

DETENTION IN THE SYRIAN ARAB REPUBLIC: *A Way Forward*



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INDEPENDENT INTERNATIONAL COMMISSION OF INQUIRY ON THE
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I. Introduction

1. Government forces and affiliated militias are arbitrarily or unlawfully detaining tens of thousands of individuals in official and makeshift detention centres throughout the Syrian Arab Republic. The vast majority are being held without due process and are not allowed access to legal representation or to their families. They endure various forms of brutal torture and subsist in severely inhumane conditions. Many have died in detention, while others have been summarily executed. The bodies of those who have died as a result of torture, neglect, inhumane conditions, or from executions are rarely returned to their families, who are also not notified about burials. As the number of detainees has grown, so too have the unofficial and secret places of detention these individuals are held in.

2. As a result, the whereabouts of tens of thousands of detainees remains unknown and unacknowledged by the state. These civilians have been disappeared and many may no longer be alive. This information is based on the chilling accounts of hundreds of former detainees received by the Independent International Commission of Inquiry on the Syrian Arab Republic¹ since August 2011, including by those most vulnerable to abuse.

3. The Commission has meticulously documented the acts described above which amount to the crimes against humanity of extermination, murder, rape or other forms of sexual violence, torture, and imprisonment in the context of its widespread and systematic detentions (see A/HRC/31/CRP.1). They have also amounted to the war crimes of murder, cruel treatment, torture, rape, sexual violence, and outrages upon personal dignity (see A/HRC/31/CRP.1. para. 99).

4. The foregoing pervasive violations do not stop with the Syrian Government. Armed groups and terrorist entities have also established makeshift places of detention where captured Government soldiers have been tortured, ill-treated, and, in some cases, summarily executed. Hundreds of civilian men, women, and children have also been held for a variety of reasons including as punishment for suspected loyalty, to extract ransom, or as bargaining chips to initiate prisoner swaps with Government forces and affiliated militias. Some have died performing forced labour. Minority religious groups have also been targeted including Alawites, Ismaili, Shi'a, Druze, and Christian families. Many were moved to Douma, eastern Ghouta (Rif Damascus), under siege now for nearly five years. Hundreds of religious minorities, primarily women and children, remain in the captivity of armed groups in Douma alone, waiting to be swapped.

5. The treatment of detainees by armed groups has amounted to the war crimes of murder, torture and other forms of ill-treatment, and also constituted violations of due process principles (see A/HRC/31/CRP.1). Since 2015, members of the terrorist group Jabhat Fatah al-Sham have also committed the war crimes of murder, cruel treatment, and torture in the context of detention, while ISIL terrorists have been responsible for the crimes against humanity of murder and torture against detainees.

6. United Nations Security Council resolutions 2254 (2015) and 2258 (2015) call on all parties to the conflict to release any arbitrarily detained persons, particularly women and children. Despite these resolutions and the efforts of UN Special Envoy Staffan de Mistura to make progress on issues of those detained in Syria, little has changed. The situation of detainees countrywide remains critical, and represents an urgent and large-scale crisis of human rights protection.

7. Just as progress on negotiating a political agreement is dependent on a ceasefire or reduction in violence, and on urgent access for humanitarian assistance, it is abundantly

¹ The Commissioners are Paulo Sérgio Pinheiro (Chair), Karen Koning AbuZayd, and Hanny Megally. coisyria@ohchr.org | [@UNCoISyria](https://twitter.com/UNCoISyria)

clear that no progress can be made in reaching a political settlement without tackling the issue of detainees and, by extension, those missing or disappeared. In this paper, the Commission is proposing what we believe are viable steps that should be implemented in the immediate future. Termed “A Way Forward”, they can help build trust and confidence among those seeking to negotiate a political solution. Placing the needs of victims and their families at the front and centre of peacebuilding initiatives and negotiations remains imperative for sustainable peace.

