, support or acquiescence of the State.”

Unlike forced disappearance, whose all its components are committed out of law and full negligence of the law requirements, arbitrary detention is often practiced under the law, with breach of some or all its requirements, as a violation of constitution and laws in Syria. Arrest is arbitrary when there is no legal justification for deprivation of freedom. Absence of justification here may precede the arrest or follow it if the person stays under arrest even after the end of the sentence. The deprivation of liberty is arbitrary when applied by authorities as part of punishing the victim for practicing rights or freedoms recognized worldwide as the right to freedom of opinion, peaceful expression and assembly. Arrest is also arbitrary when the authorities violate the formal procedure requirement for arrest, such as for the authority conducting the arrest, and legal periods. Arbitrary detention also includes judicial judgments issued by exceptional courts, as Anti-Terrorism Court, the Military Court and others. Arbitrarily detention include all deprivation of liberty which is not fully or partially respectful to the right to a fair trial under the Universal Declaration of Human Rights and other international instruments.

Arbitrary detention is defined as “deprivation of liberty of a person outside of the confines of nationally recognized laws or international standards”, or detention for no legitimate reason or without legal process, according to Amnesty International. According to the United Nations Working Group on Arbitrary Detention “cases of deprivation of liberty are arbitrary under customary international law in cases when it is clearly impossible to invoke any legal basis justifying the deprivation of liberty; or the deprivation of liberty results from the exercise of the rights or freedoms” guaranteed in human rights agreements. It includes violations of Art. 9 of the Universal Declaration of Human Rights, Article 9 of the International Covenant on Civil and Political Rights and Rules Freedom, Customary rule No. 99 that prohibits arbitrary deprivation of liberty, and No. 100 of right to a fair trial and 102 on individual criminal responsibility, and the provisions of the Fourth Geneva Convention.

Torture: Arbitrary detention and forced disappearance are often associated with torture. Torture is defined as “the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions.”²⁷ The United Nations Convention against Torture define torture in its article 1 as:

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

Extrajudicial, summary or arbitrary executions mean the killing committed by state authorities or de facto forces outside of any legal framework. By summary, it means the immediate deprivation of life under a penalty imposed by a summary trial that does not meet the requirements of a fair trial. Arbitrary execution is killing by order of the government, or with complicity with it, or leniency or submission to it without judicial or legal procedures. The United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions defines extrajudicial execution as “intentional, premeditated and deliberate use of lethal force, by States or their agents acting under colour of law, or by an organized armed group in armed conflict, against a specific individual who is not in the physical custody of the perpetrator.”

The absolute prohibition of extrajudicial executions should not be violated by governments under a state of war or threat of war, internal political instability or any other public emergency may not be invoked as a justification of such executions. Such executions shall not be carried out under any circumstances including, but not limited to, situations of internal armed conflict, excessive or illegal use of force by a public official or other person acting in an official capacity or by a person acting at the instigation, or with the consent or acquiescence of such person, and situations in which deaths occur in custody. The Human Rights Committee commented on article 6 of the International Covenant on Civil and Political Rights, on the right to life, stressing that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces, and that the deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities.

²⁷ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984, art. 1, para.1)

Death Lists

The Syrian government does not only apply arbitrary detention and enforced disappearance as a systematic policy to suppress opposition voices and intimidate their social environment, and restore the wall of fear that it has built for decades. Detention policies are at the center of its military and operational policy on the ground, where the detainees' file and the economic blockade constituted the government's most important means of putting pressure on the popular incubator, and the armed opposition as well. The first clauses in the reconciliations agreements held by the government or its Russian ally throughout Syria was the release of detainees from those areas and the disclosure of the fate of the missing, and the government did not commit to any of them, but very few detainees, and ignored the lists which was prepared by local negotiating committees or armed opposition factions. The release of detainees carried out by the government does not mean granting the detainee his freedom or ending his deprivation of freedom, but rather it is often a replacement for the deprivation of freedom with a restricted freedom through the deportation of the released to opposition-controlled areas and preventing them from returning to their cities and towns.

The government also invests in detainees to exchange them with Syrian officers arrested by various armed opposition groups, especially those who are with high ranking in the armed forces or those who have family and regional backgrounds that raise their importance to the government, through local deals limited to specific names and cases, as part of prisoner exchanges that benefit the regime militarily, and support its narrative that the civilian detainees were participants in the battles.

As part of the Syrian government's insistence on the approach of impunity, in early 2018, under Russian auspices, it began releasing lists of detainees²⁸ who were killed by execution sentences in summary trials or as a direct result of torture and conditions of detention. The government referred death documents to the Civil Registry or summoned families to military hospitals, with the aim of evading the crime, so that the lists of deaths cover a significant proportion of the numbers of detainees or those who have disappeared, and suggest that the government is cooperating in revealing their fate, to change the legal nature of the file and remove it from the priority list in any final resolution or settlement. In early July 2018, security agencies instructed to send lists of the names of the forcibly disappeared, who were killed under torture and in the absence of health care, or who were executed outside the law, to civil registry centers in Damascus countryside, Damascus, Aleppo, Hama, Latakia and Hasaka.²⁹ The biggest list contained 1,000 names³⁰ from Darayya city in the countryside of Damascus, in addition to a list

28 Death Notifications in the Syrian Arab Republic, <https://reliefweb.int/report/syrian-arab-republic/death-notifications-syrian-arab-republic-en-ar>

29 The Syrian Regime Records Forcibly Disappeared Persons as Dead in Civil Registration Offices, Syrian Network for Human Rights, <https://sn4hr.org/blog/2018/07/13/52450/>

30 "Washington refuses to participate in "Astana 10" and the opposition complains about attempts to close the detainees' file The Syrian Observatory For Human Rights", Syrian Observatory for Human Rights.

of Moadamiya al-Sham, which included 45 names.³¹ A list of 17 names³² was also handed over to the Palestinian refugee camp in Hama governorate through notifications through the camp's mayor. The delivery of several death certificates was recorded separately in separate areas in Damascus, as is the case in each of Dummar project, Barzeh, Qaboun and Yarmouk camp.

These lists were issued by the Public Relations Office, under the Ministry of the Interior. As in the list of those killed in the city of Moadamiyat al-Sham, or through the security branches of the General Intelligence Service, which in turn sends copies to the main Civil Registry offices in the governorates, which are required to send information to the sub-offices in villages and towns. The offices in some areas hang the lists they receive on the bulletin board within the offices. The families of the dead were asked to visit them to complete the death certificate. In other cases, the security services communicated with the families in order to inform them of the need to visit Civil Registry offices to issue a death statement for their relatives. The causes of death included in the lists varied between health symptoms, such as "cardiac arrest," or "death from communicable and infectious diseases," accompanied by a death certificate from military hospitals, especially Tishreen Hospital, Harasta Military Hospital, and Military Hospital 601. Some cases included that the death was "based on the decision of the First and Second Field Courts", among those who were previously executed according to the rulings of the field courts.

On 4 November 2020, the Syrian authorities handed over a several bodies of detainees who had died, in the intelligence branches, while previously they only informed the victim's family of his death and giving them a death certificate without indicating the real cause of death.³³ After the Caesar photos were published and Caesar law entered into force, it started handing over the bodies of some of those who died due to torture to their families, with forcing them to bury the body without presenting it to a doctor to indicate the cause of death. As for the largest proportion of the victims' bodies, they are not handed over to the families. Rather, the government works to bury them in mass graves across the country. It also sometimes resorts to getting rid of the bodies of victims in detention centers or the bodies of victims of ground attacks it carries out by burning them. This was documented by many recordings and rights groups and media reports, since 2012,³⁴ to completely conceal the identity of the body and the injuries it bears, so

31 The Syrian Regime Records Forcibly Disappeared Persons as Dead in Civil Registration Offices, Syrian Network for Human Rights, <https://sn4hr.org/blog/2018/07/13/52450/>.

32 "Do not forgot the Detainees", Violations Documentation Center in Syria, <https://scm.bz/en/en-studies/dont-for-got-the-detainees-en>.

33 Violations Documentation Center in Syria: A special report that monitors the most prominent events related to the detainees during the second half of 2020.

34 Executions by burning: A Practice By Syrian Government Forces, Syrian Network for Human Rights, <https://sn4hr.org/blog/2015/02/18/executions-burning/>. Syrian regime burns bodies in a crematorium to hide proof of mass killing, Enab Baladi, <https://english.enabbaladi.net/archives/2021/09/syrian-regime-burns-bodies-in-a-crematorium-to-hide-proof-of-mass-killing/>. Dancing and singing over the heads of the victims. How did the Syrian regime forces burn and abuse the bodies of the Syrian detainees? Aljazeera.net, <https://www.aljazeera.net/programs/aja-interactive/2021/8/12/%D8%B1%D9%82%D8%B5-%D9%88%D8%BA%D9%86%D8%A7%D8%A1-%D8%B9%D9%84%D9%89-%D8%B1%D8%A4%D9%88%D8%B3-%D8%A7%D9%84%D8%B6%D8%AD%D8%A7%D9%8A%D8%A7-%D9%83%D9%8A%D9%81-%D8%AD%D8%B1%D9%82%D8%AA>.

that identification becomes impossible except with the presence of high-tech and accurate laboratories by examining the DNA of the body.

