

**Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence**

Ref.: AL SYR 3/2022  
(Please use this reference in your reply)

12 May 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; and Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, pursuant to Human Rights Council resolutions 44/5, 42/22, 45/3 and 45/10.

In this connection, we would like to bring to your attention information we have received concerning **allegations of the lack of measures taken to conduct thorough and comprehensive search for individuals forcibly disappeared by the so-called Islamic State of Iraq and the Levant (ISIL) in Syria as well as the lack of investigations compliant with international standards into mass graves in areas now controlled by the Syrian Government.**

According to the information received:

The Syrian Government is now in control of some areas which were formerly under the control of ISIL. Whilst the latter held control of these areas, the group widely detained individuals incommunicado in unknown locations in conditions tantamount to enforced disappearance. It is estimated that the fate and whereabouts of more than 8143 individuals detained by ISIL remain unknown. Those who approached ISIL officials to inquire about the fate and whereabouts of their relatives rarely received information and were occasionally detained themselves.

Reportedly, the Syrian Government does not have a designated focal point or office for the search and location of disappeared individuals. Families have found it difficult to obtain information from the authorities about the fate and whereabouts of their relatives and, in the event of their death, to have their mortal remains duly identified, respected and returned to them to perform the final rituals. Families now living outside of Syria face additional barriers to obtaining information.

In December 2016, a mass grave was reportedly discovered by Syrian troops in Palmyra.

In December 2018, Syrian authorities reportedly uncovered mass graves in al-Bukamal where bodies were found, almost all of which allegedly showed signs of torture and in some cases of shootings. It is unclear how many remains have been discovered and identified and whether their family members have been informed.

Reportedly, on 31 July 2018, the Syrian Democratic Council handed over the remains of 44 soldiers who had been killed by ISIL.

While we do not wish to prejudge the accuracy of these allegations, we are concerned by the reported difficulties faced by families of disappeared individuals to obtain information on investigations, including forensic investigations, search processes, and the lack of progress in uncovering the fate and whereabouts of individuals disappeared by ISIL and determine the circumstances of death of those individuals found in the abovementioned mass graves located in territories now controlled by the Syrian Government. In this context, we stress the importance of preserving these burial sites in order to avoid irreparable damage that would make it impossible to realize the right to know the truth, which pertains both to family members and to the Syrian society as a whole.

Should the facts alleged above be confirmed, they may amount to a violation of the rights to: a remedy, life, to be protected from torture and ill-treatment, liberty and security of persons, recognition as a person before the law, privacy and family life, and to seek information, guaranteed in articles 2, 6, 7, 9, 16, 17 and 19 (2) of the International Covenant on Civil and Political Rights (ICCPR), which Syria acceded to on 21 April 1969, as well as several provisions of the Declaration on the Protection of all Persons from Enforced Disappearance. We recall that the failure to provide information on the fate and whereabouts of disappeared persons and the attitude of official indifference of authorities in the face of the relatives' suffering may amount to a form of ill-treatment, in breach of article 7, read alone and in conjunction, with article 2 (3) of the ICCPR. In addition, the impossibility to obtain the mortal remains of a loved one and to perform the last rituals and mourn amounts to a violation of the right to privacy and family life.

We would like to highlight the importance of conducting exhumations of mass graves in line with international standards and best practices. In this regard, we would like to refer to the Revised United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (the Minnesota Protocol on the Investigation of a Potentially Unlawful Death (2016)), which includes detailed guidelines including on the excavation of graves, recovery and identification of remains and crime scene investigation amongst others. This is absolutely essential for ensuring that human remains are recovered and managed professionally and in a dignified manner, that their identities may be reliably established and the causes and circumstances of their deaths accurately determined and documented. We also refer to the Guiding principles for the search for disappeared persons (CED/C/7), in particular principles 6, 7 and 12.

We wish to refer to the **Annex on Reference to international humanitarian and human rights law** attached to this letter which cites international instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the steps taken to ensure that families of persons disappeared by ISIL have a centralized and easily accessible process to request information on search and investigation activities and how families are informed of any steps taken to locate relatives. In particular, please provide further information on how the 2019 Guiding Principles on the Search for Enforced Disappeared Persons will be considered and implemented, especially taking into account Principles 2.4, 3.3, 7.3, 11.2, 11.4, and 12.4.
3. Please provide information on any efforts to locate and exhume mass graves, as well as to respect and identify the remains found therein, the extent to which families were consulted and kept informed of the process and the number of individuals identified. What steps have been taken by the Syrian Government to ensure that human remains are returned to the families for dignified burials? Please also provide further information on how your Excellency's Government intends to implement the recommendations of the Special Rapporteur on extrajudicial, summary or arbitrary executions in the report on mass graves (A/75/384), in particular the disclosure, preservation and protection of all mass graves from any interference, manipulation of evidence or loss of human remains, and what steps have been taken to date to that end.
4. Please provide information on the capacity of the Syrian Government to conduct prompt, impartial and effective investigations into potentially unlawful deaths and acts tantamount to enforced disappearance in line with international standards. Please include information on the implementation of the *Revised United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (the Minnesota Protocol on the Investigation of a Potentially Unlawful Death (2016))*, on forensic capacities and on any needs for technical assistance and capacity building in this regard.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary measures be taken to halt the alleged violations, that thorough and comprehensive search be conducted for individuals forcibly disappeared by ISIL in Syria, and that effective investigations be launched without delay, in accordance with international standards, into mass graves in areas now controlled by the Syrian Government.

