



المركز السوري للإعلام وحرية التعبير  
Navenda Sûriyayi ya Ragihandinê û Azadiya Derbirinê  
Syrian Center for Media and Freedom of Expression

Avec la participation de



MINISTÈRE  
DE L'EUROPE  
ET DES AFFAIRES  
ÉTRANGÈRES

Liberté  
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# The victims' perspective on reparation for enforced disappearance: Syria as a case study

'Who will read this report? Or is it just another series of words?'





# The victims' perspective on reparation for enforced disappearance:

## Syria as a case study

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The **Syrian Center for Media and Freedom of Expression (SCM)** is an independent, non-governmental, and non-profit civil society organization registered in France in 2004, focusing on human rights and media development. It is governed by a non-remunerated board and has held a UN ECOSOC special consultative status since 2011.

SCM seeks to build a society that guarantees freedom of expression and belief, human rights, and justice. Since its inception in 2004, SCM has been dedicated to safeguarding human rights defenders, advocating for human rights and fundamental freedoms, empowering civil society and victims' associations, and fostering the growth of an independent and professional media sector.

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This report was prepared by Dr. Adnan Mouhiddin

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1 Male, 42, Relative. In a clear indication of his frustration about the inaction on enforced disappearance, he provided these narratives when asked if there was anything else he would like to add following his interview with our researchers.

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# Introduction

Syrians, by and large, are familiar with a folk saying that translates into something in line with the following: The mother of someone murdered can sleep, but the mother of someone threatened cannot sleep. This saying probably speaks of the relatives of tens of thousands of Syrians who are subject to enforced disappearance and are yearning for news about their fate or their whereabouts.

While enforced disappearance gained significant attention during the Syrian Conflict, which enters its 13th anniversary, its practice has been an issue in Syria for decades. Albeit not to the same extent witnessed in the last 13 years, it nevertheless was an issue during the conflict between the Syrian government and the Muslim Brotherhood and other political parties during the late seventies and early eighties of the last century.<sup>2</sup> Apart from reports produced by concerned human rights organisations, atrocities that took place during that period remain unrecognised by the Syrian government, including any forms of reparation or justice.<sup>3</sup> This includes recognition and reparation for thousands of Syrians who disappeared without a trace. In the current conflict, enforced disappearance has yet again been used as a weapon against dissentients.

The prohibition of enforced disappearance as an international crime is primarily articulated in the International Convention for the Protection of All Persons from Enforced Disappearance. Adopted by the United Nations General Assembly in 2006,<sup>4</sup> the Convention outlines specific provisions that establish enforced disappearance as a crime under international law. As set out in Article 2, the term “enforced disappearance” applies to several types of actions, including arrest, detention, abduction, or other deprivations of liberty. Specifically, Article 2 states that an enforced disappearance occurs when 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 places such a person outside the protection of the law.

Consequently, Article 5 of the Convention mandates that the widespread or systematic practice of enforced disappearance constitutes a crime against humanity as defined in applicable international law and shall attract the consequences provided for under such applicable international law. In addition, each state party shall take the necessary measures to ensure that enforced disappearance constitutes an offence under its criminal law.<sup>5</sup> This, according to Article 7, Each State Party shall make the offence of enforced disappearance punishable by appropriate penalties which take into account its extreme seriousness.

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2 Conduit, D. (2016). The Syrian Muslim Brotherhood and the Spectacle of Hama. *Middle East Journal*, 70(2), 211-226.

3 Lia, B. (2016). The Islamist Uprising in Syria, 1976-82: The History and Legacy of a Failed Revolt. *British Journal of Middle Eastern Studies*, 43(4), 541-559. <http://www.jstor.org/stable/26155517>

4 United Nations. (2010). International Convention for the Protection of All Persons from Enforced Disappearance. OHCHR. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-all-persons-enforced>

5 Article 4

In 2010, a joint study on secret detention in counterterrorism, conducted by multiple United Nations Special Rapporteurs, reported that secret detentions are tantamount to enforced disappearances. Specifically, the study concluded that “all instances of clandestine detention implicitly qualify as enforced disappearances.”<sup>6</sup> Therefore, it could be concluded that according to the agreed international definition, enforced disappearances involve state-sanctioned or state-supported abductions leading to secret captivity and deprivation of legal recourse.

However, it is important to note that Syria has not ratified the International Convention for the Protection of All Persons from Enforced Disappearance, and its domestic laws do not explicitly criminalize enforced disappearances. Moreover, the Convention does not recognise parties involved in the conflict other than official authorities and de-facto powers and forces. The conflict in Syria is complicated, and multiple international and non-international actors are involved as well as de-facto powers and forces. This is particularly significant given the prevalence of enforced disappearances during the Syrian Conflict and government crackdowns on dissent. The conflict has resulted in the disappearance of over 130,000 individuals, with the numbers continuing to climb. Men, women, and children have been either abducted, killed, forcibly disappeared, or have gone missing while fleeing the violence along migratory routes.<sup>7</sup>

Despite the gravity of these violations, arbitrary arrests, abductions, and forced disappearances are not addressed by justice and accountability mechanisms outlined in the UN Security Council Resolution 2254, which pertains to the Syrian situation. While the Syrian constitution<sup>8</sup> emphasizes the sacred right to freedom and the state’s responsibility to safeguard the personal freedom, dignity, and security of citizens, the practical implementation of these constitutional provisions is compromised by actual practices and other legislative measures.

In the present Syrian context, where enforced disappearance is widely practiced as a repressive tactic, the legal frameworks for the prevention and remedy of disappearances are notably deficient or absent within Syrian statutes. Therefore, this research will explore reparation for enforced disappearance from the perception of Syrians who may have experienced enforced disappearance themselves or are relatives of someone who was a victim of enforced disappearance or is still missing. The research also focuses on how the participants understand reparation, how they envisage reparation measures in the future, whether reparation is possible in Syria, and their perception of the existing mechanisms that tackle enforced disappearance in Syria.

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6 This assertion was made in the 2010 report (A/HRC/13/42) submitted to the UN Human Rights Council by its Special Procedures mandate holders.

7 International Commission on Missing Persons (2023). More than 130,000 Missing from the Syrian Conflict with Numbers Still on the Rise. Retrieved April 15, 2024, from <https://www.icmp.int/news/more-than-130000-missing-from-the-syrian-conflict-with-numbers-still-on-the-rise/>

8 Article 33(1) reads that ‘Freedom shall be a sacred right and the state shall guarantee the personal freedom of citizens and preserve their dignity and security’. Also, Article 53 provides that no one may be investigated or arrested, except under an order or decision issued by the competent judicial authority, or if he was arrested in the case of being caught in the act, or with intent to bring him to the judicial authorities on charges of committing a felony or misdemeanour. The Article adds in subsection 3 that any person who is arrested must be informed of the reasons for his arrest and his rights, and may not be incarcerated in front of the administrative authority except by an order of the competent judicial authority. Article 54 stipulates that any assault on individual freedom, on the inviolability of private life or any other rights and public freedoms guaranteed by the Constitution shall be considered a punishable crime by the law.

## Methodology and Ethics

A total of 24 participants took part in this research, all of whom were interviewed<sup>9</sup> by trained researchers who work for the Syrian Centre for Media and Freedom of Expression (Hereinafter the 'SCM'). The participants belonged to two groups, those who experienced enforced disappearance themselves (8 participants), and those who are a relative of a person subject to enforced disappearance (16 participants). The participants' accounts provided insight into the impact of enforced disappearance, which subsequently contextualised reparation, its mechanisms, and how it appears to the victims. In addition, the report reviewed previous data and reports that were either collected by or shared with the SCM. In this research, the Centre has chosen not to name or identify any individuals named by the participants as perpetrators. This should be subject to due process and fair trial standards that are not feasible at present. The SCM has also opted to avoid pseudonyms. Certain names are very familiar in Syria. Bearing in mind that many Syrians have a missing relative, coincidence could put individuals with the same name and similar stories at risk for participating in this research. Therefore, participants have been referred to in terms of gender, age, and whether they are victims of enforced disappearance or relatives of someone who is still missing.

The research process adhered to ethical guidelines set by the Centre in its code of ethics, which governs its research projects. The research design ensured the diversity of the participants in terms of age, gender<sup>10</sup>, and location. Consent procedures were discussed and agreed upon in advance by the project team and the lead researcher. Before each interview, an information sheet was provided to each participant. The sheet included the research details, its objectives, how the participant's contribution will enrich and advance the research project, and the nature of the questions being asked. This enabled the participants to decide whether the nature of the research was something they felt they could cope with. Also, consent forms were signed before any interview took place. Necessary measures were also taken to eliminate the trigger of emotional distress during the interviews and establish a balance of powers between participants and researchers. Equally important, the welfare and the well-being of the researchers were part of the ethical considerations and the researchers were offered counselling sessions where needed.

