

## **Submission to the Working Group on Enforced or Involuntary Disappearances on the Declaration on the Protection of All Persons from Enforced Disappearance**

The Syrian Initiative to Combat Sexual and Gender-based Violence (Initiative) is a locally driven project supported by and hosted at American University Washington College of Law. It aims to challenge the misconceptions and social stigma that silence people who have experienced sexual and gender-based violence (SGBV) and exacerbate their suffering. It envisions a Syrian society in which people affected by SGBV are supported and able to speak out without fear of retaliation. To this end, the Initiative has built a coalition of SGBV service providers, Syrian and international legal experts, lawyers and civil society activists working towards enhancing access to justice for people affected by SGBV. This report was prepared by the Initiative's Strategic Litigation Team, a group of Syrian lawyers and human rights activists who engage with domestic and international human rights mechanisms to keep the harm suffered by the affected people in the consciousness of the international community, and raise awareness of legal issues that have emerged during the conflict.

The Initiative is pleased to submit this report on the Declaration on the Protection of All Persons from Enforced Disappearances to the Working Group on Enforced or Involuntary Disappearances. The report focuses on the Syrian Arab Republic (Syria), including its legal framework and practice of enforced disappearances in the ongoing armed conflict. The Initiative's Strategic Litigation Team studied local legal provisions, particularly the Syrian Constitution, Penal and Penal Procedure Codes, Legislative Decree No. 14 of 1969, Legislative Decree No. 64 of 2008, Legislative Decree No. 55 of 2011, Legislative Decree No. 20 of 2013 on Abductions, and Amnesty Act No. 13 of 2021. It also reviewed news articles and reports of human rights and international organizations. Translation of all sources was performed by bilingual legal experts and supported by native English-speaking attorneys at the Initiative.

Syria has been engulfed in conflict for more than a decade and some parts of the territory are no longer under government control. This has resulted in pluralistic legal landscapes and the emergence of ad hoc judicial institutions. This report focuses on provisions of Syrian law officially promulgated by the State, as applied in areas where the government retains territorial control.

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## Answers to Selected Questions of the Questionnaire<sup>1</sup>

**Question 1: Can you please share examples of how the Declaration on the Protection of All Persons from Enforced Disappearance (hereinafter, “the Declaration”) has contributed to the development of domestic legislation in your country? Can you kindly share examples of domestic provisions that were adopted in your country as a result of the implementation of the Declaration?**

The Declaration has not played any role in developing domestic legislation in Syria, as there is no provision in Syrian law explicitly criminalizing or otherwise addressing enforced disappearance (see Question 7 below). The Syrian legal system recognizes fundamental rights and legal provisions that can prohibit acts related to enforced disappearance, but most of these norms entered into force prior to the adoption of the Declaration in 1992. The fundamental rights related to enforced disappearance include the constitutional rights to personal freedom,<sup>2</sup> a fair trial,<sup>3</sup> not be subject to arbitrary arrest,<sup>4</sup> and the prohibition of torture and other degrading treatment.<sup>5</sup> Furthermore, there are legal provisions applicable to related acts, including to the crime of making a warrantless arrest,<sup>6</sup> keeping someone in a detention facility without legal grounds,<sup>7</sup> refusing or delaying to bring an arrested person before the judge,<sup>8</sup> torture,<sup>9</sup> and

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<sup>1</sup> The Syrian Initiative does not answer the questions related to international law and jurisprudence (questions 4 and 6 of the questionnaire), as its primary expertise and focus of work is analyzing and discussing legal developments in Syria.

<sup>2</sup> Constitution of the Syrian Arab Republic [Constitution] July 7, 2014, art. 33.

<sup>3</sup> Constitution, art. 51(1) (Syria) (right to judicial review); Constitution, art. 53(3) (Syria) (right to legal representation in criminal cases).

<sup>4</sup> Constitution, art. 53(1) (Syria). Article 28 of the Penal Procedure Code states two exceptions to this rule: flagrante delicto and evidence indicating a felony or an attempt to commit a felony Law No. 112 of 1950 (Penal Procedure Code), 13 Mar. 1950, art. 28 (Syria).

<sup>5</sup> Constitution, art. 53(2) (Syria).

<sup>6</sup> Law No. 148 of 1949 as amended by Legislative Decree No. 1 of 2011 (Penal Code), 1 Jan. 1949, art. 357 (Syria).

<sup>7</sup> Penal Code, art. 358 (Syria).

<sup>8</sup> Penal Code, art. 359 (Syria).