A letter with similar concerns is transmitted to the de facto authorities in the northeastern Syria as a non-State actor. We stress that the letter addressed to de facto authorities does not in any way imply the expression of any opinion concerning the legal status of any territory, city or area, or of its authorities.

Please accept, Excellency, the assurances of our highest consideration.

Morris Tidball-Binz  
Special Rapporteur on extrajudicial, summary or arbitrary executions

Miriam Estrada-Castillo  
Chair-Rapporteur of the Working Group on Arbitrary Detention

Luciano Hazan  
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Fabian Salvioli  
Special Rapporteur on the promotion of truth, justice, reparation and guarantees of  
non-recurrence

## **Annex**

### **Reference to international human rights law**

In connection with the above alleged facts and concerns, and without prejudging the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards.

We would like to refer to the obligation to investigate and punish gross human rights violations and to provide redress to victims. Article 2 of the Covenant on Civil and Political Rights, acceded to by the Syrian Arab Republic on 21 April 1969, establishes that States must adopt measures to ensure that persons whose rights or freedoms are violated have an effective remedy, and that the competent authorities enforce such remedies when granted and article 6 (1) which guarantees the right to life. The failure to provide information on the fate and whereabouts of disappeared persons and the attitude of official indifference of authorities in the face of the relatives' suffering may amount to a form of ill-treatment, in breach of article 7, read alone and in conjunction, with article 2 (3) of the ICCPR.<sup>1</sup> The impossibility to obtain the mortal remains of a loved one and to perform the last rituals and mourn and obstructions to seek and receive information amount to a violation of the right to privacy and family life and the right to freedom to seek information enshrined in article 17 and 19 of the ICCPR, respectively. Article 16 also stipulates that everyone shall have the right to recognition everywhere as a person before the law.

In its General Comment No. 31, the Human Rights Committee established that States have an obligation to investigate and punish serious human rights violations, including summary or arbitrary killings, torture and other cruel, inhuman or degrading treatment, and enforced disappearances (paragraph 18). Failure to investigate and prosecute such violations is in itself a breach of the norms of human rights treaties. Impunity for such violations can be an important element contributing to the recurrence of violations. We would also like to refer to the inalienable right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led, through massive or systematic violations, to the perpetration of those crimes, as established in the updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity of February 2005 (principle 2). Full and effective exercise of the right to the truth provides a vital safeguard against the recurrence of violations (principle 5).

We would like to refer to Human Rights Committee, General Comment No. 36, which notes that "investigations into allegations of violations of article 6 must always be independent, impartial, prompt, thorough, effective, credible and transparent... Investigations and prosecutions of potentially unlawful deprivations of life should be undertaken in accordance with relevant international standards, including the Minnesota Protocol on the Investigation of Potentially Unlawful Death, and must be aimed at ensuring that those responsible are brought to justice, at promoting accountability and preventing impunity, at avoiding denial of justice and at drawing necessary lessons for revising practices and policies with a view to avoiding repeated

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<sup>1</sup> See Human Rights Committee, Communication No. 107/1981, María del Carmen Almeida de Quinteros *et al.* v. Uruguay, 21 July 1983.

violations. An investigation into violations of the right to life should commence when appropriate *ex officio*.”

We further wish to remind your Excellency’s Government that, according to the Working Group’s jurisprudence as well as General Comment No. 35, enforced disappearances violate numerous substantive and procedural provisions of the ICCPR and constitute a particularly aggravated form of arbitrary detention. General Comment No. 36 also highlights that “enforced disappearance constitutes a unique and integrated series of acts and omissions representing a grave threat to life. States parties must take adequate measures to prevent the enforced disappearance of individuals and conduct an effective and speedy inquiry to establish the fate and whereabouts of persons who may have been subject to enforced disappearance. States parties should also ensure that the enforced disappearance of persons is punished with appropriate criminal sanctions and introduce prompt and effective procedures for cases of disappearance to be investigated thoroughly by independent and impartial bodies that operate, as a rule, within the ordinary criminal justice system. They should bring to justice the perpetrators of such acts and omissions and ensure that victims of enforced disappearance and their relatives are informed about the outcome of the investigation and are provided with full reparation (para. 58).” According to the Working Group on Arbitrary Detention’s Deliberation No. 10 on reparations for arbitrary deprivation of liberty, all victims of arbitrary deprivation of liberty are entitled to an enforceable right before the competent national authority to prompt and adequate reparations, which should be proportional to the gravity of the violations and the harm suffered.<sup>2</sup>

Reference is also made to the Declaration on the Protection of All Persons from Enforced Disappearance, in particular article 17 which stipulates that these acts shall be considered a continuing offence as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared, and these facts remain unclarified. Article 13 outlines an obligation to conduct prompt, effective, independent and impartial investigations into alleged enforced disappearances and stipulates that steps shall be taken to ensure that all involved in the investigation, including the complainant, relatives, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal.