In May 2017, the US State Department announced ³⁵ that it had seen evidence indicating the Syrian government's intention to burn the bodies of detainees in "Sednaya" prison, in which fifty detainees ³⁶ were subject to extrajudicial executions every day, and that some bodies are being disposed of in crematoriums. Satellite images taken between 2013 and 2017, of what it said is a building located within the prison complex, being modified to house a crematorium. This was confirmed by human rights and intelligence reports on the prison as well. Apart from the impossibility of accountability, given that the authority executing violations is the same authority that is supposed to initiate a public right lawsuit and hold the perpetrators accountable for the overlap between the executive and judicial authorities in Syria, the penalties for this offense are meager and non-deterrent. Article 468 of the Penal Code stipulates a punishment with imprisonment and a fine for those who bury a dead person, or burn a body without due process of law, or who violate in any way the laws and regulations related to burial or cremation. If the act occurred with the intention of concealing death or birth, the penalty shall be from two months to two years, and a fine for those who bury the dead or cremate a dead body without observing the legal procedures or violating in any way the laws and regulations related to burial or cremation. If the act occurred with the intention of concealing death or birth, the penalty shall be from two months to two years. If the act occurred with the intention of concealing death or birth, the penalty shall be two months to two years in prison.

Mass Graves

Mass graves have spread in Syria since the eighties of the last century, such as mass graves at the foot of Jabal Awaimer near Palmyra in 1980, ³⁷ and the cemeteries of the villages of Srihin and Buraq in Hama countryside in 1982. ³⁸ The number of mass graves doubled after 2011 to get rid of the bodies of victims in prisons at the lowest financial and moral costs, as well to conceal the crime. The Syrian government, as we have seen, has moved the bodies from military hospitals by trucks followed by bulldozers to bury them out in of-sight -areas. A mass grave is a burial site containing remains of two or more victims of extrajudicial, summary or arbitrary executions,¹⁹ and/or is a potential repository of evidence of mass killings of civilians and prisoners of wars during of an armed conflict. According to the Special Rapporteur on extrajudicial, summary or arbitrary executions: "a mass grave is a site or defined area containing a multitude (more than one) of

Executions by burning, The Euro-Mediterranean Human Rights Monitor, <https://euromedmonitor.org/en/article/731/In-attempt-to-cover-its-crimes-Syrian-regime-burns-its-victims-more-than-700-bodies-discovered-to-date>

35 U.S. says Syria built crematorium to handle mass prisoner killings, 15 May 2017, the Washington Post.

36 Assad's murder machine: Syria has executed thousands of prisoners - mostly civilians opposed to the government - and burned the dead bodies in a giant crematorium, US administration claims, 15 May 2017, Mail Online.

37 A special booklet within the "Jordanian Documents" series - details of the Syrian sectarian regime's conspiracy to attack the life of Mr. Mudar Badran, Prime Minister of Jordan, Ministry of Information - Department of Press and Publication - Amman - Jordan, February 25, 1981 (two members of the group charged with the assassination participated in the Palmyra massacre Previously, Jordan TV broadcast their confessions.

38 Shabiha in Syria (a glimpse), <https://syrianfreedom.wordpress.com/2011/04/20/>

buried, submerged or surface scattered human remains, where the circumstances surrounding the death and/or the body disposal method warrant an investigation as to their lawfulness.” “What distinguishes mass graves from other mass burial sites are violations of “last rights” and of last rites including suppression or even annihilation of individual, cultural or religious identity in death.” A distinguishing factor is the treatment of bodies in and after death: the manner of handling of remains including whether and how the remains are concealed.³⁹

Mass graves in Damascus Countryside Governorate

In addition to cemeteries near the military airport of Ad Dumayr and near the headquarters of the Fourth Division in the capital, Damascus, located between Mount Qasioun and the city of Qudsaya, VDC-Violations Documentation Center in Syria obtained many testimonies confirming that two suspected sites were monitored as places to bury the bodies of the victims. According to a previous report issued by VDC in cooperation with Human Rights Watch, VDC researchers conducted a detailed investigation of the sites where the victims of detention are suspected of burial. Relying on many testimonies and accounts of former detainees, the first cemetery is in Najha area in Damascus countryside, which was confirmed by the testimony of a defected officer. As for the second site, it is the cemetery in the Al-Hussainiya area, which is called the Southern City Cemetery, or Al-Bahdalia cemetery, which, several months after the beginning of the protests, became a completely closed military area and entry to it was prohibited. It is the same area that one of the witnesses from the area reported that field executions were carried out on it.

Najha Cemetery, Damascus Countryside

The mass grave is located in Najha,⁴⁰ a Syrian village that is administratively in Damascus Countryside Governorate, Babila district, specifically at the site of the Cemetery of the Martyrs of the Syrian Front in the War of October 6, 1973. Confirming the existence of mass graves was almost impossible at first, but after reviewing the nature of the burial places and the shape of the burial pits, and after the people of the area confirmed that during each burial process, bulldozers were brought, and then followed by the arrival of “refrigerator” trucks similar to those used in transporting fruits and vegetables during separate intervals. Many eyewitnesses - former detainees or who have extensive knowledge of the matter, especially from activists in the area, confirmed that on 9 September 2011 a cemetery was discovered in the same place and the number of bodies found was about 40. This information intersected with what the families of some detainees in Branch 215 obtained in exchange for bribes, in addition to several satellite images that proved the existence of the cemeteries.

39 Extrajudicial, summary or arbitrary executions, Note by the Secretary-General, 12 October 2020, https://www.ohchr.org/Documents/Issues/Executions/A_75_384_AdvanceUneditedVersion.pdf

40 Violations Documentation Centre in Syria - 2013, A Report on Branch 215, Raid Brigade Military Intelligence Division - Damascus: “A Conflict Between Death and Hope”, VDC, <https://www.vdc-sy.info/index.php/en/reports/1380463510#>. YfzhPerMK3B .

Southern City Cemetery, al-Bahdaliyah Cemetery, Damascus Countryside ⁴¹

It is located a few kilometres north of the Martyrs Cemetery in Binha, on the outskirts of the Husseinia area, and unlike the cemetery of Najha, the mass grave is at a sufficient distance from the regular cemeteries in the area, which made it easy to confirm the presence of the cemetery by looking at the satellite images. The behaviour of the government forces confirmed the presence of a mass grave, when it closed the area and placed it under strict security guard, which aroused the suspicion of the people of the area. Several of whom reported that at the end of September and the beginning of October 2012, specifically in the afternoon period, two “refrigerator” trucks entered the cemetery, and hundreds of bodies were buried. Locals witnessed the incident from afar, because the government forces had completely prevented approaching the cemetery, closed all roads leading to and from it, and set up military checkpoints, followed by the entry of the two trucks loaded with hundreds of bodies.



A satellite image of the mass grave in al-Bahdaliyah

⁴¹ Ibid.

CHAPTER III. ACCESS TO JUSTICE

I. International Efforts for the Missing Persons

On 22 August 2011, the United Nations Human Rights Council issued a resolution establishing the Independent International Commission of Inquiry on the Syrian Arab Republic (Syria-COI). It was entrusted with the investigation of all alleged human rights violations since March 2011. Since then, the Commission has produced several reports, relying primarily on first-hand, and communicating with victims and witnesses, in addition to medical reports, photographs, government and civil society organizations reports. In its reports, COI accused the Syrian government primarily and the armed groups secondarily of practicing enforced disappearance as a means of intimidation, and demanded more than once to stop these practices and reveal the fate of the missing persons. COI considered that enforced disappearance is one of the biggest agonies facing Syrians, and that hundreds of thousands of Syrians wake up each morning, worrying about the fate and whereabouts of missing loved ones.

Paulo Pinheiro, Chair of the Independent International Commission of Inquiry on the Syrian Arab Republic, called for the establishment of genuine, robust, sustainable and accessible mechanisms in order to locate missing persons, facilitate family reunion or the return of the remains to families. There is no doubt The centrepiece of these mechanisms must be the right of victims and their participation, and that “States must investigate all cases of enforced disappearance, address the systemic failures that allow these violations to be committed and prosecute those responsible, also with a view to preventing these abuses from re-occurring.”⁴²

The COI affirmed that “Widespread enforced disappearance was deliberately perpetrated by government security forces throughout the decade on a massive scale, to spread fear, stifle dissent and as punishment, and Tens of thousands of men, women, boys and girls taken into government custody remain forcibly disappeared.”⁴³

Since 2011 and during the subsequent years with their agreements on the missing, no progress has been made, with a complete inability by states and international organizations working in this regard, especially the International Committee of the Red Cross and the International Committee for Missing Persons, to gain access to the Syrian government prisons and detention centres.

In June 2012, Geneva I called for the cessation of violence in Syria, the release of detainees, the guarantee of the right to demonstrate and expression for Syrians, and the transition of the country to a transitional phase leading to free and pluralistic elections.

⁴² Establishing a Mechanism on the Missing in Syria is a Priority, Commission of Inquiry on the Syrian Arab Republic Tells Human Rights Council, 6 July 2021, United Nations Human Rights Council. <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=27276&LangID=E>

⁴³ The United Nations calls for justice for the tens of thousands missing in the Syrian conflict, 13 July 2021, Euronews, <https://arabic.euronews.com/2021/07/13/un-calls-for-justice-for-the-tens-of-thousands-missing-in-the-syrian-conflict>

Security Council Resolution 2139 (2014) condemned the arbitrary detention and torture of civilians in Syria, notably in prisons and detention facilities, as well as the kidnappings, abductions and forced disappearances, and demands the immediate end of these practices and the release of all arbitrarily detained persons.

