

Truth and Justice Charter

A Common Vision on the Question of Enforced
Disappearance and Arbitrary Detention in Syria by
Syrian Victims' and Family Members' Organisations



**FAMILIES FOR
FREEDOM**

رابطة معتقلي ومفقودي بسجن صيدنايا
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01. About the Charter

This Charter seeks to present a comprehensive vision of the position of victims of arbitrary detention, enforced disappearance, and torture regarding Syrian issues connected with their cause, their future vision, and their demands.

02. Who Are We?

We are groups of survivors and relatives of victims of enforced disappearance, arbitrary detention, extrajudicial killing, torture, sexual abuse, and other violations that accompany or result from these crimes. We have rights, as well as sorrows, hopes, and legitimacy. We are united by our insistence on sustained efforts to resolve these issues on the basis of our common vision and set of demands..

A. Who Are the Victims Concerned with this Charter?

- Victims of torture and cruel, inhuman, or degrading treatment or punishment, and their families.
- Victims of arbitrary detention and their families.
- Victims of extrajudicial killing and their families.
- Victims of enforced disappearance and all violations associated with these crimes, and their families.

B. Definition of Victim Organizations Participating in this Charter:

An independent group formed and led by the victims and/or their families of their own volition, which represents their views and exercises independence in its decision-making.

C. Aims of the Charter:

- To provide a framework to guide work on the issues of arbitrary arrest and enforced disappearance, taking the views of the victims themselves as a starting point, in order to assist those working on these issues in their advocacy.
- To develop a discourse expressing the demands and aspirations of the victims, and prioritizing their own narrative, within the framework of international legal principles and humanitarian standards.
- To develop common ground for victims' organizations to work collectively in future.

03. Context:

Widespread arbitrary detention, enforced disappearance, torture, and extrajudicial killing are among the most brutal weapons in the Syrian regime's arsenal. The regime has been using them systematically and on a wide scale ever since it first seized power, in order to silence any and all dissenting voices and movements opposed to its policies. These crimes have escalated since 2011 to affect even larger segments of Syrian society as the regime attempted to contain the protests, crack down on popular activism, and sow terror in society to maintain its despotic grip. On top of these seemingly endless violations, the regime has also failed to meet its obligation to conduct investigations into these crimes and hold those responsible accountable.

To this day, the regime continues to commit widespread violations, including enforced disappearance and arbitrary detention; torture in all its forms; sexual violence; extrajudicial killing; summary trials lacking adequate procedures and failing to meet the standards of fair trials; refusing to hand over the remains of people killed under torture or summarily executed; violating victims' property rights; extorting relatives of the disappeared; and depriving survivors and relatives of the disappeared of the right to free movement.

These violations, coupled with the failure of the international community to stop them and hold the perpetrators to account, have led to the spread of a culture of impunity and an emulation of these practices by the majority of Syria's armed factions, radical organizations, and de facto authorities, particularly the Islamic State of Iraq and the Levant ("Daesh"), which has committed widespread arbitrary detention, enforced disappearance, torture, and killing during its control of Syrian territory.

The spread of this culture of impunity has been accompanied by an increasing and deliberate denial and marginalization of the rights of victims and their relatives, and of their pivotal role. This denial and marginalization constitute a fundamental component of the crimes against victims and their relatives that continue to this day.

04. Key Values, Principles, and Foundations:

The Charter takes a victim-centred approach as its basis for any legal, political, or judicial work that addresses or influences the rights of victims. This approach is based on the central importance of the voice, agency, and needs of victims, as explicitly defined by the victims themselves. The victim-centred approach must focus on fulfilling the vision, aspirations, and needs of the victims, by giving them a central role in transitional justice and accountability processes. A victim-centred approach must also challenge elitist or external pressures and agendas that may be in conflict with the vision of the victims as regards justice, accountability, negotiations, and political transition.