We would like to refer to the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/75/384, which notes that “Governments and parties to a conflict should ensure that mass graves are preserved and protected until, based on an inclusive consultative process, decisions have been made as to their treatment and management. Governments, parties to a conflict and/or international actors present in a country or region should provide a list of known locations of mass graves in the country and proactively search for additional sites, including those that may have been desecrated or further concealed. Safe and confidential processes for individuals to report the existence and location of mass graves should be provided (para. 62).” Furthermore, we urge your Excellency’s Government to implement the recommendations made in the report, particularly all measures necessary to locate, disclose, protect and preserve all mass gravesites and the development of legal frameworks governing the respectful and lawful management of mass graves. In this context, the Special Rapporteur stressed that “hiding, damaging or destroying mass

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<sup>2</sup> A/HRC/45/16, Annex I, para. 7.

graves is strictly prohibited, as is the criminalization of those seeking to uncover mass graves. Such acts would constitute a violation of the right of families and society to know the truth about the circumstances behind the existence of the mass graves, including executions and enforced disappearances or failure to protect (para. 88).”

We further refer to the General Comment from the Working Group on Enforced or Involuntary Disappearances regarding the Right to the Truth in Relation to Enforced Disappearances, which highlights that the right of the relatives to know the truth of the fate and whereabouts of the disappeared persons is an absolute right, not subject to any limitation or derogation. The State has the obligation to let any interested person know the concrete steps taken to clarify the fate and the whereabouts of the person. Such information must include the steps taken on the basis of the evidence provided by the relatives or other witnesses. The relatives of the victims should be closely associated with an investigation into a case of enforced disappearance.

We also refer to the Guiding principles for the search for disappeared persons issued by the Committee on Enforced Disappearances in 2019. In particular, we draw your Excellency’s Government’s attention to principle 2.4 indicating that the body or remains of a disappeared person should be handed over to the family members under decent conditions; principle 3.3 outlining that public policy on searches should be built on the basis of States’ obligations to search for, locate, release, identify and return the remains, as appropriate, of all disappeared persons; principle 5 which outlines the right of relatives, their legal representatives, counsel or any person authorized by them, to take part in the search; principle 7.3 which states that the search for a disappeared person should continue until his or her fate and/or whereabouts have been determined with certainty; principle 11.2 and 4 indicating that States should establish registers and databases on disappeared persons that cover the entire national territory that include disintegrated data on the reason for the disappearance, location and status of the disappeared person, and in case of death, if the human remains have been identified and handed over to the respective families and that these registers and databases should be maintained even after the search has ended; principle 12.4 indicating that States should take the necessary measures to guarantee the transfer of the knowledge and technology needed for search processes, including those of national and international organizations specialized in searching for disappeared persons and identifying human remains; and principle 13 which stipulates that the search for the disappeared and the criminal investigation of the persons responsible for the disappearance should be mutually reinforcing. The comprehensive search process for disappeared persons should be initiated and conducted with the same effectiveness as the criminal investigation.

In this regard, we refer to the Working Group on Enforced or Involuntary Disappearances’ report on standards and public policies for an effective investigation of enforced disappearances (A/HRC/45/13/Add.3). The Working Group recalls in the report that completion of the criminal investigation, along with any conviction or acquittal of the persons accused of having committed an offence of enforced disappearance or the declaration of absence by reason of enforced disappearance, should not constitute an obstacle to the continuation of search activities or be invoked to justify their suspension. These activities should be pursued until it has been possible to determine with certainty the circumstances of the disappearance and the fate and whereabouts of the disappeared person or their remains.

In relation to international humanitarian law, we note that all parties to non-international armed conflicts are bound by common article 3 of the Geneva Conventions, which establishes minimum standards concerning the treatment and protection of civilians, those no longer actively participating in the hostilities and civilian objects. We further wish to refer to article 5 of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), which establishes the minimum safeguards for persons deprived of their liberty for reasons related to the armed conflict, including detention.

Parties are also bound by the customary law norms. In this regard we would like to refer to relevant rules of the International Committee on the Red Cross' study on customary international humanitarian law (IHL) including:

- Rule 98: Enforced disappearance is prohibited.
- Rule 112: Whenever circumstances permit, and particularly after an engagement, each party to the conflict must, without delay, take all possible measures to search for, collect and evacuate the dead without adverse distinction.
- Rule 113: Each party to the conflict must take all possible measures to prevent the dead from being despoiled. Mutilation of dead bodies is prohibited.
- Rule 114: Parties to the conflict must endeavour to facilitate the return of the remains of the deceased upon request of the party to which they belong or upon the request of their next of kin. They must return their personal effects to them.
- Rule 115: The dead must be disposed of in a respectful manner and their graves respected and properly maintained.
- Rule 116: With a view to the identification of the dead, each party to the conflict must record all available information prior to disposal and mark the location of the graves.
- Rule 117: Each party to the conflict must take all feasible measures to account for persons reported missing as a result of armed conflict and must provide their family members with any information it has on their fate.