Resolution 2254 (2015) demanded the release of all arbitrary detainees, especially women and children, and called on the International Syria Support Group to use their influence immediately to achieve these goals. The Resolution was linked to a series of relevant international resolutions, including Resolution 2018 (2013), and the Geneva I statement in 2012, and which demanded the release of detainees as humanitarian issue and non-negotiable.

The Riyadh statement in December 2015 called on the United Nations and the international community to force the Syrian government to implement measures confirming good intentions before starting the negotiating process, including ceasing death sentences against the Syrian opposition, and releasing captives and detainees.

In January 2017, the Astana Talks of Russia, Iran and Turkey, with the weak participation of the two sides of the Syrian conflict, and the UN envoy Staffan de Mistura constituted a setback for the missing and detainees in the legal sense, as the issue was stripped of its legal origins related to human rights violations and was linked to the military track. They agreed to form a joint working room for the so-called detainees, and it was reduced to an prisoners' exchange, in contravention of the legal nature of arbitrary detention of civilians, and confined it to the background of the armed conflict only.

During the sixth round in Geneva in May 2017, the Syria High Negotiations Committee announced its strategy not to legitimize the Astana Agreement or to contain it in Geneva, by calling for adherence to the 2254 sequence, and this requires returning the detainees issue to Geneva and not linking it to the military or political track. The Committee also highlighted the necessity of forming an international group on the issue of detainees under the supervision and management of the United Nations, in Geneva exclusively as a UN umbrella for international resolutions, and the necessity of the participation of relevant Syrian human rights organizations and the International Committee of the Red Cross.

Resolution 2474 (2019) was the first Security Council resolution addressing the missing in the conflict. The UN Security Council called on parties to the armed conflict to actively search for people reported missing and to facilitate the return of their remains. The Resolution confirmed the well-established principles of international treaty and international humanitarian law, which obligate states to ensure that people do not disappear, and the need to disclose the fate of the missing. In the context of the international interest in the issue of the missing, the UN Security Council held, about a month after the issuance of Resolution 2474, the first briefing on detainees and missing persons in Syria on 7 August 2019, in which families of victims spoke and demanded the intervention of the Security Council to

stop the ongoing suffering in Syria.⁴⁴

On 17 November 2021, the United Nations General Assembly issued a resolution calling “to conduct a study on how to bolster efforts, including through existing measures and mechanisms, to clarify the fate and whereabouts of missing people in the Syrian Arab Republic.” The resolution urged in points 63, 64 and 65 to conduct this study “in consultation with the Office of the United Nations High Commissioner for Human Rights and based on the recommendations of the Commission of Inquiry, with the full and meaningful participation of victims, survivors and their families.”

International Commission on Missing Persons

The International Commission on Missing Persons (ICMP) is specialized in searching for missing persons and determining their identities through expert teams of scientists, forensic doctors, detectives and others.

ICMP was created at a US initiative in 1996 at the G-7 Summit in Lyon, France. The Dayton Peace Agreement, which ended the fighting in the former Yugoslavia, was in its first year of implementation and ICMP’s initial mandate was to help account for the approximately 40,000 persons who were missing as a result of the fighting from 1991 to 1995. It later expanded its scope of work to work with governments, civil society organizations, justice institutions, and international organizations and with others around the world to address the issue of persons missing in conflict, contributing to the process of achieving justice and redress with a rules-based approach when investigating disappearances, as well as when providing evidence in criminal trials.

In 2001, the Committee contributed to forensic sciences with regard to bodies and was the first to use DNA to identify the identities of large numbers of people missing as a result of armed conflicts. On 15 December 2014, the Foreign Ministers of the Netherlands, the United Kingdom, Sweden, Belgium and Luxembourg signed a Treaty granting ICMP a new legal status. The Agreement constituted ICMP as a treaty-based international organization with its own system of governance and international capacities. ICMP established the largest database in the world to determine the identities of victims through DNA. ICMP has Online Inquiry Center (OIC) and Integrated Data Management System (iDMS) that manages all data related to finding missing persons. It also provides educational and training programs for a wide range of individuals, such as: government agencies, judges and prosecutors, non-governmental organizations, families of the missing, and forensic practitioners. According ICMP revealing the fate of people who went missing by violent means not only helps families of the missing to reach their loved ones knowing their fate, but also contributes to knowing the truth and establishing justice, which leads to reconciliation and the consolidation of peace.

In theory, ICMP work begins after conflicts end, but this is an early effort to search for detainees and missing persons in detention centers, prisons, and mass graves

⁴⁴ UNSC Resolution 2474 (2019) Adopted by the Security Council on 11 June 2019 [https://undocs.org/en/S/RES/2474\(2019\)](https://undocs.org/en/S/RES/2474(2019))

in Syria. By launching a program targeting the families of the missing among the approximately one million asylum seekers and Syrian refugees in Europe, to collect reference samples of the family's DNA, to investigate the fate of their relatives. The Committee maintains a central data bank that includes, so far, information from about 50,000 families of the missing. ICMP launched at the end of May 2020, with the support of Germany and Switzerland, a campaign on the missing in the Syrian conflict titled "Act in their Absence: Report Missing Persons", to encourage Syrian families who have lost their relatives as a result of the conflict to report missing persons to the ICMP's Online Inquiry Center (OIC) which enables families to report on their missing relatives and the circumstances of the disappearance.

International Committee of the Red Cross (ICRC)

A Swiss non-governmental organization ⁴⁵ whose work is of an international nature, has been organically linked to the codification and approval of treaties of international humanitarian law, and because it adheres to complete neutrality and impartiality, the warring parties usually allow the ICRC to carry out its tasks on their territory, foremost among which is the protection of victims of armed conflicts. The original and distinctive message of the work of ICRC lies in implementing the provisions and ensuring respect for international humanitarian law, especially the missing persons whose rights and the rights of relatives are stated by the four Geneva Conventions and the two protocols annexed, based on what can be considered a general principle contained in Article 32 of the First Protocol, which establishes the protection of the dead and missing during armed conflicts: " In the implementation of this Section, the activities of the High Contracting Parties, of the Parties to the conflict and of the international humanitarian organizations mentioned in the Conventions and in this Protocol shall be prompted mainly by the right of families to know the fate of their relatives."

Within its project "Restoring Family Links", ICRC works with National Red Cross and Red Crescent Societies around the world to try to find missing persons and restore contact between them and their families. According to ICRC, the first step and primary tool used to search for a missing person is to submit a search request form, and this form enables a family member (the applicant) to request a search for a relative with whom he has lost contact.

ICRC also seeks to conduct an ongoing dialogue with the competent authorities or armed groups and to send secret representatives to determine their whereabouts. Research may include visits to refugee camps, places of detention, hospitals, mortuaries and cemeteries. In cases of displacement, the ICRC continues its work in the field of searching for missing persons, restoring family ties, and assisting unaccompanied children, in cooperation with some international governmental and non-governmental organizations, particularly the International Organization for Migration and the United Nations High Commission for Refugees.

⁴⁵ About the International Committee of the Red Cross - ICRC, https://careers.icrc.org/content/About-the-ICRC/?locale=en_GB#:~:text=The%20International%20Committee%20of%20the,to%20provide%20them%20with%20assistance.

II. Mechanisms for access to justice

"We've got better evidence-- against Assad and his clique-- than we had against Milosevic in Yugoslavia, or we had in any of the war crimes tribunals in which I've involved in, some extent, even better than we had against the Nazis at Nuremberg, because the Nazis didn't actually take individual pictures of each of their victims with identifying information on them." ⁴⁶ Stephen Rapp, the Chair of Commission for International Justice and Accountability's Board of Commissioners to CBS News.

The Syrian conflict is one of the most documented conflicts and the most benefiting from scientific and communication progress for data preservation and documentation. The groups and organizations working on documenting violations have accumulated a number of evidence and testimonies about which Ambassador Stephen Rapp said that they are more than the evidence available in the Nuremberg trials. This means that the absence of effective accountability, the foundation for sustainable peace and respect for the rule of law, is not a result of weakness or lack of evidence, but rather because of the lack and weakness of the international will and the continued presence of criminals in power and their enjoyment of impunity.

As we have seen, in Caesar photographs alone, thousands of irrefutable evidences of crimes, gross violations of human rights, and wilful killing within the framework of a widespread and systematic policy against civilians, with the knowledge and orders of the leadership and tens of thousands of related continuous violations of the rights of the victims' families, are expanding into episodes. It is interconnected and extends to include the vast majority of Syrian society, which is considered a victim of enforced disappearance, whose number of victims, according to different sources, exceeds 100 thousand disappeared and disappeared within ten years, i.e. nearly 30 disappeared per day during the past ten years, under complete impunity of the perpetrators and without any accountability or an approach to accountability in the near term, for reasons that have become known to all. Despite the efforts of documentation, investigations, search for evidence and building files, which have been carried out for years by Syrian and international human rights organizations, including the International Mechanism for Syria and the Independent International Commission of Inquiry on the Syrian Arab Republic, the political balances and state interests have been able to protect the perpetrators in Syria until today, and have obstructed the possible paths of justice.

