

FURTHER EVIDENCE OF THE ASSAD REGIME'S CONTINUING
CRIMES AGAINST HUMANITY:
An LDHR Legal Analysis of the Assad Regime's Death Notices

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The 'Death Notices' provide further significant evidence the ongoing criminal responsibility of the Assad Regime for Crimes Against Humanity (unlawful imprisonment, torture, murder, extermination and enforced disappearances).

The Assad regime has recently released a large number of 'death notices', changing entries in civil registries to indicate that many forcibly disappeared detainees died years ago. The numbers reported are between 500 to more than 3,000 by the end of July 2018.¹ Many of the notices detail similar dates of death,² and for the few that note cause of death, those noted are improbable.³ None provide any explanation of the whereabouts of the person's remains or the circumstances of death.

Given what is known about the widespread systemic torture within the detention centres and the life threatening health conditions, the causes of death are almost certainly false or at least do not reflect the full cause or responsibility of the deaths.⁴ In the past, death certificates were sent to family members and some turned out to be false – a method to further terrorise and traumatise opposition figures' families and associates.⁵

By changing the civil registries, the regime has brazenly added to and confirmed the overwhelming body of evidence proving widespread and systematic torture, sexual violence, enforced disappearance and extermination of the regime's political opponents.⁶

The orders to change civil registry entries to show the status of an individual as deceased provides further evidence of the following:

1. Officials within the Assad government have knowledge of the date of death and fate of the disappeared, which includes men, women and children.
2. The bureaucracy and leadership of the Assad regime have been engaged in these deaths (at least *post mortem*) in order for them to have the information, undertake the paperwork and processing, and to order the change in status at the civil registries.
3. There is a clear connected inference that the person was in the control of Assad officials/agents at the time of death in order for them to have the information to confirm and process deaths.
4. The same date of death on a number of notices strongly infers a non-natural event causing the death on multiple persons at the same time.
5. State refusal to provide information on the fate and whereabouts of the person is demonstrated by the delay between dates of death and notices, and the false and/or inadequate information provided in the notice/change of status orders.
6. The number of notices evidences both scale (at least thousands) and knowledge of that scale among the regime officials.

¹ SNHR 532 notices; Syrian Committee for Detainees 3,027, Anwar Al Bounni over 3,000 by 1 August 2018: The Atlantic, A Cruel Epilogue to the Syrian Civil War, 15 August 2018. <https://www.theatlantic.com/international/archive/2018/08/lists-of-dead-in-syria-assad/567559/>

² Notices for four young activists arrested in Daraya in 2011 all have the same date of death as 15 January 2013.

³ HRW, Syria's Bureaucracy of Death and the Fate of the Disappeared, 30 July 2018 <https://www.hrw.org/news/2018/07/30/syrias-bureaucracy-death-and-fate-disappeared>

⁴ For example, UN Commission of Inquiry for Syria (UNCOI), *Out of Sight, Out of Mind: Deaths in Detention in the Syrian Arab Republic*, UN Doc. A/HR/31/CRP.1, 3 February 2016; Amnesty International, *Syria: Human Slaughterhouse: Mass Hangings and Extermination at Saydnaya Prison, Syria*, 7 February 2017, Index number: MDE 24/5415/2017, available online at <https://saydnaya.amnesty.org> (visited 1 April 2017); Human Rights Watch (HRW), *If the Dead Could Speak? Mass Deaths and Torture in Syria's Detention Facilities*, 16 December 2016; LDHR, *Voices from the Dark: Torture and Sexual Violence Against Women in Assad's Detention Centres*, July 2017; Amnesty International, *Between Prison and the Grave: Enforced Disappearances in Syria*, November 2015.

⁵ See Amnesty International, *Between Prison and the Grave: Enforced Disappearances in Syria*, November 2015, p.50 (prior false death certificate when person still alive), p.43 (prior false death certificate with implausible causes of death).

⁶ Supra, fn.5.

7. The distribution of notices across governorates also evidences both the widespread nature, and again knowledge of that widespread nature among regime officials.
8. The notices relate to civilians including activists, pacifists, women and children.
9. Those patterns (scale and distribution) and the notice process indicate a widespread and systematic against a civilian population (and again knowledge of that).

The Crime of Enforced Disappearance will continue until the remains are recovered and identified.