II. Methodology

8. Drawing from numerous first-hand accounts, this paper highlights the magnitude of arbitrary arrests and detention in the Syrian Arab Republic between 10 March 2011 and 20 February 2018. Its findings encapsulate over 800 detention-related interviews, as well as considerable documentary material. The Commission continues to regret that its investigations remain curtailed by the denial of access to the country, and faces numerous challenges with regard to the security of interviewees. In all cases, the Commission was guided by the “do no harm” principle.

9. The standard of proof was considered met when the Commission obtained and corroborated a reliable body of information to conclude that there were reasonable grounds to believe that incidents occurred as described, and that violations were committed by the party identified.

III. Detention

10. Arbitrary arrests and detention in Syria take many forms, often targeting civilians perceived to be either supporting a party to the conflict, or insufficiently loyal to another. Arrests are also regularly carried out for expressing hostile opinions, having a family member affiliated to a party to the conflict, infracting religious codes, conscription into armed forces, hostage taking, and administrative detention (internment). Detainees held by all parties have been beaten to death, or died as a result of injuries sustained due to torture. Others have perished as a consequence of neglect and grossly inhumane living conditions. Tens of thousands have been disappeared. In Syria, regular forms of torture include *dulab* (placing detainees inside a wheel prior to beating them), *shabeh* (hanging them from the ceiling by their wrists), and beatings with objects including pipes. In many instances, electrocution is also used, including to the genitals.

11. International human rights and humanitarian law impose clear obligations on States and, during times of armed conflict, on all parties for the treatment and protection of all persons in their custody. Detainees must be treated humanely and protected from violence or life-threatening conditions, including from any form of torture or ill-treatment, and sufficient food, water, and medical care are to be provided.²

² See, e.g., United Nations Standard Minimum Rules for the Treatment of Prisoners, 13 May 1977, at Rules 1, 22, and 24–26.

Government forces

12. While detention throughout the Syrian Arab Republic comprises violations of the most fundamental human rights perpetrated by all parties on the ground, nowhere has the phenomenon been more pervasive than in areas under Government control. Since the uprising in March 2011, the Commission has documented how the Syrian Government perpetrated the crimes of extermination, murder, rape or other forms of sexual violence, torture, and imprisonment in the context of its widespread and systematic detentions of dissidents, as well as those perceived to be sympathetic to armed groups.

13. Such acts have been perpetrated at official and unofficial places of detention including Mezzeh Hospital 601 (Damascus), Military Intelligence Branches 215 and 227 (Damascus), Military Intelligence Branch 235 a/k/a the Palestine Branch (Damascus), the Mezzeh Air Force Intelligence Airbase (Damascus), the Harasta Air Force Intelligence (Damascus), Tishreen Military Hospital (Damascus), the Military Police Headquarters in Barzeh (Damascus), Sednaya Military Prison (Damascus), the Air Force Intelligence (Aleppo), and Palmyra Military Prison (Homs) prior to its capture by ISIL in May 2015.

14. The crime of enforced disappearance has also been committed by Government forces as part of a widespread and systematic attack against the civilian population.³ At the time of writing, fears of arbitrary arrest are preventing internally displaced civilians from returning to their homes in areas where pro-Government forces have recaptured territory from armed groups, including in eastern Aleppo city, Madaya (Rif Damascus), and the Oqeirbat sub-district of Hamah.

Anti-Government armed groups

15. Since 2012, numerous armed groups have ill-treated, tortured, and, at times, killed detainees in their custody, and further denied them due process rights in violation of international humanitarian and human rights law.

“I suffered from bleeding and incontinence because of the torture, and because they also used to threaten to arrest my two children. One morning, the guards gathered all us detainees in the yard and called our names out one by one; they also called out my son’s name to make me believe he was detained. When I heard his name being called I couldn’t stop screaming and crying.”

–Female detainee | Aleppo Security Branch (2015-2016)

³ Commission of Inquiry on the Syrian Arab Republic, *Without a trace: enforced disappearances in Syria*, 19 December 2013; see also A/HRC/22/59, paras. 77-83; A/HRC/23/58, paras. 78-81; A/HRC/24/46, paras. 67-74; A/HRC/25/65, paras. 47-49; A/HRC/27/60, paras. 45-51; and A/HRC/30/48, para. 168.