Collected data were stored under the Data Protection Act 2018, and securely stored in line with the SCM's policy and relevant privacy and confidentiality measures. The findings were analysed against the elements required for reparation for enforced disappearance in line with international law, international customary law, and the experience of post-conflict countries that established reparation mechanisms for victims of enforced disappearance.

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<sup>9</sup> Semi-structured interviews.

<sup>10</sup> 12 participants identified as males, and 12 identified as females.



## The context of enforced disappearance in Syria

I was a minor at the time.

I was detained in front of my family.

The pain was and is still indescribable.<sup>11</sup>

Enforced disappearance in Syria has been subject to extensive research and analysis. This report does not aim to extend on this particular point and add to the existing plethora of reports detailing the circumstances of enforced disappearance in the country, the numbers of its victims, and the need for the international community to intervene. At the same time, it is essential to contextualise enforced disappearance and highlight some of its aspects that are particular to the Syrian scenario before we address reparation. For instance, some forms of reparations (as we will see later in this report) may be determined by the status (age, gender...etc) of the victims who, in some cases, were minors or had special needs. This will enable the reader to appreciate the mode, mechanisms, and the need for reparation for those who were victims of enforced disappearance or their families.

In broad terms, Syria's track record regarding human and political rights and freedoms is disheartening. Adolescents and young Syrians advocating for these rights or openly discussing them have faced severe consequences. The teenagers who catalyzed the 2011 uprising faced harsh reprisals for daring to challenge the prevailing political landscape. Tal al-Mallohi remained in detention since her arrest in 2009 at the age of 18. Hamza Al-Khateeb, at just 13 years old, was arrested during protests in 2011 and tragically died under brutal torture while in custody. In this sense, the Syrian authorities did not and do not distinguish between adults and minors. One participant was 16 years old when he was detained.<sup>12</sup> He detailed his experience as follows:

My house was raided by military security at dawn. They took me to the Military Intelligence branch in the city of Nawa and tortured us for about an hour. After five hours, they transferred us to the Military Security branch in Daraa, where I remained for a month, during which I was subject to interrogation and torture. Then I was transferred to the Military Intelligence branch in Kafarsouseh. After a month, I was transferred to the Military Police branch in Qaboun, which is one of the worst branches in terms of lack of cleanliness and treatment. I remained there for two months, and from there I was transferred to Adra prison. I appeared before the military court which acquitted me, and I was released without being given a release paper. The period I spent in these various branches was 5 months.

<sup>11</sup> Female, 30. She was 17 at the time of her detention.

<sup>12</sup> Male, 20, Victim.

Enforced disappearance not only affected minors as direct victims but also did not spare disabled individuals or those with specific physical or mental health needs. One participant<sup>13</sup> recounted how her brother, who held a 'disability card' due to mental health needs, was detained by security forces. Similar accounts were shared by family members of other victims. Another family member<sup>14</sup> recounted how her brother was held upon his arrival back from Lebanon. He had been receiving medical care there following injuries sustained from shrapnel from a mortar shell, which had struck him across his entire body.

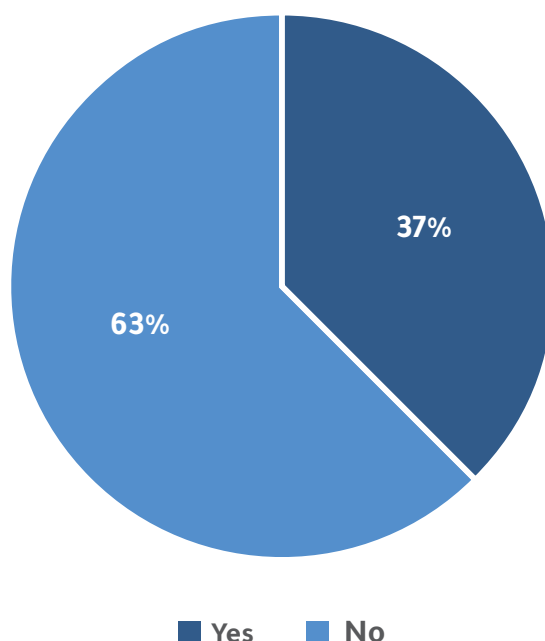


Figure 1. Did you submit a formal complaint concerning the disappearance of your relatives? R = 24.

Now families and relatives who may attempt to enquire about the whereabouts of individuals subject to enforced disappearance face various hurdles. In this research, only 37% of the participants followed the official chain to locate their relative who disappeared. This lack of trust in the formal system results from a situation where relatives fear grave repercussions for daring to enquire about their missing one.<sup>15</sup> Therefore, the inquiry is reduced to information that could be obtained by a bribe, or by speaking to activists who are involved in the uprising.<sup>16</sup> This lack of possibility to inquire about the missing individuals is exacerbated by the immunity from security that members of security forces in Syria enjoy. Namely Article 16 of Legislative Decree no. 14 1969, Article 74 of Legislative Decree no. 549 Date of 1969, and Legislative Decree no. 64 of 2008. According to the Code of Military Procedure issued by Decree 61 of 1950, military personnel are immune from prosecution, as follows:

- A. For high-ranking officers and commanders, the prosecution order is issued by a decree based on the proposal of the General Commander of the Army and Armed Forces.

13 Female 33, Relative  
 14 Female, 36, Relative  
 15 Female, 29, Relative  
 16 Female, 38, Victims

- B. For lower-ranking officers, civilian employees, and workers associated with military departments, the prosecution order is issued by the General Commander based on a recommendation from the Chief of Staff.
- C. Civilian employees directly under the Ministry of Defense are prosecuted by an order from the General Commander of the Army and Armed Forces.
- D. Captains and enlisted personnel are prosecuted by order from the Chief of Staff.

If there are military personnel of different ranks or civilians involved in a single case, the prosecution is handled by the authority responsible for prosecuting the highest-ranking individual.

In 1969, immunity was granted to members of State Security for crimes committed while exercising their duties except in cases where its director issued a warrant. In 2008, immunity similar to that granted to members of the Military Intelligence and Air Force Intelligence was given to Political Security, as well as police and customs officials, with the same exception for cases where the “general leadership of the army and military forces” issued a warrant. **In other words, no cases can be brought against members of the security services except where special permission is given by their own or military leaders.**

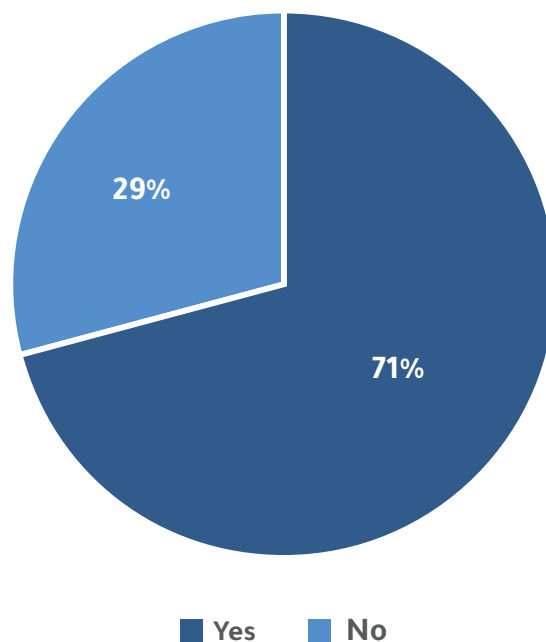


Figure 2. Did you bribe officials to gain information about your missing relative? R = 24.

Instead of following an accountable and effective complaint system, families and relatives often relied on bribing officers and other gatekeepers to access any information from significant figures in the army and security forces.<sup>17</sup> But even then, unfortunately, accurate

<sup>17</sup> Female, 33, Relative.

information is not guaranteed as these gatekeepers and figures trade on the uncertainty and anguish experienced by the relatives and provide false information. One participant<sup>18</sup> reported how he could not learn the whereabouts of his brother despite the help of a very influential army officer from Qurdaha.<sup>19</sup> Another participant reported how both the mayor of his city and Al Baath's secretary could not obtain any news on the whereabouts of his brother.<sup>20</sup>

This, understandably adds a financial burden to the existing troubles, and in the context of this research, this financial loss is vital when we discuss reparation, adding to it the socio-economic impact. Besides the financial impact, enforced disappearance can cripple the social, and economic life of those affected by the disappearance of a relative, as well as the victim themselves. Victims, if and when released are deprived of their civil rights<sup>21</sup> which deprived them of obtaining official documents which may include but are not limited to passports enrolling at the university.<sup>22 23</sup> Participants in this research also reported their inability to obtain or complete an estate inventory where the whereabouts of one party to the inventory are unknown.<sup>24 25</sup>

In addition, the visible and invisible, mental and physical scars that detention and enforced disappearance leave,<sup>26</sup> enforced disappearance has an extended gender impact on female victims and relatives due to social stigmas<sup>27</sup> and the inability of the female partner to move on with her life, even when the death of her husband is confirmed. Impact includes being the breadwinner<sup>28</sup> and the inability to obtain a death certificate which enables the wife to remarry<sup>29</sup> or seek humanitarian relief and support for herself as a widow and for her children as orphans.<sup>30</sup> Having said that, the wife has the right to request separation due to absence after one year of the husband's disappearance under the Syrian Personal Status Law. According to the Personal Status Law, No. 59 of 1953 and its amendments of 2019, Article 109(1) stipulates that if the husband is absent without an acceptable excuse or a sentence of imprisonment for more than three years, his wife may ask the judge to separate them after a year of his absence or imprisonment, even if he has funds which she can spend. Moreover, the same ruling may apply under Article 205(2) whereby the wife could obtain a judicial ruling that recognises the death of her husband four years after his disappearance.