46 Former prosecutor: More evidence of war crimes against Syrian President Assad than there was against Nazis, 18 February 2021, CBC news, <https://www.cbcnews.com/news/bashar-al-assad-syria-60-minutes-2021-02-18/?ftag=CNM-00-10aab7d&linkId=111766952>

On 18 February 2021 CBS News broadcast and interview with the defector nicknamed Caesar said he risked his life and the lives of his family to show the whole world the true face of the Assad regime's dictatorship. In 2013, corpses overflowed into the morgues and filled a car garage inside a military hospital. The torture was evident on the bodies of the detainees, not for a day or two, but rather they were tortured for long months, as their bodies were emaciated and similar to skeletons, and they were subjected to various types of torture. Their eyes were electrocuted, which was evident from the dark spots on their bodies, and they were beaten with knives, cables, and belts.

US Caesar's Law was named after this officer.

Blocked mechanisms to access justice

The Syrian legal system

The national legal system should address accountability as it is the closest to the victims, perpetrators and crime scenes, and should work in parallel with the work of non-judicial mechanisms, including truth commissions and institutional reform programmes, as a basis for ending impunity and ensuring that violations are not repeated in the future. This option is not available for Syrians, where there is no possibility of recourse to the national legal system, which is currently fully affiliated with the executive authority responsible for the violations. In addition to adopting the legislative structure that legitimizes impunity and secures legal immunity for the perpetrators, and prevents their conviction even if the trial takes place. The Syrian legal system is a partner in crimes and violations, whose perpetrators are supposed to be prosecuted, as the ordinary and exceptional judiciary granted legal cover to the perpetrators for decades and contributed to completing the formal procedures. Therefore, any accountability or fact-finding process necessarily means reviews of trials that were held without the lowest generally accepted judicial standards, which would overthrow most of the criminal justice entities.

A. M testimony: There is no real representative of the opposition and the international community does not care about us. There is no one or party that can do anything or provide protection to anyone - if the regime falls, we will not be able to demand our rights - with that I go to the international judiciary. I hope that my voice and my story will be heard. There are people under danger, there are people who will die if this situation continues, and if Bashar al-Assad remains in power. These must be held accountable. In addition to the dead, the survivors also suffer, even in France I did not receive adequate and effective treatment, although my health injury is rare as a result of torture in prison, my situation. My health requires immediate and quick intervention, but I am included in the same routine procedures in European countries with a long waiting list, and I am not dealt with exceptionally or as an emergency. With my current health condition, I will not be able to live for more than 10 years."

International Tribunal for Syria

Since the beginning of the conflict in Syria,⁴⁷ there has been repeated talk about a special international court to try those responsible for violations. European countries and the United States have demanded its formation. Indeed, many proposals have been discussed, which have not been practically put in practice, including the bill submitted by members of the US Senate to establish a “court.” to prosecute the perpetrators of war crimes in Syria under the title “Syrian War Crimes Accountability Act of 2017”.⁴⁸ It includes the establishment of a “temporary criminal court, comprising local and foreign human rights defenders, judges and other experts, who will try people suspected of war crimes, crimes against humanity, or genocide.” The court also called on legal figures around the world, most notably Judge Carla del Ponte, who said in a speech before the Human Rights Council on September 18, 2017, that “Syria, immersed in war, cannot be left like this amid complete impunity.”

The International Special Court or Tribunal is also blocked for many considerations, including that it should be established either by a decision of the UN Security Council, which is blocked by Russian-Chinese veto, or one of them, or by an agreement between the concerned country and the United Nations to form a hybrid international-domestic special court such as the “Special Court for Sierra Leone”, the impossible option because the Syrian government is implicated in war crimes and crimes against humanity and will not accept accountability. In addition to the economic burden imposed by these courts, whose establishment requires allocating huge funds to cover the expenses of their establishment, drafting of their internal laws and jurisdiction, the conduct of trials and protection of witnesses, as well as the infrastructure. It consists of buildings, offices, specialized consultants and translators. Therefore, apart from political considerations, the Special Court does not seem an effective option, especially since the already existing International Criminal Court does not require this amount of funding.

International Criminal Court

The Commission of Inquiry on Syria of the Human Rights Council called on the UN Security Council to refer the Syrian case to the International Criminal Court, many times, as the United Nations Commission of Inquiry has concluded that the International Criminal Court is the most appropriate judicial mechanism to address the phenomenon of impunity in Syria. In practice the ICC does not have any authority to consider crimes committed in Syria, as Syria has not joined the Rome Statute, the statute of the court, which can exercise its jurisdiction only

47 Paul R. Williams, Jonathan Worboys, and J. Trevor Ulbrick, Preventing Mass Atrocity Crimes: The Responsibility to Protect and the Syria Crisis, 45 Case W. Res. J. Int'l L. 473 (2012) Available at: <https://scholarlycommons.law.case.edu/jil/vol45/iss1/13> . ESTABLISHING A SYRIAN WAR CRIMES TRIBUNAL?

113th Congress (2013-2014), 10/30/2013, <https://www.congress.gov/event/113th-congress/house-event/LC1038/text?5=1&r=35> . Elzayat, Omar. (2020). Establishing an International War Crime Tribunal for Syria.

48 US draft law to establish court for “war crimes in Syria”; 8 April 2017, Jordan News Agency, https://petra.gov.jo/Include/InnerPage.jsp?ID=2205697&lang=ar&name=archived_news

after the approval of the UN Security Council. This did not happen due to the use of Veto by the two permanent members of the Security Council, Russia and China blocking the referral to ICC. When the Caesar files were presented to the UN Security Council, including photographs of compelling evidence of specific crimes that amounted to war crimes falling within the jurisdiction of the Court, the countries supporting the Syrian government, led by Russia blocked considering these accusations. Also, given the scale and scope of the gross violations of human rights, and the absence of the rule of law for decades in Syria, the ICC alone would not have sufficed to hold perpetrators accountable for the grave violations that occurred, and there must be judicial and non-judicial tracks within the framework of a political solution to reach acceptable limits of achieving justice.

Possible mechanisms to access justice

Universal Jurisdiction

Among the many litigation options, Syrians have no choice to prosecute the perpetrators of violations in Syria today except for personal jurisdiction or universal jurisdiction. Universal jurisdiction is the legal principle that allows or requires a state to initiate criminal procedures in relation to some crimes regardless of the location of the crime and the nationality of the perpetrator or victim. Many states have guaranteed this principle in its legislation, including most Western European countries, which, when sufficient evidence is available about a suspect, can start legal proceedings. The procedures differ according to the country. Universal jurisdiction is based on the principle of “collective obligation” which confers a legal interest for any state to exercise jurisdiction over suspected perpetrators of crimes against humanity and is an obligation for each state to pursue and investigate international crimes that affect not only the victim but all of humanity.

In addition to being the only available option, the verdicts issued by the European judiciary condemning members of the Syrian government constitute precedents on which to build in future trials. The facts and evidence presented to these courts, whether through expert testimonies or documents and studies on the nature and practices of the authority in Syria become available for use in another litigation, or even in the context of transitional justice in the future. In addition, it blocks the way for any claims of normalization with the Syrian government in the future. In addition, it can be used politically to pressure Western governments to not normalize relations with Damascus, and to demand that normalization is linked to a political solution. Universal jurisdiction also provides a more fair reading of the well-established legal rule that the accused may not be tried twice for the same crime by emphasizing that the prohibition contained in Article 14 of the International Covenant on Civil and Political Rights is limited to multiple prosecutions within the same country, thus blocking the way for attempts to gain impunity and keeps the possibility of prosecution in their countries of persons who have been pardoned or granted immunity of any kind.

However, litigation according to the principle of universal jurisdiction is considered a mechanism to achieve justice and redress for victims of grave violations of human rights in Syria, and that the crimes proven in the Caesar photographs constitute a limited percentage of the total number of crimes committed, but rather remain a means of individual or partial remedy for the reasons:

Most of the trials, due to the nature of jurisdiction and the criminal judiciary, do not try the military and security authorities in Syria as an institution, and the trials, by their nature, do not depart from the framework of the prosecution submitted to the court.

Some countries, such as Germany, require the presence of the accused on their soil to initiate the trial, and do not recognize the trial in absentia. Thus, the arrest warrants issued against some of those responsible for violations in Syria, such as Jamil al-Hassan, the former head of Air Force Intelligence are only moral pressure on the Syrian government.

Court rulings issued in absentia have no punitive value against the perpetrators, with the exception of what is related to restricting their freedom of movement and travel to the countries of the European Union. The trials are full legal procedures to reach a final judgment, if the court manages to arrest the convicted person in the first place.

Litigation based on the principle of universal jurisdiction is surrounded by technical challenges related to the possibility of hearing witnesses from inside Syria, obstacles to translation, protection of witnesses in addition to the length of litigation process, and its negative effects on victims, which result from the nature of the judiciary as a social body produced by the cultural, social and religious contexts in a society. This means that the foreign judge's tools are less efficient than the national judge in understanding the Syrian contexts, in evaluating the credibility of witnesses, studying the evidence, and understanding the significance of terms, and that it requires a longer time to clarify the facts and understand the implications to form conviction in the judgment.

