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## Tackling the Impunity Gap in Syria Detainees and Disappearances

Tens of thousands of individuals have been arbitrarily or unlawfully detained in Syria, and in many cases forcibly disappeared, since civil war broke out in 2011. In recent months, while some of their families have come to know of their deaths, many questions remain unanswered. This article warns of the “impunity gap” that is likely to arise from this situation, and gives practical recommendations for obtaining justice for victims and survivors.

### About the Author

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The bloody war in Syria, in which all parties to the conflict have shown a total disregard for civilian lives, took an ugly turn in June 2018 when families began finding out that their detained loved ones—some not seen since the early days of the uprising in Syria and presumed forcibly disappeared by the state—were dead. The silence of the Syrian state on the issue of the detainees has finally been broken but the inhumane manner in which families are being informed beggars belief. Many questions remain unanswered, including how many and how have they died, where the remains are, and for those who remain alive, their whereabouts.

### The issue of the detainees and the disappeared

The war in Syria began with non-violent protests in March 2011 and quickly descended into a bitter non-international armed conflict once the state, aware of the changes happening in Tunisia, Egypt and Libya, resorted to brutal force. The situation has since been further exacerbated as the number of parties to the conflict has morphed (including the involvement of pro-government outside forces, anti-government armed groups and terrorists, and a variety of regional and international state actors and sponsors).

So far, several hundred thousand civilians have been killed, more than 6 million internally displaced, and more than 13 million in need of humanitarian assistance. The number of Syrians who have fled their country is now above 5.5 million.

Tens of thousands of individuals are arbitrarily or unlawfully detained, primarily by government forces and affiliated militias in official and makeshift detention centers, without due process or access to legal representation or to

their families. They endure various forms of brutal torture and subsist in severely inhumane conditions. Many have died in detention as a result of mistreatment or neglect, while others have been summarily executed. The remains of those who have died are rarely returned to their families, who are also not notified about how the bodies are disposed of. As the number of detainees has grown, so too have the unofficial and secret places of detention these individuals are held in. As a result, the whereabouts of tens of thousands of detainees remains unknown and unacknowledged by the state. The [Syrian Network for Human Rights](#), in a report issued in July, says it has collected the names of some 82,000 Syrians it believes have been forcibly disappeared by the state. The fears are that many may no longer be alive.

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The issue of the detainees and the missing has been on the agenda of the Geneva political talks brokered by the United Nations (UN) between the Syrian government and its opponents. It gathered further momentum in December 2017 when a [working group](#) on the issue was created, as part of the eighth round of de-escalation talks in Astana, Kazakhstan, comprised of the three guarantor states, Iran, Russia, and Turkey, with the UN represented through the office of the Special Envoy Staffan de Mistura, and the International Committee of the Red Cross (ICRC) attending as an observer and resource. In March this year, the UN Independent International Commission of Inquiry on the Syrian Arab Republic issued a policy paper highlighting the issue and recommending a number of urgent steps including releasing those most vulnerable—children, women, the elderly, and the infirm—providing lists of the names of those in detention, and allowing access to all official and unofficial places of detention.

All of this has seemingly set the stage for what came next, which took many by surprise.

## The silence is finally broken

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The families of brothers Yahya and Muhammad (Aka Ma’an) al-Sharbaji, Islam Dabbas and brothers Majd and Abdul Sattar al Kholani (dubbed by the [Syrian Center for Media and Freedom of Expression](#) as “the peaceful knights”)—are in mourning having learned over a few days in July that all are dead. All come from Darayya on the outskirts of Damascus, were involved in the peaceful protests that spread across Syria beginning March 2011, and were detained at different times between July and September 2011. This was in a period well before the protests turned violent, the Free Syrian Army was born, or the

extremist groups and the international actors became directly and militarily involved. They were simply protesting peacefully. A harbinger as to their likely fate might have been surmised when the remains of [Ghiath Matar](#), who had been detained with Yahya and Ma'an on September 6, was returned to his family on September 10 bearing marks of torture. Still, the fact that they remained alive in 2011 and some were even seen in 2012 gave hope that one day they would be released.

The first inkling relatives had that the state was beginning to divulge information on the deaths of detainees came through the civil registry offices (Dawaer al Nufus). A relative was routinely renewing family documentation when he was informed that his missing relative was deceased and he could now apply for a death certificate. As news spread, more families went to check, and the numbers began to grow.