While dealing with and addressing the consequences of enforced disappearance, international humanitarian law treaties do not explicitly use the term 'enforced disappearance.' Nevertheless, enforced disappearance contravenes and undermines various

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18 Male, 32, Relative

19 Qurdaha is a small village on the Syria coast and the birthplace of Syria's late President Hafez Al Assad. It is also considered as the home of the Assad family.

20 Male 57, Relative

21 Male, 40, Victim

22 Female, 30, Victim. She was 17 years old upon detention and disappearance.

23 Male, 32, Victim

24 Female, 37, Relative

25 Male, 57, Relative

26 A Guide Through the Untold Darkness: The Realities of Syria's Disappeared, Arbitrarily Detained, and Their Families | International Center for Transitional Justice. (n.d.). [www.ictj.org](https://www.ictj.org/node/35037). Retrieved May 10, 2024, from <https://www.ictj.org/node/35037>. Also, see: Syrian Center for Media and Freedom of Expression (2022). Report | "Prison Without Bars" report 22 Faces of Caesar's photos... and the tragedy continues. Syrian Center for Media and Freedom of Expression. <https://scm.bz/en/report-prison-without-bars-en/>

27 Female, 38, Victim

28 Female, 33, Relative

29 Female, 38, Relative

30 Female, 37, Relative

customary principles of international humanitarian law. This includes the prohibition of arbitrary deprivation of liberty,<sup>31</sup> the prohibition of torture and other cruel treatment,<sup>32</sup> and the prohibition of murder.<sup>33</sup> Moreover, in international armed conflicts, the extensive requirements related to the registration, visits, and transmission of information concerning individuals deprived of their liberty aim, among other objectives, to prevent enforced disappearances. In non-international armed conflicts, parties are similarly under the duty to take measures to prevent disappearances, such as through the registration of individuals deprived of their liberty.<sup>34</sup>

This prohibition should be considered in conjunction with the rule mandating respect for family life<sup>35</sup> and the rule requiring each party to the conflict to take all feasible measures to account for individuals reported missing due to armed conflict and to provide their family members with information available regarding their fate.<sup>36</sup> The combined impact of these rules establishes that the occurrence of enforced disappearance is prohibited by international humanitarian law.

Similarly, the Rome Statute which establishes the International Criminal Court (ICC) and outlines crimes falling under its jurisdiction refers to enforced disappearance as a crime against humanity<sup>37</sup>, and defines enforced disappearance in article 7(2)(i) as follows:

”Enforced disappearance of persons “means the arrest ,detention, or abduction of persons by ,or with the authorization ,support ,or acquiescence of ,a State or a political organization ,followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons ,with the intention of removing them from the protection of the law for a prolonged period of time.

There are a number of key international treaties that pertain to the prevention of enforced disappearances, the investigation and prosecution of such acts, and the entitlements of victims to truth and reparation. One pivotal treaty is the International Convention for the Protection of All Persons from Enforced Disappearance (ICCPEd), which was adopted by the UN General Assembly in 2006 and took effect in 2010. This treaty exclusively concentrates on enforced disappearances and currently boasts 65 state parties. Furthermore, the International Covenant on Civil and Political Rights plays a crucial role, articulating in a key article that “no one shall be subjected to arbitrary arrest or detention<sup>38</sup>” with disappearance construed as a violation. Moreover, the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment recognizes disappearance as a mode of torture.<sup>39</sup>

31 Rule 99 of the rules of customary international law: <https://ihl-databases.icrc.org/en/customary-ihl/v1>

32 Rule 90 of the rules of customary international law: <https://ihl-databases.icrc.org/en/customary-ihl/v1>

33 Rule 89 of the rules of customary international law: <https://ihl-databases.icrc.org/en/customary-ihl/v1>

34 Rule 123 of the rules of customary international law: <https://ihl-databases.icrc.org/en/customary-ihl/v1>

35 Rule 105 of the rules of customary international law: <https://ihl-databases.icrc.org/en/customary-ihl/v1>

36 Rule 117 of the rules of customary international law: <https://ihl-databases.icrc.org/en/customary-ihl/v1>

37 Article 7(1)(i)

38 Article 9(1). The same clause could also be read in the 1948 Universal Declaration of Human Rights.

39 United Nations(2010). International Day of the Victims of Enforced Disappearances. United Nations. <https://www.un.org/en/observances/victims-enforced-disappearance>

Additionally, the Inter-American Convention on Forced Disappearance of Persons, established in 1994 by the Organization of American States, serves as a leading regional treaty, setting a precedent for UN-level standards. This shows that while the 2006 International Convention directly addresses the issue of disappearance, earlier global treaties have laid a foundational groundwork, solidifying the illegality of such actions within the realms of human rights and international humanitarian law. Regional treaties have also played a significant role in contributing to the ongoing evolution of these norms. Beyond prevention, reparation for enforced disappearance is also enriched in international law. Article 19 of the 1992 UN Declaration on the Protection of All Persons from Enforced Disappearances provides that the victims of acts of enforced disappearance and their families have the right to adequate compensation, including the means for as complete a rehabilitation as possible. It further stipulates that “in the event of the death of the victim as a result of an act of enforced disappearance, their dependants shall also be entitled to compensation”.<sup>40</sup>

Now the fundamental international treaties and declarations explicitly addressing the entitlement to reparation for victims of enforced disappearances are noteworthy. The International Convention for the Protection of All Persons from Enforced Disappearance (2006) delineates comprehensive reparations rights for victims in Article 24. These rights encompass restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. Similarly, the International Covenant on Civil and Political Rights (1966), which Syria ratified, incorporates a key article that outlines the right to an effective remedy for human rights violations, with unlawful arrest or detention specifically recognized as a violation. Additionally, the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims (2005) provide guidelines for the implementation of comprehensive reparation measures for victims across five essential areas: restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.

Like the principle of preventing enforced disappearance, regional human rights courts and UN treaty bodies consistently reaffirm state obligations regarding reparation in cases of enforced disappearances by applying these established international legal frameworks. Therefore, the foundation for reparation is firmly established through the explicit language of these treaties and the interpretive jurisprudence derived from them.

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40 UN Doc. A/47/49, 18 December 1992.

# Reparation

Life has become colourless since  
he disappeared .Just black and  
white<sup>41</sup>.

International law has developed an expansive definition of what constitutes appropriate reparation for victims of enforced disappearance and their families, given the multifaceted harms inflicted by this abuse. In this sense, reparation encompasses diverse material and symbolic measures spanning truth, justice, compensation, rehabilitation, restitution, and reform, ideally swiftly delivered to address the comprehensive nature of disappearance harms.

Article 24 of the International Convention for the Protection of All Persons from Enforced Disappearance outlines crucial provisions regarding the rights of victims and their families. Victims are granted the right to know the truth surrounding the enforced disappearance, including details about the circumstances, the progress and results of investigations, and the fate of the disappeared person. State Parties are required to take appropriate measures to search for, locate, and release disappeared persons, and in cases of death, they must locate, respect, and return the remains. Additionally, each State Party must ensure in its legal system that victims of enforced disappearance have the right to obtain reparation, guaranteeing prompt, fair, and adequate compensation. The right to reparation encompasses material and moral damages, as well as other forms such as restitution, rehabilitation, satisfaction (including the restoration of dignity and reputation), and guarantees of non-repetition.