Litigation under personal jurisdiction

The jurisdiction of the national judiciary is established in any country by the existence of a link between it and the crime committed, where regional jurisdiction is held, for example, if the crime was committed on the territory of the state and therefore its national judiciary has the authority to investigate and prosecute its actions. While personal jurisdiction is held if one of the parties to the crime (suspect/victim) is a citizen of that country. It is called the principle of active personality if the suspect is a citizen of the state, but if the victim is the citizen, it is called the principle of passive personality. The importance of personal jurisdiction is increases in proportion to the increase in the number of Syrian refugees in Europe who were granted citizenship of the countries in which they reside. Therefore personal jurisdiction is held to consider the claim of any Syrian European citizen among the former detainees, victims of torture and other victims of human rights violations in Syria.

Human Rights Complaints Procedure

One of the theoretically possible means and mechanisms is to submit allegations of human rights violations to the United Nations individually and directly. Some of which fall within the possible remedies for the families of missing persons residing outside Syria in particular, and despite their weak or non-existent direct impact, if they take place within the framework of a comprehensive and well-studied strategy, they constitute one of the possible and effective means to achieve justice, and it includes:

- Individual complaints under international human rights treaties.
- Individual communications under the special procedures applied by the Human Rights Council.
- Complaints to the Human Rights Council.

Although submitting complaints to the United Nations is available and facilitated for all survivors or those who suffer from grave violations of human rights. However, on the practical level, the requirements of these mechanisms are not commensurate with the complexities of the Syrian reality, and complaints can be submitted directly or through a proxy of an independent party, such as civil society organizations and human rights bodies that connect survivors or victims' families to the United Nations mechanisms and prepare the complaint, submit it or register it on their behalf after obtaining a representation that is based on full awareness of the procedures, results, risks and advantages surrounding each mechanism.

Individual complaints under international human rights treaties

The charter of any of the basic human rights treaties includes the establishment of a committee (treaty body) to work on monitoring the implementation of its provisions by states parties. These committees receive, with different terms and powers, individual complaints or communications submitted by individuals about any violation of the provisions of the convention. Including six of the committees established under human rights treaties (Human Rights Committee, Committee on the Elimination of Racial Discrimination, Committee against Torture, Committee on the Elimination of Discrimination against Women, Committee on the Rights of Persons with Disabilities and Committee on Enforced Disappearances) while the Committee on Migrant Workers, the Committee on Economic, social and cultural rights, and the Committee on the Rights of the Child are waiting entry into force or acceptance of a specific number of countries with the competence of the Committee. The committees receive complaints from individuals and investigate them to issue recommendations to the concerned state that define ways to address the subject of the complaint, and usually extend beyond the situation in question and make recommendations as Guidelines for the prevention of similar violations in the future. Despite the availability of ready-made forms for filling and submitting complaints electronically, they are not possible with respect to violations in Syria.

It is not sufficient to accept the complaint that the concerned state be a party to the treaty, but rather it must acknowledge the competence of the human rights treaty body established to look into complaints, which is something that the Syrian government has not accepted in the human rights treaties it has ratified.

The role of the committees is also limited to determining the remedy for the complainant, which should be provided by the Syrian government, and to follow up its implementation within six months without any serious consequences for non-compliance or a mechanism to enforce implementation.

Individual communications under special procedures of the Human Rights Council

Each special procedure/mechanism of the Human Rights Council is composed of independent experts mandated to provide reports and advice on human rights on specific topics or in specific countries, and it is an essential component of the United Nations mechanisms; 44 thematic mandates to a specific right, and 12 country mandates to a specific state. Individual complaint about human rights violations can be submitted, provided that there is a special procedure that covers the subject and the violated right or covers the specific country. It is legally binding, and each State is at its discretion to comply with the recommendations of the rapporteurs and the special procedures mechanisms. Following the complaint, the Special Rapporteur (or rapporteur or working group) communicates with the government of the country in which the violation is alleged to have occurred and does the following:

- Write Urgent Appeals (Special Rapporteur or Working Group) urging the government to respond as soon as possible to stop the violation.
- Write a memorandum (regarding violations that have already occurred) urging the government to respond within 60 days.
- If the Special Rapporteur receives new allegations, they may send a follow-up note to the State.

The government's responses remain confidential until the issuance of the report on the joint memoranda, which is submitted to the Human Rights Council three times a year (March, June, and September). The identity of the victim also always remains clear in any communication between the Special Rapporteur (or the Special Rapporteur or the Working Group) and State actors. The complainant or the victim may request that their name or identity not be included in published or publicized reports.

Report here: https://oic.icmp.int/index.php?w=mp_reg&l=en

Among the most prominent actions directly related to the missing persons:

- Mechanism of the Special Rapporteur on the situation of human rights in the Syrian Arab Republic.
- Mechanism of the Special Rapporteur on violence against women, its causes and consequences.
- Mechanism of the Special Rapporteur on extrajudicial, summary or arbitrary executions.
- Mechanism of the Working Group on Enforced or Involuntary Disappearances.

One of the working group's primary tasks is to help families find out the fate or whereabouts of their members who have been reported missing. The Working Group serves as a channel of communication between family members of victims of enforced disappearance and other sources reporting disappearances, on the one hand, and the Governments concerned, on the other. For this purpose, the Working Group receives studies and transmits communications on cases of disappearance from relatives of the disappeared persons or from human rights organizations working on their behalf. The Working Group requests Governments to carry out investigations and to inform the Working Group of the results. The Working Group follows up on these requests for information on a periodic basis. These cases remain open in the working group's database until the fate or whereabouts of the person concerned is determined.⁴⁹ The group accepts cases from any country in the world. It is not required to exhaust local remedies before submitting a case to him.

The working group does not:

- Investigate directly into individual cases.
- Directly adopt measures to protect against retaliation.
- Determine individual or governmental responsibility in cases of enforced disappearance.
- Issue judgments and imposing penalties.
- Carry out exhumations.
- Grant satisfaction or compensation.
- Address cases of disappearances committed by non-governmental actors, rebel groups.

The working group actions:

Urgent Appeal: The group within one or two days of receiving the report refers it directly to the Ministry of Foreign Affairs of the designated country through the United Nations Office in Geneva.

⁴⁹ Practical Information the Working Group on Enforced or Involuntary Disappearances (WGEID) in a nutshell, https://www.ohchr.org/Documents/Issues/Disappearances/how_to_use_the_WGEID.pdf

General allegations to governments to provide responses to, formulated by relatives of the disappeared and by NGOs about the obstacles that exist in certain countries to the implementation of the 1992 Declaration to Combat Enforced Disappearances.

Immediate intervention on cases of reprisals: The group transmits information to relevant governments about cases of intimidation, persecution or reprisals committed against relatives of the disappeared, witnesses, their families, or members of NGOs concerned with disappearances, and calls on governments to take steps to protect all the fundamental rights of people affected.

Country visits: With the prior approval of the relevant government, the group can visit a country to assess general conditions of disappearance, and then issues a report on that visit.

Communicate with the group and submit communications in English, French or Spanish via e-mail: wgeid@ohchr.org or by fax: + 41 22 917 9006

Procedure for submitting complaints to the Human Rights Council

On 18 June 2007, the Human Rights Council adopted Resolution 5/1 titled "Institution-building of the United Nations Human Rights Council" which established a new complaints procedure to address established patterns of gross and reliable violations of all human rights and all freedoms in any part of the world and in any circumstances. Complaints can be submitted by any individual or group claiming to be a victim of violations, as well as by any person or group with direct and reliable knowledge of their occurrence, provided that they constitute a pattern of gross human rights violations supported by documented evidence rather than individual violations, and are considered by the Working Group on Communications before they are referred to the working group concerned with the cases, who in turn refers them to the Board with recommendations from the experts.

The complaint to the council is the only procedure that covers the violation of any of the basic human rights in any country in the world, and despite the ease of the complaint, and the complete confidentiality of its procedures, it also ends with non-binding recommendations that do not seek to redress individual cases and hold the perpetrators accountable or compensate the survivors, and the role of the council is limited to issuing recommendations and to refer them to the Secretary-General to draw the attention of the Security Council to take appropriate action.

Where to send communications?

Communications intended for handling under the Human Rights Council complaint procedure may be addressed to:

Complaint Procedure Unit

Human Rights Council Branch

Office of the United Nations High
Commissioner for Human Rights

United Nations Office at Geneva

CH-1211 Geneva 10, Switzerland

Fax: (41 22) 917 90 11

E-mail: CP@ohchr.org

“What I saw from the pictures is inconclusive evidence, that can be presented to international courts. In Sierra Leone, there were reports of the death of 1.2 million people, but I was not able to link the names and identities to each other, but here I am in front of a recorded and photographed evidence that contains all the details. Prosecutors have the complete information, and although this information may be scarce in modern international law, I am willing to walk a case like this in the courts.”