<sup>9</sup> Penal Code, art. 391 (Syria).

kidnapping and abduction.<sup>10</sup> While the Legislative Decree No. 20 of 2013 on Abduction entered into force after the Declaration, there is no evidence that Syria adopted this law to implement the Declaration at the domestic level.

**Question 2: Can you please indicate the status of the Declaration in the domestic legal order in your country with respect to ordinary legislation?**

Syrian law and jurisprudence does not regulate the status of soft-law instruments such as the Declaration. The Syrian Constitution only regulates the ratification and implementation of international treaties and agreements.<sup>11</sup> This shows the ambiguity of the Declaration's legal status and, combined with the legal and practical obstacles outlined in Question 7 below, renders the Declaration meaningless in Syria.

**Question 3: Can you please illustrate if the provisions of the Declaration can be invoked before domestic courts in your country and, if so, share examples of case law where domestic courts made reference to the Declaration in their verdicts (if possible, summarizing to which provisions of the Declaration reference was made and how they were interpreted)?**

The Initiative is not aware of any case law of Syrian courts invoking the Declaration. There is also no information available on case law dealing with enforced disappearance generally. This is due to the fact that filing a criminal complaint against state security agencies involved in enforced disappearances carries numerous legal and practical challenges (see Question 7 below).

**Question 5: Has your State ratified or acceded to the International Convention on the Protection of All Persons from Enforced Disappearances? If your State has not yet ratified or acceded to the Convention, is there any pending project or initiative to do so?**

Syria has not ratified or acceded to the International Convention on the Protection of All Persons from Enforced Disappearances, and there are currently no projects or initiatives to do so.

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<sup>10</sup> Penal Code, art. 555 (Syria); Legislative Decree No. 20 of 2013 (Criminalizing and Punishing Abduction), 2 Apr. 2013 (Syria).

<sup>11</sup> Constitution, art. 73 (Syria) (stating the parliament's authority to approve international treaties and agreements that require a new legislation to implement them); Constitution, art. 107 and 128 (Syria) (stating the competencies of the President and Council of Ministers, respectively, with regard to the conclusion and cancellation of international treaties and agreements).

**Question 7: Can you kindly indicate the main obstacles – practical and legal – encountered by your country in the implementation of the Declaration (if possible, making reference to specific provisions and concrete examples)?**

Syria has become notorious for enforceably disappearing its citizens, particularly during the ongoing armed conflict. Human rights reports indicate that over 86,000 people were forcibly disappeared at the hands of the Syrian State from the beginning of the conflict, in March 2011, until August 2021.<sup>12</sup> Thus, there are numerous legal and practical obstacles to implementing the Declaration in Syria.

Legal Obstacles:

- Syrian law does not criminalize enforced disappearance and therefore fails to provide an effective remedy to the victims of enforced disappearances (see Question 1 above). Syria has argued that the crime can be construed as abduction under Legislative Decree No. 20.<sup>13</sup> The decree defines abduction as kidnapping and depriving someone of their liberty without a legal ground for political or material gain, sectarian reasons, or with the intent of revenge or retaliation or to demand a ransom.<sup>14</sup> This definition does not, however, consider the concealment of the disappeared person's whereabouts, which is characteristic of an enforced disappearance. It also requires a deprivation of liberty without legal warrant, which excludes at least some cases of enforced disappearance in Syria. In fact, during the conflict, many people were first arrested on (mostly flimsy) legal grounds and later disappeared.
- Legislative Decree No. 55 of 2011 facilitates enforced disappearance by state actors. It empowers the “judicial police or those authorized to perform its duties,”<sup>15</sup> which are primarily members of the state security branches, to investigate crimes related to state security and detain suspects for up to 60 days without bringing them before a judge.<sup>16</sup> The provision allows the State to isolate citizens from the outside world without any judicial guarantee. This lays the ground for torture, other forms of mistreatment, and enforced disappearances.

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<sup>12</sup> Syrian Network for Hum. Rts., *The Tenth Ann. Rep. on Enforced Disappearance in Syria on the Int'l Day of the Victims of Enforced Disappearances; Long Years of Constant Grief and Loss*, ReliefWeb (Aug. 30, 2021), at 14, [https://reliefweb.int/sites/reliefweb.int/files/resources/The\\_Tenth\\_Annual\\_Report\\_on\\_Enforced\\_Disappearance\\_in\\_Syria\\_on\\_the\\_International\\_Day\\_of\\_the\\_Victims\\_of\\_Enforced\\_Disappearances\\_Long\\_Years\\_of\\_Constant\\_Grief\\_and\\_Loss\\_en.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/The_Tenth_Annual_Report_on_Enforced_Disappearance_in_Syria_on_the_International_Day_of_the_Victims_of_Enforced_Disappearances_Long_Years_of_Constant_Grief_and_Loss_en.pdf).

