



Transitional justice and political settlement
in syria
laying the foundations for addressing
the issue of missing persons



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EXECUTIVE SUMMARY

This paper discusses the issue of Syria's missing and disappeared persons in the context of transitional justice and the anticipated political settlement of the ongoing Syrian crisis. It focuses on the importance of addressing the issue of the missing at several levels, including the future Syrian constitution, domestic legislation, and the content of the hoped-for political settlement, which should contribute to the implementation of the pillars of transitional justice. The paper highlights the necessity of involving Syrian civil society, especially representatives of the families of victims of enforced disappearance and survivors, in this process, to ensure their rights and strengthen the legitimacy of achieving sustainable peace and laying the foundations for building a state of law.

The paper aims to provide the parties involved in negotiations regarding Syria's future with technical information on the necessary guarantees to address the issue of the missing in any upcoming political settlement. It also seeks to serve as a reference tool for civil society organizations and associations of victims' families and survivors to support advocacy efforts on this issue. The paper reviews several peace agreements from countries that have experienced conflicts and systematic human rights violations, offering examples of how the issue of the missing was incorporated into political settlements after these conflicts. Among other issues, it addresses the importance of investigating the fate of the missing and providing compensation to victims and their families, whether material or moral, as a key pillar of transitional justice. It also emphasizes the need for accountability for those responsible for systematic human rights violations, as a prerequisite for achieving justice for victims, preventing the recurrence of such violations, and combating the culture of impunity. The paper also touches on the issue of amnesty, which may include some of those involved in committing violations, under certain conditions and within the framework of applying the pillars of transitional justice.

The paper concludes by highlighting the current status of the issue of the missing and detained in Syria, as well as previous efforts that have not yet yielded results. It reaffirms that addressing the issue of the missing is a fundamental part of any future political settlement in Syria, and that such a settlement will be of little value



unless it leads to genuine political change and the establishment of a state governed by the rule of law. This includes repealing repressive laws, particularly those enabling enforced disappearance, providing future guarantees to prevent its recurrence, releasing detainees, uncovering the fate of the missing, compensating victims, and holding perpetrators accountable. The paper calls on all relevant parties to prioritize the issue of the missing and not use it as a bargaining chip in negotiations, stressing that it must remain a humanitarian issue above political interests and considerations.

INTRODUCTION

Syria has experienced widespread phenomena of enforced disappearances and missing persons amid the continuation of the tyrannical rule, the security breakdowns, and the systematic violations committed by the parties to the conflict. The issue of the missing and disappeared in Syria² must be addressed through the inclusion of transitional justice measures and principles in a future Constitution, domestic laws and the upcoming Syrian political settlement. The political forces negotiating Syria's future may attempt to reach a political settlement while neglecting to truly address the issue of missing persons. However, to ensure the success of such a settlement, there must be community participation and popular acceptance which requires handing power from the authoritarian rule to trustworthy parties and addressing human rights comprehensively including the rights of families of missing persons and the disappeared and guaranteeing the non-recurrence of violations in the future. Therefore, the issue of the missing should be dealt with as a cornerstone of a resilient political settlement capable of establishing sustainable peace.

In turn, applying the principles of transitional justice is essential to overcoming the societal divisions, reinstating the rule of law and fostering sustainable peace. Transitional justice includes measures to ensure that the truth is revealed, including investigating the fate, whereabouts and circumstances of persons having gone missing or having disappeared, that victims receive just reparations, that perpetrators are held accountable, and that guarantees of non-recurrence are provided. In addition to being part of the political settlement, these measures should be included in both the future Constitution and domestic laws.

A political settlement involves a set of agreements and understandings associated with a comprehensive process that result in a political solution for a state experiencing an armed conflict or an unstable political situation. It is often included in

1- This research is one of the outcomes of the Third Annual Conference on Syrian Studies - organised by Harmoon Centre. The author completed it with the support of the International Commission on Missing Persons and the European Union.

1- It is estimated that around 130,000 people are missing. See ICMP, Syria-Brussels Conference 6: ICMP Facilitated Policy Coordination Group Makes Recommendations on the Missing, Disappeared and Detained, 4 May 2022, available at: <https://www.icmp.int/ar/news/syria-brussels-vi-icmp-facilitated-policy-coordination-group-presents-recommendations-on-missing-disappeared-and-detained>



political settlements clauses that detail an end to the conflict, a ceasefire, addressing the legacy of violations, the assumption and exercise of power³, reform of State institutions, reconstruction, and the drafting of a new Constitution. Such settlements may also involve clear references to the issue of detainees and abductees release, the exchange of prisoners, and the accounting of missing persons as a matter of law and as confidence-building measures or in order to contribute to post-conflict stability or lay the foundation for a peace agreement. Accountability measures depend on the method and nature of conflict resolution, and the power of the parties involved which can benefit from non-penal prosecution in case they become part of the post-conflict authority.