Syrian Democratic Forces (SDF), People’s Protection Units (YPG), and Asayish (Kurdish civilian police)

16. Throughout Kurdish-held northern Syria, the SDF, YPG, and Asayish have been increasingly arresting men aged 18 and above for attempting to evade forced conscription. Such arrests have been carried out pursuant to various promulgated conscription laws, and documented in Hasakah, northern Raqqah, and Aleppo governorates. In the same areas, Kurdish forces further continue cracking down on political dissenters by arbitrarily arresting men and women supporting competing political parties, as well as those perceived to be insufficiently loyal. In some instances, the Commission has documented the torture of detained political dissidents by both SDF and YPG forces.

17. During the course of operations in ar-Raqqah and Dayr al-Zawr in 2017, SDF claimed to have detained 1,397 “terrorist” fighters, the majority of whom are or were ISIL members, including hundreds of foreign fighters from as many as 30 countries.⁴ Women and children associated with ISIL are also being held. While SDF indicated it seeks to send the foreign fighters, spouses, and children to their countries of origin, they reported that states have thus far declined to repatriate their nationals, leaving these individuals in legal and administrative limbo and susceptible to abuse.

Jabhat Fatah al-Sham

18. Members of Jabhat Fatah al-Sham (previously known as Jabhat al-Nusra and currently under the Hay’at Tahrir al-Sham umbrella coalition) have set up detention facilities in Idlib, for example in Harim, Kafr Hamra, Misrin, and Abu al-Duhur prior to its recapture by Government forces in January 2018, where deaths in detention were documented. Some individuals held in Harim prison described women and children being separated from their male relatives, held in squalid conditions with little food, and forced to pray. The terrorist group also conducted mass executions of captured Government soldiers in Idlib (A/HRC/31/CRP.1, para. 102).

“Some detainees were starved and tortured, which included using electric cables to beat us. We used to regularly hear other prisoners screaming, too. I remember one Kurdish man being beaten so hard he started screaming and begging for his mother.”

–Male detainee | held by Jabhat al-Nusra in Kafr Hamra, Idlib (2015)

Islamic State in Iraq and the Levant (ISIL)

19. At the height of their power, ISIL terrorists routinely subjected male, female, and child detainees to serious abuses, including torture and summary executions in ar-Raqqah and Dayr al-Zawr governorates. Initial arrests were often carried out by its police force, al-Hisbah. Detainees were frequently executed after unauthorised courts issued death sentences (A/HRC/31/CRP.1, para. 104). Its unauthorised mock trials further deprived victims of basic due process guarantees in violation of international humanitarian law and fundamental human rights norms. Thousands of Yazidi women, girls, and

⁴ PEOPLE’S DEFENSE UNITS, *2017 Balance Sheet of War – Syrian Democratic Forces*, 3 January 2018, available at <https://www.ypgrojava.org/2017-Balance-Sheet-of-War-%E2%80%93-Syrian-Democratic-Forces>.

boys who were the focus of ISIL's campaign of genocide have also been detained in Syria, all of whom suffered enslavement and indoctrination (see A/HRC/32/CRP.2). After the severe weakening of ISIL's bastions in Dayr al-Zawr by pro-Government forces in September 2017, and the fall of its de facto capital of Raqqah city to SDF in October, the whereabouts of majority of these Yazidi captives remains unknown.

IV. A Way Forward

20. In addition to needing to protect those in detention from further torture, ill-treatment, deprivations, or death, the families of those detained, missing, disappeared, or dead have an urgent right to the truth: a right to know what has happened to their loved ones. It is incumbent on all parties to the conflict in Syria and those supporting them to prioritise issues surrounding those they detain.

21. In that light, we are calling for immediate actions that will not only address the most urgent needs of those detained and deprived of their liberty, but also serve as confidence building measures among parties to the conflict as well as towards those held in detention, and their families.

