


The UN Independent Institution on Missing Persons in the Syrian Arab Republic A marathon, a sprint, or a hurdle race?

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On 29 June 2023, the UN General Assembly adopted resolution [A/77/L.79](#) to create an Independent Institution on Missing Persons in the Syrian Arab Republic. This new institution will have two aims: (1) to clarify the fate and whereabouts of *all missing persons in Syria* and (2) provide adequate support to victims, survivors and the families of those missing.

The task ahead is huge, because, since the conflict started 12 years ago, there are at least 100.000 persons who went missing. This figure encompasses persons whose fate and whereabouts are unknown for multiple reasons, including because they were disappeared. The disappearances are alleged to have been committed by different actors, but most of them by the Syrian State authorities, and as such are enforced disappearances: a grave violation of human rights law and of international humanitarian law and a crime under international criminal law.

In this blog post, we will argue that it is crucial for the new independent institution to explicitly address enforced disappearance. This, unfortunately, has been neglected in the General Assembly's resolution, which only mentions 'missing persons' and, albeit generically quoting international human rights law in the preamble, does not refer to any legal instrument or mechanism dealing with enforced disappearance. We also highlight two novelties of the future institution: it is the first UN initiative that deals with missing persons without having any access to the territory where the persons disappeared. Furthermore, it explicitly aims at providing support to victims, survivors and the families of those missing.

Casualty or collateral damage? “Enforced disappearance” disappeared from the mandate of the new institution

The adoption of the resolution and creation of the institution is the result of long lasting work by Syrian civil society and families of missing and forcibly disappeared persons, who, since 2011, launched the Truth and Justice Charter, i.e. an initiative aimed at advancing victims' rights and the cause of justice and truth in Syria. Notably, the original initiative extensively refers to “victims of enforced disappearance” and not only to missing persons. The need to specifically address enforced disappearances for the institution was also contained in the 2022 recommendations by the Office of the High Commissioner for Human Rights (OHCHR), as well as in a call from June 2023 by several UN special procedures and the UN Committee on Enforced Disappearances, specifically asking to “break down different types of cases, including alleged enforced disappearances”.

Under international human rights law an enforced disappearance consists of three elements: (1) the deprivation of liberty of the victim (2) perpetrated by Governmental officials, at least indirectly by acquiescence, followed by (3) a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person. The Rome Statute includes enforced disappearance among crimes against humanity, when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack. Pursuant to the Rome Statute, enforced disappearance can also be perpetrated with the authorization, support, or acquiescence of, a 'political organization'.

The disappearances committed by the Assad regime, as recognized by the Independent International Commission of Inquiry on the Syrian Arab Republic, clearly fit the enforced disappearances definition under both IHRL and ICL. Disappearances committed by other actors in Syria in the conflict would most likely also fall under the ICL definition.

When enforced disappearances occur, States have specific obligations under international human rights law that do not arise with regard to other missing persons, for example, the obligation to proactively search for the disappeared person and, in the event of death, locate, respect and return the remains. Importantly, not only the disappeared person is considered a victim, but also any individual who has suffered harm as a direct result of the enforced disappearance (art. 24 ICPPD).

It is thus disappointing that enforced disappearances have not been explicitly mentioned in the A/77/L.79 resolution. This fails to acknowledge the nature of crimes being perpetrated and significantly weakens the rights of families. The gap could be filled when drafting the terms of reference of the new institution (the Secretary General, with the support of OHCHR, has 80 days to complete the task). The General Assembly emphasises that this shall be done "in consultation with all other relevant actors, including with the full participation of victims, survivors and families". Hopefully, this time their requests to include enforced disappearances will be duly taken into account.

A victim-led and victim-centered initiative

The unabated struggle of civil society organisations and families of missing and forcibly disappeared persons secured the adoption of the resolution and it is reflected and somehow acknowledged in the design of the new institution: first, it will have to ensure their full and meaningful participation and representation (para. 3); and, second, it will have to provide them with "adequate support" (para. 2).

The provision of support to victims, survivors and families is a welcome novelty for a mechanism dealing with missing and forcibly disappeared persons. While this should be a crucial element when addressing the subject, it has largely been neglected by international and domestic mechanisms and initiatives. Putting support to families as one of the two pillars of the new institution is therefore a huge achievement and should be acknowledged as such, albeit there are a couple of potentially tricky issues.

The first one is related to the fact that the resolution refers to “missing persons *in* Syria and their families” and this might unduly limit the scope of the “beneficiaries” of the work of the institution. Albeit proposals to mention “persons missing as a result of the situation in Syria” were formulated so as to encompass also persons that went missing and forcibly disappeared while fleeing the conflict, they were discarded in favour of a narrower approach.

The second one is related to which sort of support is concretely envisaged (psychosocial? Monetary relief? Other?), and how it will be ensured and administered in practice, especially since the institution will operate from outside Syria.

An ‘exile’ institution

The new institution will be the very first UN initiative with the aim to clarify the fate and whereabouts of missing and forcibly disappeared persons against the will of the State concerned and that will (almost certainly) have no access to the territory where the persons were seen for the last time. This poses unique challenges. One might ask whether it is at all possible to clarify the fate and whereabouts of the disappeared without the cooperation of the State involved. Without access to detention centers and mass graves, it will indeed be extremely difficult. As said, also the provision of support to victims will be problematic, as some are in Syria, while others fled and, in other cases, they may be spread across the world (bearing in mind that also foreign fighters went missing or were forcibly disappeared in Syria).

The new institution will have to be designed bearing in mind these unique challenges and accordingly be provided with adequate human, technical and financial resources to undertake a complex, transnational and long-term engagement.

Firstly, sufficient financial and human resources. To discharge its mandate, the new institution must collect victim and witness statements, create databases, collect DNA samples from families and use new technologies. These tasks will have to be carried out in many countries and in coordination with already existing mechanisms dealing with Syria and missing and forcibly disappeared persons in general (hence also having to ensure the interaction and mutual reinforcement between the search of the disappeared and the criminal investigation aimed at ensuring accountability).

Secondly, the institution needs to be supported by other States, in particular those where families of missing and forcibly disappeared Syrians or foreign fighters reside. Getting families involved – which is at the core of the mandate – and supporting them, appears hardly possible without the engagement of the States of residence. As such, it is troubling that none of the neighbouring countries is among the sponsors of the resolution.

Neither a sprint or a plain hurdle race: an unprecedented hurdle marathon ahead

The UN has created in the past mechanisms to clarify the fate of missing and forcibly disappeared persons, for example, the UN Special process on missing persons in the territory of the former Yugoslavia. The expert leading the mechanism resigned from his

mandate after three years, citing three reasons: the lack of resources, the lack of coordination between international organizations and the refusal of one of the States concerned – where many of the mass graves were – to cooperate.

Arguably, the new institution will have to face the same three challenges (and more) and it should better gear up for an unprecedented hurdle marathon. In this endeavour, it may take advantage from all the tools at disposal, including international legal instruments and mechanisms dealing with enforced disappearance.

It will be a long-term effort and eyes should be kept on “the prize”: relieving the ongoing suffering and anguish of relatives of missing and forcibly disappeared persons and providing them with adequate support. The only way to reach the finish line is to genuinely consider, and listen to, their needs and expectations to set the pace and design the course around them.

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