

Syria: Input to the Committee on Enforced Disappearances and the Working Group on Enforced or Involuntary Disappearances' Joint Statement on the Notion of Short-Term Enforced Disappearance



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Syrian laws must clearly define 'enforced disappearance' based on the Declaration on the Protection of all Persons from Enforced Disappearance and stipulate informing the detainees' families and counsel as procedural obligations

[Syrians for Truth and Justice \(STJ\)](#) is submitting this input to support the efforts of the Committee on Enforced Disappearances (CED) and the Working Group on Enforced or Involuntary Disappearances (WGEID) on issuing a [joint statement](#) on the notion of short-term enforced disappearances.

In the present input, STJ reflects on the notion of short-term enforced disappearances in Syria, taking into account the multiple legal frameworks set forth by the different de facto non-State actors controlling several territories of the country's north-eastern and western parts.

Despite the fact that Syria is not a party to the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), STJ stresses that Syria is obliged to prevent both short and long-term enforced disappearances under the relevant provisions of international law including those of; International Covenant on Civil and Political Rights (ICCPR), International humanitarian law (IHL), and Declaration on the Protection of all Persons from Enforced Disappearance. Notably, several UN bodies confirmed that the practice of enforced disappearance in Syria is systematic and widespread.¹

STJ addresses in this input the main legal provisions in force that were allegedly laid to ensure keeping persons deprived of their liberty under the protection of law while highlighting their vagueness and contradiction that authorises in certain instances the short or long-term disappearance of those deprived of their liberty. The input will also point out the impact of the Syrian Law shortcomings on the practices of the de facto authorities in northern Syria in general.

How to Understand the Notion and Context of 'Short-Term Enforced Disappearance'?

1. Syrian law does not include any explicit reference to enforced disappearance. However, the Syrian government stated in its national report submitted to the Universal Periodic Review mechanism in 2021 that the term “enforced disappearance” does not exist in Syrian law. Nonetheless, the law does penalize abduction and deprivation of liberty, which are internationally classified as enforced disappearance.² In this context, the Syrian government referred to the Legislative Decree No. 20 of 2013, that criminalizes anyone who “abducts another person thereby depriving them of liberty with the intention of achieving political, material, or sectarian ends, of reprisal and revenge, or of demanding ransom is liable to life imprisonment with hard labor.”³
2. Since the Syrian law ignores enforced disappearance as a crime, Article 33.1 of the current 2012 Syrian constitution stipulates that “freedom shall be a sacred right and the state shall guarantee the personal freedom of citizens and preserve their dignity and security”, can be seen as a constitutional guarantee against enforced disappearance as a form of deprivation of liberty. Needless to say, depriving a person of their liberty without their family being informed of their place of detention is a violation to the person's freedom, dignity, and security. Furthermore, the Constitutional restrictions on the arrest and detention of individuals is also a guarantee against enforced disappearance. According

¹ UNGA, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic (Feb 2022), UN Doc A/HRC/49/77, para 37-44.

² UNGA, Human Rights Council, National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1, Syrian Arab Republic, 17 November 2021, UN Doc A/HRC/WG.6/40/SYR/1, para 44.

³ Legislative Decree No. 20/2013, 2 April 2013, Art.1.

to Article 53 of the Constitution, no one may be investigated or arrested, except under an order or decision issued by the competent judicial authority; and any person who is arrested must be informed of the reasons for their arrest and their rights, and may not be incarcerated in front of the administrative authority except by an order of the competent judicial authority. Given that the key element for determining the state of enforced disappearance is placing the person who is deprived of freedom outside the protection of the law, we can rely on the aforementioned Articles to contend that law must protect persons deprived of their liberty in any case.