The Charter notes the gender-differentiated impact of many violations that have taken place in the Syrian conflict, including but not limited to the fact that most detainees are men, while the burden of dealing with the absence of male detainees falls mainly on women. Some women who have experienced detention also face additional stigma compared to men. The victim-centred approach must therefore also be gender-transformative, guaranteeing the full participation of survivors, victims, and family members of all genders.

Furthermore, the Charter is based on the shared values of its founding victims' organizations, principal among which are independence, inclusivity, transparency, impartiality, and non-discrimination between victims based on their identity, the type of violation, the extent of suffering, or the violating entity, as well as self-representation for victims.

The Charter adopts as its terms of reference legal principles and international humanitarian standards based on various branches of international law relevant to the situation in Syria. The general framework of these principles and standards is defined as follows:

- a. International human rights law and relevant conventions including the Convention against Torture and the International Convention for the Protection of All Persons from Enforced Disappearance. Also relevant are the instruments related to these conventions, including the comments of human rights committees and commissions, and the resolutions, declarations, and guidelines issued by UN agencies, especially the UN General Assembly Resolution on the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.
- b. International humanitarian law, specifically Article 3, which is common to all four Geneva Conventions of 1949, and the articles related to Additional Protocol II of 1977 of the four

Geneva Conventions of 1949, which are considered a reflection of customary international humanitarian law.

- c. Customary international law and customary international humanitarian law.
- d. Relevant provisions of international criminal law. Although Syria is not a member state of the Rome Statute, which created the International Criminal Court, the Charter seeks guidance from the articles of the Rome Statute to indicate possible criminal acts.

The vision and demands laid out in this Charter regarding issues of truth, justice, reparation, and non-repetition apply equally to violations committed by all parties to the conflict in Syria, whether the regime, de facto authorities, or foreign forces, and regardless of their legal status.

05. Vision of the Victims:

Below, we outline our vision, aspirations, and demands in order to uphold our rights as survivors, victims, and family members, and to build a future Syria that upholds the dignity and rights of all its citizens.

A. Vision of Justice

We believe that reaching a comprehensive justice satisfying the needs and aspirations of victims, survivors, and their family members is a long-term process that will encompass cumulative stages. All of these stages are essential, but we as victims see some elements as critically urgent, while others may take longer to attain.

We therefore differentiate between short-term justice and long-term justice. In the short term, there are immediate measures that must be taken to put a halt to ongoing violations and alleviate the suffering of survivors, victims, and their families. In the medium- to longer-term, we have additional demands to ensure comprehensive justice and non-repetition of the crimes we have suffered and continue to suffer from. We have therefore listed our demands in order of priority and chronological urgency for us as survivors, victims, and family members.

▪ The immediate release of detainees, and revealing the fate of the forcibly disappeared:

All parties must cease arbitrary detention and enforced disappearances, and all detainees must be released, in line with international law and in implementation of Security Council Resolution [No. 2254 of 2015](#) and other relevant resolutions. Neutral international actors must be given access to all detention facilities, including secret and unofficial detention facilities, in order to halt the violations committed therein and reveal the truth about, and the fate of, the disappeared, with the participation and observation of victims, survivors, and family members.

The crime of enforced disappearance has had a significant impact on Syrian society, as it does not affect the prisoners and disappeared alone: there are hundreds of thousands of relatives who are also direct victims of this crime. Therefore, the international community, and all international entities concerned with the situation in Syria, including the United Nations and its agencies, must act quickly to mobilize all their resources to determine the fate of victims of enforced or involuntary disappearance and address all aspects of this issue. No real negotiations or real peace process can take place while these families are unaware of the fate of their loved ones, in the absence of the confidence-building measures stipulated in Resolution 2254, and without addressing the question of detention and enforced disappearances as an urgent priority.

The cruel, degrading, and inhuman conditions at detention facilities put any prisoner or victim of enforced disappearance at risk of death any moment. Therefore, all parties must immediately end the practice of enforced disappearance, and hand over lists of all detainees and their place of detention, with documents related to their disappearance, if any, to UN agencies and specialized international organizations, especially the International Committee of the Red Cross.