This paper is directed at all parties involved in the Syrian conflict, emphasizing the importance of addressing the issue of missing persons within the framework of the anticipated political settlement in Syria. This includes both dealing with the legacy of systematic human rights violations, particularly the widespread cases of enforced disappearance, and establishing guarantees to protect all individuals from enforced disappearance in the future. In the absence of similar studies and research, this paper aims to provide stakeholders in any serious negotiation process for shaping Syria's future with technical information on the key guarantees that must be included in the upcoming political settlement to help address the issue of missing persons. Additionally, this paper can serve as a reference tool for civil society organizations, victims' families, survivors' associations, and others to use in advocating for the issue of missing persons, particularly to influence negotiations regarding Syria's future.

This paper looks at the issue of missing and disappeared persons in Syria within the framework of a political settlement which should be based on transitional justice principles. The paper employs a descriptive, analytical, and critical methodology by conducting a review and analysis of various peace agreements and contemporary political settlements, highlighting the approaches adopted by them with respect to missing persons. The paper subsequently analyses these experiences on the Syrian

2- Christine Bell, Kimana Zulueta-Fülscher, Sequencing Peace Agreements and Constitutions in the Political Settlement Process, policy Paper no. 13, 1 November 2016, the Global State of Democracy, page 9, available on: <https://www.idea.int/sites/default/files/publications/sequencing-peace-agreements-and-constitutions-in-the-political-settlement-process.pdf>



situation, showing the most prominent challenges and lessons to be followed or avoided. The first section deals with the issue of investigating the fate of the missing. The second section highlights the issue of victims' reparation and the multiple forms of compensation. The third and last section, which complements the transitional justice measures mentioned in the first two sections, discusses the accountability of perpetrators and those involved in violations against missing persons, in addition to discussing the possibility of amnesty.



INVESTIGATING THE FATE OF THE MISSING

Releasing detainees-disappeared from prisons and detention centres and the investigation of the fate of missing persons is an essential part of peace agreements for the role it plays in strengthening such agreements, building confidence among the parties and demonstrating goodwill and desire to put an end to the conflict⁴. Political and transitional arrangements may precede or act as the first step in a political settlement, the most prominent of which is the mutual recognition of gross human rights violations, the release of detainees and disappeared persons, the exchange of prisoners, and the establishment of a fact-finding mechanism. Prisoners exchange and detainees release are closely linked to revealing the fate of the missing persons, particularly in the Syrian case, where the majority of detainees are subjected to enforced disappearance⁵.

Peace agreements tend to mandate the creation of lists of detainees and missing persons, and information sharing about them. Agreements often touch upon the categories of the detainees to be released, including civilians, military personnel, and sometimes members of militias or specific organizations, as well as women, children, and the elderly. Other categories can include hostages, perpetrators of public right crimes, political prisoners, prisoners of conscience, and those sentenced by court rulings. These categories may also be defined by the periods during which the arrest was made or by the reasons for the arrest.

Thus, peace agreements vary in their choice of categories covered by the release. For example, the peace agreement between the Islamic Republic of Afghanistan and the Islamic Party (Hizb-e-Islami) on 29 September 2016 stated that “a list of

4- According to a survey conducted by The Day After, “the vast majority of respondents indicated the importance of working on revealing the fate of detainees by all the warring forces in Syria. It is noticeable here that Syrians from different geographical areas under study, with their different religious, sectarian, and ethnic affiliations agree on the importance of revealing the fate of the detainees within the framework of the political solution process”. The Day After Foundation, The constitutional process from the point of view of the Syrians *العملية الدستورية من وجهة نظر السوريين*, January 2021, p. 14, available at : <https://tinyurl.com/4m3j9td5>

5- Syrian law enshrines the subjection of detainees to enforced disappearance. For example, Legislative Decree No. 55, issued on April 21, 2011, added a paragraph to Article 17 of the Code of Criminal Procedure to authorize “the judicial police or those authorized to carry out their duties,” including the security services, the ability to detain the suspect “for a period of up to up to sixty days”, during which the detainee will be isolated from the outside world.

