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Human rights situations that require the Council's attention

Written statement* submitted by Cairo Institute for Human Rights Studies, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[23 May 2022]

* Issued as received, in the language of submission only. The views expressed in the present document do not necessarily reflect the views of the United Nations or its officials.

Civil Society Urges States to Ensure the Creation of an International Independent Humanitarian Mechanism for the Missing

Acts of torture and ill-treatment have been the hallmark of Syria for long decades. Prior to 2011, the Syrian government systematically used torture and ill-treatment as tools to suppress its opponents.[1] The situation has not changed since 2011. In contrast, the use of torture has become more systematic and widespread along with enforced disappearance, amounting to crimes against humanity[2]. The photos leaked by a defected military photographer from the ranks of the Syrian army, code-named "Caesar", showed thousands of corpses of victims in detention centers whose bodies show signs of torture.[3] The widespread use of enforced disappearance has touched upon almost every family in Syria, who, after a decade, are still looking for answers about their loved ones.

On 29 March 2022, the Syrian government issued Law 16/2022 aimed at criminalizing acts of torture in the Syrian domestic legal system. [4] However, the law fails to genuinely comply with the Convention against Torture, and it exploits human rights language in order to whitewash ongoing crimes and persisting impunity. Indeed, the new law has several huge shortcomings, including:

- The law does not address the other forms of ill-treatment, inhuman and degrading treatment, and punishment that are widely used against detainees in Syrian detention centers.

- The law does not end the impunity currently enjoyed by the army, internal security forces, and general intelligence that is granted by other national law provisions for the crimes they may have committed on duty. All of these provisions require the approval of either their superiors in charge or the Police Disciplinary Court affiliated with executive power before a criminal complaint can be brought against them and an investigation can be conducted, which results in de facto impunity. [5] No step has been taken by the Syrian government to annul these provisions and any efforts toward criminal accountability will continue to be blocked.

- The law fails to protect the victims' rights to remedy and reparations as well as guarantees of non-recurrence through criminal courts. Although victims can access compensation through civil claims, they face a number of obstacles, including a three year statute of limitation and the requirement on victims to meet the burden of proof. [6]

On 30 April 2022, the Syrian government issued an amnesty decree for those accused of acts of terrorism, and around 470 people have been released, some of whom had disappeared for more than a decade. [7] A declaration of amnesty is an insufficient measure to address the magnitude of the tens of thousands of people detained and disappeared in Syria. The granting of amnesty also fails to address the multitude of charges used against detainees in Syria, which are not limited to terrorism crimes.

Moreover, the Syrian government's amnesty announcement and the release procedures only created more pain, and confusion for families who have been waiting for more than a decade. Rather than releasing a public list of names of individuals to be released or informing family members, the Syrian government simply transported detainees to the middle of Damascus and left them there. The released detainees had no knowledge of how or means to contact their families. Families had no way to know if their loved one may be among the crowd of individuals dropped off in Damascus. This situation was made worse for the millions of Syrians living outside the areas under the control of the Syrian government, who faced insurmountable challenges to have access to information.

The call for a humane and dignified approach to detainees and disappeared has become even more timely and necessary. On 28 April 2022, evidence of a massacre in the

Damascus suburb of Tadamom in 2013 was brought to light. [8] Several families were able to identify their loved ones in the videos only to find out after nine years of waiting that they had been executed in 2013. [9] As previously occurred with the release of the Caesar pictures, families had to look through graphic footage and evidence to know about the fate of their loved ones, praying that they will not see them on screen. Once again, the search for the missing has fallen on the shoulders of families, exacerbating their existing trauma and suffering.

Syrian families and survivors of detention have been calling for the creation of an independent international humanitarian mechanism to address the detainees and disappeared crisis in Syria, with the support of the International Committee of the Red Cross, the UN Working Group on Enforced or Involuntary Disappearance, the UN High Commissioner for Human Rights and the Commission of Inquiry on Syria. [10] Only through such a mechanism, can detainees, the disappeared, and their families have access to their rights to truth and freedom.

In light of the aforementioned, our organisations urge the Member States of the Human Rights Council to:

- To ensure the establishment of an international independent humanitarian mechanism for the missing in Syria in order to coordinate the search for the disappeared and the release of detainees.
- Urge the Syrian government to abolish immunity provisions that violate the rights to justice and redress of Syrian victims of torture and prevent genuine guarantees of non-recurrence and end to the use of torture.
- Call for an end to violations in Syrian detention centers and demand the Syrian government to fulfill their obligations on the right to truth for families of disappeared, including the release of detainees in a dignified manner, the right to information of families, and the access of humanitarian organizations to all places of detention.

Syrian Legal Development Programme (SLDP); Ta'afi Initiative; Caesar Families Association; Coalition of Families of Persons kidnapped by ISIS - Massar; Association of Detainees and the Missing in Saydnya Prison, NGO(s) without consultative status, also share the views expressed in this statement.

[1] Amnesty International, 'Amnesty International Briefing: Syria' (1979) MDE 24/004/1979, 12-13; You can also view Amnesty International, 'Syria: Torture, Despair and Dehumanisation in Tadmur Military Prison' (Amnesty International 2001) MDE 24/014/2001

[2] See, Human Rights Council, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic (February 2022), UN Doc A/HRC/49/77

[3] Human Rights Watch, 'If the Dead Could Speak: Mass Deaths and Torture in Syria's Detention Facilities' (2015).

[4] Law No. 16 of 2022, available in Arabic at:

<http://parliament.gov.sy/arabic/index.php?node=5516&cat=22943&>

[5] If acts of torture were committed by members of the Army or the Military Intelligence Division, prosecution cannot be initiated without an order issued by the Commander in-Chief of the Army or the Chief of Army Staff (Legislative Decree no. 61 of 1950, Military Penal Code, available in Arabic at: <http://www.parliament.gov.sy/arabic/index.php?node=5585&cat=11811>). If acts of torture were committed by General Intelligence Department members, Legislative Decree 14/1969 establishing the General Intelligence Department stipulates in Article 16 that it is not permissible to prosecute members without the approval of their superiors. If acts of torture were committed by the police and Internal Security Forces, their acts would not fall under the jurisdiction of the criminal court unless the Police Disciplinary Court decides so, and will only be liable for disciplinary penalties (Legislative

Decree no. 1 of 2012, the Internal Security Forces Service Law, Art 23(1-a), Art 118(2) and 120(1,2), available in Arabic at: <http://www.parliament.gov.sy/SD08/msf/M1-2012pdf.pdf>.

[6] Syrian Civil Code no.84 (1949), Article 173

[7] Syrian Network for Human Rights, “The Syrian Government Has Released 476 People Under Amnesty Decree 7/2022 and Is Still Detaining Some 132,000 of Those Arrested Since March 2011”, 16th May 2022

[8] The Guardian, “Massacre in Tadamon: how two academics hunted down a Syrian war criminal”, 27th April 2022

[9] The Guardian, “He ran in a familiar way: heartbreak as families identify Tadamon victims”, 6th May 2022

[10] Cairo Institute for Human Rights Studies, “Syria: Crisis of Detained and Disappeared Must be Addressed by UN Member States,” 5 July 2021, at: <https://cihrs.org/syria-crisis-of-detained-and-disappeared-must-be-addressed-by-un-member-states/?lang=en>