<sup>13</sup> U.N. GAOR, Hum. Rts. Coun., 40th Sess., Nat'l Rep. Submitted in Accordance with Para. 15(a) of the Annex to Hum. Rts. Coun. Res. 5/1 – Syrian Arab Republic, ¶ 44, U.N. Doc. A/HRC/WG.6/40/SYR/1 (24 Jan. 2022) [hereinafter Nat'l Rep. 3d Cycle].

<sup>14</sup> Legislative Decree No. 20 of 2013, art. 1 (Syria).

<sup>15</sup> Legislative Decree No. 55 of 2011 (Amending the Code of Penal Procedure issued by Legislative Decree 112 of 1950 on the Jurisdiction of the Judicial Police), 21 Apr. 2011, art. 1 (Syria).

<sup>16</sup> *Id.*

- The lack of judicial independence effectively prevents any investigation into enforced disappearances by the State. Article 132 of the Constitution subjects the judiciary to the supervision of the Supreme Judicial Council, which is the highest judicial body and headed by the President of Syria (currently Bashar Al-Assad).<sup>17</sup> This institutional design ensures that the entire judiciary remains loyal to the executive, and lawsuits and investigations into crimes committed by the State or its affiliated groups do not thrive. For instance, Legislative Decree No. 14 of 1969 stipulates that state security officers can only be prosecuted for crimes committed in the implementation of their tasks with the approval of a supervisor.<sup>18</sup> Similarly, Legislative Decree No. 64 of 2008 subjects prosecutions of officers, non-commissioned officers, members of the Internal Security Forces, members of the Political Security Division, and members of the customs police to an authorization by the General Command of the Army and Armed Forces.<sup>19</sup>
- Syria has also granted amnesty for numerous crimes committed during the conflict.<sup>20</sup> On May 2, 2021, it adopted Legislative Decree No. 13 of 2021, granting amnesty for the crime of abduction “if the kidnapped person was released prior to the date of issuance of this legislative decree without causing him any permanent [physical] disability.”<sup>21</sup> The amnesty also applies if the perpetrator releases the kidnapped safely within ten days of the date of issuance of this decree.<sup>22</sup> The amnesty waives the penalty for the perpetrator, but it does not affect the victims’ rights to compensation under civil law.<sup>23</sup> Its application to crimes of enforced disappearance is limited since it does not apply to cases where the abducted person died during the deprivation of liberty or has not been released. However, the practice of adopting amnesty laws for crimes committed during the conflict is concerning since Syria may grant an even broader amnesty for abduction in the future.

Practical Obstacles:

- Family members of the disappeared do not bring criminal complaints against state security agencies out of fear of retaliation against themselves or the disappeared, should they still be alive. Similarly, lawyers are reluctant to take on any case involving state agents.<sup>24</sup>

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<sup>17</sup> Constitution, art. 132 (Syria) (“The judicial authority is independent, and the President of the Republic guarantees this independence with the assistance of the Supreme Judicial Council.”).

<sup>18</sup> Legislative Decree No. 14 of 1969 (Law Establishing the State Security Administration and the Law on Internal Regulations for State Security Administration), 6 Feb. 2004, art. 16 (Syria).

<sup>19</sup> Legislative Decree No. 64 of 2008 (Trial of Police Officers and Members, Customs and Political Security Elements Before the Military Judiciary), 30 Sept. 2008, art. 1 (Syria).

<sup>20</sup> Nat’l Rep. 3d Cycle, *supra* note 13, ¶ 34 (stating that Syria enacted “20 amnesty laws, as of October 2021”).

<sup>21</sup> Legislative Decree No. 13 of 2021, 2 May 2021, art. 7(A)(1) (Syria).

<sup>22</sup> *Id.* art. 7(A)(2).

<sup>23</sup> *Id.* art. 20.

<sup>24</sup> *Seeking Truth for Syria’s Disappeared*, Syria Just. and Accountability Ctr. (July 25, 2018), <https://syriaaccountability.org/updates/2018/07/25/seeking-truth-for-syrias-disappeared/>.

- Released detainees also do not file criminal complaints against those who caused their disappearance because they usually do not know the identity of the perpetrators, lost trust in the very judicial system that was involved in the disappearance, and fear to be arrested again.
- Since 2018, Syria has issued tens of thousands death certificates for people who went missing during the conflict.<sup>25</sup> Through this practice, Syria can claim that it has determined the whereabouts of the disappeared and does not commit enforced disappearance. The death certificates typically indicate a natural cause of death, such as heart attack, which does not correspond to pictures, videos, and accounts of torture and inhuman detention conditions that have emerged from Syria's detention facilities.<sup>26</sup> In some cases, death certificates of individuals from the same location mention the same dates, indicating mass executions.<sup>27</sup> Thus, the death certificates seem to be an attempt of the State to hide the mass atrocities it has committed.