individuals to be released shall be established; such list shall not include individuals who committed criminal crimes, and those who have claims filed against them”⁶. In the Syrian context, parties should look to the various United Nations (UN) resolutions for guidance on this matter. For example, the UN Security Council Resolution No. 2254⁷ on reaching a political settlement of the situation in Syria, in Article No. 12, calls on all parties in Syria to “release any arbitrarily detained persons, particularly women and children”. UN Security Council Resolution 2139 (Syria) also calls for “the release of all arbitrarily detained persons starting with women and children, as well as sick, wounded and elderly people and including United Nations personnel and journalists”⁸. Explicitly defining the categories of persons to be released will be important within the prospective political settlement in Syria.

On the obligation to investigate the fate of missing persons, it is worth also mentioning the 2000 Townsville Peace Agreement for the Solomon Islands, under Part III on “Loss of Lives and Property”, which states that “within ninety days from the date of execution of this Agreement, “both the Isatapu Liberation Movement (IFM) and the Malaita Eagle Force (MEF) shall locate, identify and allow remains of any persons known to be killed during the crises and allow the relatives to retrieve the remains”⁹. The Nepal agreement that was signed between the government and the Communist Party of Nepal (Maoist) in 2006 provides another example on the release of detainees and disclosure of the fate of the missing. Under the “release and rehabilitation” section, the agreement provides that it should immediately establish the fate and whereabouts of the disappeared citizens¹⁰. The 1994 Cessation of Hostilities Agreement in Bosnia and Herzegovina similarly states that “The parties agree to work continuously and simultaneously on processes for the early release of persons detained in relation with the conflict, as well as for the provision and cross-checking

6- Astrid Jamar and Christine Bell, Transitional justice and peace negotiations with a gender lens, October 2018 UN Women. New York, October 2018, p. 7, available at: <https://www.politicalsettlements.org/wp-content/uploads/2018/12/Inclusive-peace-processes-Transitional-justice-en.pdf>

7- Resolution adopted on December 18, 2015, in the context of seeking to reach a political settlement of the situation in Syria.

8- This resolution also strongly condemned the “arbitrary detention and torture of civilians in Syria, particularly in prisons and detention facilities, as well as abduction, hijacking, and enforced disappearances.” The resolution was issued on February 22, 2014.

9- The full text of the agreement is available on the “Language of Peace” website, link: <https://www.languageofpeace.org/#/search>

10- This agreement was reached on 25 May 2006. The full text is available on the website of “Language of Peace”, <https://peaceadmin.languageofpeace.org>



of all available information on persons unaccounted for”¹¹.

The issue of missing persons has also been mentioned in countries that have not undergone a real political change but rather a consolidation of the power of the ruling regime after pretending the establishment of national reconciliation procedures. This has been witnessed in the framework of the Algerian “Pact for Peace and National Reconciliation” of 2005¹². This Pact includes a set of texts related to the missing persons, which focused mainly on the responsibility of the State to account for all missing persons. However, this has not been implemented so far.

In fact, the Pact ignores the political transition which thus means the continuation of a regime

that is mainly responsible for the violations that occurred during the years of internal fighting¹³.

Some peace agreements provide for the formation of a body dealing with missing persons, as was the case under the agreement between the Colombian government and the FARC in 2016. This agreement establishes a “Special Unit for the Search for Persons deemed as Missing in the context of and due to the conflict”. This Unit of a non-judicial humanitarian character¹⁴ should search for those persons, identifying the deceased among them and handing over their remains in a dignified manner¹⁵. A peace settlement in the Syrian context should also include the establishment of a commission on missing persons in order to support the competent government

11- The full text is available on the website of “Language of Peace”, link: <https://www.peaceagreements.org/view/915>

12- It was put to a referendum and approved by law in 2006. For the full text, see Al Jazeera’s website: <https://www.aljazeera.net>

13- For more on victims of enforced disappearance in Algeria, see: MENA Rights Group, Waiting for Redress The Plight of Victims of Enforced Disappearances in Algeria, Baseline Study, August 2020, 40 p, <https://menarights.org/en/documents/waiting-redress-plight-victims-enforced-disappearances-algeria-baseline-study>