3. In the same vein, the Syrian Penal Code No. 148/1949 provides for a prison sentence for anyone who commits this crime, including State officers. Article 555 of the Code states that “anyone who deprives another of his liberty by any means shall be imprisoned from six months to two years. This penalty is reduced, in accordance with article 241, paragraph 3, if the guilty party, on their own initiative, releases the abductee within 48 hours without committing any other offence, whether a felony or misdemeanour.” This is followed by Article 556, which fleshes out the details and outlines the conditions for increasing this penalty,
 - “If the period of deprivation of liberty exceeds one month.
 - If the person deprived of their liberty is subjected to physical or mental torture.
 - If the act is committed against an official during or in the course of his duties.”
4. Any violation of the constitutional rights recognized in the Covenant is an offence punishable under the Penal Code. In order to deter officials from any abuse of their authority or influence, Syrian law regards abuse of authority as an aggravating circumstance that merits a heavier penalty insofar as article 367 of the Penal Code stipulates that: “With the exception of cases in which the law imposes special penalties for offences committed by officials, those of them who commit any offence in their official capacity or by abusing the authority or influence derived from their posts, through incitement, collusion or involvement, merit the heavier penalties prescribed in article 247”. According to Article 247, the punishments shall be elevated from one-third to one-half with doubling the fines if the accused is one of the people described in the Article.
5. As to the measures and procedures to be followed for protecting personal freedom, they were prescribed in the Code of Criminal Procedure. The Code states in Article 15 that the Prosecutor-General shall oversee the justice process and judicial departments, prisons, detention facilities and law enforcement; meaning that all judicial departments, prisons, and detention facilities are under judicial control. To ensure the good functioning of this control the Code states, “Investigating judges and justices of the peace, once a month, and presidents of the criminal courts, once every three months, shall visit inmates in detention centers and prisons.” (Article 422).

In light of these provisions, the judiciary must provide protection to those deprived of their freedom against enforced disappearance.

In this vein, Article 424 of the Code stipulates that anyone who has information about a person who has been arrested and imprisoned without a legal justification or in a place not designated for the purpose shall notify the Procurator-General or the investigating judge or the justice of the peace.

As notified, the latter shall immediately go to the place where the arrest took place and release those who were illegally detained. Nevertheless, if the judges find that there was a legal reason for the arrest, they shall immediately send the detainee to the Public Prosecutor or the competent justice of the peace. Notably, if the judges fail to follow

these due procedures, they shall be considered accomplices to the crime of deprivation of liberty and thus prosecuted.

6. Although the aforementioned Constitutional and law provisions can 'theoretically' be considered protection guarantees against enforced displacement, there are still legal shortcomings in this area which are;
 - a. Concerning the crimes abduction and other forms of deprivation of liberty, the law does not consider the perpetrator's denial of their act of deprivation of liberty or their refusal to reveal the fate or whereabouts of the detainee as elements of these crimes. For example, when a state official deprives a person of their liberty legally – in case of flagrante delicto or under court order – and refuses to disclose the detainee's whereabouts or deny the act altogether, this officer will not be considered a law violator and thus will not be held to account.
 - b. The notion of enforced disappearance cannot be limited to abduction as in the Syrian government legislation, especially since the abduction act may lack the denial element; the perpetrator may contact the family of the victim to ask for a ransom. Furthermore, the abduction within the meaning of Legislative Decree No. 20/2013 has a connotation that this act shall be criminalized only if carried out by non-State individuals, considering that State officials are empowered to use deprivation of liberty in the course of performing their duties.
 - c. The measures that allegedly meant to protect the persons deprived of their liberty – meaning the oversight of the Procurator-General and the visits of the investigating judge or the justice of the peace – are in fact designed primarily to legitimize the liberty deprivation. In the absence of an explicit provision that criminalizes the denial of a liberty deprivation act or the refusal to disclose the detainee's fate or whereabouts, those responsible for protecting detainees are not even expected to consider these two elements.

Legal Frameworks and Practices that May Lead to Short-Term Enforced Disappearance

7. In addition to the deficiencies in the existing legal systems and frameworks covering enforced disappearance, the Syrian law is overbroad and vague on several points in this area, including how long law-enforcement bodies are allowed to keep the person deprived of liberty detained before trial. Article 358 of the Penal Code states, "Any warden or guard of a prison or a disciplinary or reform institution, and any official vested with their powers, who admits a person into the institution without a court order or instruction or who retains a person therein for a period longer than that ordered is liable to a penalty of detention for one to three years." Notably, the officials included in this Article do not have to investigate crimes, gather evidence, or arrest perpetrators and refer them to the courts in charge;⁴ these tasks are mandated to the judiciary police.⁵
8. The law stipulates that an accused person brought in pursuant to a warrant must be questioned by an investigating judge within 24 hours of being placed in custody.⁶ Once

⁴ Law No. 112/1950, the Code of Criminal Procedure, Art. 8.1.

⁵ Law No. 112/1950, the Code of Criminal Procedure, Art. 6;
Legislative Decree No. 55/2011 amending the mandate of the judiciary police.

