

DEATH NOTIFICATIONS IN THE SYRIAN ARAB REPUBLIC



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INDEPENDENT INTERNATIONAL COMMISSION OF INQUIRY ON THE
SYRIAN ARAB REPUBLIC

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In the wake of recent information released in bulk by the Government of the Syrian Arab Republic on the deaths of numerous detained and/or missing persons, the Commission of Inquiry¹ stresses the need to account for the fate and whereabouts of detained and missing individuals countrywide. The Commission further recommends a number of essential steps to address the most pressing concerns of both the victims and their families on this matter, including acknowledging the truth about how victims perished and revealing the whereabouts of their remains.

I. Introduction

1. While arbitrary detention throughout the Syrian Arab Republic continues to be perpetrated by all parties on the ground, nowhere has the phenomenon been more pervasive than in areas under Government control. The Commission has previously documented a widespread and systematic pattern in which men above the age of 15 years had been arbitrarily arrested and detained by Government security, armed forces, or militia acting on their behalf during mass arrests, at checkpoints, or during house searches.² After being taken to Government-run detention facilities, detainees were often severely beaten, many of whom later perished due to torture, inhuman living conditions, lack of adequate medical assistance, or wilful neglect. In several instances, families were compelled to pay bribes to learn the whereabouts of their detained relatives. On other occasions, they were never informed of their whereabouts and never saw them again.
2. Many of these families learned the fate of their fathers, spouses, and sons for the first time in May 2018,³ when State entities⁴ provided Government civil registry offices – administrative bodies operating under the Syrian Ministry of Interior and located in each governorate countrywide – with information in bulk⁵ that individuals were deceased. Civil registry offices then registered their deaths and subsequently updated family records. In some cases, lists referencing the deaths were released by these offices. In other cases, the offices confirmed deaths to individuals who requested their family status. These offices provide confirmations of death, though families must still obtain a death certificate (*see* paras. 6-7).

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

² *See Out of Sight, Out of Mind: Deaths in Detention in the Syrian Arab Republic*, INDEPENDENT INTERNATIONAL COMMISSION OF INQUIRY ON THE SYRIAN ARAB REPUBLIC, A/HRC/31/CRP.1, 3 February 2016, at para. 17, available at https://www.ohchr.org/Documents/HRBodies/HRCouncil/CoISyria/A-HRC-31-CRP1_en.pdf.

³ The Commission has documented civil registries updating their records to reflect massive deaths beginning in January 2018, though the majority of cases appear to have surfaced in May and June 2018.

⁴ A centralised system is in place to register deaths of detainees in Government controlled detention facilities, with deaths being regularly reported in from security directorates to the Military Police corps of the Syrian Arab Army, who are the custodian of this information.

⁵ The Commission has previously documented how persons searching for detained family members had been directed to the Military Police headquarters in Damascus by staff at security branches or other State representatives. In most documented cases, families were left without any information about the fate of their loved ones. In other cases, however, Military Police officials informed families that the person for whom they were searching had died, and subsequently referred them to Tishreen military hospital (Damascus) where families could obtain a death certificate for the victim (*see* para. 5). The release this year of what may amount to thousands or tens of thousands of names of allegedly deceased detainees and/or missing persons is unprecedented.

3. Many individuals whose statuses were updated to reflect their deaths are believed to have been detained by State authorities between 2011 and 2014,⁶ and most custodial deaths are thought to have occurred in places of detention run by Syrian intelligence or military agencies. The Commission has not documented any instance, however, where bodies or personal belongings of the deceased were returned.
4. These notifications or information upon which they were based have been issued by military hospitals.⁷ In nearly every instance, the records indicated natural causes of death such as “heart attack” or “stroke.” In other cases, the deceased were reportedly executed as a result of a decision by either the First or Second Field Court (including reportedly at Sednaya Prison). Some individuals from the same geographic area share common death dates, possibly indicating group executions.
5. In a pattern previously documented by the Commission, death certificates issued by staff at Tishreen military hospital (Damascus), for example, contained the name and date of birth of the victim, as well as the alleged date and cause of death. These certificates bore the stamp of Tishreen military hospital, and appeared to be signed by one or more officials.⁸ In stark contrast to the common causes of death of prisoners documented by the Commission,⁹ most of these death certificates recorded the cause of death as being a “heart attack.” Hospital officials did not provide information regarding the place of detention, with place of death in most cases stated to be Tishreen military hospital. Similar attestations were also issued at Mujtahid hospital (Damascus).¹⁰