14- Despite the non-judicial nature of this body, this agreement explicitly states that the activities of this unit may not replace judicial investigations or prevent investigations that fall within the State’s obligations. The issue of accountability was therefore not dropped from the agreement, but rather the process of revealing the fate of the missing was separated from the issue of pursuing perpetrators, possibly with the aim of not impeding the work of this body and achieving results in this path. See United Nations Document, No. S/2017/272, April 21, 2017, p. 112, available at: https://unmc.unmissions.org/sites/default/files/s-2017-272_e.pdf

15- *Ibid.*, same page. For more information about the investigative bodies, see Andreas Kleiser (Editor), Global Report on Missing Persons, the International Commission on Missing Persons, 2021/2022, pp. 40-41, available at: <https://bit.ly/3GvYKhQ>

bodies of the future state and coordinate with them in investigating the fate and circumstances of the disappearances of persons inside Syria as well as Syrians abroad. The Policy Coordination Group for Syria's Missing and Disappeared Persons (PCG)¹⁶ has proposed a framework for such a body, including proposals on its composition, its work, and its objective. The PCG has considered that such a body should be established within the constitutional and legal framework¹⁷. A political settlement agreement in Syria must include clear provisions for the establishment of such a body, as well as the commitment of the concerned parties to cooperate with it.

Several peace agreements also provided for the involvement of some international bodies in the processes of accounting for the missing and investigating the circumstances of their disappearance. The 1995 Dayton Agreement of Bosnia and Herzegovina stipulates that "Parties shall provide information on all unaccounted persons through the International Committee of the Red Cross (ICRC) tracing mechanisms. The Parties shall also extend their full cooperation to the International Committee of the Red Cross in its efforts to determine the identities, whereabouts, and fate of those unaccounted for"¹⁸. The Colombian Peace Agreement in its fourth part referred to the participation of the "ICRC, ICMP, and Sweden [as] partners in the Peace Agreement on the issue of missing persons"¹⁹. A future political settlement for Syria should similarly take into account the support of such international bodies to contribute to the investigation of the fate of the missing²⁰.

16- The Policy Coordination Group was formed with the support of the ICMP. It is a Syrian-led initiative composed of members, including representatives of several associations of families of missing Syrians, legal experts, human rights defenders, and civil society activists. The Group also includes international experts who provide consultations in their area of competence. The Group is working on broad recommendations and policy frameworks for a future process on Syria's missing persons, including legislation, the creation of purpose-built institutions, and measures to provide compensation to families of the missing, as well as other issues related to arbitrary arrest, mass graves, and effective and safe methods for handling data on missing persons.

17- See the PCG paper "Proposed Constitutional Principles for the Missing Persons of Syria", 2022, p. 7 et seq., available on the ICMP website: <https://www.icmp.int/wp-content/uploads/2022/01/pcg-007-6-W-doc-constitutional-paper-on-the-issue-of-missing-persons-in-syria.pdf> See also the PCG paper entitled "Syrian Legislation on Missing Persons: Towards the Adoption of a Law on the Affairs of Syria's Missing and Disappeared Persons", 2022, p. 5, available on the ICMP website: <https://www.icmp.int/wp-content/uploads/2022/03/pcg-005-3-W-doc-paper-of-syrian-legislation-concerning-the-missing-persons.pdf>

18- See Annex VII of this agreement, the full text is available on the OSCE website: <https://www.osce.org/files/f/documents/e/0/126173.pdf>

19- Document No S/2017/272, op. cit., p. 185. Part V added that "the search unit shall be headed by a director of Colombian nationality, selected based on established criteria of suitability and distinction, taking into account the proposals of the proposals of ICRC and ICMP. The director receives recommendations and suggestions from the National Committee for the Search for the Disappeared Persons, victims' organizations, the International Committee of the Red Cross, and the International Committee for Missing Persons". Ibid., p. 123.

20- On the role of international actors, see Andreas Kleiser, op., cit, p. 50.



REPARATIONS FOR VICTIMS

Reparations for victims are an important pillar of transitional justice and should be incorporated in any future political settlement. Compensation may take many forms, including of a material character such as pensions, privileges for the victims or their families in education, employment, access to social security, and the burial of the remains of missing persons found in mass and clandestine graves. It can also be of a moral character such as acknowledgment of violations, public apologies, guarantees of non-repetition, and memorialization efforts.