Under international law, enforced disappearance only ends upon the location and forensic identification of remains. There is clear case law from the Inter-American Court of Human Rights (IACHR) that forensic identification of recovered remains demarks the end of enforced disappearance.⁷ Death notices are not sufficient and are not regarded as having any relevance to the cessation of this crime.⁸

In the case of Ibsen Cárdenas and Ibsen Peña v. Bolivia,⁹ the IACHR held “the constitutive elements of forced disappearance are permanent as long as the whereabouts of the victim are not known or his or her remains have not been located [...]. However, [...] a State’s obligation is not limited solely to the act of finding the remains of a particular person; logically, this act must be accompanied by evidence or analyses to corroborate that, in fact, the remains belong to that person. Therefore, in cases of alleged forced disappearance where there are indications that the alleged victim has died, the determination of whether a forced disappearance existed and has ceased, if applicable, necessarily involves establishing, irrefutably, the identity of the individual to whom the remains belong. Thus, the appropriate authorities must carry out a prompt exhumation of the mortal remains so that they may be examined by a competent professional. Exhumations must be carried out in a manner that protects the integrity of the remains collected in order to establish, if possible, the identity of the deceased, the date on which he or she died, the manner and cause of death, and the existence of possible injuries or signs of torture.”

In that case, the victim had been arrested in 1971. There had been newspaper reports of his death, an official notice and a death certificate issued in 1972. Remains had been exhumed in 1983, but were not identified until 2008. The Court found the identification date in 2008 as the end of date of the disappearance.¹⁰ The remains of the father, who was disappeared while trying to locate his son, were

⁷ See also, Blake v. Guatemala, IACHR Judgement, 24 January 1998 para.52(b) (cause of death and location of remains traced in 1987 but remains relocated before could be recovered, identified in 1992 when the disappearance ceased; Heliodoro Portugal v. Panama, IACHR, Judgement 12 August 2008 (remains found in 1999, genetically identified in 2000 when the disappearance ended), para.34; Osorio Rivera and Family v. Peru, IACHR Judgment of 26 November 2013, Series C No. 274, para. 31; González Medina and family members v. Dominican Republic, Judgement 27 February 2012, paras.50-51; The Case of The Río Negro Massacres v. Guatemala, Judgement of 4 September 2012, paras.112-113, 125-126; Gudiel Álvarez et al. (“Diario Militar”) v. Guatemala, Judgment of 20 November 2012, Series C No. 253, paras.42, 183, 195. “**The Court recalls that the permanent nature of forced disappearance means that it continues until the whereabouts of the disappeared person are known and his or her identity is determined with certainty. With regard to the instant case, the Court notes that the remains of Amancio Samuel Villatoro and Sergio Saúl Linares were identified in November 2011 (supra paras.42 and 183). As of that moment, the forced disappearance of these two individuals concluded.** However, as acknowledged by the State, this does not affect the classification as forced disappearance of the acts perpetrated against them over the time they were disappeared; in other words, from February and March 1984 to November 2011. **Regarding the other 24 victims, their disappearance has not yet ceased, because their whereabouts or fate is still unknown.**” (emphasis added) It should be noted that some death certificates had been issued in relation to some of these 24 who remained disappeared (para.183).

⁸ *Supra*, and in particular The Case of the Río Negro Massacres v. Guatemala, paras.125-126 “For the Court, in the context of this case, the fact that a death certificate does not indicate a precise cause of death is not relevant for determining that a person has been forcibly disappeared. To the contrary, the fact is that, to this day, the whereabouts of the 17 people who were forced to board a helicopter on May 14, 1982, during the Los Encuentros massacre remain unknown. [...] the Court considers that the 17 people [...] remain victims of forced disappearance to date.”

⁹ Ibsen Cárdenas and Ibsen Peña v. Bolivia, Series C No. 217, Judgment of 1 September 2010, para.82.

¹⁰ See para.94 noting the differences between the 1972 death certificate (gun shot, supporting the falsified story of attempted escape) and the results of the 2008 forensic examination indicating “cranio-encephalic trauma” and “multiple traumas” (which would suggest torture and repeated physical violence).

only partially recovered and never formally forensically identified, the Court found his whereabouts were still not known. His enforced disappearance continued.

This position is also supported by the decisions of the United Nations Human Rights Committee under the International Covenant on Civil and Political Rights (ICCPR) (to which Syria is a party). In the case of El Alwani v. Libyan Arab Jamahiriya, in 2002, seven years after arrest, authorities notified a man of his brother's death in a government prison (with no information provided in the interim), and sometime in 2003 a death certificate was issued without any indication of exact date of death, cause or circumstances death. The Committee pointed out that the body was not returned and the location of the burial site never disclosed.¹¹

The regime orders to change civil registries status to deceased is formal state confirmation of knowledge of that person's death, which also creates an inference that those who died were in state custody at the time of their allegedly death (in order to know the date of death). "In any case, all State authorities, public officials or individuals who have received news about acts of the forced disappearance of persons must report them immediately."¹² The clear delay from date of death (2013 in some cases) is *prima facie* evidence of failure to provide information about the fate and whereabouts of the disappeared person. Furthermore, provision of false information is considered the same as refusal to provide information.¹³ These death certificate are therefore further evidence supporting the regime's continuing commission of this crime.