Over the past few decades, there has been a growing recognition in international law of the rights of families affected by enforced disappearances to receive reparations. This acknowledgment began formally in 1992 with the UN Declaration, which established the rights of disappeared persons and their relatives to fair reparations. Subsequently, key human rights treaties and case law have reinforced the rights of families to truth and just compensation in cases of disappearances. In this regard, international human rights courts have consistently ruled that states are obligated to provide both material and moral reparations to families impacted by disappearances, solidifying this principle through significant judgments. For instance, the Velásquez Rodríguez Case ruled that enforced disappearances violate multiple rights and necessitate reparations.<sup>42</sup> These reparations must be adequate, prompt, and proportional reparation, and the specified measures should attempt to fully address the material, physical, and moral damages proportionally to the gravities suffered by all parties involved (the disappeared, the killed, their loved ones, and communities).<sup>43</sup>

In its Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International

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41 Female, 38, Relative

42 Velásquez Rodríguez Case, Inter-Am.Ct.H.R. (Ser. C) No. 4 (1988), Inter-American Court of Human Rights (IACrHR), 29 July 1988

43 UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation (2006)

Humanitarian Law of 2005<sup>44</sup> (Hereinafter the Basic Principles and Guidelines), the United Nations formulated five forms of reparation, entailing both monetary and non-monetary measures<sup>45</sup>. The measures are also supported by numerous findings of case law. First, the Guidelines referred to the principle of **restitution**<sup>46</sup>, which 'restores the victim to the original situation before the gross violations of international human rights law and serious violations of international humanitarian law occurred' (principle 19). Examples of restitution include restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment, and return of property.<sup>47</sup> Second, and once the rights are restored, the Guidelines postulates establish a mechanism for **compensation**<sup>48</sup>, which 'should be provided for any economically accessible damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case' (principle 20). The Guidelines observed that damage giving rise to compensation may result from physical or mental harm; lost opportunities, including employment, education, and social benefits; moral damage; costs required for legal or expert assistance, medicine and medical services, and psychological and social services.

Compensation measures may also be embedded in **rehabilitation** measures, which include medical and psychological care, as well as legal and social services (principle 21). In seeking a closure towards the violations, the Guidelines highlighted the need for **satisfaction**, which may include a broad range of measures<sup>49</sup>, from those aiming at the cessation of violations to truth-seeking<sup>50</sup>, the search for the disappeared<sup>51</sup>, the recovery, and the reburial of remains,<sup>52</sup> public apologies, judicial and administrative sanctions,<sup>53</sup> commemoration<sup>54</sup>, and human rights training (Principle 22). Finally, the Guidelines prompt parties to the violation to provide **guarantees of non-repetition**<sup>55</sup> comprising broad structural measures of a policy nature such as institutional reforms aiming at civilian control over military and security forces, strengthening judicial independence, the protection of human rights defenders, the promotion of human rights standards in public service, law enforcement, the media, industry and psychological and social services (principle 23).

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44 Van Boven, T. (2005.). Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law United Nations. The United Nations Audiovisual Library of International Law. Retrieved April 17, 2024, from [https://legal.un.org/avl/ha/ga\\_60-147/ga\\_60-147.html#:~:text=The%20United%20Nations%20General%20Assembly](https://legal.un.org/avl/ha/ga_60-147/ga_60-147.html#:~:text=The%20United%20Nations%20General%20Assembly)

45 Blake v. Guatemala, Inter-American Court of Human Rights (IACrTHR), 24 January 1998. Also see: Bámaca Velásquez v. Guatemala (2000)

46 For an extended discussion on restitution and the intrinsic differences between restitution and compensation, please see Gray, C. (1999). The choice between restitution and compensation. *European Journal of international law*, 10(2), 413-423

47 Anzualdo Castro and ors v Peru, Preliminary objection, merits, reparations, and costs, IACHR Series C No 202

48 International Convention for the Protection of All Persons from Enforced Disappearance (Article 24), (2006). Also see: Cyprus v. Turkey, 25781/94, Council of Europe: European Court of Human Rights, 10 May 2001. Also see: Aslakhanova and Others v. Russia (Appl. Nos. 2944/06 and 8300/07, 50184/07, 332/08 and 42509/10), Judgment (Chamber), 18 December 2012

49 ICC Trial Chamber ordered potential collective and symbolic reparations for disappearances along with individual reparations: The Prosecutor v. Thomas Lubanga Dyilo, ICC-01/04-01/06

50 UN Commission on Human Rights, Study on the Right to Truth (2006): <https://www.refworld.org/docid/46822b6c2.html>

51 States must provide redress for disappearances including thorough investigation: Kurt v. Turkey, Appl. No. 15/1997/799/1002, Council of Europe: European Court of Human Rights, 25 May 1998

52 Monetary compensation, investigation, and issuance of death certificate for disappeared: Caso Molina Theissen vs. Guatemala, Serie C No. 106, Inter-American Court of Human Rights (IACrTHR)

53 Velásquez Rodríguez Case, Inter-Am.Ct.H.R. (Ser. C) No. 4 (1988), Inter-American Court of Human Rights (IACrTHR), 29 July 1988

54 Comprehensive reparations for disappearances including memorialization: Gomes-Lund et al. (Guerrilha do Araguaia) v. Brazil, Inter-American Court of Human Rights (IACrTHR), 24 November 2010

55 UN General Assembly, Declaration on the Protection of all Persons from Enforced Disappearance (1992)



## Envisioned Reparation in Syria

Now bearing in mind that all participants in this research had either experienced enforced disappearance or are relatives of someone who experienced it ,only a third of them<sup>8</sup>) participants (are aware of the concept of reparation for enforced disappearance .Without being aware of the existing right of reparation available to them under international law ,their idea of what reparation looks like in their case nevertheless coincides with the provisions shared above .In this sense ,participants understand reparation as a` concept which aims to restore the rights of the victim] of enforced disappearance [or their family<sup>56</sup> .` It is` an integrated series of procedures which starts by making the culprits] of enforced disappearance [accountable for the crimes they committed<sup>57</sup> .`One participant<sup>58</sup> was more detailed and envisaged reparation to have three dimensions .Namely ,legal ,moral ,and monetary<sup>59</sup> which should be implemented in short and long terms:

Morally speaking, reparation involves knowing the fate of the missing person and releasing him, alive or dead. Financially, they must be compensated for the losses and damages caused to his family while they were trying to find out his whereabouts. Legally, reparation involves solving the legal problems related to official documents issued by the Syrian government and granting him the right to obtain the official papers he needs. These requirements are met in the long and short term. In the short term, the missing person who has been released must be rehabilitated and a job opportunity must be provided to help him secure a decent life. In the long term, those who hid and tortured him must be held accountable and compensate him for all his losses.

Another participant<sup>60</sup> shared a somewhat identical understanding of reparation for enforced disappearance but suggested an enhanced structure to ensure that reparation is delivered swiftly. He emphasised that:

It is necessary to have specialised committees that study the state of society and assess specific criteria to develop a clear vision of the needs of the victims and their families and how they should be compensated. Later, a working committee could emanate and deliver reparation according to the study that was carried out previously. I would like to point out that I do not favour the concept of ‘long-term’, as it may happen after it is too late, and the reparation for the damage that has been decided may not be appropriate then.

56 Female, 38, Victim

57 Female, 33, Relative

58 Female, 30, Victim

59 Male, 37, Relative

60 Male, 32, Victim

While all participants addressed the moral, legal, and monetary dimensions of reparation in one way or another, they expressed these dimensions in different priorities. For instance, for some participants, monetary reparation was not a priority. For them, reparations mean 'accountability', and accountability means seeing Bashar Al Assad and his officers subject to the rule of law for all the harm they perpetrated.<sup>61</sup> This involves 'overthrowing and dismantling all security departments and holding the perpetrators accountable, from guards all the way up to the head of state'.<sup>62</sup> This is more important than financial reparation because, as per their argument, 'financial harm can be compensated easily, whereas the accountability process is more significant since the perpetrator can commit his crimes at any time'.<sup>63</sup> The extent of reparation could also reach the 'victims of enforced disappearance during the clash between the Syrian regime and the Muslim Brotherhood during the 80s of the last century'.<sup>64</sup>

Furthermore, moral reparation could also involve restoring the reputation of the missing person. One participant placed above any form of reparation, explaining that:

Reparation must be material and moral. Financially, because we lost a lot of money, and because my brother lost his life, his family, his health, and his job. If he is still alive, he should be compensated for all that he lost. If he passed away, then we must be compensated for all the bribes we paid and for our house that was destroyed. But the most important thing is to provide his children with another non-financial compensation in a way that makes them proud of their father and that he is not a criminal, but rather the regime that arrested and hid him because he came out chanting for freedom is the criminal one. My brother had a beautiful voice and he used to sing during the demonstrations. One form of compensation, for example, is to name the school in which he was an employee after him. This is better than keeping it in the name of the martyrs of the Baath Party.

While the term enforced disappearance may suggest a long-term disappearance, victims of short-term enforced disappearances also face considerable dangers during and after captivity. They risk reprisals, threats, and harassment from the perpetrators, even after their release. Ensuring their physical and mental safety requires protective measures. States can develop protection programmes for witnesses and victims of disappearances. Potential safeguards include anonymity, emergency relocation if under threat, and access to psychological and medical services. These programs should be customized to each person's specific needs and risks. It is also vital to implement mechanisms to investigate claims of retaliation or intimidation against victims and witnesses. Those responsible for such acts should be prosecuted. Overall, victims require tailored security programs and the ability to report harmful acts without fear of consequences. In fact, their well-being depends on the state prioritizing their safety before, during, and after disappearances.<sup>65</sup>

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61 Male, 42, Relative

62 Female, 37, Relative

63 Male, 30, Relative

64 Male, 59, Victim

65 Salih, M., & Samarasinghe, G. (2017). Families of the missing in Sri Lanka: Psychosocial considerations in transitional justice mechanisms. *International Review of the Red Cross*, 99(905), 497-517.