David Crane, the Chief Prosecutor of the Special Court for Sierra Leone from April 2002 until July 15, 2005. ⁵⁰

The International Court of Justice

At the international level, any country that fulfils certain conditions can resort to the International Court of Justice to sue the Syrian government and not other parties to the conflict, and to overcome the obstacles facing international accountability for the crimes committed by it in Syria, given that the jurisdiction of International Court of Justice is limited to states only. The Court is the principal judicial instrument, and the only permanent court of the United Nations, available to countries that want to settle their disputes peacefully. The International Court of Justice issues advisory opinions at the request of the Security Council, the General Assembly, or several other United Nations bodies empowered to request such opinions. Jurisprudence has settled that some advisory opinions enjoy an authority that sometimes makes them a higher rank than those enjoyed by the judicial ruling issued by the court, as they are issued against all persons of the international community and their effects are not limited to the parties to the conflict only. In addition to advisory opinions, the Court exercises jurisdiction in contentious cases between two or more countries, and its jurisdiction is established in three ways:

1. The consent of the parties to the dispute that the International Court of Justice decide their disputes on an ad hoc basis.
2. States may make a declaration under Article 36(2) of the Statute of the International Court of Justice, agreeing to the compulsory jurisdiction of the Court with respect to other States which have made a similar declaration.
3. Many treaties such as the International Convention against Torture contain provisions that give the International Court of Justice jurisdiction over any dispute between the parties to the treaty over its interpretation or application. That is, the court exercises its jurisdiction under the provision of a multilateral international treaty or bilateral agreement. Article 36(1) of the Statute of the Court has made it clear that the jurisdiction of the Court includes all matters specifically provided for in applicable international treaties and agreements.

⁵⁰ Expert: There is a “system” within the Syrian regime to list and classify executions, 21 January 2014, Zaman Alwasl <https://www.zamanalwsl.net/news/article/45762>

Based on this, many multilateral or bilateral treaties have included explicit provisions in their provisions referring to the jurisdiction of the court regarding the settlement of disputes arising between its parties or regulating a specific subject and stipulating the jurisdiction of the court to consider disputes that arise regarding its interpretation and application, meaning that the consent of the parties has been granted in the form of a binding agreement concluded in advance. Among these conventions is the 1984 Convention against Torture, which states in Article 30 that any dispute arising between two or more States with regard to the interpretation or implementation of the Convention, and which cannot be settled by negotiation, shall be submitted to arbitration at the request of one of these States. If, within six months from the date of the request for arbitration, the parties are unable to agree to the organization of the arbitration, any of those parties may refer the dispute to the International Court of Justice by submitting an application in accordance with the statute of this court, a procedure which the Kingdom of the Netherlands commenced on September 18/ September 2020 and Canada joined on March 3, 2021.

Any state party to the Convention against Torture, even if it is not particularly affected by the alleged violations, can sue the Syrian Arab Republic, and ask the Court of Justice to take whatever temporary or precautionary measures it deems appropriate, including stopping the implementation of all death sentences issued by Syrian courts since 2011, especially those issued by the Military Field Court and the Anti-Terrorism Court as these judgments were based on confessions extracted under torture. The International Court of Justice explicitly recognized in *Belgium v. Senegal*, the only case brought under the Convention against Torture to date, that the Convention creates “obligations for all”. Each state party has obligations towards other state parties to comply with the treaty in view of the “common interest” in achieving “purposes which are the reason for the treaty’s existence.”

In addition to the lengthy litigation period, which continues for years, the judgments issued by the International Court of Justice stop on the way of implementation, especially in the case of Syria or similar cases. The will of the state is the basis for resorting to international justice or international arbitration, and therefore those countries, since the start to resolve the dispute through the judiciary, should express initial will to accept the judgment to be issued by the body charged with examining the case. But if the state refuses to implement it, the judgment shall have its moral effect only. The same applies to precautionary measures, summary decisions and final judgments.

Although Article 94/1 of the Charter of the United Nations states that “ Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party”, in the event that the Syrian government refuses to implement the rulings and decisions, it is necessary to go to the UN Security Council to impose implementation, that is, to return to confronting the Russian and Chinese vetoes and the absence of consensus on the Syrian issue.

III. Civil Society Efforts - Victims' Families Associations

The Syrian experience, in its cruelty and in the prevalence of impunity for perpetrators, is similar to the experiences of many countries of the world in the second half of the twentieth century, as authoritarian governments agree to ignore the issue of missing persons and cases of disappearance carried out by their agencies, provide immunity for the perpetrators and withhold records of all kinds from the public. It may continue even after the fall of these governments, which leave structures, bodies and people that contradict their efforts to reveal the truth and know the fate of the victims. However, these policies have not been successful in the face of the insistence and urgency of voices calling for the disclosure of the truth, such as the associations of the victims' families, the majority of which were women. In many cases, such as the "Mothers of the Plaza de Mayo" movement ⁵¹ in Argentina, which had a clear impact in pushing for the disclosure of the fate of the missing and the accountability of the perpetrators, which led to the prosecution of the perpetrators of violations within the Argentine judicial system. As well as the enactment of laws to isolate the active political sectors during the military rule and support organizations and bodies active popular groups in accountability and the restoration of rights. In Nepal, for example, the first commission to investigate human rights violations was formed in July 2004 in response to a hunger strike organized by the families of the missing. In Lebanon, the Committee of the Families of Kidnapped and Disappeared and the Committee to Support of Lebanese in Detention and Exile in February finalized in 2012 the Law for the Missing and Forcibly Disappeared Persons to investigate the fate of the missing and the disappeared. Pressure continued to be drawn towards drafting a decree establishing an independent national body for victims of enforced disappearance. In 2012, although the decree was not approved, and the fate of thousands of missing persons remains unknown, their cause remained alive despite government and parliamentary neglect, and their struggle continues to this day.

In Syria, over the past years, the relatives of the missing have shown a high ability in terms of unorganized gathering, beginning to track the news of their loved ones through local social networks from the families of the missing, and from detainees who have been released. This moved from oral exchange to text message groups on the phone, and lists of names of detainees on social media, which were mainly published by released detainees, then expanded from the local area and moved to the national level. Although it did not succeed in revealing the fate of the victims, it provided undeniable support between families who share the suffering and live with the same fears. Later, Syrian civil society organizations had a role in involving the families of the missing in policy or coordination meetings on justice, and in advocacy campaigns, in order to establish several associations for the families of the victims and the missing. On August 30, 2017, a letter was sent to the High Commissioner for Human Rights, along 66 Syrian civil society organizations, asking him to work to end the tragedy of tens of thousands of forcibly disappeared persons, and to provide support to ILM to assist in the investigation and prosecution of

51 Grandmothers of the Plaza de Mayo, https://en.wikipedia.org/wiki/Grandmothers_of_the_Plaza_de_Mayo

those responsible for the most atrocities crimes committed in Syria since March 2011.

Among these associations, Caesar Families Association ⁵² which was established in February 2018. Today, it includes 44 people ⁵³ representing families whose loved ones' pictures appeared in the leaked photos of victims of enforced disappearance and murder under torture in Syrian government prisons. Since the establishment of the Association, 590 families have contacted them. Their loved ones were victims of enforced disappearance, including 125 families who are still in Syria. About 170 families asked the association to search for their lost in the Caesar photographs. Most of the families confirmed that the disappearance of their son was carried out by the Syrian government forces (security checkpoints - intelligence - army - People's Committees - Shabbiha - Military Security), 50 of which were unable to determine the security authority responsible or the branch carrying out the disappearance. 50 families confirmed the appearance of their sons in the leaked Caesar photos, while 40 families confirmed that they obtained a death certificate from the Syrian government. Although some of them refused to receive this certificate, others said that they were informed orally when they went to inquire about their loved ones with the security authorities, or through the mayor of the neighbourhood.

Caesar Families Association demands truth, justice and rehabilitation for all victims of torture and enforced disappearance in Syria through:

- Work to retrieve the remains of the victims' bodies in order to ensure burials that respect human dignity and families' rituals.
- Secure psychological and legal support to the families of victims and help them overcome the repercussions of these crimes.
- Guarantee the rights of victims and their families, memorialize the victims, and restore their dignity.
- Contribute to the release of detainees, the forcefully disappeared, the kidnapped, and pressure for the disclosure of the whereabouts of the missing.
- Work to end impunity and strive for the establishment of a special court for war crimes and crimes against humanity.
- Support a transitional justice process based on fairness and accountability.

⁵² the Caesars Families Association (CFA) website: <https://www.caesarfamilies.org/>

⁵³ Information by the Coordination and Communication Department of the Caesar Families Association on December 2021.

"We refused to receive any death document until we are handed over the body. Although I gave the photo a percentage of almost 70% resemblance, but I am still confident that he is alive". **From the testimony of J.M., the victim's brother.**

Yasmine: "We refused to obtain a death certificate because they would write died of natural causes or other unreal reasons."

N., the victim's sister: "Despite our desire not to believe and to maintain the hope of his return, we all confirmed through the photo that the death occurred, but we do not want any connection, procedure or papers from this system."