It is also considered moral compensation to create a narrative in honour of the victims and acknowledge the violations they have suffered. Some States' Constitutions adopted in transitional stages²¹ and many peace agreements have recognized such decrees. For example, the 2016 final agreement between the Colombian Government and the FARC stated that "the end of hostilities marks in the first place the end of the immense suffering caused by the conflict. The conclusion of hostilities will first and foremost represent the end of the enormous suffering caused by the conflict. Millions of Colombians, men and women alike, have been victims of forced displacement, Hundreds of thousands were killed, and tens of thousands of people of all races disappeared. There should be no more victims in Colombia"²². This agreement also includes an entire chapter on victims' rights and contains the following sections: "Recognition of the victims, Acknowledgement of responsibility, Realization of Victims' Rights, Victims and Security, Guarantees of Non-Recurrence, Participation based on a Rights-Based Approach, Historical Clarification of Truth, Reparations for the Victims, and Guarantees of protection and security"²³.

Many agreements at the Arab regional level dealt with the issue of reparations. It is stated in the Algerian above-mentioned Pact of reconciliation that the State should

21- Tunisia's 2014 Constitution provides in its preamble that: Taking pride in the struggle of our people for independence, to build the state, for freedom from tyranny, responding to its free will, and to achieve the objectives of the revolution for freedom and dignity, the revolution of December 17, 2010, through January 14, 2011, with loyalty to the blood of our virtuous martyrs, to the sacrifices of Tunisian men and women throughout generations, and breaking with injustice, inequity, and corruption, Full text available on the website: https://www.constitute-project.org/constitution/Tunisia_2014.pdf?lang=en

22- Document No S/2017/272, op. cit, p. 6.

23- Ibid.

take all appropriate measures to enable those with the rights of missing persons to overcome this severe ordeal. It also recognized the right of the missing families to compensation²⁴. The Yemeni Comprehensive National Dialogue Document attaches great importance to the issue of reparations, as it calls for providing material and psychological compensation to victims of arrest, loss, and enforced disappearances within the Reconciliation and Transitional Justice Law²⁵. This document also states that “the government must compensate all those who were arrested, imprisoned, tortured, intimidated, or practiced any transgression against them during the Saada battles, regardless of the responsible party.” It adds “the Government shall treat the families of all those who have disappeared because of the Sa’ada battles as those of the martyrs, and shall immediately reveal their fate, whether dead or alive”²⁶.

It is essential that the political settlement include reference to vulnerable segments²⁷ of the population so that they have priority access to compensation. The Managua Protocol to Disarmament in Nicaragua explicitly stipulates that “the resistance is urged to submit immediately a list of widows and orphans, so that the Nicaraguan Social Security and Welfare Institute can include them in its budget and they can receive the monthly pensions to which they are entitled”²⁸. On the other hand, many criticisms were levelled at the Dayton Peace Agreement for neglecting the rights of some vulnerable groups, particularly women victims and displaced persons who did not receive the necessary compensation²⁹. Although the above-mentioned Nepal Agreement touches upon assisting displaced persons in the dignified return to their homes, as well as the return of their confiscated property³⁰, it has neglected to directly address victims’ rights, including the families of missing and forcibly disappeared persons.

24- Ibid. It is worth mentioning that the Algerian authorities require families to abandon investigations in order to receive compensation. See Andreas Kleiser, op. cit, p. 42.

25- Available on Constitution Net: https://constitutionnet.org/sites/default/files/final_outcome_document-arabic.pdf, page 50.

26- (Ibid.) page 50.

27- However, care should be taken to discard any discrimination based on race, religion, or affiliation.

28- See Astrid Jamar, Christine Bell, op. cit., p. 19.

29- Lisbeth Pilegaard; Jasminka Dzumhur, Human rights shortcomings of the Dayton Peace Agreement, FMR 50, September 2015, available at: <https://www.fmreview.org/ar/dayton20/pilegaard-dzumhur> Article 15 of the *Law on Missing Persons of Bosnia and Herzegovina* provides for the establishment of the Fund for Missing Persons. However, this Article has still not been implemented to date.

30- op. cit, page 4.



Finally, the family associations and other civil society organizations play an essential role in complementing or supporting the state's tasks in providing material and moral support to the victims. In this respect, these groups should be given particular attention in the political settlement by stipulating the need to involve them in formulating policies related to the missing and providing support for their programs and projects aimed at helping families of missing persons.