The families of missing persons face immense hardship, not knowing the fate of their loved ones and struggling with relentless anguish. This demonstrates the critical need to fully support families in coping and accessing information on the whereabouts and investigations of the disappeared. Transparent communication with families is vital to avoid exacerbating their distress from lack of information and to uphold their right to the truth. In addition to information access, families require psychological and emotional assistance to deal with the trauma, similar to the disappeared victims. While all participants highlighted the significance of psychological and emotional support, one participant highlighted her wish to travel somewhere far away so she may forget what she experienced during her brother's disappearance.<sup>66</sup>

Legally, victims of enforced disappearance may also need support to assert their rights and pursue justice. States should facilitate families' access to human rights lawyers to initiate proceedings, obtain reparations for harm, and navigate complex judicial systems. Transitional justice mechanisms like truth commissions, special courts, and reparations programs can be instrumental in combating impunity and enabling reconciliation and peace. Overall, states must consider tailored measures to meet families' specific needs, including material, psychological, social, and symbolic reparations. Supporting families is imperative for truth, accountability, and healing.<sup>67</sup> Ensuring access to justice, a broader pursuit of truth, and the availability of suitable reparations for victims of both long and brief enforced disappearances and their families are essential prerequisites for effectively combating these atrocities.<sup>68</sup>

### **My brother Should Decide**<sup>69</sup>

Despite sharing what reparation means to them, some relatives prefer to wait for the missing person to decide on the kind of reparation they wish to receive and feel entitled to.<sup>70</sup> One participant<sup>71</sup> argued that:

[Reparation] should be subject to the evaluation of each [missing] person individually, and based on an assessment of the violations and the harm they experienced. Therefore, some may need financial compensation and others may require a job opportunity, housing, or something else they determine.

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66 Female, 29, Relative

67 Karl, S. (2014). Rehumanizing the disappeared: spaces of memory in Mexico and the liminality of transitional justice. *American Quarterly*, 66(3), 727-748.

68 Fulton, S. (2014). Redress for Enforced Disappearance. *Journal of International Criminal Justice*, 12(4), 769-786. <https://doi.org/10.1093/jicj/mqu044>.

69 Male, 39, Relative

70 Ibid

71 Male, 30, Victim

Now the International Convention for the Protection of All Persons from Enforced Disappearance defines the victim of enforced disappearance to be “The person who has been subjected to enforced disappearance, and Any individual who has suffered harm as a direct result of the enforced disappearance, such as the family members of the disappeared person.”<sup>72</sup> The relevant section of the Rome Statute of the International Criminal Court related to secondary victim participation and reparations is Article 75. Specifically, Article 75(2) states:

The Court may make an order directly against a convicted person specifying appropriate reparations to ,or in respect of ,victims ,including restitution ,compensation ,and rehabilitation .Where appropriate ,the Court may order that the award for reparations be made through the Trust Fund provided for in Article.79

Arguably, this provides the basis for the ICC to award reparations to victims, including secondary victims. Additionally, Article 68(3) allows for victim participation in the ICC proceedings, stating that “where the personal interests of victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court”.

While not explicitly outlined, the ICC’s case law and Rules of Procedure and Evidence have interpreted these provisions to allow relatives of deceased, disappeared, or incapacitated primary victims to present their own mental and emotional distress claims in seeking reparations. They must provide reasonable evidence to support those personal harm claims. Articles 75(2) and 68(3) enable secondary victim participation and reparations pursuant to certain evidentiary standards, as clarified through ICC trial chamber decisions. For instance, the ICC established criteria for victims’ eligibility for reparations, including that a child soldier’s relatives can claim reparations for mental and emotional harm under Article 75 based on their relationship with the direct victim.<sup>73</sup> Similarly, the Court postulated that deceased or missing victims do not exclude the granting of reparations for their loss to eligible relatives, subject to evidence of mental harm.<sup>74</sup> In the Ntaganda Case (2021)<sup>75</sup>, The Court permitted relatives of deceased, disappeared, or otherwise incapacitated victims to apply for reparations under Rule 94(2) of the Rules of Procedure and Evidence. Relatives must provide proof of identity and reasonable evidence of the personal harm suffered due to the direct victim.

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72 Article 19

73 Situation in the Democratic Republic of the Congo, in the case of the Prosecutor v. Thomas Lubanga Dyilo, ICC-01/04-01/06, International Criminal Court (ICC), 14 March 2012

74 The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui, ICC-01/04-01/07 OA 8, International Criminal Court (ICC), 25 September 2009

75 The Prosecutor v. Bosco Ntaganda (2021)

ICC-01/04-02/06: <https://www.icc-cpi.int/sites/default/files/CaseInformationSheets/NtagandaEng.pdf>

## Is Reparation Possible in Syria?

Generally speaking, participants in this research were not very optimistic about the possibility of reparation for enforced disappearance in Syria. Those who could see it happening shared a conditional hope, subject to the removal of the Syrian regime.<sup>76</sup> And even if moral and monetary reparations were possible, some participants noted that nothing could compensate them for their missing relative, or for the time they lost in detention in cases where they themselves were subject to enforced disappearance.<sup>77</sup>

The role of the international community and transitional justice that precedes reparation has also featured in the participants' narratives. Skeptical of the willingness of the international community to lead a change in Syria<sup>78</sup>, the participants also believed that reparation is not possible before transitional justice in Syria. In fact, only 12% thought that reparation was possible before transitional justice, whereas the rest (88%) thought it was not possible.

This cast doubt on the existing mechanisms that deal with enforced disappearance in Syria and the possibility for reparation. Conditional to transitional justice first, one participant's<sup>79</sup> rationale was that:

The matter] reparation [requires authorities to implement it ,and there must be an independent judiciary and independent army and police. This is difficult to achieve unless we get rid of the rule of Bashar the tyrant and his thugs

These narratives are not remote from the principles of transitional justice. In principles, transitional justice aims to achieve various objectives including restitution, compensation, rehabilitation, satisfaction, and guarantees against repetition.<sup>80</sup> It also involves incorporating additional elements crucial for fostering lasting peace, such as psychosocial processes, socioeconomic conditions, and political contexts.<sup>81</sup> Beyond promoting sustainable peace, the transitional justice process can also positively influence the rule of law, while addressing security, political, economic, and justice concerns at the same time.<sup>82</sup>

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76 Male, 32, Relative

77 Female, 33, Relative

78 Male, 30, Relative

79 Male, 42, Relative

80 Bassiouni, M. C. (2000). Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law, UN Doc. E/CN. E/CN, 4, 62 (2000)

81 Lambourne, W. (2009). Transitional justice and peacebuilding after mass violence. *International journal of transitional justice*, 3(1), 28-48.

82 Jeong, H. W. (2005). *Peacebuilding in post conflict societies: Strategy and process*. Boulder, CO: Lynne Rienner. Also see: Laplante, L. J. (2013) *The plural justice aims of reparations*. In *Transitional justice theories* (pp. 78-96). Routledge.

The beneficial impact of transitional justice on reparation is well-documented. In Rwanda, for instance, the implementation of transitional justice mechanisms focused on holding perpetrators of war crimes accountable. This inspired the development of a new justice system emphasizing human dignity and fostering unity among ethnic groups.<sup>83</sup> Similarly, during South Africa's transition from apartheid, the justice system, previously biased against black people, underwent reforms including the enactment of anti-racist laws to dismantle discriminatory practices.<sup>84</sup> Considering the potential application of the transitional justice model in Syria, it presents an opportunity to recognize individual dignity and address past violations while aiming to prevent their recurrence.<sup>85</sup> This prospective endeavour would contribute to reparation for enforced disappearance, particularly given the distinctive characteristics inherent in the Syrian conflict such as its ethno-sectarian nature and the involvement of various international and regional powers.

In the following section, we will examine the existing mechanisms that address enforced disappearance in Syria. The lack of prospects for transitional justice and its impact on those mechanisms is evident. But first, the section will start by looking into the experience of other nations who experienced conflicts resulting in enforced disappearance and how reparation and the needs of victims were addressed.

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83 Ingelaere, B (2008) The gacaca courts in Rwanda. In: Huyse, L, Salter, M (eds) *Traditional Justice and Reconciliation Mechanisms after Violent Conflict: Learning from African Experiences*, Stockholm: International Idea.

