

# BEFORE IT IS TOO LATE

A Joint Document on the Issue of Detention in Syria  
A Group of Syrian Human Rights Organizations



Brief Edition

This document is a description of the content available in a 60-page Arabic document recently published by this group of civil society organizations.

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## What?

Before It is Too Late is a framework document that examines the various aspects of the issue of detention in Syria and offers practical proposals on how to address this issue within a set of legal and human rights parameters. This is a living, non-final document and a joint project, which shall not be owned or used by any one party; rather, it is intended to serve detainees in Syria.

## Why?

This document provides a modest reference for Syrian and non-Syrian politicians, legal and human rights experts, and all those concerned with detention in Syria on various political and legal levels. This document has come as a response to the urgent need for information to dispel the ambiguity surrounding the issue of detention in Syria, simplify the complexities, and communicate the concerns of detainees' families and Syrian society at large in a way that offers some expertise that may contribute to addressing this issue. Towards that end, the working group was keen on including the necessary simplified legal background and making use of practical field experience.

## Who We Are?

We are a group of Syrian human rights organizations who have worked jointly on developing the first edition of this document. We seek to include more organizations in the future to develop a more comprehensive and informative document.

## **Introduction**

Despite the great complexity of the conflict in Syria, its protracted nature, and the multiplicity of actors, the issue of detention can be said to be one of the most complex and critical aspects of this conflict.

Notwithstanding the stalemate in the course of political negotiations, addressing the issue of detention is urgent and must not be delayed. The idea of this document is to develop a reference that tackles the various aspects of detention in Syria and explores the approaches that may be effective in addressing it.

This document is the product of more than four months of joint efforts by Syrian human rights organizations who wanted, through this initiative, to contribute to illuminating the long road towards resolving the issue of detention in Syria. However, these joint efforts date back much farther, as these organizations took part in finding common ground among civil society organizations working on the issue of detention, and coordinated policies and positions at various turning points in the conflict. This effort will continue in developing this document and issuing new editions, as this is a living non-final document and an open project for legal and human rights experts, activists, and politicians concerned with detention in Syria who would like to join this project, adopt this document, and offer feedback and contributions to future editions. This edition focuses on state responsibility regarding detainees and the violations perpetrated against them. While violations perpetrated by other parties in the context of the conflict are recognized, these will be addressed in detail in future editions.

## **Purpose**

This document aims to provide a reference for Syrian and non-Syrian politicians, legal and human rights experts, and all those concerned with detention in Syria on various political and legal levels.

This document has come in response to the urgent need for information based on technical legal knowledge combined with practical field expertise against the backdrop of addressing the issue of detention in various political tracks and fora.

The hope is that this document will offer assistance to all those working on this issue and ensure that there is a uniform approach regardless of the body or track in which it is addressed.

## This Document:

- Provides an overview of the issue of detention from various angles
- Indicates relevant international laws and resolutions
- Reviews the history of the issue of detention in parallel with political tracks to date
- Summarizes obstacles and challenges
- Proposes strategies and appropriate approaches
- Examines the position of detainees in the anticipated peace agreement
- Is a living document which will be reviewed and developed continuously



## This document is **NOT**:

- × A detailed legal reference
- × A final unmodifiable strategy
- × A substitute for continuous coordination and joint action among all stakeholders in parallel with political tracks





## Legal Background

This section addresses detainees in the context of both international law and Syrian law including:

- ◆ The International Covenant of Civil and Political Rights
- ◆ The Universal Declaration of Human Rights
- ◆ The Geneva Conventions
- ◆ The Convention Against Torture
- ◆ Customary international human rights and humanitarian law

It further explores some of the relevant international bodies including:

- ◆ The Working Group on Arbitrary Detention
- ◆ The Working Group on Enforced or Involuntary Disappearance
- ◆ The UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- ◆ The UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Execution
- ◆ The International Committee of the Red Cross

In addition, this section summarizes how the issue of detention was tackled in Security Council resolutions on Syria, particularly UNSCRs 2041 (2012), 2118 (2013), 2139 (2014), 2191 (2014) and 2254 (2015) as well as UNSCRs 2268 (2016), 2332 (2016) and 2401 (2018).

## Detainees Under Syrian Law

The Syrian government uses the law itself to violate the most basic rights and freedoms. Laws and legislative decrees promote impunity and empower oppressive apparatuses by granting security personnel immunity against prosecution for crimes committed in the course of upholding their duties, impeding the independence of the judiciary, and undermining the separation of powers.