#### Cause of Death

In general, the registries do not usually contain information on causes of death, which should be on the death certificate, and the process that is unfolding now in Syria seems to be working backwards. Normally, families go the registry office with a death certificate in hand that they want to register. Now they are going to the registry offices to check if the deaths are recorded and if so they could obtain the certificates. Relatives who have asked about cause of death were either informed "reasons unknown" or natural causes, such as heart failure, kidney infection, etc. In some cases, the reason given was execution, meaning the relative may have been tried by a military field court and sentenced to death. In all cases, a date of death was included—most of them, tellingly, between 2013 and 2015.

Islam Dabbas (mentioned above) was a student at the faculty of architecture. He was arrested July 22, 2011, and was seen by his [sister](#) on November 13, 2012, in Saydnaya military prison near Damascus. He asked her to bring him clothes and food. He was never seen again.

Soon it became evident that lists had been sent to several civil registry offices across the country to update their records and inform the families. Initially the office in Mu'adamiya al-Sham (near Darayya) received 165 names; Hama had 120 names; Hassakeh was sent several hundred names; and Homs around 300.

Other offices were to follow, and further lists were also being dispatched to supplement the first batch. This was happening all over the country, so the ways families were being informed differed by location and sheer numbers. In some cases, the lists were pinned on the walls of the registry office, in other cases, families were directly informed by phone to come obtain their certificates, and in others, they only learned when visiting the registry for some other business.

Going back to Darayya, the civil society committee that is coordinating efforts on behalf of the families of missing relatives says it has obtained a list of 950 to 1,000 names of deceased sent to the registry, and ominously, has been informed a second list is on its way. Apparently, 2,800 to 3,300 Syrians have been detained from Darayya, so families are understandably apprehensive. In the cases of the Sharbaji brothers, it seems that Yahya was executed on January 15, 2013 (as were a number of others, including the al Kholani brothers and Islam Dabbas), in Saydnaya prison. Ma'an is listed as having died on December 13, 2013, in detention; reasons unknown.

#### **Death of the “Man with the Roses”**

[Yahya al Sharbaji](#), born in 1979, was a long-time activist involved in non-violent civil society activism including “the Peaceful Youth of Darayya.” He led student protests against corruption and for cleaning up the streets that landed him in prison in 2003 for violating emergency laws that prevented freedom of assembly. He was sentenced to four years at the military prison in Saydnaya. With the start of street protests and demonstrations in March 2011, he was one of the founders of the Local Coordination Committees. Soon after the 2011 uprising, Sharbaji became known in Darayya as “the man with the roses” for his idea that protesters should give flowers to the members of the security forces. He is quoted as saying, “We will insist on peacefulness until we build a new Syria without violence and build a state that can solve its internal problems with reason, not with weapons with which the Assad regime uses to solve its problems with the people. When we offer flowers to the army and police, we provide them to ourselves in the first place.”

He was detained by Syrian air force intelligence on September 6, 2011, and died on January 15, 2013 (presumed hanged).

In a report issued in February 2017 Amnesty International described Saydnaya prison as a [“human slaughterhouse.”](#) and reported on mass executions happening at a rate of once or twice a week of groups ranging between 20 to 50 people. “The killings have taken the form of mass hangings. Before they are hanged, the victims are condemned to death in ‘trials’ at the Military Field Court located in the al-Qaboun neighbourhood of Damascus, which last between one and three minutes.” A former detainee remembers executions usually taking place in the evenings on Tuesdays. January 15, 2013, the date Yahya al-Sharbaji, Islam Dabbas, and the al Kholani brothers Majd and Abdul Sattar are listed as having died, happens to be a Tuesday. The time of death in the registry is [10pm](#).

The Amnesty International report also highlights the systematic denial of food and medicine to detainees in a deliberate policy of starvation to death, and many succumbed to their fate in this way. Tragically, perhaps this may have been the fate of Ma’an al Sharbaji.

Information about large numbers of detainees being routinely killed by the state in Syria is not new. Evidence had emerged in 2014 when a defector code named [Caesar](#)—a photographer in the military police whose job was to photograph and record the deaths of detainees—fled Syria and released over 28,000 photographs showing at least 6,786 detainees who had died.

For families to find out about the fate of their loved ones in this manner is a cruel twist in a conflict that is littered with war crimes and crimes against humanity. It is true families have been looking for the flimsiest of evidence that their loved ones are still alive or to know where they were buried if they had died. To be informed, however, in such a callous way and without any further details on how they died, where they are buried, etc., cannot but add to the pain and sense of injustice.

The [wife](#) of Bassel Khatabil, who was taken away on October 3, 2015, summed it up when she recently learned that he had died just two days later: "There's no going back. For more than two years I fought to know his fate. Now I'll be fighting my whole life to get his body."