84 Sachs, A. (2009) *The Strange Alchemy of Life and Law*. Oxford: Oxford University Press.

85 Kodikara, C. (2023). The Office on Missing Persons in Sri Lanka: Why Truth Is a Radical Proposition. *International Journal of Transitional Justice*, 17(1), 157-172.

## The Past Informing the Future: Future Reparation in Syria and the Experience of Post-conflict Nations

Reparation for enforced disappearance in post-conflict societies is not a straightforward matter. In Sri Lanka, in the relentless pursuit of justice and closure, the families of the disappeared and attorneys representing them have endured harassment and threats from governmental entities and extrajudicial factions. This highlights the need for a transitional justice that precedes reparation efforts. But despite palpable risks, relatives continued to fight the injustice of silence and persisted through relentless efforts to silence them.<sup>86</sup>

However, elsewhere some initiatives provide signs of progress. The Unit for the Search of Disappeared Persons (UBPD) in Colombia, for instance, employs various tactics to tackle the immense challenges of locating those who went missing in the country's long conflict. They initiate searches with the presumption that the individual may still be alive. Compiling and cross-referencing all previous information, while coordinating efforts across institutions, forms the crux of investigations. If found deceased, the UBPD strives to recover remains and return them to grieving families. By partnering with forensic medical agencies, law enforcement, and academics, they identify anonymous bodies in morgues and cemeteries. Traditionally, relatives of the missing would provide tips or be reunited with their loved ones. However, the UBPD rejects this narrow involvement in favor of an approach aligning with humanitarian values. One where affected families and advocacy groups actively participate at every stage of the search process. For the UBPD, "families" encompasses non-blood relatives, LGBTQ partners, and expansive conceptions of family held by Indigenous and Afro-Colombian communities.<sup>87</sup>

In Argentina, the country established the National Commission on the Disappearance of Persons (CONADEP) in 1983, which documented cases of enforced disappearances during the military dictatorship (1976-1983). Its mandate empowered investigators to probe the enforced disappearances of people that occurred from 1976 to 1983. Their duty was to uncover the details surrounding the cases, determine the fate of the abducted, and locate the burial sites of the missing to deliver answers to their relatives. Trials were initiated against military officials involved in human rights abuses, leading to convictions and imprisonment.<sup>88</sup> The exhumation and identification of remains provided families of the missing person some measure of peace and enabled proper burials. For example, the Argentine Forensic Anthropology Team has tirelessly worked for years to locate and identify the remains of those who were forcibly abducted and vanished under Argentina's former military dictatorship. This grants closure to relatives and honors those lost by finally bringing them home.<sup>89</sup> Still in Latin America, and as a result of the ruling by the Inter-American Court, the relatives of the disappeared in La Cantuta received financial compensation, acknowledgment of their emotional distress, a public apology, the creation of a memorial site, and other forms

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86 Amnesty International (2020) Sri Lanka: Deliver justice, truth, and reparation to families of the disappeared. <https://www.amnesty.org/en/latest/press-release/2020/11/sri-lanka-deliver-justice-truth-and-reparation-to-families-of-the-disappeared/>

87 WOLA. (2020, August 31). Colombia's Unit for the Search of Disappeared Persons. Colombia Peace. <https://colombiapace.org/colombias-unit-for-the-search-of-disappeared-persons/>

88 Guevara, V. V. (2022). Prologue to truth: Argentina's National Commission on the Disappeared and the authority of international law. *Leiden Journal of International Law*, 35(1), 105-127.

89 McFarland, Sam (2018) "Azucena Villaflor, the Mothers of the Plaza de Mayo, and Struggle to End Disappearances," *International Journal of Leadership and Change*: Vol. 6: Iss. 1, Article 7.

of redress. While not compensating for the loss of the missing persons, these measures provided some solace and justice.<sup>90</sup>

Bosnia and Herzegovina has successfully resolved roughly 70 percent of cases of those documented missing from the war - a higher success rate than any other post-conflict nation, despite operating within a bureaucratically complex system of government and up against deliberate obstruction to finding and identifying remains. This achievement has also followed in the face of institutional red tape and concerted campaigns by some to actively disrupt and stonewall efforts to locate the disappeared.

Still, Bosnia has managed to account for the fates of a substantial majority of those lost amidst the chaos of conflict, though considerable work remains to uncover the truth for all grieving families affected.<sup>91</sup> Enacted in 2004, the Bosnia and Herzegovina Law on Missing Persons<sup>92</sup> marked a groundbreaking legislative milestone, being the first of its kind in any post-conflict nation globally. This law solidifies the “right to the truth regarding the fate of missing relatives” and ensures the right to be informed about ongoing investigative efforts. It established the Missing Persons Institute (MPI) as a state institution with the mandate to search for and identify missing persons throughout the entire territory of Bosnia and Herzegovina, thereby eliminating the discriminatory practice of searching based on ethnic or religious affiliation.<sup>93</sup> The legislation also mandated the creation of the Central Records on Missing Persons (CEN) and a Fund for the Families of the Missing. It also includes provisions for imposing sanctions against individuals and institutions withholding information related to the fate of missing persons. The Central Records on Missing Persons (CEN), established under this law, serves as a centralized database consolidating information from various government levels and regional offices. This consolidation is crucial to maintaining data integrity and preventing the manipulation of missing persons’ numbers for political or other purposes.<sup>94</sup>

Additionally, the law protects various rights of families, encompassing the temporary disposition of missing persons’ property when their death has not been declared, coverage of burial costs, priority rights for the education and employment of children of missing persons, access to healthcare, and the right to memorialization at grave sites.<sup>95</sup> That being acknowledged, two decades after the signing of the peace agreement concluding the Bosnian War, the resolution of numerous cases of enforced disappearances remains unattainable. Discrimination and a regrettable absence of politics will continue to impede victims’ access to justice, truth, and reparations.<sup>96</sup>

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90 Case of *La Cantuta v Peru*, *Muñoz Sánchez and ors v Peru*, Merits, reparations, and costs, IACHR Series C No 162, IHRIL 3047 (IACHR 2006)

91 Blumenstock, T. I. L. M. A. N. (2006). Legal protection of the missing and their relatives: The example of Bosnia and Herzegovina. *Leiden Journal of International Law*, 19(3), 773-793.

92 International Humanitarian Law Databases (2024) Law on Missing Persons, 2004 in Bosnia and Herzegovina. ICRC. <https://ihl-databases.icrc.org/en/national-practice/law-missing-persons-2004>

93 Huffine, E., Crews, J., Kennedy, B., Bomberger, K., & Zinbo, A. (2001). Mass identification of persons missing from the break-up of the former Yugoslavia: structure, function, and role of the International Commission on Missing Persons. *Croatian Medical Journal*, 42(3), 271-275.

94 ICMP Bosnia and Herzegovina. (n.d.). *Www.icmp.int*. <https://www.icmp.int/where-we-work/europe/western-balkans/bosnia-and-herzegovina/>

95 Amnesty International (2015) *Bosnia and Herzegovina: 20 years of denial and injustice*. Amnesty International. <https://www.amnesty.org/en/latest/news/2015/12/bosnia-and-herzegovina-20-years/>

96 Juhl, K. (2009). The problem of ethnic politics and trust: The missing persons institute of Bosnia-Herzegovina. *Genocide Studies and Prevention*, 4(2), 239-270.



The aforementioned experiences, if anything, coincide remarkably with what the participants in this research asserted, in that political will, legal frameworks, and societal support play crucial roles in the success of initiatives of reparation for enforced disappearance.

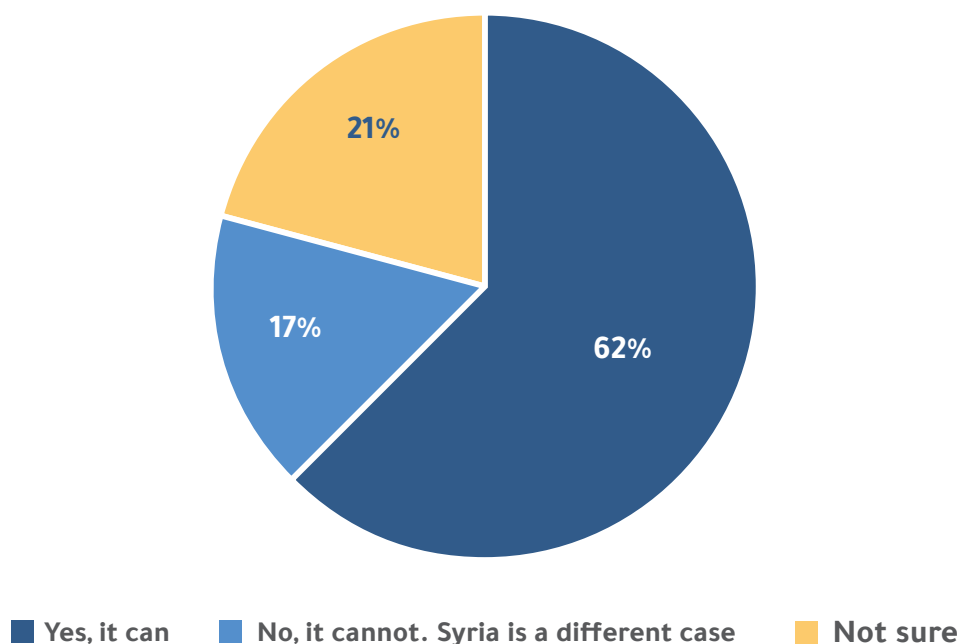


Figure 3. Can Syria learn from other nations that implemented measures for reparation for enforced disappearance? R = 24

