

## **General Allegation – Syrian Arab Republic – February 2023**

The Working Group received information from the sources concerning obstacles encountered in the implementation of the Declaration on the Protection of All Persons from Enforced Disappearance (hereafter, ‘the Declaration’) in the Syrian Arab Republic.

1. Since the beginning of the armed conflict, the number of enforced disappearances perpetrated across the country has been constantly on the raise. Notwithstanding the existence of a serious underreporting, already in 2014, the Working Group was alarmed by the scale of enforced disappearances in Syria, including as documented by the Independent International Commission on Inquiry in Syria (A/HRC/WGEID/102/1, paras. 156-157). The Working Group thus decided to express its grave concern in relation to the enforced disappearances in the country by writing to the President of the Human Rights Council, the President of the General Assembly, the Security Council, the Secretary-General and the Joint Special Representative for Syria to request the adoption of any appropriate action that they may deem appropriate. In particular, the Working Group requested in 2014 the President of the Security Council to bring the matter to the attention of the Council for any appropriate action, including a possible referral of the matter to the International Criminal Court (A/HRC/WGEID/102/1, para. 157 and A/HRC/27/49, para. 32).
2. Furthermore, in February 2021, the Working Group sent a general allegation to the Syrian Arab Republic concerning the widespread practice of enforced disappearance against Sunni Muslims in Aleppo, Damascus, Homs, Idlib, Latakia and Rif-Dimashq. At the time of writing, no response has been received and this shows a worrisome ongoing lack of cooperation with the Working Group on the part of the Syrian authorities (A/HRC/51/31, para. 74).
3. In the face of the utmost gravity of the above-described situation, the sources informed the Working Group that the Syrian Government has not adopted adequate preventive measures and is failing to carry out effective search activities and investigations, whilst perpetrators are not held accountable and victims of enforced disappearance and their families cannot obtain redress for the harm suffered. Indeed, according to the information submitted to the Working Group, Syrian legislation is at odds with international human rights law and, in particular, with the Declaration, on several counts.
4. Firstly, enforced disappearance is not codified as an autonomous offence under the applicable criminal legislation. The sources reported to the Working Group that the Syrian legislation equates enforced disappearance with kidnapping or deprivation of liberty. Albeit these offences may form part of an enforced disappearance, neither, alone, reflects the complexity and the particularly serious nature of the crime at stake, nor is sufficient to encompass all the elements of an enforced disappearance. The lack of codification of enforced disappearance as an autonomous offence reportedly hinders the prevention of the crime and jeopardises investigations, whilst favouring impunity for perpetrators.
5. Secondly, the Working Group was informed that, pursuant to a legislative decree adopted in 2011 (i.e. legislative decree No. 55) and its subsequent amendments, the judicial police and its delegates are enabled to investigate a broad range of crimes – including State security crimes – and to detain persons for a period of 7 days, renewable with the permission of the Public Prosecutor for up to 60 days, without access to any guarantee or judicial review. The

sources referred to the Working Group that, in practice, the provisions concerned are mostly used to detain political opponents, who are deprived of their liberty without being brought before any judicial authority for more than 60 days and without having access to legal representatives or family members. During the period concerned, persons deprived of their liberty are *de facto* placed outside the protection of the law and exposed to increased risks of being subjected to human rights violations, including enforced disappearance, torture or other forms of ill-treatment.

6. The described situation is allegedly worsened by the lack of official up-to-date registers of all persons deprived of their liberty and the virtual impossibility for persons with a legitimate interest (e.g. relatives of persons deprived of their liberty, their representatives or counsels or civil society organisations) to have access to information on persons deprived of their liberty and, in particular, their fate and whereabouts. The sources emphasised that the existing mechanism – under the responsibility of the Ministries of Justice, Interior, and National Reconciliation – mandated to inquire about the fate and whereabouts of persons disappeared during the conflict has proven ineffective.
7. Similarly, the sources pointed out that the practice – usually several years after the enforced disappearance begun – to issue a death certificate without specifying the cause of death, clarifying whether there has been an investigation and the corresponding results, and without handing over to the family the body of the person concerned, cannot be regarded as an effective form to establish the fate and whereabouts of the disappearance and does not put an end to the obligations of the State.
8. Moreover, the Working Group learned that, in fact, relatives of disappeared persons have frequently had to pay bribes to obtain information on the whereabouts of their loved ones, visit them, or expedite their presentation to a judicial authority. Reportedly, instances of harassment and reprisals have also been frequent, as referred to in a general allegation sent by the Working Group to the Government (A/HRC/WGEID/123/1, Annex II, para. 38), to which no response has been received.
9. Thirdly, the sources informed the Working Group that, since 2011, almost 20 amnesty laws were enacted (the latest being Law No. 3 and No. 7 of 2022), including acts meant to extend the effectivity of previous amnesty laws. The sources informed the Working Group that, in practice, these laws had the effect of exempting persons who have or are alleged to have committed gross human rights violations, including enforced disappearances, from any criminal proceedings or sanctions.
10. In addition, the sources reported to the Working Group that the applicable Syrian legislation does not allow the prosecution of the members of the army, its intelligence branches, of the members of the Internal Security Forces and the General Intelligence Department. Allegedly, members of the army or the military intelligence division could be prosecuted only pursuant to a prosecution order issued by the Commander-in-Chief of the Army and Armed Forces or the Chief Staff. Were the said prosecution order to be issued, the case would be dealt with by a military court. In the case of members of the internal security forces, they are administratively affiliated with the Ministry of Interior and subjected to the jurisdiction of the military judiciary, unless a Police Disciplinary Court decides that a case should be prosecuted