**Question 8: Can you kindly illustrate whether your country has previous experiences with regard to technical cooperation and assistance from Special Procedures and whether you think this could be an effective means to further disseminate and foster the implementation of the Declaration? What other kinds of initiatives could be favored?**

Syria has submitted reports to Special Procedures and engaged in debates on its human rights record, most recently during the third cycle of the Human Rights Council's Universal Periodic Review (UPR). However, it has either failed to implement the Special Procedures' recommendations or ignored their requests. For instance, during Syria's second cycle of the UPR in 2016, the UN member states issued ten recommendations regarding enforced disappearance in Syria.<sup>28</sup> Syria later stated that it rejected six<sup>29</sup> and accepted to implement four of these

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<sup>25</sup> Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, *Death Notifications in the Syrian Arab Republic*, ReliefWeb (Nov. 27, 2018), [https://reliefweb.int/sites/reliefweb.int/files/resources/DeathNotificationsSyrianArabRepublic\\_Nov2018.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/DeathNotificationsSyrianArabRepublic_Nov2018.pdf); *Arbitrary Deprivation of Truth and Life*, Syrians for Truth & Justice (May 20, 2021), <https://stj-sy.org/en/syria-arbitrary-deprivation-of-truth-and-life/>.

<sup>26</sup> *Seeking Truth for Syria's Disappeared*, *supra* note 24.

<sup>27</sup> Cairo Inst. for Hum. Rts. et al., *Universal Periodic Review of the Syrian Hum. Rts. File Before the U.N.*, Cairo Inst. for Hum. Rts. Studies (Nov. 12, 2021), <https://cihrs.org/syria-universal-periodic-review-must-center-the-rights-of-the-detained-the-disappeared-and-their-families/#PDF>.

<sup>28</sup> U.N. GAOR, Hum. Rts. Coun., 26th Sess., Nat'l Rep. Submitted in Accordance with Para. 5 of the Annex to Hum. Rts. Coun. Res. 16/21 – Syrian Arab Republic, ¶¶ 109.6, 109.7, 109.13, 109.82, 109.152-109.155, 109.159, 110.19, U.N. Doc. A/HRC/WG.6/26/SYR/1 (31 Oct. 2016) [hereinafter Nat'l Rep. 2d Cycle].

<sup>29</sup> U.N. GAOR, Hum. Rts. Coun., 34th Sess., Rep. of the Working Grp. on the Universal Periodic Review – Syrian Arab Republic – Add., at 3, 8, U.N. Doc. A/HRC/34/5/Add.1 (13 Mar. 2017) [hereinafter Report of the Working Grp. 2d Cycle Add. 1] (recommendations 109.13, 109.82, 109.153, 109.155, and 109.159); U.N. GAOR, Hum. Rts. Coun., 34th Sess., Rep. of the Working Grp. on the Universal Periodic Review – Syrian Arab Republic, ¶ 110.19, U.N. Doc. A/HRC/34/5 (27 Dec. 2016).

recommendations.<sup>30</sup> It has, however, not implemented any of them in practice.<sup>31</sup> Similarly, in August 2021, the Working Group on Enforced or Involuntary Disappearances requested information from Syria about the fate of 113 people who allegedly disappeared between May 2019 and May 2020.<sup>32</sup> To date, Syria has not replied to the request. These experiences show that Syria interacts with Special Procedures on some occasions, but it is not willing to effectuate change on the topic.

While the Special Procedures alone lack sufficient influence on Syria to foster the local implementation of the Declaration, they may still be useful tools to provoke change in the mid- or long-term. The Initiative suggests that Special Procedures pressure Syria, as well as other States with similar approaches to enforced disappearance, by sending more frequent follow-up requests if the State ignores the initial request for information on cases of disappearance. It also recommends Special Procedures to use their platforms to publish reports and statements on the practice of enforced disappearances in Syria. These steps may not be sufficient to stop the egregious atrocities, but at least they keep the crimes in the conscience of the international community and may influence the political process to discuss remedies for victims of war and accountability mechanisms.

**Question 9: Can you kindly illustrate any activity undertaken in your country to raise awareness and further disseminate the content of the Declaration?**

The Initiative is not aware of any awareness raising activity by the Syrian State or on its territory on the Declaration or enforced disappearance in general.