When asked about whether Syria and Syrians could learn from these experiences, 62% of the participants in this research were positive, 21% were not sure and 17% believed that Syria and the Syrian conflict embed particular features that hamper the benefits of shared experience. One participant<sup>97</sup> articulated the Syrian story and why it is different as follows:

I believe that our situation in Syria is different because our war has now become a sectarian conflict and all nations on earth have intervened in it. Bashar al-Assad imported all the mercenaries in the world and enabled them to kill us .We have a lot of revenge in Syria ,and the regime has turned the course of the revolution in Syria into a war between Sunnis and Alawites .Bashar al-Assad also displaced three-quarters of the Syrian people ,demolished their homes ,and displaced them to all parts of the earth .Compensation must be for everything ,for the homes that were destroyed and the lands that were left fallow.

The fact that Syria has become a theatre for regional and global powers to settle their scores complicates the scene and impedes any future efforts for reparation. Those forces, as one participant asserted, are here (in Syria) to stay and they will have a say in post-conflict Syria and the way reparation mechanisms are shaped.<sup>98</sup> Moreover, participants noted the broad

97 Male, 42, Relative

98 Male, 32, Victim

injustice, conflict, and inequality that portrays the Middle East in general<sup>99</sup> as well as the political divisions that stain family members in one house sometimes whereby one member is loyal to the Syrian regime and the other is an opponent<sup>100</sup> among other reasons that distinguish the Syrian scenario and subsequently requires innovative and creative approach to reparation.

## Syria: the Independent Institution on Missing Persons

In June 2023, the General Assembly deliberated on the draft resolution titled “Integrated and coordinated implementation of and follow-up to the outcomes of the major United Nations conferences and summits in the economic, social, and related fields” (document A/77/L.79).<sup>101</sup> The resolution emphasized the imperative of devising a framework to address the crisis of missing persons in Syria. Consequently, the Assembly made the decision to create the Independent Institution on Missing Persons. This institution is tasked, among other responsibilities, with ensuring the active participation and representation of victims, survivors, and families of missing persons, including women’s organizations and civil society. The resolution noted that ‘after 12 years of conflict and violence in the Syrian Arab Republic, little progress has been achieved in alleviating the suffering of families by providing answers as to the fate and whereabouts of all missing persons, and that the unresolved issue of missing persons has had a particular impact on women and children.’<sup>102</sup>

Additionally, the Assembly called upon the Secretary-General, with the support of the Office of the United Nations High Commissioner for Human Rights (OHCHR), to formulate the terms of reference for the Independent Institution within 80 working days from the adoption of the resolution. The institution is mandated to adopt a victim- and survivor-centered approach and the Secretary-General is urged to take necessary measures for the establishment of this institution. The resolution also requires the Secretary-General to provide a report on the implementation of the resolution within 100 days of its adoption, with subsequent annual reports on the activities of the Independent Institution.

**In an apparent demonstration of the participants’ concern on how international politics may play into the tragedy of enforced disappearance in Syria, and while the text of the resolution refers to ‘missing persons’, it does not explicitly refer to ‘enforced disappearance’. This will have a significant legal impact on the way this mechanism operates and functions as it excludes ‘enforced disappearance’ which is a defined crime.**

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99 Male, 32, Relative

100 Female, 34, Relative

101 The UN General Assembly (2023) Seventy-seventh session Agenda item 13 Integrated and coordinated implementation of and follow-up to the outcomes of the major United Nations conferences and summits in the economic, social, and related fields Independent Institution on Missing Persons in the Syrian Arab Republic. Retrieved May 9, 2024, from <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/26062023.pdf>

102 Ibid page 1

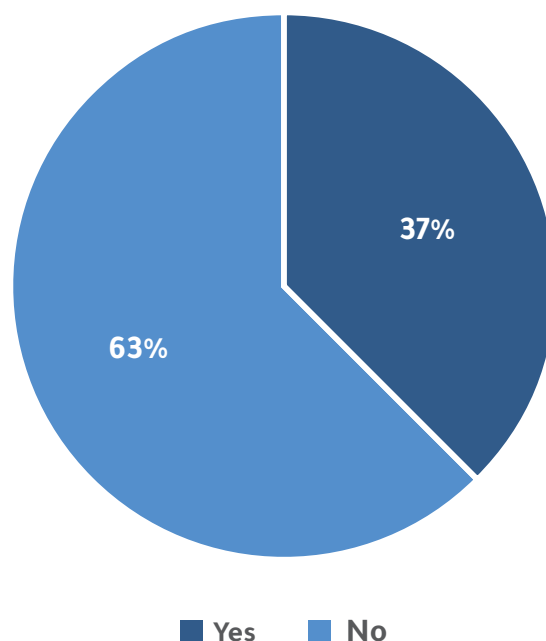


Figure 4. Have you heard of the recent mechanism that aims to work on the issue of Syrians subject to enforced disappearance?  
R = 24

At times of crisis, the UN and its mechanisms appear to be irrelevant to the layperson. While its impact in terms of relief and services is evident, it remains an elite club when it comes to politics and human rights.<sup>103</sup> **In this case, for instance, only 37% of participants in this research are aware of the Independent Institution on Missing Persons. While a third of the participants were themselves subject to enforced disappearance, only a quarter of them heard of the new mechanism.**

103 Gruenberg, J. (2009). Article 12 2009 Part of the International Law Commons Recommended Citation Recommended Citation Justin S. Gruenberg, An Analysis of United Nations Security Council Resolutions: Are All Countries Treated Equally? 41 Case W. Res. J. Int'l L., 41. Also see: House-Midamba, B. (1990). The United Nations Decade: Political Empowerment or Increased Marginalization for Kenyan Women? Africa Today, 37(1), 37-48. Also see: A "club of elites" will not realise the multilateral future we need, Holy See tells UN Assembly | UN News. (2023, September 26). News.un.org. <https://news.un.org/en/story/2023/09/1141507>. Also see: Askari, B. (2020). Expanding the UN Security Council: A Potential Bulwark against the UN's Legitimacy Crisis. Va. J. Int'l L., 61, 661.

## Evidence Standards

Moreover, the Resolution requests the United Nations system as a whole to cooperate fully with the Independent Institution and to promptly respond to any requests, including access to information and documentation, in particular, to provide the Institution with any information and data it may possess, as well as any other forms of assistance necessary to fulfill the mandate of the Institution. However, While it refers to information and documentation, it does not make an explicit reference to the evidence and record that may be held by the survivors of enforced disappearance or their relatives.

Article 19(1) of the International Convention for the Protection of All Persons from Enforced Disappearance stipulates that personal information, including medical and genetic data, constitutes admissible evidence within the framework of the search for a disappeared person This is without prejudice to the use of such information in criminal proceedings relating to an offence of enforced disappearance or the exercise of the right to obtain reparation. Moreover, Chapter 4 of the ICC Rules of Procedure and Evidence outlines standards around admissibility and relevance for evidence of harm submitted by victims and their eligible family members seeking reparations. This sets boundaries around claims lacking justification.

The standard of evidence in international law for claims related to enforced disappearance is rigorous, yet it is tempered by an awareness of the challenges faced by victims in documenting these abuses. Key principles include court acknowledgments that circumstantial evidence, indicia, and presumptions can serve as the foundation for objective and justified inferences regarding the fate of disappeared individuals and the culpability of authorities. Instead of solely relying on direct evidence, which perpetrators often intentionally conceal through denial and obstruction of investigations, a comprehensive and conscientious examination of the evidence as a whole is mandated.

Despite the use of circumstantial evidence ,convictions are still required to meet specific thresholds concerning the strength ,credibility ,and consistency of inferences drawn from the available mix of direct and indirect pieces of evidence .Reliance on suppositions alone is deemed inadequate .Regional human rights courts have devised contextual indicators demonstrating state responsibility for disappearances in the absence of explicit documented orders or admissions ,considering that authoritarian regimes often conceal incriminating evidence .However ,any inferences of culpability must be established beyond a reasonable doubt based on the systemic information available .Confessions from accused perpetrators collaborating with truth commissions hold evidentiary weight ,especially when aligned with other established facts.