On 10 February 2021, five groups concerned with detainees, missing and disappeared persons, namely The Association of the Detainees and The Missing in Sednaya Prison,⁵⁴ Caesar Families Association, Families for Freedom,⁵⁵ Coalition of Families of Persons kidnapped by ISIS,⁵⁶ and Taafi Initiative⁵⁷ met, and launched "Truth and Justice Charter: A Common Vision on the Question of Enforced Disappearance and Arbitrary Detention in Syria",⁵⁸ which included the demands:

- The immediate release of detainees, and revealing the fate of the forcibly disappeared
- An immediate halt to torture, inhuman treatment, and sexual crimes
- Returning the remains of those killed under conditions of enforced disappearance and detention
- The abolition of field and exceptional courts
- Fair and independent civil courts adhering to international standards,
- Compensation and reparations
- Recognition of the truth and memorialization
- Reform the security and judicial institutions and their practices

The families of the victims are seeking today an international, independent, impartial mechanism with a global mandate to work on uncovering the fate of the forcibly disappeared, determining their whereabouts, and returning the remains of the deceased.⁵⁹ As part of a strategy to overcome the obstacles to the continued presence of violators in power and the inability of the international community to stop the crimes and their perpetrators. This mechanism must be formed within the framework of the General Assembly of the United Nations or

54 The Association of the Detainees and The Missing in Sednaya Prison website: <https://www.admsp.org/>

55 Families for Freedom website: <https://syrianfamilies.org/en/>.

56 Coalition of Families of Persons kidnapped by ISIS website: <https://massarfamilies.com/?lang=en>

57 Taafi Initiative website: <https://taafi-sy.org/>

58 Truth and Justice Charter: A Common Vision on the Question of Enforced Disappearance and Arbitrary Detention in Syria, <https://www.caesarfamilies.org/truthandjusticecharter/>

59 The Case for an International Mechanism to Address the Detainees and Disappeared Crisis in Syria, <https://www.caesarfamilies.org/the-launch-of-the-mechanism-on-the-site/>

the European Union in order to bypass the Russian and Chinese obstacle in the UN Security Council, provided that it must be established as soon as possible for several reasons including:

- The mechanism must work to reveal the fate of the forcibly disappeared while they are still alive, and not wait for their death.
- Searching for the bodies of the deceased, identifying the remains and returning to the families is becoming increasingly difficult and impossible with the passage of time due to the difficulty of collecting pre-mortem data and due to the decomposition of bodies and the deliberate and unintentional manipulation of burial sites.
- The question of revealing one's destiny and the right to knowledge will not be less important and urgent with the passage of time, and as other experiences have taught us, ignoring this question necessarily means that the conflict will return again, even after a while.
- The process of searching and discovering the fate will depend heavily on testimonies and memory that have a temporary validity date.
- That the work of the mechanism with the humanitarian methodology will not take place in the form of a peace agreement that guarantees impunity, and that international crimes and crimes against humanity cannot be pardoned by any decree or method and do not fall within the statute of limitations.
- The obstacle today to achieving accountability does not lie in the lack of evidence and testimonies, but rather in the absence of political mood and international will, and the weakness of the authority of international law in the face of war crimes and crimes against humanity.

RECOMMENDATIONS

To the Syrian government

- Immediately release all detainees and forcibly disappeared persons in prisons and detention centers. Affirm the full and sole mandate of the judiciary with regard to arrest or pretrial detention. Place the detention institution entirely under the supervision of the judicial authority. Adhere to the requirements of a fair trial, and the final and absolute prohibition of arrests by military or security members.
- Abolish laws and legislation that perpetuate impunity and provide special immunity for members of the military and security establishment from any judicial accountability for the crimes they may commit in the course of performing their duties, including, but not limited to, Decree No. 14 of 1969 establishing the State Security Administration, and Decree 69 of 2008. Establish a judicial committee or the allocate a court to consider claims and cases of civil compensation for violations committed under the absolute immunities of the two institutions mentioned.
- The immediate and comprehensive abolition of the exceptional criminal judiciary bodies and the immediate halt to the execution of death sentences issued by the exceptional courts, considering their rulings null and void, and emphasizing that the judicial authority has full and comprehensive mandate over various disputes because it derives its existence and entity from the constitution that entrusted it alone with justice, independent of the rest of the authorities, in contrast to the exceptional judiciary's violation of the constitution and the principles of equality and justice.
- Close all secret detention facilities or private security or military facilities, subjecting the closure to supervision and inspection by the judicial authority in the presence of a partner from the civil society "civilian - human rights observer" and limit the detention centers to official headquarters.
- Prohibit by law, and in practice, all forms of torture and cruel, inhuman or degrading treatment in prisons, detention centers and interrogations. Ensure that impartial investigations are conducted by an independent authority into all allegations of torture and ill-treatment and punish those responsible. Provide effective remedies and compensation to victims, and include the crime of torture in the Penal Code as defined by Article 1 of the International Convention against Torture and impose appropriate penalties to punish its perpetrators.
- Include the enforced disappearance in the Penal Code, as defined in the Declaration on the Protection of All Persons from Enforced Disappearance of 1992 and the International Convention for the Protection of All Persons from Enforced Disappearance of 2006.
- Reconsider prison systems, clarifying the procedures and methods of their

management and unifying them under the administration of the Ministry of Justice. Conduct a comprehensive assessment of prison infrastructure and improve their conditions to ensure that they meet basic human rights standards, including the United Nations Standard Minimum Rules for the Treatment of Prisoners, the “Nelson Mandela Rules” and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).

- Initiate institutional reforms and take the necessary measures to ensure respect for the rule of law and to promote and maintain a culture of human rights and to restore citizens’ trust in government institutions, in compliance with the principle of “non-repetition”, Principle 35 of the United Nations Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity 1997 Updated 2005.
- Reform the security establishment in Syria, in accordance with the provisions of international human rights law, and formulate training curricula for security personnel and the judicial police on standards and rules related to international freedoms and rights, and how to exercise law enforcement powers without compromising the basic rights of citizens.
- Grant international detention monitors access to all detention facilities, as well as human rights monitors, including the UN Special Rapporteur on extrajudicial killings, the Office of the High Commissioner for Human Rights, the UN Human Rights Council’s Commission of Inquiry on Syria and the Special Rapporteur on Syria.
- Prepare official lists with the names of all detainees or those who have been arrested during the past ten years in its detention centers and headquarters, and handing them over to the competent international authorities, including the full name, the name of the mother, the place and date of arrest, the entity responsible for the arrest, and the charges against the detainees in the event they are referred to the judiciary without omission the deaths and their causes.
- Work to end impunity and ensure full accountability for violations of enforced disappearance, arbitrary detention, torture and extrajudicial killings, and initiate prompt, effective, comprehensive, credible, independent and impartial gender-sensitive investigations, and hold perpetrators accountable in line with international human rights norms and standards.
- Activate oversight mechanisms over police and security agencies and fully comply as a normative framework with the Declaration on the Protection of All Persons from Enforced Disappearance, and the Code of Conduct for Law Enforcement Officials, the document issued by Amnesty International titled Ten Basic Standards for Human Rights, and the Convention against Torture and the Standard Minimum Rules for the Treatment of Prisoners, and abolish all legislation and administrative orders that contradict their content.
- Acknowledge the right to access information, and facilitate citizens’ access to

all documents, data, regulations, and administrative orders originally prepared for public viewing in affirmation of the principle of legality and considering it a basic human right under international covenants and charters, and United Nations General Assembly resolutions that stipulate the necessity of enabling citizens to obtain information and take action measures to ensure their exercise of this right. Inform the families on a regular basis of the status of the missing persons. Establish a system to track prisoners whose release has been prevented by judicial obstacles, and inform their families of their status and whereabouts as well.

- Adopt a comprehensive policy and a set of measures related to implementing the right to compensation for victims of serious violations of human rights and humanitarian law, ensuring that compensation is provided by the Syrian government for deaths, injuries and damage resulting from unlawful practices against civilians, and provide means of appeal and claiming compensation.
- Erase the criminal records of persons who were previously detained or currently detained for exercising one of their basic rights stipulated in the International Covenant on Civil and Political Rights, especially freedom of opinion, freedom of expression and information, freedom of assembly and association, and cancel of any related disciplinary penalties or punishments.
- Issue the necessary circulars to exempt the families of the missing - their first degree relatives - from delay fines and penalties related to the registration or updating of events, such as marriage, birth and divorce, in all civil registry offices, as well as exempting the families of the missing from the time limits and fines resulting from the delay in registering the death of their loved ones after confirming it.
- Form a legal committee to initiate the formulation of training curricula for judicial police personnel based on international human rights standards and rules and techniques for exercising law enforcement powers by adopting the Code of Conduct for Law Enforcement Officials and the document issued by Amnesty International of 10 Basic Standards for Human Rights.

To the international community, the United Nations, and relevant international organizations

- To UN Security Council: follow up on resolutions 2139/2014 - 2254/2015 - 2401/2018 and affirm the condemnation of the massive and widespread violations of human rights by the Syrian government, such as arbitrary detention, enforced disappearance, torture, and ill-treatment. Demand an immediate end to these practices, and impose sanctions on individuals in the Syrian army and government responsible for non-compliance with these decisions.
- To UN Security Council: impose a comprehensive arms embargo on Syria and oblige countries to suspend all military sales and assistance, including training and technical services, to the Syrian government and any armed group for which there is credible evidence of its involvement in human rights violations.
- To UN Security Council: pass a resolution obligating all parties to the conflict to allow the urgent and unimpeded entry of staff of the Independent International Commission of Inquiry on the Syrian Arab Republic, humanitarian and human rights organizations, and international journalists to Syria to monitor any violations of human rights and international humanitarian law and to identify those responsible.
- To UN Security Council: establish an international mechanism to investigate the fate of the missing in Syria, which has access to official records and to oblige the Syrian government to immediately hand over any official documents in its possession that include information about secret and official detention centers, and any documents related to the missing in the possession of the armed forces and security services or those associated with them, that may be useful for investigations, and ensure that legal provisions relating to state secrets or national security may not be invoked to impede the delivery of such documents.
- Establish an independent body to address the issue of the missing to complete the work of the Independent International Commission of Inquiry on the Syrian Arab Republic and undertake the task of recovering the bodies, identifying and re-burying them in accordance with the expressed or presumed wishes of the victims, providing care and legal and social services to the families of the victims, and benefiting from previous international experiences such as the Missing Persons Act of 2004 Annex to the Dayton Peace Agreement.
- Put pressure on the Syrian government to ratify the International Convention for the Protection of All Persons from Enforced Disappearance, declaring its full commitment to the International Convention against Torture, and withdrawing its reservation to Article 20 of the Convention, which is concerned with the competence of the Committee against Torture, and to cooperate with the Committee in any future investigations. Ratify the Optional Protocol to the Convention against Torture and adopt its provisions in national laws.
- To the United Nations Educational, Scientific and Cultural Organization "UNESCO": call for an international conference to prepare legal recommendations or

international instruments in preparation for their adoption, to define the image right, the rules and restrictions surrounding the publishing the photos of the victims, and the balance between freedom of expression and the free flow of ideas through words and photos on the one hand, and individuals rights on the other hand.

