

SYRIA'S MISSING AND DISAPPEARED:

IS THERE A WAY FORWARD?

Recommendations for a Mechanism with an International Mandate



Hundreds of Syrian women, men, and children wait at the President's Bridge in Damascus on 3 May 2022, hoping for the release of their loved ones. © AP Photo/Omar Sanadiki.

INDEPENDENT INTERNATIONAL COMMISSION OF INQUIRY ON THE
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Introduction

More than a decade into the Syrian conflict, **millions of Syrians are looking for their missing loved ones** and seeking information on their fate and whereabouts. In December 2021, the UN General Assembly adopted resolution 76/228, in which it requested the Secretary-General to produce a study on how to bolster efforts, including through existing measures and mechanisms, to clarify the fate and whereabouts of missing people, identify human remains and provide support to their families. The General Assembly specifically requested that the study be based on the recommendations of the Independent International Commission of Inquiry on the Syrian Arab Republic (hereinafter the Commission). In this paper, the Commission sets out some of its views on ways to address this issue, in line with its prior recommendations and the wishes of family members, victims, and survivors of the Syrian conflict.¹

As the Commission's 2021 special report on detention ([A/HRC/46/55](#)) sets out, the fate of tens of thousands of Syrian victims subjected to **enforced disappearance** by Government forces and by other armed actors, remains largely unknown. On the cusp of the twelfth year of the conflict, the Government, Hay'at Tahrir al-Sham, the Syrian Democratic Forces and the Syrian National Army continue to hold thousands of detainees incommunicado and in appalling detention conditions. To be detained in Syria is to be missing. Those who have survived detention describe executions and deaths from neglect and appalling prison conditions, suggesting that those still in incommunicado custody may slowly die unless released expeditiously.

The evidence shows that the Government is aware of and meticulously registers information about those it has detained. However, rather than investigate the crimes committed in its detention facilities, it continues to withhold information from family members, as do other parties to the conflict. In doing so, they are intentionally prolonging the suffering of hundreds of thousands of family members – and leaving pressing legal issues related to civil status and property rights unresolved, with severe consequences for families', not least women-headed households', ability to deal with fundamental aspects of their daily lives and to fully enjoy their human rights. Enforced disappearances represent a **national trauma** that will affect Syrian society for decades to come.

In addition, thousands of others are **missing** for reasons other than incommunicado detention. In relation to those who went missing or are presumed dead as a consequence of conduct of hostilities, the sheer scale of damage and destruction, together with the massive displacement that has taken place on the ground, greatly complicates the ability of families to locate their missing relatives. The multitude of actors involved in the conflict – and their shifting lines of territorial control since 2011 – raise further difficulties, as set out in the Commission's recent retrospective report ([A/HRC/46/54](#)). The complex transnational nature of the issue of the missing and disappeared is also apparent in the context of Yezidis missing as a result of genocide, most of whom were originally from Iraq but were last heard of in Syria. Adding another transnational layer of complexity, ten years of conflict has resulted in millions of Syrian seeking refuge outside the country, with many dying or going missing *en route*. Families of missing and disappeared persons, as well as survivors, are largely concentrated in neighbouring countries but form part of a now global refugee and diaspora community.

¹ The Commission elaborated a non-paper regarding this issue in May 2021, on which this policy paper is partly based.

Why is the Commission recommending a mechanism with an international mandate?

Enforced disappearances and arbitrary detention were already serious concerns in Syria prior to 2011 and have been identified as both root causes and drivers of the current conflict. In its very first report to the HRC in 2011 ([A/HRC/S-17/2/Add.1](#)), the Commission recommended to the **Government of Syria to establish a mechanism** to investigate cases of disappearances by allowing relatives to report the details of their cases and to ensure appropriate investigation. While the Government has established various entities² ostensibly to look into the issue of the missing and those forcibly disappeared, and to assist families in finding their missing relatives, very little information has come to light. Families contend that the state is deliberately withholding information in many cases rather than actively seeking to clarify the fate and whereabouts of the missing. Meanwhile, other non-State armed groups (NSAG) have become increasingly responsible for disappearances, often occurring in areas that remain outside the control of the Government, hampering its possibility to investigate these cases even if there was a political will to do so.