## Why is this happening now?

Some, including the distraught families and the seasoned rights activists, see it as a signal from the Syrian government that the regime is back in charge and is immune to outside accountability pressures—so it does not fear any repercussions for revealing that many of those missing or disappeared are no longer alive. For them, this is yet another example of the failure of the international community to come to their aid despite the mounting evidence of war crimes and crimes against humanity. They are pessimistic about what may

come next. Others see this as a step taken under pressure from the Russians to begin resolving the file of the detainees and the missing, something that is at the political settlement table as part of the Astana process. The working group set up to look into this issue has met three times and progress has been slow, including on issues to do with exchanging lists of names of those detained. Additionally, some commentators believe resolving the issue of the detainees and the missing may in some way be part of a package that is linked to efforts to resolve the refugee question, to begin reconstruction in earnest, and to move forward on constitutional reform and elections. As has been the pattern in Syria, to move forward on one aspect requires some progress on at least one other—and no one seems capable of holding all the strings.

Whatever the reasons, and tragic as it is for relatives to be now hearing about the deaths of loved ones, there are also important practical outcomes for the families that the state must be aware of and perhaps has planned with them in mind. Obtaining a death certificate enables widows, for example, to move forward with resolving important daily life issues, often in dispute, such as rental leases, re-marriages, property rights, husbands' pensions, inheritance, etc. Many of these issues cannot be sorted out without formal proof of death and have created immense hardships for many families. Perhaps the state is calculating that by resolving these “bureaucratic” blockages the population may begin to return to some form of normality. If they accept the death certificates—and some may not—families may be able to move on with their daily lives even if they may not be able to do so in terms of their grief and demands for justice and accountability.

## **Tackling the “impunity gap”**

It is abundantly clear that no progress can be made in reaching a political settlement and a lasting peace in Syria without tackling the justice-based needs of Syrian victims and survivors. Yet, in the best-case scenario, only a small number of cases—those who bore the greatest responsibility—will likely be prosecuted and punished.

One of the main challenges in post-conflict societies is how to overcome this “impunity gap,” and experiences from around the world have shown that a range of other judicial and non-judicial measures to address lower-level perpetrators—and the needs of victims—should accompany criminal prosecutions of those most responsible for serious crimes (the architects).

In the Syria context, the issue of the detainees and the missing lends itself to such measures. While victims and survivors crave accountability for the crimes they have endured, they also need immediate tangible forms of justice. That includes, among other things, learning the whereabouts of their missing loved ones who are alive and obtaining their release; receiving reparation for the

horrific abuses endured in detention; being allowed to bring closure by knowing where deceased relatives are buried and perhaps even ceremonially reburying them; and ensuring secret places of detention are closed down and never used again to torture or disappear by dismantling them or turning them into establishments that benefit the community.

So, in light of what has been happening these past few months in Syria, the following steps may go a long way to tackling the impunity gap and obtaining justice for victims and survivors.

First, the families of those who have died in detention have an absolute right to the truth, to know what happened to their loved ones and, even more important, where the remains are. They should be allowed closure by being informed about the location of the remains of their loved ones and be permitted the opportunity to pay their last respects, perform appropriate ceremonies and rites, including if possible conducting reburials.

Second, if the deaths are a result of crimes (and this can range from torture to criminal neglect—there are abundant stories of detainees dying as a result of lack of food or medicine), then those responsible should be held accountable. Given the sheer numbers this may require a nation-wide process and should not be left for individual families to pursue alone.

Third, the fate of those still alive and whose whereabouts are unknown should be made public without delay. Families should be allowed to visit as well as an independent humanitarian organization, like the ICRC. If the state can show no legal justification for their continued detention, they should be released immediately.

Last, a national reparations mechanism needs to be established to assess harms done, receive complaints, and provide appropriate individual or communal reparations, be they financial or in other forms.

Some of the above steps, such as accountability (which may take several forms in the future) or reparations may seem difficult to attain today, and will depend on the extent to which a transition happens in Syria and whether there is political will to tackle these issues. In other countries, the UN and the international community have provided much needed support. Regardless of whether this can happen soon or in due course, these are rights and obligations that will not go away and, if not promptly attended to in an impartial and transparent way, they will fester and grow to undermine any efforts at achieving a sustainable peace in Syria.

Other steps, such as releasing or locating the whereabouts of those detained, can and should happen very quickly. Doing so, after delivering the tragic news of the deaths, is the minimum that the families would now need and could help

tremendously in improving the environment for the difficult political settlement talks that lie ahead.

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