HOLDING PERPETRATORS ACCOUNTABLE AND THE ISSUE OF AMNESTY

Accountability of those involved in committing violations, including pardons, is one of the main issues addressed in peace agreements and transitional justice measures. A future political settlement should consider several factors related to both accountability and amnesty, such as, on the one hand, the need to hold perpetrators of serious crimes accountable in order to bring justice to the victims and eliminate the state of impunity which will ultimately guarantee the non-recurrence of human rights violations, and on the other hand, the need to achieve comprehensive reconciliation, the inability of the judicial system to try all criminals or suspects, and the use of amnesty as a means to motivate armed groups to abandon armed action and engage in the political process. Amnesty for certain offenders is normally associated with other binding measures, such as public apologies, providing information on violations and the fate of missing persons or the whereabouts of their remains, and preventing the pardoned from holding certain positions in the state.

A recent study issued by the “The Day After” showed that among the Syrians’ priorities are to hold accountable those parties to the conflict responsible for committing human rights violations or war crimes³¹. The PCG similarly focused on accountability and considered it essential in setting legislative policies during the transitional phase. The PCG’s proposed constitutional paper stated that “In the context of implementing transitional justice measures, the principle of non-retroactivity of laws, the existence of a prior amnesty or the statute of limitations for crimes may not be invoked”³². The PCG also stressed the need for the state to “take all necessary measures to avoid recurrence of violations and conflicts, achieve national reconciliation, and establish sustainable peace and an environment conducive to promoting and respecting human rights”³³. This paper also explicitly states that “arbitrary arrest, enforced disappearance and torture shall not be subject to statutory limitations”³⁴. Therefore, the desire of Syrians not to abandon the principle of

31- The constitutional process from the Syrian’s point of view, op. cit., p. 16.

32- Proposed constitutional principles for the issue of missing persons in Syria, op. cit., p. 7.

33- Ibid, same page.

34- Ibid, p. 4.



accountability must be taken into account, by including such provisions in the forthcoming political settlement.

Some statistics indicated that “of the 84 peace agreements that provide for forms of judicial accountability, 52 contained weak commitments and 27 significant commitments to deal with judicial accountability in national and international courts. Only five agreements involved strong commitments to deal with judicial accountability through a national court that adopts detailed legal methods and procedures”³⁵. Despite the establishment of many special tribunals at the international level, based on United Nations resolutions, to prosecute perpetrators of crimes committed in many states³⁶, peace agreements provided for the establishment of a national judicial body for accountability, as was the case under the supplement to Uganda’s 2008 Accounting and Reconciliation Agreement. The latter stipulates in its seventh article the establishment of a special division at the Supreme Court in Uganda to try individuals alleged to have committed serious crimes during the conflict³⁷. It adds in its eighth article that the division, in particular, shall make arrangements to facilitate the protection and participation of witnesses, victims, women, and children. While article 13 affirms that special attention is given to crimes and violations committed against women and children during the conflict³⁸.

Thus, the texts of the Uganda Agreement provide a model to follow in the Syrian case concerning giving attention to victims of serious crimes and establishing a special body devoted to accountability. However, the possibility of establishing such a body and ensuring the fulfilment of its functions in Syria shall depend primarily on the extent to which the judiciary and the security apparatus are reformed.

For its part, the Colombian Peace Agreement excluded a range of crimes from the possibility of amnesty under any circumstances, including the crimes of enforced

35- Astrid Jamar, Christine Bell, *op. cit.*, p. 15.

36- As is the case for the International Criminal Tribunal for former Yugoslavia, established by Security Council Resolution 780 of 1992, and the International Criminal Tribunal for Rwanda, established by Security Council Resolution 955 of 1994.

37- Available on the Peace Agreements website: <https://www.peaceagreements.org/view/667>

38- Ibid.

disappearance and torture³⁹. Under the Agreement, an Investigation and Indictment Division was formed, consisting of several highly qualified legal professionals in investigation and prosecution, with the participation of experts in various branches of law, especially those with knowledge of international humanitarian law and human rights⁴⁰. The agreement added that this division would have a criminal investigation team that would benefit from international support, particularly in exhuming bodies and identifying the remains of the missing⁴¹.

The above-mentioned Algerian Reconciliation Pact is a bad example that should not be followed in its approach to the issue of accountability and amnesty. It states that it “rejects any allegation intended to hold the State responsible for causing disappearances” and adds that “the tragedy of missing persons is one of the consequences of the scourge of terrorism that has plagued Algeria”⁴². With regard to accountability, the Agreement alleges that punishable acts committed by State agents have been punished⁴³.