⁶ Law No. 112/1950, the Code of Criminal Procedure, Art. 104.1.

the 24 hours have expired, the officer-in-charge, on his own initiative, must refer the person in custody to the public prosecutor, who in turn must ask the investigating judge to interrogate the defendant or release him/her.⁷

9. This stipulation seems consistent with the obligation of bringing the detainee promptly before a judge set forth in Article 9.3 of the ICCPR; however, it is vague as to the pre-investigation detention period of those deprived of liberty for reasons other than pursuing warrants. Article 1 of Legislative Decree No. 55/2011 provides that the judiciary police or those commissioned with their mission could hold a suspect for seven-day renewable periods by the Attorney General for as long as 60 days. This is contrary to the opinion of the Human Rights Committee, which considers that the exact meaning of “promptly” may vary depending on objective circumstances, and 48 hours is ordinarily sufficient to transport the individual and to prepare for the judicial hearing; any delay longer than 48 hours must remain absolutely exceptional whether the charge is criminal or of other kind.⁸
10. The crimes covered in the abovementioned Article are mostly those related to state security,⁹ where the judiciary police are mandated to carry out investigations and collect evidence. These Articles do not provide definitions of the crimes; they are vague, broadly-worded and thus open to more than one interpretation. To give some examples of the offences contained in these Articles; “Undermining the prestige of the state”, “Undermining the status of the State”, and “Weakening national sentiment”. As such, it is so easy to accuse anyone of such crimes over any act or behaviour even if they do not utter a word. Article 287 states, “Every Syrian who broadcasts abroad false or exaggerated news that could harm the reputation of the State, or its financial position shall be punished by up to six months in prison.” This Article was amended under Law No. 15/2022 by deleting the words ‘financial’, which made it broader, and ‘abroad’ to include all Syrians inside and outside the country. Furthermore, Article 285 of the Code states, “Anyone who, in time of war or the expected onset of war, makes propaganda with the aim of weakening national sentiment or stirring up racial or inter-confessional strife shall be punished by temporary arrest.” Law No. 15/2022 replaced the phrase, “undermining the national identity” in Article 285 with “weakening national sentiment”. These offences were also prescribed in the Cybercrime Law No. 20/2022 with the aim to broaden the scale of the means and tools for their commission.
11. Such loose provisions help interpret any act as a threat to State security and thus facilitate trumped-up charges being brought against anyone. Linking broad provisions to the security of the state in one way or another broadens the range of possibilities for extending pre-trial detentions up to 60 days on the slightest suspicion or alleged investigation necessities. Moreover, the judges’ visits to detention centres and prisons provided for in Article 422 of the Code of Criminal Procedure, if effectively applied, may lead to the detainees being forcibly disappearing for at least one month. Furthermore, in the absence of a legal text requiring law enforcement officials or judicial authorities authorized to oversee the course of justice to inform the family of a detainee of their whereabouts, the latter would remain at risk of enforced disappearance, even if it is short-term. Thereby, since the law does not include notifying the families in the due procedures of protecting persons deprived of liberty, the so-called “justice guarantors” are not obliged to do so.

⁷ Law No. 112/1950, the Code of Criminal Procedure, Art. 104.2.

⁸ Human Rights Committee, General comment No. 35: Article 9 (Liberty and security of person), CCPR/C/GC/35, 16 December 2014, § 33.

⁹ See Articles 260 to 339 and Articles 221, 388, 392 and 393 of the Syrian Penal Code.