by the ordinary judiciary. The described situation has reportedly resulted in the almost total impunity of perpetrators of gross human rights violations, including enforced disappearances.

The Working Group would like to bring to the Government's attention the following provisions of the Declaration, which are directly related to the present allegation:

*Article 2*

- 1. No State shall practice, permit or tolerate enforced disappearances.*
- 2. States shall act at the national and regional levels and in cooperation with the United Nations to contribute by all means to the prevention and eradication of enforced disappearance.*

*Article 3*

*Each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction.*

*Article 4*

- 1. All acts of enforced disappearance shall be offences under criminal law punishable by appropriate penalties, which shall take into account their extreme seriousness.*
- 2. Mitigating circumstances may be established in national legislation for persons who, having participated in enforced disappearances, are instrumental in bringing the victims forward alive or in providing voluntarily information, which would contribute to clarifying cases of enforced disappearance.*

*Article 9*

- 1. The right to a prompt and effective judicial remedy as a means of determining the whereabouts or state of health of persons deprived of their liberty and/or identifying the authority ordering or carrying out the deprivation of liberty is required to prevent enforced disappearances under all circumstances, including those referred to in article 7 above.*
- 2. In such proceedings, competent national authorities shall have access to all places where persons deprived of their liberty are being held and to each part of those places, as well as to any place in which there are grounds to believe that such persons may be found.*
- 3. Any other competent authority entitled under the law of the State or by any international legal instrument to which the State is a party may also have access to such places.*

*Article 10*

- 1. Any person deprived of liberty shall be held in an officially recognized place of detention and, in conformity with national law, be brought before a judicial authority promptly after detention.*
- 2. 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.*
- 3. An official up-to-date register of all persons deprived of their liberty shall be maintained in every place of detention. Additionally, each State shall take steps to maintain similar centralized registers.*

*The information contained in these registers shall be made available to the persons mentioned in the preceding paragraph, to any judicial or other competent and independent national authority and to any other competent authority entitled under the law of the State concerned or any international legal instrument to which a State concerned is a party, seeking to trace the whereabouts of a detained person.*

#### *Article 12*

*1. Each State shall establish rules under its national law indicating those officials authorized to order deprivation of liberty, establishing the conditions under which such orders may be given, and stipulating penalties for officials who, without legal justification, refuse to provide information on any detention.*

*2. Each State shall likewise ensure strict supervision, including a clear chain of command, of all law enforcement officials responsible for apprehensions, arrests, detentions, custody, transfers and imprisonment, and of other officials authorized by law to use force and firearms.*

#### *Article 13*

*1. Each State shall ensure that any person having knowledge or a legitimate interest who alleges that a person has been subjected to enforced disappearance has the right to complain to a competent and independent State authority and to have that complaint promptly, thoroughly and impartially investigated by that authority. Whenever there are reasonable grounds to believe that an enforced disappearance has been committed, the State shall promptly refer the matter to that authority for such an investigation, even if there has been no formal complaint. No measure shall be taken to curtail or impede the investigation.*

*2. Each State shall ensure that the competent authority shall have the necessary powers and resources to conduct the investigation effectively, including powers to compel attendance of witnesses and production of relevant documents and to make immediate on-site visits.*

*3. Steps shall be taken to ensure that all involved in the investigation, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal.*

*4. The findings of such an investigation shall be made available upon request to all persons concerned, unless doing so would jeopardize an ongoing criminal investigation.*

*5. Steps shall be taken to ensure that any ill-treatment, intimidation or reprisal or any other form of interference on the occasion of the lodging of a complaint or during the investigation procedure is appropriately punished.*

*6. An investigation, in accordance with the procedures described above, should be able to be conducted for as long as the fate of the victim of enforced disappearance remains unclarified.*