- **An immediate halt to torture, inhuman treatment, and sexual crimes:**

All parties must immediately cease the crime of torture and the cruel, degrading, or inhuman treatment of prisoners and victims of enforced disappearance. These include physical and mental torture, crimes of sexual violence, and cruel and degrading detention conditions, which frequently cause death or permanent harm due to inadequate health and living conditions. The systematic or widespread practice of torture and enforced disappearance against detainees is considered a crime against humanity, and the effects of torture are not limited to the victims themselves, but also extend to the psychological torture suffered by their relatives.

- **Returning the remains of those killed under conditions of enforced disappearance and detention:**

All parties must reveal the truth of the circumstances of death and the location of the remains of those who were executed or killed under torture and all forms of cruel treatment at detention facilities, and hand over their remains to their families to ensure a proper burial.

All parties must ensure that mass graves are not tampered with, and that evidence is not contaminated, as this would compromise the identification of human remains and undermine the families' right to recover the remains of their relatives, thereby maintaining the state of enforced disappearance. Mass graves must be maintained in accordance with international standards. To this end, the regime and other de facto authorities must take responsibility for facilitating the access and operations of specialized international organizations to mass grave sites to identify victims, determine the causes of their deaths, identify possible perpetrators, and collect available forensic evidence.

In addition, a formal mechanism must be established to involve the victims and their families in planning, development, and implementation of current and future efforts pertaining to mass graves, including the exhumation of bodies, identifying victims and returning their remains, and keeping their relatives informed at all times.

No death certificate may be accepted as valid without the remains of the deceased also being received, and a death certificate may not be considered as evidence of the fate of the disappeared. The person mentioned in the death certificate should be considered disappeared until their remains are handed over; even then, the crime of enforced disappearance has still occurred. The death certificates issued by the Syrian regime without returning the deceased's remains to his or her family are no more than evidence of its responsibility for the person's enforced disappearance and possible murder in detention facilities.

- **The abolition of field and exceptional courts:**

The Syrian authorities and other de facto authorities must immediately abolish field and exceptional courts, including anti-terrorism courts, with summary judicial proceedings that rely on security reports and confessions extracted under torture by the security agencies. They must also open the archives of the courts to the relevant stakeholders; revoke the verdicts issued by these courts; release those sentenced by them; and invalidate the consequences of these verdicts, such as the confiscation of individuals' property and the stripping of their civil

rights. Officials in charge of these courts should be identified and held accountable, as should those involved in detention-related extortion and extracting unlawful fees. These measures should apply equally to any other summary procedures that do not provide judicial guarantees undertaken by any other parties to the conflict in Syria.

Exceptional courts, especially military field courts, deprive families of knowledge about the fate of their relatives and the verdicts issued against them. Most of these courts have deprived detainees of their minimum legal rights, such as appointing a defence lawyer and limiting provisional detention to the most serious crimes.

▪ **Fair and independent civil courts adhering to international standards:**

Those detained arbitrarily must be released immediately. Others detained on lawful grounds must be referred to courts that meet international standards of fairness and independence. They must also enjoy the right to a fair trial, in adherence to the following standards, alongside other international standards:

- The presumption of innocence;
- The right to a public trial;
- The limiting of cases of provisional detention to the most serious crimes;
- The right to a lawyer prior to interrogation and during the trial;
- The right to dignity and respect;
- Ensuring the independence of the judiciary without any interference by the security agencies;
- The inadmissibility of confessions made under torture;
- Ensuring the right to access all the details of and evidence behind the charges.

▪ **Compensation and reparations:**

The state and international entities must give priority to the right to reparation and compensation for the victims, and involve them directly in developing these programs, which include material and moral reparations as well as rehabilitation and health service provision. They must provide reparation for severe and permanent harm caused by these crimes against victims and affirm the restitution of their rights as binding on the Syrian government. We stress here that reparation is just one of the rights of victims and must not be deemed a substitute for their right to know the truth or for holding the perpetrators to account. We also emphasize that all victims must be included in these measures, without any form discrimination.