12. It is necessary to recall that the obligation of bringing the detainees to appear physically before the judge or other officer authorized by law is meant to give the opportunity for inquiry into the treatment that they received in custody. It thus serves as a safeguard for the right to security of person and the prohibition against torture and cruel, inhuman or degrading treatment,¹⁰ which are violated as a matter of fact by enforced disappearance. It is relevant to recall the issue of secret detention centres, which are controlled by security and intelligence forces and are not subject to any supervision. The WGEID calls in its General Comment No. 3 for a set of measures that limit the possibility of enforced disappearance and guarantee the right of access to information for the families of the missing persons, their lawyers, and anyone who has a legitimate interest. One of the important measures the Comment cited is to hold any person deprived of liberty in an officially recognized place of detention and in conformity with international law. The Comment affirmed that under no circumstances could any State interests be invoked to justify or legitimize secret centres or places of detention.¹¹
13. In practice, the vast majority of law enforcement officials refuse to inform families of the detainees of their whereabouts citing investigation necessities. In this regard, a medical worker told STJ that he was arrested from his home in Eastern Ghouta of Damascus Countryside in June 2019. The witness confirmed that he was transferred to several detention centres and prisons and underwent lengthy investigations about his activities during the armed opposition's control of the area. The witness said that he was held at the [Mezzeh Military Airport](#) (the air force intelligence), where his investigation was extended for eight months and then he was transferred to a military intelligence branch where he was investigated for another six months. However, in February 2023, the witness was transferred to [Adra Central Prison](#) where he managed to contact his family for the first time since his arrest. In such a case, "justice guarantors" may have performed their legal obligations of the periodic visits to detention centers and prisons, but certainly, they did not consider informing the family of that detainee about his fate and whereabouts as one of the requirements of the course of justice. A confirmation of this is Article 72 of the Code of Criminal Procedure which grants the investigating judge the right to ban any contact between the defendant and others, with the exception of a lawyer, for a renewable period of 10 days.
14. The absence of a legal obligation on law enforcement officials to disclose the whereabouts and fate of persons deprived of their liberty and the impact of this on facilitating deliberate withholding of such information violates the essence of Article 10.2 of the Declaration on the Protection of all Persons from Enforced Disappearance, which states, "Accurate information on the detention of such persons and their place or places of detention, including transfers, shall be made promptly available to their family members, their counsel or to any other persons having a legitimate interest in the information unless a wish to the contrary has been manifested by the persons concerned." One of the means that may prevent enforced disappearance is the State's establishment of a constantly updated central register of such information, accessible to the detainees' families and counsel.

¹⁰ Human Rights Committee, General comment No. 35: Article 9 (Liberty and security of person), CCPR/C/GC/35, 16 December 2014, § 34.

¹¹ WGEID, General Comment No.3 on Article 10 of the Declaration on the Protection of All Persons from Enforced Disappearance, UN Doc E/CN.4/1997/34, para 22-24.

15. The practice of concealing the detainees' fate and whereabouts is enhanced by a legal immunity, which grants impunity to detention perpetrators. Article 16 of Decree No. 14/1969, which provides for establishing the State Security Department, officially called the General Intelligence Directorate states, "Employees of the State Security Administration "shall not be judicially pursued for offenses they commit while carrying out their duties or specific tasks assigned to them without a warrant issued by the director authorizing legal action against them". In 2008, the Syrian government issued Legislative Decree No. 69, which confers immunity against prosecution to Political Security, police and customs officials for crimes committed while on duty. This Decree expanded the circle of beneficiaries of immunity and thus widened the scope of impunity.
16. Not only Political Security, police, and customs officials are immune from prosecution, but also officials of the Syrian Army, who can only be prosecuted by the military prosecutor under a decision or decree issued by the Commander in Chief of the Armed Forces, according to Article 53 of the Military Penal Code No. 61/1950.
17. Given the immunity they enjoy, the State officials included in the aforementioned provisions can arbitrarily detain anyone without providing information on their fate or location and thus depriving them of the protection of the law empowered by the impunity granted to them. The impact of this immunity is even more serious in the anti-terrorism cases, that are legislated under a special form of legal proceedings. In these cases, as in the exceptional courts, State officials do not follow due processes of investigation, prosecution and trial. Article 5 of Decree No. 109/1968 stipulates that the field military court is not required to adhere to procedures in the legislation in force. The Counter-Terrorism Court is also exempt from following the due process within the current legislation, including those of investigation and trial, as set forth in Article 7 of Law No. 22/2012. Notably, the Counter-Terrorism Court replaced the special State Security Court.
18. The legal deficiency of procedures applicable to the protection of persons deprived of liberty also exists in non-State-held areas, where Syrian laws are still applicable despite some amendments that do not generally affect what is addressed above. The Autonomous Administration declared that authorities should bring a suspect before a judge within 48 hours of arrest and that this period may be extended to 15 days under permission from the Public Prosecution. In terrorism cases, however, the period shall be a week renewable for as long as a month.¹² In practice, those accused of security charges can be kept in custody while their fate and whereabouts concealed for months, during which their families suffer to obtain any information about them. In September 2022, the internal security of the Autonomous Administration arrested a journalist while performing his job in Raqqa. The family of the journalist did not obtain any official information about him until the 41st day of his detention when they learned from the General Security Department that he was transferred to Ayed prison over a security charge. Authorities did not allow the family to visit the journalist because of the prison's tight security measures. The family obtained information about its beloved one's charges and trial from acquaintances within the security forces; it was not informed officially.