#### *Article 16*

*1. Persons alleged to have committed any of the acts referred to in article 4, paragraph 1, above, shall be suspended from any official duties during the investigation referred to in article 13 above.*

*2. They shall be tried only by the competent ordinary courts in each State, and not by any other special tribunal, in particular military courts.*

*3. No privileges, immunities or special exemptions shall be admitted in such trials, without prejudice to the provisions contained in the Vienna Convention on Diplomatic Relations.*

*4. The persons presumed responsible for such acts shall be guaranteed fair treatment in accordance with the relevant provisions of the Universal Declaration of Human Rights and other relevant international agreements in force at all stages of the investigation and eventual prosecution and trial.*

#### *Article 18*

*1. Persons who have or are alleged to have committed offences referred to in article 4, paragraph 1, above, shall not benefit from any special amnesty law or similar measures that might have the effect of exempting them from any criminal proceedings or sanction.*

*2. In the exercise of the right of pardon, the extreme seriousness of acts of enforced disappearance shall be taken into account.*

The Working Group would be grateful for your Excellency's Government cooperation and observations on the following questions:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information on the progress in the response to previous communications sent to your Excellency's Government, either through the humanitarian procedure or in the form of general allegations.
3. Please provide information on the applicable criminal legal framework to deal with allegations of enforced disappearance and clarify whether the latter is codified as a separate criminal offence. In case of the absence of a separate crime of enforced disappearance under the Syrian legislation, please inform on which are the offences used in criminal investigations concerning reports of disappeared persons. Kindly clarify whether there is any legislative reform envisaged in order to assure that enforced disappearance is codified as a separate offence under domestic criminal legislation.
4. Please provide information on the applicable legislation concerning arrest warrants and how does it allow any person deprived of his or her liberty to take proceedings before a court so that the latter may decide without delay on the lawfulness of the deprivation of liberty. Kindly illustrate how the Syrian legislation on pre-trial detention (and especially legislative decree No. 55 of 2011 and subsequent amendments) complies with international law. In particular, kindly detail the measures adopted to ensure that any person deprived of liberty is authorised to communicate with and be visited by his or her family, counsel or any other person of choice.
5. Please provide information on whether official up-to-date registers of all persons deprived of their liberty are maintained in every place of detention and the measures taken to ensure that relatives of persons deprived of their liberty, their counsel or any other person having legitimate interest have access to the information contained in such registers. Furthermore, please inform on the measures adopted to ensure that no one is held in secret detention.
6. Please provide detailed information on how the mechanism under the responsibility of the Ministries of Justice, Interior and National Reconciliation concretely allows families to inquire about the fate and whereabouts of persons disappeared during the conflict.
7. Please provide information on the applicable legislation concerning the release of certificates of deaths, the competent authorities and the procedure followed to issue such documents, their

contents and the circumstances under which they can be issued in the absence of the body of the person concerned. Moreover, kindly illustrate whether the families that receive these certificates are allowed to dispute their contents and, if so, through which procedure.

8. Kindly illustrate the measures taken to ensure that all those involved in the investigation of an enforced disappearance, and, in particular, witnesses, complainants and their relatives, are protected against reprisals and intimidations. In particular, has any investigation into alleged instances of bribery against relatives of disappeared persons and harassment against them and their representative organisations been carried out? If not, what are the reasons? Otherwise, what are the results or progress of such investigations?
9. How does your Government ensure that any person, having knowledge or legitimate interest, who alleges that a person has been subjected to enforced disappearance is able to lodge a complaint to a competent and independent State authority? How does your Government ensure that enforced disappearances are promptly, thoroughly and impartially investigated by the authority even if there has been no formal complaint?
10. Kindly provide detailed information on whether the amnesty laws adopted since 2011 in the Syrian Arab Republic are applicable to persons who have or are alleged to have committed enforced disappearance and have the effect to exempt them from any criminal proceedings or sanctions. In particular, kindly provide information on the number of persons charged with, or condemned for, kidnapping or arbitrary deprivation of liberty, that benefitted from any amnesty law or pardon over the last decade.
11. Kindly inform on the measures taken to guarantee that any person who commits, orders, solicits or induces the commission of, attempts to commit, is an accomplice to, or participates in, an enforced disappearance, is held criminally responsible. In particular, please clarify whether, under the applicable legislation, any category of persons enjoys privileges, immunities, or special dispensations from trials and, if so, how is this compatible with international law.
12. Please provide detailed information on the measures adopted to guarantee that persons alleged to have committed an enforced disappearance are tried only by the competent ordinary courts and not by military courts. Moreover, kindly clarify whether and how, during the relevant investigations, the persons concerned are suspended from any official duties.

The Working Group requests your Excellency's Government to provide a response to the above questions within sixty days.