Meanwhile, Syrian civil society groups, the UN – including [the Commission](#), [WGEID](#), [WGAD](#), OHCHR and the [IIIM](#) - the [ICMP](#), the [ICRC](#)³ and other smaller entities have documented and publicly reported on the existence of tens of thousands of cases of missing (hereinafter understood to include persons subjected to enforced disappearance) as well as on the existence of mass graves.⁴ However, **eleven years into the conflict, individual cases of missing have not yet been comprehensively documented and claims filed with a plethora of actors have not been consolidated.** Syrian organizations have documented more than [100,000](#) individual cases of disappearances; while the ICMP has collected data from relatives on more than [23,000](#) missing persons and the ICRC had received more than [13,000](#) tracing requests by 2018.

In addition to political and operational challenges, efforts to collect claims have been hampered by the sheer magnitude and continuing expansion of the number of missing. **The efforts required to both register and actively track these cases far exceeds the current resources** provided to any of the above bodies. The time is long overdue to consolidate the information gathered by, for example, entities collecting family tracing requests on the one hand, and, on the other, those gathering

² These have included the Ministry of Justice's Office of Missing Persons which was set up around 2013 to help citizens who are searching for their missing relatives; the General Committee for Forensic Medicine established in 2014 to provide forensic examination services; the Directorate for the Martyrs, Wounded and Missing which provides support and services to families of the martyrs, wounded and missing through scholarships and work opportunities (it does not however assist families in trying to determine the fate of their missing relatives); the governmental Committee on Reconciliation (formerly a ministry, downgraded to a committee in November 2018, closed in 2020) which sought to support families in seeking the whereabouts and fate of relatives who have gone missing through a Missing and Abductees Registry. According to OHCHR, family members of detainees and missing persons in Syria report that despite reaching out to these bodies, they have been unable to obtain crucial information about the whereabouts of their relatives. The extent to which either body has done outreach to affected families appears to be limited. Those with family members missing from both sides of the conflict face particular difficulties.

³ The Working Group on Enforced or Involuntary Disappearances (WGEID); the Working Group on Arbitrary Detention (WGAD); the Office of the High Commissioner for Human Rights (OHCHR); the International, Impartial and Independent Mechanism to assist in the investigation and prosecution of persons responsible for the most serious crimes under International Law committed in the Syrian Arab Republic since March 2011 (IIIM); the International Committee of the Red Cross (ICRC); and the International Commission on Missing Persons (ICMP).

⁴ See e.g., Commission of Inquiry on the Syrian Arab Republic, A/HRC/22/59, Annex IV, paras. 20 and 32 and A/HRC/46/55.

information on violations including testimonies from former detainees and other witnesses and victims that can help resolve the fate of those reported missing. Consolidation and corroboration of cases facilitated by an internationally mandated coordination mechanism may help facilitate the resolution of cases, and ensure that the rights of victims and their families, such as civil status issues and property concerns, legal protection and reparations, are taken into account as Syria hopefully approaches a phase of post-conflict, resilience strengthening, rehabilitation, and reconciliation. An effective mechanism is needed as soon as possible – experience globally indicates that the longer it takes to establish such a mechanism, the [more difficult](#) it will be to clarify the fate and whereabouts of missing persons and [disappeared](#).

As a consequence, since 2016, the Commission has recommended that the **international community support the creation of a mechanism** to assist Syrians in tackling the challenge of the tens of thousands of missing and forcibly disappeared. As set out in its March 2021 [report](#) on detention (para 113.b), the Commission has recommended that UN Member States facilitate the creation of “an independent mechanism with an international mandate regarding missing persons, including persons subjected to enforced disappearance” to help coordinate efforts on this issue; consolidate claims filed with a wide variety of non-governmental and humanitarian organizations so as to efficiently and effectively track and identify those missing and help their families; and coordinate overtures to parties to the conflict to offer technical assistance and advice regarding detainees and other missing persons and their remains, including those found in mass graves, which meanwhile must be protected.