22. First, as a matter of priority, the Commission urges the parties preparing for negotiations on a political settlement, including a draft constitution and elections to prioritise the issue of the detainees in Syria by taking the following steps:

- Immediately and unilaterally release all those most vulnerable in all places of detention, including children, women, the elderly, the disabled, and infirm. Such a humanitarian gesture should help in trust and confidence building;
- Streamline all discussions on the establishment of a joint Syrian Working Group on detention under the framework of the Geneva peace talks and Security Council Resolution 2254;
- Expediently agree to a timetable for identifying and releasing all arbitrarily or unlawfully detained individuals from official and unofficial detention facilities;
- Commit to immediately discontinuing all forms of incommunicado detention or other forms of deprivation of liberty amounting to enforced disappearance; and
- Disclose the locations of all official and unofficial places of detention, and provide full lists of the names of all those held in detention.

23. Second, to address the most pressing protection needs of those remaining in detention, the Commission recommends all parties to the conflict to:

- Allow unconditional access to all official and unofficial places of detention to the Commission and humanitarian organisations such as the International Committee of the Red Cross;
- Ensure that all persons in custody have routine contact with their families;
- Commit to inspecting and improving detention conditions, including by ensuring access to medical care, sufficient water, and food, in compliance with international standards;
- Take significant measures to protect the lives of all detainees in their custody, in particular by preventing torture, ill-treatment, sexual violence, or other abuses;
- Take measures to discipline or dismiss individuals responsible for violations against detainees; and
- Immediately suspend any enforcement of capital punishment.

24. Third, in the context of serious negotiations underway or once a cessation of hostilities has been achieved, the Commission urges that the following issues be given priority with the assistance of relevant UN agencies:

- In relation to due process and fair trial rights of those in detention, the Syrian Arab Republic should address the situation of conflict-related detainees, and appropriately screen those detainees with a view to either charging or releasing them in accordance with international standards, and grant all detainees regular access to adequate legal counsel;
- Victims, survivors, and their families will need to know that justice – including criminal accountability, right to truth, and reparations - will not be swept aside but central to any process for achieving a sustainable peace in Syria. Documentation and other evidence – such as medical reports, post mortems, death certificates, detention records, locations of gravesites, etc. relevant to such processes – should be safeguarded and made available to them and to any legitimate mechanism that may be established to look into these issues; and
- To address the size, scale, and situation of missing persons, including persons subjected to enforced disappearance, and their families, the international community should facilitate:
 - The creation of a new independent mechanism with an international mandate to coordinate and consolidate claims regarding missing persons, including persons subjected to enforced disappearance; and
 - Task the mechanism with defining the key elements required to efficiently and effectively track and identify missing persons, to help consolidate claims filed with a wide variety of non-governmental and humanitarian organisations, and coordinate overtures to the parties to the conflict to locate the missing or their remains.

25. Under international law, each party to the conflict is obligated to take all feasible measures to account for persons reported missing as a result of hostilities and provide their family members with any information it has on their fate.⁵

26. Thus far, calls for justice and accountability remain largely unheeded. Time and again, history has shown that enhancing justice and accountability are crucial elements for realising and maintaining durable peace. On-going efforts to bring parties to the conflict to the negotiating table require commitments by all concerned that these victims' demands for justice and accountability will become central to any negotiated settlement, and a part of any durable solution to achieve peace. Political negotiators must not, however, award amnesty to perpetrators of serious human rights violations, war crimes, and crimes against humanity in order to sustain a negotiated settlement.

27. Finally, the commitments proposed above should be seen as benchmarks by the parties to the conflict and the international community at large. United Nations agencies and major donors among Member States and regional organisations should ensure the provision and facilitation of reconstruction funding, while providing that assistance is contingent upon adherence to these commitments.

⁵ International Committee of the Red Cross (ICRC), *Customary International Humanitarian Law*, 2005, Volume I: Rules, at Rule 117.