In the *Velásquez Rodríguez v. Honduras* case (1988)<sup>104</sup> , the court established that circumstantial evidence and logical inference can effectively establish state liability for disappearances, even in the absence of direct proof of death, particularly when security forces exhibit systematic involvement. In the *European Court Case of Cyprus v. Turkey* (2001)<sup>105</sup> , the court panel determined that presumptions of Turkish state liability were objectively justified despite the lack of explicit orders or bodily evidence due to denial policies. This decision was based on numerous third-party eyewitnesses having last seen missing individuals in the custody of Turkish or Turkish-Cypriot forces, combined with the absence of subsequent accountings.

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104 *Velásquez Rodríguez Case*, Inter-Am.Ct.H.R. (Ser. C) No. 4 (1988), Inter-American Court of Human Rights (IACrHR), 29 July 1988

105 *Cyprus v. Turkey*, 25781/94, Council of Europe: European Court of Human Rights, 10 May 2001

In the International Criminal Tribunal case of Prosecutor v. Kupreškić (2000), judges invoked the general principle of international law that state responsibility can be inferred from indicia demonstrating a chain of command involved in widespread or systematic abuses against disappeared detainees, taking into account concealment efforts when making considered deductions.

Relatively, the International Review of the Red Cross has published guidelines around applying legal presumptions of death or state responsibility for disappearances after extensive periods without accounting for the missing persons where circumstances point to potential concealment of killings.<sup>106</sup> Also, Legal scholars have engaged in discussions concerning the necessary equilibrium between stringent standards of proof and the flexibility warranted, particularly in light of the tendency of authoritarian regimes to obliterate or suppress direct evidence of enforced disappearances through denial and intimidation, both during and after conflicts.<sup>107</sup> The utilization of contextual indicia, circumstantial inference, and witness testimony is seen as a viable means to establish cases of enforced disappearance or presumptive death, especially in situations where bodily or documentary evidence is frequently lacking due to the brutal nature of this form of abuse.<sup>108</sup>

The ongoing development of 'disappearance jurisprudence' strives to harmonize meticulousness with the adjustment of evidentiary methodologies to accommodate the practical constraints faced by victims and investigators. This adaptation is deemed necessary as the militarized state apparatus frequently deliberately conceals incriminating information.<sup>109</sup> Nevertheless, critics caution against excessively facile presumptions of enforced disappearances that do not consider alternative explanations. They argue that such presumptions, especially in situations where allegations arise during civil conflict or crisis climates with limited verification, may encroach upon the due process rights of those accused.<sup>110</sup>

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106 Henckaerts, J. M. (2009). The grave breaches regime as customary international law. *Journal of International Criminal Justice*, 7(4), 683-701. See: Guiding Principles/Model Law on the Missing: Principles for Legislating the Situation of Persons Missing as a Result of Armed Conflict or Internal Violence : Measures to prevent persons from going missing and to protect the rights and interests of the missing and their families.

107 Scovazzi, T., & Citroni, G. (2007). The struggle against enforced disappearance and the 2007 United Nations convention. In *The Struggle against Enforced Disappearance and the 2007 United Nations Convention*. Brill Nijhoff.

108 González-Núñez, D. (2020). The widespread use of torture in Mexico and its impacts on the rule of law. In *Peremptory International Legal Norms and the Democratic Rule of Law*(pp. 68-87). Routledge.

109 Smith, G. (2016). The interface between human rights and police complaints in Europe. *Civilian oversight of police: advancing accountability in law enforcement*, 159-177.

110 Quintana, M. and Fernández, E. (2014). "Protection of Human Rights Defenders: Best Practices and Lessons Learned (Part 1)", Legislation, National Policies and Defenders' Units, Brussels: Protection International.

The evidence standard shared above chimes with what participants in this research are able to produce. **While discussing the evidence standard for enforced disappearance is not in the scope of the report, referring to it and raising awareness about it are vital for both victims and relatives when they attempt to access any reparation mechanisms in the future.** The evidence that participants in this research possessed ranged from witness statements,<sup>111</sup> visit cards to various security departments,<sup>112</sup> the identity card of the missing person,<sup>113</sup> video recordings,<sup>114</sup> Caesar's photos,<sup>115</sup> and physical scars resulting from prolonged detention and torture.<sup>116</sup>

Notably, many participants referred to the documentation process with Syrian civil society organisations (such as the SCM) as evidence. This suggests a very important role for Syrian civil society organisations in future reparations by enabling the victims and relatives to document their experience and use it later as evidence. It also suggests the need for these organisations to reach out to the survivors and relatives of enforced disappearance, and share in a clear and accessible language what is enforced disappearance, what is reparation, what are their rights, and the available mechanisms available to them including the need to document their experience. In Peru, for instance, and after the disappearance of the victims, their families and supporting organizations initiated widespread efforts nationally and globally demanding the truth about what happened and calling for those responsible to be held accountable. Their multifaceted campaign included utilizing media, petitioning leaders, organizing public demonstrations, and keeping the case in the public discourse.<sup>117</sup>

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111 Female, 33, Relative

112 Female, 33, Victim

113 Male, 32, Relative

114 Male, 30, Relative

115 Female, 37, Relative. 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. For detailed discussion on the said photos, please see: Syrian Center for Media and Freedom of Expression (2022). Report | "Prison Without Bars" report 22 Faces of Caesar's photos... and the tragedy continues. Syrian Center for Media and Freedom of Expression. <https://scm.bz/en/report-prison-without-bars-en/>

116 Male, 30, Victim

117 Case of La Cantuta v Peru, Muñoz Sánchez and ors v Peru, Merits, reparations, and costs, IACHR Series C No 162, IHRL 3047 (IACHR 2006)

# Recommendations

Based on the findings of this report, the Syrian Centre for Media and Freedom of Expression calls for:

## The Syrian government

- \* To immediately and unconditionally release all detainees and individuals subject to enforced disappearance and reveal the names of all individuals who were died under torture.
- \* To adhere and commit to the provisions of international human rights law and international humanitarian law that stipulate the prohibition of arbitrary arrest, torture, enforced disappearance, and ill-treatment of prisoners as well cruel, inhuman, or degrading treatment.
- \* To repeal legislation and law provisions that provide immunity to the security and military from any accountability. In this regard, the Syrian government should acknowledge that some provisions in its domestic law hamper its commitment to international conventions to which Syria is a member.
- \* Abolish special courts that violate the requirements of a fair trial, as well as all rulings that were issued by these courts. This includes removing the verdicts from the criminal record of the survivors.
- \* To acknowledge the plea of enforced disappearance survivors and put in place mechanisms and provisions that provide them with medical care according to their needs, and ensure their rehabilitation and reintegration into their society and local communities.
- \* To facilitate the role of civil society organisations in Syria in general ,and those which work with torture survivors in particular ,and eradicate any bureaucratic and procedural hurdles that may hamper their work.

## The International community

- \* To pressure the Syrian government to declare its full commitment to the international conventions it signed and ratified.
- \* To shoulder their responsibilities (including as United Nations bodies) in protecting civilians by all available means at their disposal, and to pressure the Syrian government to treat Syrians according to international conventions to which Syria is a party.

- \* To pursue the Syrian government by all available means to declare its full commitment to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to withdraw its reservation on Article 20 of the said convention, to ratify the International Convention for the Protection of All Persons from Enforced Disappearance, and to grant international and human rights observers the right to access all detention centers, including the UN Special Rapporteur on extrajudicial executions, the Office of the High Commissioner for Human Rights, the Commission of Inquiry on Syria of the United Nations Human Rights Council, and the Special Rapporteur on Syria.
- \* To shift international support for enforced disappearance survivors in Syria from statements of condemnation to actual support for Syrian civil society organisations and to suggest and apply specific solutions for future reparation rather than blanket approaches that do not take into consideration the particularities of the Syrian scenario.
- \* To provide financial and technical support to civil society and humanitarian organisations that are involved in identifying the whereabouts of individuals subject to enforced disappearance, spread awareness about future reparation and its mechanism as well as document the experience of the victims and survivors to use it as evidence in future reparation.
- \* The international community and nearby countries hosting Syrian refugees should also halt their programmes that aim to deport Syrian refugees, who may be detained and tortured and therefore subject to enforced disappearance upon their return as happened in many documented cases.

## Syrian Civil Society Organisations

- \* While we do not have an indication of the perception of the families as to the level and standards of evidence they need to produce ,they should be informed in accessible language about the value of any information they may have and/or possess.
- \* This suggests a very important role for Syrian civil society organisations in future reparations by enabling the victims and relatives to document their experience and use it later as evidence.
- \* Syrian civil society organisations and other concerned bodies should actively reach out to the survivors and relatives of enforced disappearance, and share in a clear and accessible language what is enforced disappearance, what is reparation, what are their rights, and the available mechanisms available to them including the need to document their experience.





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