The **call for a mechanism has since gained increasing support**, including by UN [Secretary-General Guterres](#) and [High Commissioner Bachelet](#), the [ICRC](#), the [IIIM](#), the [European Parliament and Commission](#), by individual Member States, in the EU-UN Brussels V Conference co-chairs' [declaration](#) (point 15), and by many international and local human rights organizations and defenders, separately or [jointly](#). Importantly, a number of Syrian Victims' and Family Members' Organisations also called for a mechanism in their “[Truth and Justice Charter - A Common Vision on the Question of Enforced Disappearance and Arbitrary Detention in Syria](#)” as well as in a report they commissioned, entitled “[Humans Not Numbers: The Case for an International Mechanism to Address the Detainees and Disappeared Crisis in Syria](#)”.

These efforts culminated in the General Assembly adopting [resolution 76/228](#) in December 2021, in which it requested a **study on how to bolster efforts**, including through existing measures and mechanisms, to clarify the fate and whereabouts of missing people, identify human remains and provide support to their families (para 64). At the time of writing, OHCHR is leading the preparation of the UN Secretary-General's study, and in doing so is consulting with a wide range of Syrian victim, survivor and family associations and other civil society organisations, as well as UN Member States and relevant entities.

From Recommendation to Action

Just as each conflict or other situation of violence that leads to large numbers of missing or disappeared persons is unique, so mechanisms to resolve the fate of the missing, return remains or repatriate or release individuals have also been tailored to those unique situations and have taken many different forms. The **Syrian situation differs** from most past precedents, given that eleven years in, the conflict has still not ended; incommunicado detention and disappearances still occur routinely, indicative of

the absence of political will among the parties to the conflict to address the situation; and there is a persisting lack of consensus among permanent members of the Security Council on how to address the situation.

Bearing in mind the specific context of the Syrian conflict and present geopolitical realities, the Commission strongly supported the request by the UN **General Assembly** for a study, and looks forward to its release. From the Commission's point of view, the establishment of a mechanism, most realistically mandated by the General Assembly, would be the most appropriate way forward.

Without entering into whether the mandate and mechanism would build on an existing entity or be established separately, there is a wide range of **potential activities** that a mechanism could undertake. What follows is a non-exhaustive set of possible activities or functions that can be initiated in the **short or medium term**, even with current levels of access and commitment from the parties of the conflict.

These include **coordinating and consolidating claims and information** currently held with a wide variety of entities that can help track the disappeared or missing; and offering family members a long sought after “one stop shop” regarding filing and follow up of their claims and tracing requests. A mechanism could also tap into hitherto underused information sources on the fate of the missing (including testimonies from former detainees, defectors and witnesses; the estimated 55,000 “Ceasar” photos and new analysis thereof; and other information emerging within ongoing criminal or other investigations, including efforts to obtain information from an estimated 10,000 alleged ISIL members currently held in northeast Syria). Consolidating and analysing such information could entail the creation of a database, to help fill gaps in families' knowledge of their loved one's fate and whereabouts.⁵ A mechanism could also serve as a standard-setter to ensure that NGOs, UN actors, and any other entities collecting information relevant to the search for the missing in the Syrian context apply consistent criteria to allow for future consolidation of collected information. Further, it could facilitate joint tracking and monitoring of alleged burial sites with remains - at least remotely via satellite for those areas of Syria where access would initially be lacking.⁶

Beyond consolidating existing information, a mechanism can also coordinate overtures to all parties to the conflict controlling territory in Syria (see the annexed [map](#) in the Commission's latest report) to offer **technical advice**. Such advice can range from how to enable communication between detainees and their families and improved detention registration, conditions and release practices, to addressing complex legal status and civil documentation issues family members face, which disproportionately affect women-headed households.

A mechanism providing a “one stop” hub for families of the missing could also assist in mapping existing avenues for psychosocial aid; and help establish a **consolidated referral system** to facilitate their access to much needed services.

Building on good practices elsewhere, a mechanism could facilitate or produce a **certificate** showing that a person has reported a spouse, parent, sibling or child as missing – and advocate for its recognition

⁵ Any such database and the process of collecting and preserving information itself must entail protection measures related to respect for confidentiality, privacy, data protection, consent, and the anonymization of data where necessary.