The outcomes of the Kampala Dialogue between the Government of the Democratic Republic of the Congo and the March 23 Movement also neglect any explicit mention of missing persons. However, these outcomes also address key-related issues, like the Government’s obligation to initiate prosecution against those suspected of war crimes, genocide, crimes against humanity, sexual violence, and child recruitment⁴⁴. These outcomes also focus on the issue of security sector reform⁴⁵, which is crucial in the Syrian situation, where systematic crimes by the security services have been committed in a climate of impunity⁴⁶.

A political settlement must include a commitment to consolidate the legal ground for judicial accountability and the prevention of impunity, especially in the Syrian

39- Document No S/2017/272, op.cit., p. 260.

40- Ibid., p. 145

41- Ibid., same page.

42- op. cit.

43- op. cit.

44- Outcome Documents from the Conclusion of the Kampala Dialogue between the Government of the Democratic Republic of the Congo and the M23, 12/12/2013, <https://www.peaceagreements.org/view/793>

45- Ibid.

46- For more information, see PCG, Syria: Towards Addressing the Issue of the Missing, Report to the United Nations on the Universal Periodic Review of the Syrian Arab Republic, Fortieth Session - July 2021, p. 8 and beyond, available at: <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=9605&file=ArabicTranslation>



context, where legislative decrees - that are still in force to date - grant immunity to the security services for the crimes they commit⁴⁷. In this context, the Guatemalan Peace Agreement includes an explicit commitment to the parties' acceptance of resolute action to combat impunity and stipulated that the government should not sponsor the adoption of legislative measures or any other type of measure designed to prevent the prosecution and punishment of persons responsible for human rights violations⁴⁸. The agreement added that the Government of the Republic of Guatemala should amend criminal legislation, to describe serious offenses, either enforced or involuntary disappearances and summary or extrajudicial executions, and punish perpetrators accordingly⁴⁹.

Finally, the violations committed in Syria amount to war crimes and crimes against humanity⁵⁰. Consequently, it is the responsibility of the future State to hold those involved accountable, and it also requires the involvement of international organizations and mechanisms in the prosecution⁵¹. Recently, there has been increased litigation to hold suspects and those involved in the commission of such crimes in Syria accountable under the principle of universal jurisdiction⁵², which is based on domestic laws in many states⁵³, and on international law. For instance, article 10 of the International Convention for the Protection of All Persons from Enforced Disappearance⁵⁴ provides that State parties are obliged to detain every person in their territory suspected of having committed enforced disappearances, or by taking all other legal measures necessary to ensure that suspects remain in their territory when circumstances so require.

47- For more information on decrees devoted to the immunity of the security services, see the previous reference, pp. 8-9.

48- Anne Manuel, Human Rights in Guatemala During President de León Carpio's First Year, Human Rights Watch/ Americas, the United States of America, June 1994, p. 137.

49- Ibid., same page.

50- See the reports of the Independent International Commission of Inquiry on the Syrian Arab Republic, including the report issued at the 46th session of the Human Rights Council, AHRC/46/55, 11 March 2021, p. 26, <https://www.ohchr.org/ar/hr-bodies/hrc/iici-syria/independent-international-commission>

51- Such international bodies should also intervene to support local efforts to gather the evidence needed for prosecutions, such as in excavations of mass graves.

52- Such as the trial of the former Syrian intelligence officer *Anwar Raslan* before the Koblenz Court in Germany. For more information, see Nael Gerges, International Jurisdiction of European National Courts - Anwar Raslan case as a model للاختصاص الدولي للمحاكم الوطنية الأوروبية قضية أنور رسلان نموذجاً Adel HR, April 27, 2020, available at: <https://adelhr.org/portal/9927>

53- Ibid.

54- Adopted by the United Nations General Assembly, Resolution No. 47/133, December 23, 2010.

CONCLUSION

The issue of missing persons and detainees has not lost sight of Syria's on-going negotiations and multiple peace plans. The peace plan proposed by the late Kofi Annan, the United Nations and League of Arab States Special Envoy to Syria, contained six points, the fourth of which relates to the issue of detention and enforced disappearances. It states the need to "Intensify the pace and scale of release of arbitrarily detained persons, including especially vulnerable categories of persons, and persons involved in peaceful political activities, provide without delay through appropriate channels a list of all places in which such persons are being detained, immediately begin organizing access to such locations and through appropriate channels respond promptly to all written requests for information, access or release regarding such persons"⁵⁵. Annan's plan, like many other plans and negotiations related to the future of Syria, did not result in any political settlement or solution to the issue of missing persons⁵⁶, which remains among the most important issues for Syrians as well as the international community.