- Work to push the political track to reach a solution that guarantees a political transition towards building a democratic state ruled by law in Syria, based on the Geneva Talks reference and relevant Security Council resolutions, and consider the file of detainees and missing persons a priority of a legal nature that is not subject to bargaining, and emphasize that any solution that ignores the file of detainees and missing persons, will generate new conflicts and exacerbate the instability of the region.
- Put pressure on the Syrian government to stop the systematic violations it is committing, to put an end to enforced disappearances, arbitrary detention, torture and other ill-treatment and extrajudicial executions, as well as to immediately halt the implementation of any death sentences, and to ensure respect for the most stringent international fair trial standards in relation to procedures related to any offenses likely to lead to the imposition of such punishment.
- Activate the work of the Independent International Commission of Inquiry on Syria and the International, Impartial and Independent Mechanism for Syria and allow them to conduct investigations throughout the Syrian Arab Republic in cooperation with relevant international and local organizations and establish a local or international judicial mechanism to hold accountable those responsible for violations and crimes against humanity.
- Work individually at the state level or within the regional framework to prosecute military or civilian officials whom their involvement in human rights violations in Syria was confirmed by evidence. Apply financial sanctions against them and freeze their bank accounts in accordance with national legislation, as well as initiate prosecution of the perpetrators withing universal jurisdiction.
- Provide financial and technical support to Syrian and international institutions and groups working on issues of missing persons in Syria, to unify their efforts in order to establish a database of missing persons at the national level that includes a unified recording and reporting system for cases of enforced disappearance, and to include Caesar photos and related data to facilitate the identification of victims and the recovery of their remains in the future .
- Provide technical and financial support to create a map of mass graves in Syria and to identify the main cemeteries in which evidence of special importance for criminal cases may be available to preserve them and their contents as sound evidence usable in trials, truth commissions, compensation procedures, historical testimonies and other mechanisms that the Syrians may agree upon future.

- Provide technical and financial support to develop an integrated plan at the national level for financing and special training for teams on information collection and preservation programs, and training Syrian experts on exhumation and identification of bodies so that these efforts are carried out in accordance with international standards. Emphasize that they use unified scientific protocols, a unified system for numbering and documentation, and that they coordinate methods used to collect evidence of crimes and identify the remains.
- Fund and train for information collection and preservation programs. Expand capabilities in the field of forensic medicine. Find sufficient equipment to store the bodies. Find facilities equipped with sufficient equipment to examine and identify the remains. Start an integrated plan to take DNA samples from families of the missing at the national level, and to establish a database for the missing.
- The pursuit of justice for the families of the victims, as it is very difficult to work on individual recovery in light of the absolute lack of justice, and the vast majority of victims' families have become members in various countries, and the pursuit of their recovery will produce productive individuals in these societies.

To Syrian civil society

- Emphasize the centrality of the role of victims in any human rights, political or judicial course or action that deals with or affects their rights, to ensure that it meets their vision, aspirations and needs, and to stand firm in the face of pressures and agendas that conflict with the victims' vision in any of the justice and accountability tracks, negotiation processes and political transition.
- Emphasize on removing the detainees and missing' file from the circle of political negotiations and emphasize that any subsequent amnesty does not include the perpetrators of the crimes of disappearance, arbitrary detention and torture, given that no authority has the authority to approve an amnesty for violations of international human rights law.
- Establish legal and administrative support teams for the wives and families of the forcibly disappeared and arbitrarily detained to enable them to obtain official documents and papers. Dedicate programs to empower victims' families. Pay special attention to education and vocational education, especially for women, to help them overcome the economic and social challenges associated with disappearance.
- Consolidate the efforts of Syrian civil society organizations working in the field of documenting human rights violations to establish a database at the national level, and cooperate with international bodies such as the International, Impartial and Independent Mechanism to support the investigation and prosecutions of the most serious crimes committed in Syria since March 2011, within an institutional framework that allows the collection of as much information and evidence as possible about the mass crimes committed and paves the way for

the perpetrators to be held accountable.

- Focus the efforts of specialized psychological bodies in preparing psychosocial support programs for the unique psychological effects of the families of the victims and the frozen grief that are commensurate with the weak psychological culture of the families of the victims and their acceptance of psychological support and pave the way for family psychosocial support programs for the families of the victims collectively, given that they live in a turbulent situation instead of considering them as troubled individuals, through which families are supported to reach a solution to the conflict over the confirmation/denial of the death of the victim and to create special ceremonies simulating burial and mourning ceremonies to help them bring their frozen grief to closure. Create group programs aimed at exchanging experiences and ways of dealing with those who have common suffering.
- Launch awareness campaigns about the suffering of families and the symptoms they suffer to spread a societal culture and secure supportive communication from the community with the families of the victims.
- Start cultural and media programs that pave the way for the national reconciliation process, in isolation from the political reality, and open the way for national initiatives and projects at the grassroots level to reach a national solution. Adopt reconciliation as a long-term community project based on truth, accountability, reparation and ensuring non-recurrence of violations.
- Emphasize that transitional justice programs include compensation for human rights violations resulting from enforced disappearance, and ensure not to confuse compensation with social protection measures that any existing authority must provide to families who have lost their main breadwinner, as well as preserve the rights of the affected and their families to resort to the judiciary and claim compensation in case of subsequent forms of damage on both the psychological and physical levels.
- Prepare plans and monitor needs and possibilities for implementing transitional justice mechanisms related to the file of the missing, such as the recognition sessions mechanism that constitutes a basis for building trust and overcoming the past, and the reparation and compensation mechanism that establishes social harmony, rebalancing, satisfying the collective sense of justice, and restoring the victims' trust in the state.
- Launch programs to provide treatment for survivors of detention, disappearance and torture. Develop programs of support and psychological rehabilitation for survivors and their families and families of victims, and create a support fund to finance reparations and compensation for victims of violations and their families from all parties without discrimination.
- Include in the prospective constitution decisive and clear clauses emphasizing the independence of the constitutional judiciary, the protective umbrella for the rights and freedoms of individuals through its monitoring of the nature

of laws and decisions issued by the legislative authority and their consistency with the principles of the constitution and the International Bill of Human Rights. The abolition of laws that protect perpetrators of violations due to their unconstitutionality and the abolition of exceptional courts whose establishment represents a flagrant attack on constitutionally protected rights and freedoms.

- Include in the prospective constitution the concept of transitional justice, as a foundational justice necessary for the transition to a state of social peace and political stability, and the elimination of relationships that generate violence by stipulating them without mentioning mechanisms, similar to the South African Constitution, Article 25 “to redress the results of past racially discriminatory laws and practices” given that these constitution provisions do not restrict redress, or obligate the legislative authority to implement the transitional justice system according to a specific constitutional framework, similar to the Tunisian Constitution, paragraph 9 of Article 148, or the Egyptian Constitution, Article 241.

To the families of the victims

Dealing with the documentation of violations as a process that goes beyond the personal rights, and that its results extend to society and future generations, and contribute to it as much as possible through one or all of the following methods:

- Consider the priority of their personal safety and the safety of the disappeared. Share information and files about the disappearance and its circumstances with the credible international or local entities.
- Preserve any photos of the victim and try to collect photos from the extended family members or friends, and keep all identification papers related to them.
- Write down what was in the possession of the disappeared on the day of the violation, and keep a full description of their belongings, clothes, and any information that might help in revealing their fate in the future.
- Record all dates and information that are in the family’s possession and arrange them in chronological order.
- Keep documents that include the victim’s medical history, especially dental x-rays, and any medical files, laboratory tests or reports in case they underwent previous treatment or surgery.

On the psychological and family level:

- Be fair for themselves by prioritizing and caring for themselves. Support the rest of the family in being fair themselves and take care of them as well, bearing in mind that each family member has their own and unique reasons of their unique suffering.
- As family members: listen to each other and encourage the expression and release of feelings associated with the victim and the circumstances they lived through, whatever they may be, thus paving the way to recovery.

- Remember the positive characteristics of the deceased and how they wish their families to live.
- Consider the difference of views in the family about the death or non-death of the victim as a normal matter, and seek to reach agreement through which the family members would gather rather than be divided.
- Ensure the continuity of communication with support networks, whether direct or remote.
- Search for the meaning of their suffering and struggle, and acceptance of uncertainty. Seek support when needed, and confront any stigma related to psychological distress.
- Memorialize the memory of their deceased by creating a ritual, an act or a practice associated with them.

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