⁶ In relation to alleged burial sites and mass graves, a mechanism could also encourage local authorities and communities to locate and preserve such sites until they can be examined in line with international standards.

by all parties currently controlling territory in Syria. This can help families resolve both legal status, property and civil documentation issues as well as obstacles to accessing services, without forcing them to declare a missing loved one dead. Additionally, such a document could assist in a range of administrative and practical matters for the Syrian refugee population in host countries and during travel.

Other activities would require building political will and commitment among the parties to the conflict; which may **only be possible in the medium term, or for some parties, more likely the longer term.**

These could include facilitating **legal reforms** resolving civil status and sub-standard detention issues; **on-site independent monitoring** of all places of detention (including unofficial and secret places which hitherto no actor has been able to access); assisting in **releases and post-release** reunification of families and the immediate support of and referral services for formerly missing or disappeared persons, and **on-site examination and protection of remains**, including those in mass graves.

In conceiving the mechanism's mandate, the Commission encourages States to **consult** with the Syrian family associations and with other entities (UN, non-UN) with experiences of such functions, such as the OHCHR, ICRC, the ICMP and WGEID; there are many useful best practices and lessons learned worldwide that can be drawn on.

The Commission further recommends that the mechanism itself should determine its precise **Terms of Reference** (ToRs), working methods, strategy etc., depending on the mandate it is given and with participation of the families of missing persons in Syria and relying on [guidance](#) provided by expert entities such as ICRC, WGEID, the [Committee on Enforced Disappearances](#) and ICMP.

The Commission has called for a mechanism with **“an international mandate”** to make sure that such a mechanism can operate with credibility, successfully consolidate claims gathered by other entities (and secure information-sharing MoUs with such entities) and have access to places outside Syria where millions of refugees (who are also victims and witnesses) are located. An international mandate can also help guarantee independence and minimize politicization, and can help ensure that the mechanism adheres to established methodologies (related to e.g. impartiality, non-discrimination, secure storage and protection of sensitive information, protection of sources, families, victims and witnesses).

Pending the outcome of ongoing consultations for the Secretary General's study as requested by the General Assembly, the Commission does not take a position on the question of “who” should lead or co-lead such a mechanism or what forms it ultimately takes. However, in formulating the mandate, some **foundational principles** should be adhered to. These include:

- **Syrians' priorities** must determine the best framework, mandate and elements.
- It needs to be able to address missing persons from **all parties** to the conflict without its work being conditional on the results achieved by any other party.

- It must ensure the **participation of the families** of missing persons, whether they are inside or outside the country, and be accessible to them. They are also victims, and such a process should ensure the protection of their security and safety.
- Regardless of final form, it should be impartial, independent, credible, inclusive, and accessible. See the Annex for a more detailed list of the **core principles** by which the mechanism should abide in its work, regardless of its shape or form. This list should not be seen as comprehensive.

Until the new mechanism gains the support of the Government (unless it is mandated by the UNSC, which is unlikely⁷), it would be subject to similar **territorial and access limitations** as OHCHR, the Commission and the IIIM at present. While far from ideal, this would not prevent the mechanism from advancing on crucial tasks in the meantime, as set out above.

Issues related to **funding and sustainability** would need to be addressed by the mandating entity, depending on the entity/entities entrusted or created. A UN-mandated mechanism could either be funded through the UN's regular budget and/or via voluntary contributions. This could be determined in the mandating resolution, and could also shift over time.⁸

Consideration would need to be paid to the role to be played by the Syrian families associations as well as the abovementioned entities (e.g. OHCHR, ICRC, ICMP, IIIM, WGEID, WGAD and the Commission), including potentially as a **steering function** as proposed in the paper mentioned above.⁹

Previous experiences have shown that mechanisms that did not have any explicit criminal justice-related mandates, but more [humanitarian objectives](#) and a focus on the **right to know** the fate and whereabouts of missing persons, were more successful in carrying out their specific tasks. This approach should be followed here. At the same time, as proposed above, coordination modalities should be set up to ensure that the mechanism's search for the missing and that of potential judicial authorities are [mutually reinforcing](#).

⁷ While the SC unanimously adopted [resolution 2474 on missing persons](#), consensus has typically been lacking on the Syria situation.

