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Input with a View to Issuing a Joint Statement on the Notion of Short-term Enforced Disappearance

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Since 2011, tens of thousands of Syrian men, women, and children have been subjected to enforced disappearance, arbitrary detention, and abduction, or gone missing by the Syrian government, pro-government forces, armed opposition groups, and terrorist groups.¹ However, previously, enforced disappearance was a primary method for the Syrian government to silence political opponents, intimidate families and friends, and deter political opposition and protests. Moreover, during the presidency of former President Hafez al-Assad, enforced disappearance was commonly used to intimidate and control the Syrian society. The number of people forcibly disappeared in the 1980s is estimated at 17,000. After the outbreak of widespread protests in 2011, the practices of disappearance escalated dramatically. It is estimated that at least 150,000 people are still forcibly disappeared or arbitrarily detained,² more than 94% of the cases of enforced disappearance took place in areas controlled by the Syrian government, while the rest are distributed to areas controlled by other parties, including non-state actors.³

How is the notion of ‘short-term enforced disappearances’ understood and in which contexts do they occur? Which are the legal frameworks and practices that may lead to ‘short-term enforced disappearances’, and which are the legal frameworks and practices that might prevent them?

Short and long-term enforced disappearance is practiced in the context of political repression, in the daily practices of the security services whose powers extend to various areas of life, and in the context of judicial procedures. These practices are supported by a legislative structure that legalizes violations and prevents accountability.

¹ <https://www.ohchr.org/en/stories/2021/03/syrias-missing-search-truth-justice-and-reparation>

² Independent International Commission of Inquiry on the Syrian Arab Republic. Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, 11 March 2021.

<https://undocs.org/ar/A/HRC/46/55>

³ Forcibly Disappeared in Syrian Detention Centers Research about the Details of the Process of Forced Disappearance and the Fate of the Victims. The Association of Detainees and the Missing in Sednaya Prison. December 2020. <https://www.admsp.org/wp-content/uploads/2021/07/Forcibly-Disappeared-in-Syrian-EN.pdf>



The legislative structure:

Syrian laws lack a definition of enforced disappearance and do not specifically criminalize its acts. Moreover, the Syrian government does not acknowledge that its security, military, and judicial institutions commit enforced disappearance.

- Syrian legislation lacks provisions that explicitly criminalize enforced disappearance.⁴ It only incriminates acts committed by individuals in the context of detention or kidnapping, or by officials who abuse their power while exercising their duties. These actions establish an individual responsibility and do not affect the executive authority and its institutions.
- Theocratically, several legal provisions combat the crime of enforced disappearance. The Criminal Procedure Code stipulates that the arrest warrant and the reasons for its issuance must be presented.⁵ The interrogation of detainees and their presentation to the Public Prosecution may not be delayed for more than 24 hours,⁶ otherwise, Article 358 of the Penal Code considers the person responsible for that a lawbreaker. Article 72 of the Criminal Procedure Code allows detainees to contact their lawyers at any time, even if the investigating judge decides to prevent that. Articles 242,252 stipulate that it is not permissible to detain individuals in places other than those designated for that, and it is the duty of citizens to inform about this. Article 33 of the Syrian constitution contains various guarantees, including that “Freedom shall be a sacred right and the state shall guarantee the personal freedom of citizens and preserve their dignity and security”. However, these legal and constitutional articles are not adhered to, especially considering contradictory legislation.
- Article 1 of Legislative Decree No. 20 of 2013 sets out the penalties for kidnapping offences. If the act is committed for political or material gain, revenge, sectarian reasons, or ransom, the offence shall be punished by a life sentence of penal labor. However, this decree is directed against non-governmental gangs that practice kidnapping and it does

⁴ “The absence of an explicit definition in the domestic legislation of enforced disappearance as an autonomous crime is of great concern” Carmen Rosa Villa Quintana, Chair of UN Committee on enforced disappearance. <https://www.ohchr.org/en/press-releases/2022/11/enforced-disappearance-iraq-un-committee-concludes-country-visit-calls#:~:text=%E2%80%9CThe%20absence%20of%20an%20explicit,day%20country%20visit%20to%20Iraq.>

⁵ Articles 108-109

⁶ Articles 104-105



not include the government agencies or their affiliates that are directly responsible for thousands of cases of missing persons in Syria.

The great power of the security services authorized to carry out arbitrary detention:

Short-term enforced disappearance takes place in the form of security summons, which is often made by phone and is heavily implemented by the security services against Syrian citizens. As a result, when people are detained, they become isolated from the world and their fate is unknown, either for one day or for several years.