Obtaining death certificates: national legislation and human rights implications

6. In Syria, the registration of birth, death, and marriage is organised on the basis of family units and therefore undertaken by a family member within one month of the event, in this case the receipt of a death notification.¹¹ Under Syrian law and for deaths occurring inside the country, families thereafter have one month after obtaining a confirmation of death to apply for an official death certificate with the civil registry office. Without one, they are unable to move forward on legal aspects of the death. If they fail to apply for a death certificate within one

⁶ The Commission has previously documented how detentions of both armed group members as well as arbitrary detentions of both perceived and actual opposition sympathisers have led to the crimes against humanity of extermination, murder, rape or other forms of sexual violence, torture, and imprisonment in the context of a widespread and systematic attack directed against a civilian population (*see generally, Out of Sight, Out of Mind, supra* note 2). These acts have also amounted to the war crimes of murder, cruel treatment, torture, rape, sexual violence, and outrages upon personal dignity. *See Ibid.*, at para. 99.

⁷ Tishreen military hospital, Mezzeh military hospital 601, Harasta military hospital, or certain medical points.

⁸ *See Out of Sight, Out of Mind, supra* note 2, at para. 43

⁹ Former detainees of the State have detailed to the Commission how cellmates were killed as they were beaten to death during interrogations and in their cells, or died as a result of severe injuries sustained due to torture or ill-treatment. Others perished as a consequence of inhuman living conditions inflicted on the prison population, including severe overcrowding, lack of food, and unclean drinking water. Prisoners held by the State are often given inadequate or no medical care, and have died in large numbers from preventable conditions such as diarrhoea or other contagious infections spread in unhygienic and overcrowded cells.

¹⁰ *See Out of Sight, Out of Mind, supra* note 2, at para. 43

¹¹ Syrian Arab Republic, Legislative Decree No. 26 of 2007, Civil Status Law, at art. 67; *see also Civil Documentation and Registration in the Syrian Arab Republic*, SYRIAN ARAB REPUBLIC MINISTRY OF INTERIOR CIVIL AFFAIRS DIRECTORATE AND UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR), at pp. 26-27, *available at* <http://www.unhcr.org/sy/wp-content/uploads/sites/3/2018/09/Personal-Documentation-En-Jul-2018.pdf>.

month, they could be fined 3,000 Syrian pounds,¹² and if they fail to apply within one year, a police report is required and the fine increases to 10,000 Syrian pounds.¹³ Taking into account the number of refugees and internally displaced persons countrywide,¹⁴ many displaced Syrians are currently not in a position to perform such obligations under law.

7. The lack of an official death certificate has many potential deleterious effects for the human rights of relatives of the deceased, including their housing, land, and property (HLP) rights. Given that HLP documents often exclude the names of women, female-headed households may face further challenges to secure tenure or prove inheritance rights or marital status.

II. Preliminary observations

8. It is estimated that tens of thousands of Syrians have been disappeared by pro-Government forces,¹⁵ primarily Syrian Government forces.¹⁶ Many of these individuals had been detained arbitrarily, including during house searches, at checkpoints, or while carrying out day-to-day activities.
9. By updating the records of those disappeared, State officials including high-ranking members of the Military Police corps of the Syrian Arab Army¹⁷ admit to having information about the fates, including purported dates of death, of those deceased. To that end, the State is further tacitly admitting to knowing where the individual was at the time of his/her death, as well as to having played a role in deaths in the cases of executions by court order or extrajudicial executions.
10. The State, however, has not released any information on the whereabouts of bodies, nor provided any restitution of personal belongings. In the context of death notifications released by Syrian authorities which list the names of individuals otherwise disappeared, the Commission is of the view that the enforced disappearance as a violation of international law continues as long as families do not know the victim's whereabouts.¹⁸
11. The Commission recalls in this regard that whenever a person known to be in State custody dies, the burden is primarily on the State to prove that his/her death did not result from acts or

¹² *Ibid.*

¹³ Civil Status Law, *supra* note 11, at art. 68; *see also Civil Documentation and Registration in the Syrian Arab Republic, supra* note 11, at pp. 26-27.

¹⁴ *See generally, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/39/65, 9 August 2018, *available at* https://www.ohchr.org/Documents/HRBodies/HRCouncil/CoISyria/A_HRC_39_65_EN.docx.

¹⁵ "Pro-Government forces" denotes Syrian forces, Russian forces, and/or militia members affiliated with the Government of the Syrian Arab Republic. "Government forces" denotes forces of the Syrian Arab Republic alone.