⁸ By way of example, the General Assembly-mandated IIIM was initially mandated to be funded entirely by voluntary contributions, which were later complemented by UN regular budget funds. For a mechanism on the missing, the reverse may be more practical: Core coordination and information consolidation tasks, which can be undertaken already now with current levels of access and political will among the parties, could be funded by UN regular budget funds from the outset – to be complemented in a second phase by voluntary contributions for expanded tasks possible only in the medium or longer term.

⁹ “Humans Not Numbers: The Case for an International Mechanism to Address the Detainees and Disappeared Crisis in Syria”.

Annex: Core Principles

The following core principles should apply to the mechanism regardless of its shape or form. If it is decided to entrust the functions of a mechanism to any existing entity or group of entities, careful attention must be paid to the ability of such an entity to clearly distinguish its activities related to the missing person mechanism from any other aspect of its work in relation to these core principles.

Basic humanitarian action principles: Independence, Impartiality, Neutrality, Humanity, Dignity¹⁰

Independence – The functioning of such a mechanism must be autonomous from the political, economic, military, or other objectives that any actor may hold with regard to addressing the issue of missing and disappeared persons.

Impartiality – The mechanism must undertake its functions without making any distinctions regarding the perceived or actual affiliation of the victims or their family with a political or armed faction, nor on the basis of nationality, race, gender, religious belief, class, political opinion, or any other immutable quality of an individual that could give rise to the appearance of partisanship.

Neutrality – Such a mechanism and any staff assigned to it must not take sides or engage in controversies of a political, racial, religious or ideological nature.

Humanity – The purpose of this mechanism would be primarily to address human suffering, to protect life, and to ensure respect for individual human beings.

Dignity – This requires that victims, including the families of missing or disappeared persons, be recognized as individuals and as rights holders who should be protected and who possess important knowledge that may contribute to the effectiveness of the search. They should not be subject to stigmatization or slurs that undermine their dignity, reputation or good name as people, or those of their disappeared loved ones.

Basic human rights principles: Non-discrimination, Equality, Inclusivity, Participation, Do No Harm, Human Rights are Universal, Inalienable, Indivisible and Interdependent

Non-discrimination – Such a mechanism should guarantee to all persons equal and effective access and prioritisation without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Equality – All persons who present information or assistance to, seek assistance from, and or otherwise interact with such a mechanism on missing persons must be treated equally based on objective, defined criteria set out in policy or regulation and all persons must benefit from equal treatment on such basis, free from any form of discrimination.

Inclusivity – Such a mechanism must be inclusive for all impacted persons and communities, taking into account the mosaic of Syrian society as well as the presence of non-Syrians who may also have

¹⁰References adapted from “OHCA on Message: Humanitarian Principles”, available at https://www.unocha.org/sites/dms/Documents/OOM-humanitarianprinciples_eng_June12.pdf

¹¹For more details on this and other “Guiding principles for the search for disappeared persons” issued by the Committee on Enforced Disappearances: <https://www.ohchr.org/EN/HRBodies/CED/Pages//Guiding-principles.aspx>

gone missing in relation to the conflict in Syria. The mechanism must be able to conduct meaningful outreach to all impacted communities and should have adequate resources, be they human, linguistic, financial, logistical, and technological to be effectively inclusive. It must be inclusive of victims and survivors regardless of where they reside, and without distinction based on actual, alleged, or perceived affiliation with any group or entity.

Gender perspective– The conflict in Syria has deeply gendered implications and consequences on women, girls, men, boys and sexual minorities, including in relation to the impact of missing and disappeared persons. Particular care must be taken to ensure the inclusion of perspectives and identifications of particular needs of all groups, and in particular those specific to women and girls, and women-headed households in all aspects of its operations.

Participation – The mechanism must be participatory, primarily from the perspective of the families of the missing or disappeared from all sides of the conflict. It must also take into account the benefits of interaction, dialogue, and access that the participation of current and former parties to the conflict and non-military structures affiliated to such parties may bring to shedding light on the fate of the missing. Participation of family members, associations, and individuals, as well as relevant entities and institutions, must be secured at each step of the conceptualization, creation, and implementation of such a mechanism. Effective outreach must be a priority and it must be consistent throughout the course of the mechanism’s existence. Beneficiaries and members of the communities served must be sufficiently informed of the work, functions, and outputs of such a mechanism so that their participation is meaningful.