The upcoming political settlement in Syria should refer to the issue of missing persons, especially with regard to investigating the fate of the missing, victims' reparation, and holding those involved accountable, as described in this paper. Giving consideration to the issue of the missing, whether through a political settlement or in the later stages, requires reviewing a number of in-depth studies related to the Syrian conflict and the issue of the missing. In this context, the PCG papers contain valuable information and technical recommendations for Syrian actors and stakeholders. The Group drafted several policy papers, including a comprehensive constitutional paper on what should be included in a future Constitution to effectively address the missing persons issue⁵⁷, including the application of the elements of transitional justice. In its paper on enacting a law on missing persons⁵⁸, the PCG also proposed the most important elements to be included in such a law, which may be part of a

55- Reuters, April 4, 2012, available at: <https://www.reuters.com/article/us-syria-ceasefire-idUSBRE8330HJ20120404>

56- For more information, see Tammam Abu al-Khair, Timeline: Paths to a Political Settlement to a Solution in Syria, Noon Post *مسارات التسوية السياسية للحل في سوريا*, interactive content published on 03/18/2021, available at: <https://www.noonpost.com/content/40047>

57- op cit.

58- op cit.



political settlement or help pave way for its adoption.

The PCG paper on mass graves⁵⁹ includes a legal framework at the national level requiring that graves be opened in a professional manner that allows for identifying the victims, determining the circumstances of death and collecting the necessary forensic evidence to prosecute those responsible. A political settlement must address the issue of mass graves containing the remains of tens of thousands of Syrians and non-Syrian citizens⁶⁰.

The political settlement remains worthless and unenforceable unless it results in a real political change that paves the way for building rule of law State. Such a change requires the repeal of all Syrian laws that criminalize opposition and human right practices, as well as laws that perpetuate discrimination among citizens and that violate human rights⁶¹. It also requires the application of the principle of separation of powers and citizens' involvement in the decision-making process through free and fair elections. In this context, all state institutions, especially the judiciary and security, should be restructured and reshaped on democratic grounds, guaranteeing the rights and freedoms of people and non-recurrence of conflicts and violations in the future. At the same time, it should also contribute to the implementation of a political settlement and addressing the issue of the missing.

59- PCG paper "Adressing the Issue of Mass Graves in Syria", 2022, available on the ICMP website: <https://www.icmp.int/wp-content/uploads/2022/10/pcg-016-1-W-doc-addressing-the-issue-of-mass-graves-in-syria.pdf>

60- For more information, see the report of the International Commission on Missing Persons, "Missing Persons in Northeast Syria: a Stocktaking", 25 March 2020, pp. 9 and beyond, available at: <https://www.icmp.int/wp-content/uploads/2020/05/icmp-gr-mena-065-6-w-doc-stocktaking-missing-persons-in-north-east-syria.pdf>

61- Syria: Towards addressing the issue of the missing, previous reference, p. 8 and beyond.



The international character of the Syrian conflict, in which international, regional, state and non-state actors have been involved, requires these parties to take the initiative and provide supportive guarantees for the steadfastness of a political settlement and ensure its proper application in the future. Such interference certainly depends on the goodwill of such parties, most of whom continue to prioritize their political-economic interests above any other consideration, including humanitarian matters directly related to the suffering of the Syrian people. Moreover, achieving such a settlement requires reaching a consensus among international and regional stakeholders influencing the Syrian case, although such a consensus does not seem possible in the foreseeable future.

The issue of missing persons should not be used as a bargaining chip in any current or future negotiations; it is a human issue beyond all political considerations and interests. In this context, pressure must continue on the parties to the conflict to achieve progress towards releasing the political detainees from prisons and detention centres and revealing the fate of the missing, pending a final political settlement that would pave the way for a comprehensive and thorough treatment of the issue of the missing. It is hoped that the newly established "Independent Institution on Missing Persons in the Syrian Arab Republic", which was established last year, will contribute to addressing the issue of the missing⁶².

62- It was established by the United Nations General Assembly through its resolution on June 29, 2023, Resolution A/77/L.79.



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WWW.HARMOON.ORG



Harmoon Center for Contemporary Studies

Doha, Qatar:

Tel. (+974) 44 885 996

Istanbul, Turkey:

Tel. +90 (212) 813 32 17

Tel. +90 (212) 542 04 05 PO.Box: 34055