¹² The Follow-up Committee of the Autonomous Administration: The prison administration is responsible for detainees after the end of investigation period, North Press, 10 March 2021, <https://npasyria.com/60498/>

19. The situation is the same in the areas controlled by Hay'at Tahrir al-Sham (HTS), where having links with the Syrian government or the international coalition against Daesh are the main pretexts to hold detainees for unlimited periods under investigation. Usually, persons accused of these charges are not warranted or summoned, but rather arbitrarily arrested at security checkpoints. A victim of this practice confirmed to STJ that in August 2022, he was arrested at a checkpoint in Sarmada town, taken to an unidentified place and questioned about alleged links with all parties to the Syrian conflict. The witness said that he was kept without any contact with the outside world even his family, which asked all security branches about him since the second day of his disappearance, but they denied knowing anything about the incident. However, after two months and a half the family was informed by the Sarmada Court that he was in custody and would be tried within days. The victim was acquitted of all charges and released after three months of enforced disappearance.
20. The abovementioned practice is more complicated and reflects a greater likelihood for enforced disappearance in areas under the control of the Syrian National Army (SNA). This fact is due to the independent conduct of each faction of the SNA with regard to arrests and investigations. Additionally, the factions use broad and undefined charges to arrest people, especially the Kurds, including charges of supporting terrorism or the Kurdistan Workers' Party (PKK). Despite the existence of a Turkish-sponsored agreement that obliged the factions to hand over detainees to military police to take over their investigation and prosecution, this agreement is hampered by the fact that officials of the military police are from the SNA itself. Meaning that even if a detainee is handed over to the military police, they remain practically under the tutelage of that faction that arrested them or that controls the area. The factions usually delay handing over detainees to the military police attempting to pressure their families for ransoms in exchange for dropping charges and releasing them.¹³ While in the custody of the military police, it is impossible for the detainees to contact their families; nonetheless, they are eventually tried after months of detention and disappearance.¹⁴

Main Procedural Questions

1. What is the maximum period of time after which law enforcement officials must inform the family of the person deprived of their liberty of their fate or whereabouts? Are there clear and specific measures for such a procedure? Do these period and measures vary according to the legal grounds for deprivation of liberty?
2. When can the detainee contact their family? Do the timing and measures of this procedure vary according to the type of the detainee's charge?
3. Have the relevant authorities created a central register of all persons deprived of their liberty regardless of the grounds and places of arrest? Is the created register accessible to families and/or counsel of detainees? Is there clear and public information about the register available to help families and/or counsel easily access it within a reasonable time after arrest?
4. Is it within the prerogatives of the public prosecutor and the investigating judge as monitors of the justice course, to ensure informing the detainees' families and/or counsel of their fate and whereabouts? Is the failure of the detaining authorities to

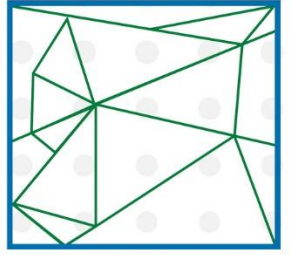
¹³ A testimony by STJ field researcher, 23 March 2023.

¹⁴ Ibid.

provide this information to families considered a violation? What are the legal measures monitors of the course of justice can take against them?

5. If given permission to extend the detention, is the Public Prosecutor required to take the necessary measures to notify the family and/or counsel of the arrested person? If yes, do the procedures vary according to the reasons for arrest and/or the charges against the detainee?
 6. Do the judicial officers' powers relating to keeping the detainees vary according to their tasks and missions? Do legal grounds for detentions play a role in this variation?
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About Us:

Syrians for Truth and Justice (STJ) is a nonprofit, nongovernmental organization monitoring human rights violations in Syria. Founded in 2015, STJ has been based in France since 2019.

STJ is an impartial and independent Syrian human rights organization operating across Syria. Our network of field researchers monitor and report human rights violations occurring on the ground in Syria, while our international team of human rights experts, lawyers, and journalists gather evidence, examine emerging patterns of violations, and analyze how violations break domestic Syrian and international law.

We are committed to documenting violations of human rights committed by all parties in the Syrian conflict and elevating the voices of all Syrians victimized by human rights violations, regardless of their ethnicity, religion, political affiliation, class, and/or gender. Our commitment to human rights monitoring is founded on the idea that professional human rights documentation meeting international standards is the first step to uncovering the truth and achieving justice in Syria.



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