- The security services, which have dozens of branches in the capital, governorates, and rural areas, have the power to arrest people without stating the reasons or adhering to specific formal procedures. Arrest warrants are issued by the person in charge of a security branch either verbally or by telegram, telephone, or in writing. Moreover, arrest warrants are executed by the members of the security branch that issued it. Branches do not abide by any law or clear hierarchy and do not adopt regulations or legal bases that justify their practices which are carried out without any supervision.⁷ In addition, the lack of coordination and the competition between branches lead to repeated detention in various branches when the charges differ. **If an accused is imprisoned according to a judicial ruling, they may be subjected to short-term enforced disappearance after the completion of the penalty if they are wanted by a security branch. In this case, the accused shall be transferred to the branch instead of being released. The same applies if an accused grants a release decision from court.**
- Security services still enjoy the power they had under the state of emergency that ruled the country for decades before its termination on 21 April 2011.⁸ The latter gave security services the power to detain suspects for indefinite periods without judicial decisions. It authorized the “provisional arrest of suspects or those dangerous to security and public order”. This is also enshrined in Decree No. 55 of 2011⁹ which preserves the power of

⁷ Syria Justice and Accountability Center. Walls Have Ears: An Analysis of Classified Syrian Security Sector Documents. 21 May 2019. <https://syriaaccountability.org/walls-have-ears/>

⁸ Decree No. 161.

⁹ Legislative Decree 55 of 2011 that amends Article 17 of the Criminal Procedure Code of 1950 regarding the jurisdiction of the judicial police. This decree gives the status of the judicial police to security agencies and civil police members and grants them the right to exercise provisional detention for a period of sixty days before referring a detainee to court.



security branches whose members enjoy legal immunity.¹⁰ The decree allows the competent law enforcement and related bodies to investigate crimes described in the Penal Code (Articles 260-339 and 221, 388, 392, 393), crimes touching on state security, and public safety matters. These investigations should not exceed seven days, during which evidence would be collected and suspects would be heard. The reservation period of seven days is renewable for a maximum of 60 days by order of attorney general on a case-by-case basis. Moreover, this decree grants great power to the judicial police and those it delegates, who are mostly the various security agencies. The decree does not separate the power of accusation from the power of investigation in a way that guarantees human rights and freedoms. The seriousness of this decree lies mainly in the ability of the security services to detain an accused for a period of up to 60 days, incommunicado, and without acknowledging their detention, thus, they become victims of enforced disappearance. It is worth noting that the security services do not always adhere to this article, as the period of imprisonment often exceeds 60 days, or the detainee ends up being killed under torture or due to the inhumane conditions.

Secret detention centers and the lack of supervision:

- Secret detention facilities of the security services are widespread and work outside the scope of the supervision and inspection bodies. Detainees are denied basic legal safeguards including a mechanism to monitor their treatment and to reconsider their long detention that takes place without any judicial review, or any record prepared to inform the public of the date of their detention, release, or transfer to another detention facility.¹¹

¹⁰ Legislative Decree No. 14 of 1969 on establishing the General Intelligence Directorate (the State Security Department) confers immunity to the Directorate, its personnel, and files.

Article 74 of Legislative Decree No. 549 of 1969 states that contractors or those who are employed at the Directorate may not be prosecuted by the judiciary system, in crimes arising from the nature of their work or while performing it, before being referred to the Disciplinary Board.

Decree No. 64 of 2008 grants the security services immunity for crimes committed by them while performing the tasks entrusted to them. To establish immunity from prosecution for members of the security services, a prosecution is only possible by a decision of the Minister of Defence.

¹¹ Concluding observations of the Committee against Torture on the initial report of the Syrian Arab Republic (CAT/C/SYR/1).



- Many detention centers belonging to the security services are integrated into prison institutions¹² such as Adra and Saydnaya prisons, and it is difficult to distinguish between them and regular prisons or those affiliated with military branches or units. Moreover, there are secret detention facilities run by local militias such as “the National Defense”¹³ and foreign militias such as “the Lebanese Hezbollah”, or those run by influential personalities.¹⁴ **This leads to cases of short-term enforced disappearance resulting from personal disputes, malicious reporting, or even the moods of some militia members or their leaders.**
- The lack of judicial oversight over detention centers due to the legislative structure that enshrines the complete dominant of the executive authority over the judiciary,¹⁵ the Syrian government’s withholding of information, and the prevention of human rights organizations and monitoring bodies from entering detentions.

Terrorism Court (short-term enforced disappearance in the context of judicial proceedings):

The Terrorism Court is specialized in terrorism crimes and crimes referred to by the Court's Public Prosecution. Law No. 19 of 2012 is applied at all stages of the trial, and the vast majority of those referred to the Terrorism Court go through a short-term enforced disappearance. Since mid-2013, the security services in Syria have begun to refer several detainees from the security branches directly to the Terrorism Court or through the Military Public Prosecution under the guard and supervision of the military police, without going through the regular courts.