▪ **Recognition of the truth and memorialization:**

Independent truth-seeking mechanisms must be established to reveal the circumstances and facts of the violations. These mechanisms must include a diversity of victims' voices in order to develop an accurate historical narrative capable of resisting harmful counter-narratives that aim to deny victims their rights and risk repetition of the same violations in future. This must be followed by a formal acknowledgment of the violations by a future Syrian government responsible for transitional justice. Mechanisms to preserve the memory of the victims must also be established as part of the historical record.

▪ **Reform the security and judicial institutions and their practices:**

The security and judicial institutions in Syria have committed many violations against Syrian citizens, as well as overlooking or facilitating the commission of these crimes by other parties. To ensure non-repetition of these events, significant reform is required, in particular via the following measures:

- Reform the judiciary to ensure its full independence; guarantee the right to a fair trial; and uphold the rule of law.
- Any laws or decrees that provide immunity to security officials for any violations or crimes, such as Decree 1969/14 and 2008/69, must be abolished and invalidated, and impunity for those who benefited from them must end.
- The prosecution of civilians in military courts must be forbidden.
- All security branches must be disbanded and restructured on national and professional bases adhering to international standards, especially those responsible for maintaining public order.
- Security and police agencies are merely the executive authorities that implement judicial rulings. No one should be deprived of their liberty arbitrarily or be detained by security agencies without a valid decision issued by competent judicial bodies.
- All prisons and detention facilities, both public and secret, must be revealed, and the use of secret detention facilities must cease entirely.
- Torture and all forms of cruel, degrading, or inhuman treatment or punishment must be criminalized, both in law and in practice.
- Syria must ratify the Rome Statute establishing the ICC, and incorporate its provisions into national laws, without waiving any criminal liability that precedes the date of accession and ratification.
- Syria must accede to the [Optional Protocol to the Convention against Torture](#) and ratify it by incorporating its provisions into national laws.
- Syria must accede to the [International Convention for the Protection of All Persons from Enforced Disappearance](#) and incorporate its articles into national laws. This should ensure the criminalization of enforced disappearance and the development of suitable mechanisms to search for and identify the disappeared, and hold those responsible for their disappearance accountable.
- Syria must accede to Additional Protocol II (1977) to the Geneva Conventions of 1949, to ensure the maximum protection of victims of non-international armed conflict.
- International conventions, principles, and standards of human rights must be adopted on the basis that they supersede national legal systems, especially the constitution.

B. Vision on Accountability and Preventing Impunity:

In addition to our demands above, criminal accountability is also crucial as part of our vision of long-term justice. To ensure accountability, action is needed both immediately and in the future.

- A fair accountability mechanism must be established with international guarantees, covering all those involved in violations in Syria, with no immunity for any person. This mechanism must ensure that victims and their families fully participate in the process, laying the foundations of genuine and effective transitional justice.
- All countries must bear their legal and humanitarian responsibilities to refer the Syrian case to the International Criminal Court, or to form a special international criminal tribunal for Syria. The obstruction of these two tracks by any state or party contradicts the principles and goals of the United Nations.
- All countries and parties must support and cooperate with the International, Impartial, and Independent Mechanism (IIIM) in an effective and sustained manner. This mechanism constitutes a key track that must lead to comprehensive and fair accountability, although the existence of the IIIM alone must not be taken as meeting the aspirations of survivors and victims regarding accountability. The IIIM's work must be utilized to hold to account everyone who facilitated, implemented, and ordered violations and other relevant crimes, as well as all others implicated by the principle of command responsibility.
- Persons involved in committing violations must have no role in the institutions responsible for delivering justice and accountability. They must therefore be prevented from holding decision-making positions or other sensitive posts in future.
- Accountability must take place within the legal framework of a transitional justice process in order to ensure a lasting peace that is not undermined by acts of revenge.