¹⁶ *Detention in the Syrian Arab Republic: A Way Forward*, INDEPENDENT INTERNATIONAL COMMISSION OF INQUIRY ON THE SYRIAN ARAB REPUBLIC, 8 March 2018, at para. 2, *available at* https://www.ohchr.org/Documents/HRBodies/HRCouncil/CoISyria/AWayForward_DetentionInSyria.pdf. Current estimates made by credible non-governmental organisations engaged in documentation efforts concur, putting the figure between 60,000 and 100,000.

¹⁷ *See supra* note 4; *see also Out of Sight, Out of Mind, supra* note 2, at para. 96.

¹⁸ The United Nations Declaration on the Protection of All Persons from Enforced Disappearance provides that "[a]cts constituting enforced disappearance shall be considered a continuing offence as long as perpetrators continue to conceal the **fate and the whereabouts** of persons who have disappeared . . ." (emphasis added). United Nations General Assembly, 92nd plenary meeting, A/RES/47/133, 18 December 1992, at art. 17(1).

omissions attributable to it. Each custodial death must be independently investigated, the results of which must be publicly reported.¹⁹

12. The Commission continues to assess the process of issuing death notices and possible related violations, including the dissemination of information, return of the bodies, identification of burial sites, and investigations into causes of death. The Commission is further assessing challenges to obtaining official death certificates (and civil documentation generally) and the impact this might have on the enjoyment of key rights, including women's housing, land, property, and inheritance rights. Investigations remain on-going.

III. Recommendations

The Commission notes that no progress can be made in reaching a political settlement and a lasting peace in Syria without urgently confronting the justice-based needs of Syrian victims and survivors as well as their families. In relation to the recent widespread updating of civil registry records to reflect deaths in the Syrian Arab Republic, the Commission recommends the following steps:

- First, the Government of the Syrian Arab Republic should immediately suspend any enforcement of capital punishment, including when issued by military or field courts.
- Second, pro-Government forces and primarily the Syrian State should reveal publicly the fates of those detained, disappeared, and/or missing without delay. 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.²⁰ Families as well as an independent humanitarian organisation, such as the International Committee of the Red Cross (ICRC), must be allowed to visit all those still in detention. United Nations Security Council resolutions 2254 (2015) and 2258 (2015) call on all parties to the Syrian conflict to release any arbitrarily detained persons, particularly women and children. If the Syrian State can show no legal justification for continued detention, these individuals should be released immediately.
- Third, families of those who have been victims of enforced disappearance have the right to know the truth regarding the circumstances of the disappearance and the fate of the victim.²¹ Families must further be able to retrieve the bodies of their relatives who died in detention or by execution or be told where their remains are.²² Families should further be allowed to achieve some modicum of closure and the opportunity to pay their last respects, perform appropriate ceremonies and rites, including if possible by conducting reburials.

¹⁹ *Report of the Secretary General, Human rights in the administration of justice: analysis of the international legal and institutional framework for the protection of all persons deprived of their liberty*, Advance unedited version, A/68/261, 22 July 2013, at para. 52 (internal citations omitted); see also *General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life*, Advance unedited version, CCPR/C/GC/36, 30 October 2018, at para. 29 (internal citations omitted).

²⁰ International Committee of the Red Cross (ICRC), *Customary International Humanitarian Law*, 2005, Volume I: Rules, at Rule 117.

²¹ *International Convention for the Protection of All Persons from Enforced Disappearance*, opened for signature 6 February 2007, A/61/488 (entered into force 23 December 2010), at art. 24(2).

²² *Ibid.* at art. 24(3).

- Fourth, the Government of the Syrian Arab Republic should immediately repeal Articles 67 and 68 of the Civil Status Law (Legislative Decree No. 26 of 2007), which stipulate that families will be fined in the event they apply for an official death certificate with the civil register office later than one month or one year respectively.

- Fifth, the Syrian State must ensure that all custodial deaths are promptly, thoroughly, transparently, and independently investigated in line with international standards. Medical reports and all other evidence resulting from such investigations should be made public and available to the next of kin. Those responsible for any violations must be held accountable, and this should not be left for individual families to pursue alone. If the Syrian State is unwilling or unable to hold perpetrators accountable, a referral by the United Nations Security Council to the International Criminal Court should be made.

- Sixth, a national reparations mechanism should be established in the Syrian Arab Republic to assess harms done, receive complaints, and provide appropriate individual or communal reparations, and other appropriate remedies be they financial or in other forms.