¹² Several civil and military prisons contain a security deposit department that is not governed by the law that governs the prison.

¹³ Media reports indicate the existence of a secret prison in Jabal Qasioun in Damascus run by the “National Defense” militia. The New Arab. Al-Assad Security and Secret Prisons. <https://goo.gl/Wvq8QM>

¹⁴ Alliance Defence Science Forum. A detailed study of the Syrian Air Force Intelligence Department. 28 July 2017. <https://www.udefense.info/threads/%D8%A5%D8%AF%D8%A7%D8%B1%D8%A9-%D8%A7%D9%84%D9%85%D8%AE%D8%A7%D8%A8%D8%B1%D8%A7%D8%AA-%D8%A7%D9%84%D8%AC%D9%88%D9%8A%D8%A9-%D8%A7%D9%84%D8%B3%D9%88%D8%B1%D9%8A%D8%A9-%D8%AF%D8%B1%D8%A7%D8%B3%D8%A9-%D8%AA%D9%81%D8%B5%D9%8A%D9%84%D9%8A%D8%A9.1106/>

¹⁵ Article 133 of the Syrian Constitution of 2012 states that “the Supreme Judicial Council is headed by the President of the Republic, and the law states the way it shall be formed, its mandate and its rules of procedures”. The amended Article 65 of the Judicial Authority Law states that the Supreme Judicial Council shall be headed by the President of the Republic.

Also see: Legislative Decree No. 40 of 1966, Legislative Decree No. 95 of 2005, and Legislative Decree No. 32 of 1968.



Before being referred to the relevant judiciary, detainees may be placed in the Military Police branch in the Qaboun neighborhood in Damascus, in Saydnaya Military Prison, in the Fourth Division, in Adra prison, or in another detention center.

Moreover, detainees from various governorates are transferred to the city of Damascus because there are no terrorism courts in other cities. If a detainee is referred directly from a security branch located in the city of Damascus and its countryside, their papers shall be recorded in the register at the Prosecution Office of the court. Otherwise, if a detainee is referred from other cities, their papers shall be recorded in the Income Register.¹⁶

However, sometimes the papers reach the Terrorism Court while the detainee is still in the security or in the military police branch where they are arrested, or they are deposited in favor of the branches in Adra or Saydnaya prisons deprived of their rights including having visitors or being duly registered in the prison's records.

After registering the papers in the Court, a detainee should wait for their interrogation, which may take a week or two. It is worth mentioning that in the first two years after the establishment of the Court, detainees had to wait for their interrogation for several months. During this period, they had to remain in the deposit department in Adra prison without a judicial warrant. If the investigative judge decides that a suspect is guilty, an arrest warrant shall be sent with the police officer who transfers detainees from prison to Court and vice versa. At that point, the head of the prison orders to transfer the detainee from the deposit department to the judicial detention department in the prison. **The period that a detainee spends in the security deposit department is considered “enforced disappearance” for a short or extended period because the detainee is prevented from communicating with their family and lawyer.**¹⁷

¹⁶ The Violations Documentation Center in Syria. Counter-Terrorism Court in Syria: a Tool for War Crimes. April 2015. <https://www.vdc-sy.info/index.php/en/reports/1430186775>

¹⁷ The Legal Agenda. The Terrorism Court in Syria. 19 May 2015. <https://legal-agenda.com/%D9%85%D8%AD%D9%83%D9%85%D8%A9-%D8%A7%D9%84%D8%A5%D8%B1%D9%87%D8%A7%D8%A8-%D9%81%D9%8A-%D8%B3%D9%88%D8%B1%D9%8A%D8%A7/>



Which are the main procedural questions that may arise for domestic authorities, the Committee and the Working Group when dealing with ‘short-term enforced disappearances’?

- Does the legislative authority in Syria plan or aim to ratify the International Convention for the Protection of All Persons from Enforced Disappearance?
- Are there detailed records of the detainees that can be presented to stakeholders and their legal agents? Detainees should be registered upon entering detention centers. The registry must include the identity of the detainee, the date, time, and place of detention, the identity of the authority that detained the person, the reason for the detention, the detainee’s health condition upon admission and any changes that occur, the time and place of the interrogation with the names of all the interrogators, in addition to the date and time of the detainee’s release or Transfer to another detention facility.
- Under legal provisions, law enforcement authorities must inform the family of an arrested or detained person of their fate and whereabouts. However, as Syria lacks similar legal provisions, are there clear and specific administrative measures or instructions? Is the Public Prosecutor obligated to notify the family of the detainee or their legal representative if the detention period shall be extended?
- Are there secret detention facilities belonging to the security and military services? Who has the authority to monitor the conditions of detainees and the legal justifications for depriving them of their liberty?