C. Recommendations Linked to the Peace Process and the Future of Syria:

The survivors, victims, and their families represent themselves, and no party may claim to represent them without their consent, whether inside or outside Syria. There will be no true process of accountability and justice without the victims and their relatives at its core, because only a victim-centred justice that takes their needs, vision, and priorities into account will ensure a lasting peace. Moreover, the demands of the victims and their relatives, including the immediate release of prisoners; revealing the fate of the missing and disappeared; the immediate halt of torture; and the abolition of exceptional courts; must be considered non-negotiable humanitarian demands; a sine qua non for the holding of any talks or negotiations. In addition, effective mechanisms must be established to include the rest of the demands in this Charter in the peace process negotiations, under the sole auspices of the United Nations.

As victims, survivors, and family members, we have the right to participate in shaping the future of Syria, the peace process, and any other process that directly affects our rights. As such, we make the following demands:

- **Negotiations and prisoner exchanges:**

The release of detainees and revelation of the fate of the forcibly disappeared must not be dependent on negotiations or exchange agreements between the parties to the conflict and their guarantors. Nor should prisoners and victims of enforced disappearance be treated as prisoners of war. We reject the treatment of any detainees or victims of enforced disappearance during the conflict in Syria as participants in hostilities, as they are not necessarily members of any party to the armed conflict. The majority are prisoners of opinion and conscience, peaceful activists, journalists, and human rights defenders. Persons who are arbitrarily detained, including abductees and victims of enforced disappearance in Syria, are

not prisoners of war. They are civilians, as per the legal characterization, and are entitled to the protection stipulated in all legal principles and norms.

- **The constitution and its implementation mechanisms:**

To ensure a peaceful political transition and lasting stability, the constitution of the country must include key components and detailed articles that guarantee the dignity and rights of citizens in full, and criminalize enforced disappearance, torture, and extrajudicial trials. The constitution must also precisely define the security agencies and determine their powers, not leaving these details to laws. The constitution must strengthen the principle of the independence of the judiciary and separation of powers and must include a special Transitional Justice Annex that ensures the implementation of genuine transitional justice mechanisms in line with the demands of this Charter, including recognizing the rights of victims to truth, justice, reparation, and guarantees of non-recurrence, all with meaningful and active participation by victims, survivors, and their family members.

We stress here that Syria's problems are not necessarily rooted in the content of its constitution, but rather in the flawed relationship between its political system and society, as well as its laws, regulations, decisions, and security and suppressive instruments that may be based on the constitution in form, but violate it in content in many cases. Those responsible for violating the constitutional rights of citizens under all previous constitutions are sure to violate them again under any future constitution too.

- **Reconstruction**

The signatories to this Charter view reconstruction as a process that should rebuild Syria's state and society on foundations that guarantee the dignity of Syrian citizens and prevent the repetition of previous violations. This process cannot begin before the fate of the disappeared is revealed, and the remains of the dead are handed over. In no way can this process, or any other early recovery processes, take place on the ground under which thousands of Syrian citizens are detained, disappeared, tortured, and buried in mass graves.

A proportion of the land and property being developed under early recovery and reconstruction processes is owned by detainees and the disappeared. Reconstruction and early recovery must not violate these persons' housing, land and property rights.

- **Return of refugees and IDPs**

Arbitrary detention and forced disappearance are among the principal reasons preventing most refugees and internally displaced persons (IDPs) from returning to their places of residence. Voluntary return cannot start while the machinery of arrest, torture, and enforced disappearance continue to operate. Before a safe, dignified, and voluntary return of IDPs and refugees can occur, there must be confidence-building measures, such as the release of prisoners, revealing the fate of the missing, an end to torture, and the abolition of exceptional courts and extrajudicial detention to reassure them that they will not face the same violations that forced them to leave on their return.



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