This section reviews the history of repeated and systematic legal violations since the beginning of Baath rule and the imposition of the state of emergency, including the malicious accusations and loose legal texts by which Syrian political prisoners are tried. In addition, it addresses extraordinary courts, which do not uphold the guarantees to a fair trial, as well as the laws and decrees that preclude criminal accountability and promote a culture of impunity.

## **Detention and the Political Track: A Historical Review**

Although almost all of the various political tracks have attempted to tackle the issue of detention in the Syrian conflict, no significant progress has been made. These include the Geneva Communique, all negotiation sessions held in Geneva, the Astana track, and activities of the Civil Society Support Room established during the course of the intra-Syrian talks in Geneva.

As we embark on developing a new vision for resolving the issue of detention, we realize the importance of lessons learned from past experiences, particularly for building confidence and taking measures necessary to ensuring the safety of detainees.

## **Methods of Circumventing the Issue of Detention in Syria**

The Syrian government deliberately uses procrastination and denial to evade international agreements concerning humanitarian issues in general and detainees in particular.

In an attempt to align itself with global counter-terrorism policy and to restore its legitimacy internationally, the Syrian government has used various approaches to frustrate the issue of detention in Syria during negotiations. These include:

- 1- Denying of the presence of prisoners of conscience and branding them as terrorists
- 2- Utilizing extraordinary courts for “security reasons”
- 3- Demanding lists of detainees’ names from the opposition
- 4- Transforming the issue into prisoner exchanges and ignoring legal protections of civilian detainees
- 5- Excluding many detainees from amnesty decrees

## **Detainees in Peace Agreements**

This section reviews the experiences of other countries, such as Colombia, Bosnia and Herzegovina, and Palestine, and the lessons learned from their experiences in integrating issues of detention into peace agreements.

## **Proposed Approach**

Detention in Syria must be approached very cautiously and actors should develop strategies to counter the Syrian government's tactics, duly prioritize the issue of detainees, and work with the international community to pressure the Syrian government to meet its international obligations.

## **General Objectives**

- ◆ Seeking to achieve as many demands as possible for detainees and working towards their release regardless of the political arrangement and irrespective of the negotiation process.
- ◆ Final political arrangements shall include terms and guarantees necessary to accomplish all that is not achieved during negotiations
- ◆ A mechanism that is both practical and legal must be established to shed light on the fate of missing and forcibly disappeared persons, alleviate the burden on the nascent state, meet the needs of victims' families, and guarantee their right to truth.
- ◆ The foundations for accountability and transitional justice mechanisms must be laid.
- ◆ Drastic institutional reformation to the legal and security apparatus must be introduced in order to put an end to human rights violations, impunity, and to ensure non-repetition.
- ◆ A mechanism that is both practical and legal to rehabilitate survivors, integrate them into society, engage them in justice mechanisms, and enable them to play an active role in the future of their country must be guaranteed

## **General Principles**

- ◆ The issue of detainees is a humanitarian, non-negotiable issue.
- ◆ The urgent measures needed to protect detainees are only a step towards more long-lasting change
- ◆ There is no peace without justice and no justice without accountability

## **Recommendations on Most Vulnerable Detainees**

The requirements of the most vulnerable detainees, including women, children, and persons with disabilities, can be put into two categories:

- ◆ Urgent measures
- ◆ Long term demands

## **General Recommendations**

### **Establishing a timeframe**

- ◆ Urgent demands: These include the most urgent and immediate needs that must be addressed by means of confidence building or establishing good faith among the parties. No advanced steps shall be taken before these demands are met.
- ◆ Medium-term demands: These include the detailed steps that would address as many aspects of detention as much as possible before reaching, or regardless of, progress towards final political arrangements. Work on these measures may take place in parallel with the political track.
- ◆ Long-term demands: These include the drastic structural changes needed in the legal system that perpetuate impunity. This is necessary to ensuring that human rights are upheld, penal institutions are reformed, and the rights of victims of war are guaranteed, including those of detainees and forcibly disappeared persons. Such changes and guarantees must be enshrined in the final political arrangements.

### **Utilizing sanctions as leverage**

### **Utilizing reconstruction as leverage**

## **General Parameters for Detention-related Provisions in Final Political Arrangements**

### **Provisions related to detainees must fulfil the following criteria:**

- ◆ Using clear and specific language to avoid multiple interpretations and ambiguity
- ◆ Defining detainees who must be released using specific criteria rather than numbers
- ◆ Introducing guarantees regarding detainees who remain in prisons, detention facilities and secret detention centers when the final agreement is signed and in the first days of transition
- ◆ Respecting relevant international laws



This is the collaborative work of:

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