Do No Harm – Any entity tasked with implementing such a mandate must ensure that it applies the do no harm principle in all aspects of its functioning, ensuring where possible that in the course of its work, it does not put families or individuals at risk of harm due to its interaction with or provision of information to such a mechanism. This will require risks assessments for any staff or person interacting with such a mechanism, regular review of its operating procedures, and a robust process for identifying and mitigating potential protection issues. Confidentiality in relation to individuals and their data (see below) and the proper security thereof, will be crucial in this regard. In putting into place any mechanism to collect or consolidate information as well as any efforts to locate, identify and return human remains, its work must be carried out in such a manner as to mitigate or minimize risk of harm to the currently detained and should not negatively impact efforts to provide greater protection for such persons.

Other principles related to missing persons mechanisms: Credibility, accessibility, confidentiality and respect for personal data, practicality, sustainability, transparency, and non-duplication

Credibility – Such a mechanism must have credibility, primarily with families, but also with parties to the conflict and the international community. The mandate and functions must be realistic and achievable, and it must demonstrate its effectiveness in the context of its operations. Much of its credibility will depend on the mandate formulation, the degree of consultation with stakeholders and the achievability of the mechanism’s mandate and goals – as well as on the mechanism’s ability to communicate its role clearly and manage expectations.

Accessibility – Related to inclusiveness, the mechanism must be accessible to all relevant persons and groups, regardless of their current physical location, language preferences, or access to technological tools. The language and terminology employed, procedures, processes and functioning of the mechanism must be easily understood by families and persons it is meant to interact with, regardless of their level of education or access to infrastructure.

Particular attention must be taken to ensure accessibility for women, children, the elderly, infirm, and the displaced, as well as other groups that may face particular challenges for whatever reason.

Confidentiality – The process of collecting, storing and utilizing any personal data provided by an individual about themselves or others must be used only as authorized by the provider, and personal and other data of families and of missing persons must be protected in line with international best practices, and as applicable, domestic law. The use of any information provided by any source can only be used in line with the informed consent of the concerned person, group, or entity. Such consent records must be preserved throughout the existence of the related data.

Practicality – A mechanism on the missing must be able to provide practical, concrete results in relation to the missing persons file and in terms of the level of support, guidance, advice or other potential services it may provide to families, victims, and potentially, survivors. It must have identified practical means and methods to support persons it interacts with, be it through meaningful referral channels, or any form of possible direct or indirect assistance.

Sustainability – Any effort to address the issue of the missing and disappeared in Syria must take into account that most mechanisms created to address such issues have carried out their work over a period of decades and in many cases have evolved over time as political will developed. In addition to basic issues of funding, structure, and infrastructure, consideration must be given to the protection and preservation of data, and the potential for such data and information to be used in future domestic Syrian processes or processes that may result from the implementation of present or current international agreements, including United Nations Security Council resolution 2254 and any successor resolutions, that aid the search for the missing or address legal or administrative matters for survivors and families. To this end, the operation and functioning of such a mechanism must take into account human rights and international humanitarian law compatible provisions of domestic Syrian legislation, with the aim of future use in domestic proceedings or processes insofar as possible and without compromising the do no harm principle in all respects.

Transparency: Without compromising on principles of confidentiality and use of information only in line with the informed consent of cooperating persons, such a mechanism must be transparent with regard to its goals, processes, procedures, operations, outputs and standards. Without compromising its impartiality and neutrality, it should include a public reporting component and must regularly engage all stakeholders to provide updates on its work and its outputs and to receive information as well as external feedback and critique on all aspects of its operations. All information concerning its policies, procedures, methodologies, and other aspects of its operations should be made public unless it interferes with the fundamental ability of such a mechanism to operate. In no way should this result in any confidential, protected or privileged information being made public.

Non-duplication: Any mechanism on the missing and disappeared must ensure that it is not duplicating the work of other entities working on issues related to the missing and disappeared. Any mechanism created must leverage existing mechanisms, networks, and information and add value for the missing, disappeared, including the detained, families and survivors. In relation to domestic systems and mechanisms and initiatives established by parallel governance structures, efforts must be taken to ensure complementarity and compatibility, where appropriate and feasible.