Awareness raising efforts are limited to international human rights bodies and civil society organizations working outside of the areas controlled by the Syrian State. Syrian and international civil society organizations have created social media pages and websites to report missing people,<sup>33</sup> documented and shared stories of the disappeared and their family members to shed light on their suffering,<sup>34</sup> and advocated for the release of political detainees and

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<sup>30</sup> Report of the Working Grp. 2d Cycle Add. 1, *supra* note 29, at 3, 4 (recommendations 109.6, 109.7, 109.152, 109.154).

<sup>31</sup> For instance, Recommendation 109.152 asks to “put an end to enforced disappearances and torture in all places of deprivation of liberty.” See Nat’l Rep. 2d Cycle, *supra* note 28, ¶ 109.152. However, the State has continued to disappear its opponents until today (see Question 7 above).

<sup>32</sup> U.S. Dep’t of State, Embassy in Damascus, *Syria 2020 Hum. Rts. Rep.* (May 3, 2021), <https://sy.usembassy.gov/syria-2020-human-rights-report/>.

<sup>33</sup> *Report a Missing Person*, Int’l Comm’n on Missing Pers., [https://oic.icmp.int/index.php?w=mp\\_reg&lang=en](https://oic.icmp.int/index.php?w=mp_reg&lang=en) (last visited Feb. 1, 2022); *Report a Missing Person*, Caesar Fams. Ass’n, <https://www.caesarfamilies.org/report-a-missing-person/> (last visited Feb. 1, 2022).

<sup>34</sup> E.g., *Syrian Network for Hum. Rts., At Least 98,000 Forcibly Disappeared Persons in Syria since March 2011*, ReliefWeb, Aug. 30, 2019, [https://reliefweb.int/sites/reliefweb.int/files/resources/At\\_least\\_98000\\_have\\_been\\_forcibly\\_disappeared\\_in\\_Syria\\_since\\_March\\_2011\\_en.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/At_least_98000_have_been_forcibly_disappeared_in_Syria_since_March_2011_en.pdf).

investigations into the whereabouts of the disappeared.<sup>35</sup> International human rights bodies have also documented and reported on the conflict-related practices of enforced disappearance by state and non-state actors.<sup>36</sup> In March 2021, the Independent International Commission of Inquiry on the Syrian Arab Republic even called on UN member states to “[f]acilitate the creation of an independent mechanism with an international mandate to coordinate and consolidate claims regarding missing persons, including persons subjected to enforced disappearance.”<sup>37</sup> While the European Union expressed its support, the UN has not yet taken any steps towards establishing this mechanism.<sup>38</sup>

**Question 10: Can you kindly share information on existing training programs (directed both at authorities and at civil society organizations) in your country where the Declaration is analyzed and disseminated? Any information on the nature and frequency of such trainings is welcome.**

The Initiative is not aware of any training program in Syria on the Declaration or enforced disappearance in general.

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<sup>35</sup> *ICMP-Facilitated Syrian Pol’y Coord. Grp. Discusses Draft Missing Persons Law*, Int’l Comm’n on Missing Pers. (Jan. 28, 2022), <https://www.icmp.int/news/icmp-facilitated-syrian-policy-coordination-group-discusses-draft-missing-persons-law/>; *The Truth and Justice Charter by Syrian Victims and Fam. Members*, Caesar Fams. Ass’n (Feb. 10, 2021), <https://www.caesarfamilies.org/the-truth-and-justice-charter-by-syrian-victims-and-family-members/>; *Truth and Justice Charter*, Ta’afi Initiative (Feb. 2021), <https://taafi-sy.org/wp-content/uploads/2021/02/Truth-Justice-Charter-EN.pdf>.

<sup>36</sup> *E.g.*, Indep. Int’l Comm’n of Inquiry on the Syrian Arab Republic, *Without a Trace: Enforced Disappearances in Syria*, U.N. Hum. Rts. Coun. (Dec. 19, 2013), <https://www.ohchr.org/EN/HRBodies/HRC/IICISyria/Pages/Documentation.aspx>.

<sup>37</sup> U.N. GAOR, Hum. Rts. Coun., 46th Sess., Report of the Indep. Int’l Comm’n of Inquiry on the Syrian Arab Republic, ¶ 113(b), U.N. Doc. A/HRC/46/55 (11 Mar. 2021).

<sup>38</sup> Res. of 11 Mar. 2021 on the Syrian Conflict – 10 Years after the Uprising (2021/2576(RSP)), Eur. Parl. Doc. P9\_TA(2021)0088 (2020), [https://www.europarl.europa.eu/doceo/document/TA-9-2021-0088\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/TA-9-2021-0088_EN.pdf).