The Regime's Continuing Crime of Inhumane Treatment of the Victim's Families

The Assad regime is also committing the continuing crime of torture and other inhumane treatment of victim's relatives.¹⁴ In two cases against Belarus before the UN Human Rights Committee under the ICCPR, the state had executed a death penalty order in secrecy, then later provided death certificates with the court order as the cause of death. The Committee held that "the authorities' initial failure to notify the author of the scheduled date for the execution of her son, and their subsequent persistent failure to notify her of the location of her son's grave amounts to inhuman treatment of the author, in violation of article 7 of the Covenant".¹⁵ Similarly in a case relating to Burkino Faso, the same Committee noted "the anguish and psychological pressure which [...] the family of a man killed in disputed circumstances have suffered and continue to suffer because they still do not know the circumstances surrounding the death [...], or the precise location where his remains were officially buried. [The] family have the right to know the circumstances of his death [...] The Committee considers that the refusal to conduct an investigation into the death [...], the lack of official recognition of his place of burial and the failure to correct the death certificate constitute inhuman treatment of [the family], in breach of article 7 of the Covenant."¹⁶

Rights of the Victims including the Families of the Disappeared

"The right to the truth in relation to enforced disappearances means the right to know about the progress and results of an investigation, the fate or the whereabouts of the disappeared persons, and the circumstances of the disappearances, and the identity of the perpetrator(s). [...] The obligation to continue the investigation for as long as the fate and the whereabouts of the disappeared remains unclarified is a consequence of the continuing nature of enforced disappearances. [...] It also makes it

¹¹ El Alwani v. Libyan Arab Jamahiriya, 2007, CCPR Comm 1295-2004, UN Doc A-62-40, Vol.11, from p.173, at para.6.8.

¹² Ibsen Cárdenas and Ibsen Peña v. Bolivia, *ibid*, para.65.

¹³ Gerhard Werle (2005), *Principles of International Criminal Law*, para.756.

¹⁴ Cyprus v. Turkey, ECHR, paras.157-158; Edriss El Hassy v. Libya, HRC CCPR/C/91/D/1422/2005, 30 October 2007, para.6.11, 7, continuing violation of Article 7 of ICCPR (torture, cruel and inhumane treatment) against both the victim and his brother/family; Quinteros v. Uruguay, CCPR Communication No. 107/1981, 21 July 1983, para.14.

¹⁵ Schedko v. Belarus, CCPR Comm No. 886/1999, 3 April 2003, para.12; see also Staselovich v. Belarus, CCPR Comm No.887/1999, para.11.

¹⁶ Mariam Sankara et al. v. Burkina Faso, CCPR, 28 March 2006, para.12.

clear that the right of the relatives to know the truth of the fate and whereabouts of the disappeared persons is an absolute right, not subject to any limitation or derogation. [...] The right to know the truth about the fate and the whereabouts includes, when the disappeared person is found to be dead, the right of the family to have the remains of their loved one returned to them, and to dispose of those remains according to their own tradition, religion or culture. The remains of the person should be clearly and indisputably identified, including through DNA analysis. The State, or any other authority, should not undertake the process of identification of the remains, and should not dispose of those remains, without the full participation of the family and without fully informing the general public of such measures. States ought to take the necessary steps to use forensic expertise and scientific methods of identification to the maximum of its available resources, including through international assistance and cooperation.”¹⁷

Measures required under Syria’s International Human Rights Obligations

Under international human rights obligations, *jus cogens* and under treaties to which Syria is a state party, the state is required to:

- “To undertake a thorough and effective investigation into the disappearance and fate of the [the victim], his immediate release if he is still alive, adequate information resulting from its investigation,
- To pay adequate compensation for the violations suffered by the [disappeared] and his family.
- To expedite the current criminal proceedings and ensure the prompt trial of all persons responsible [...] and to bring to justice any other person who has been implicated in the disappearance.
- To prevent similar violations in the future.”¹⁸

Based on international law, LDHR calls for the following steps required to be taken as a priority:

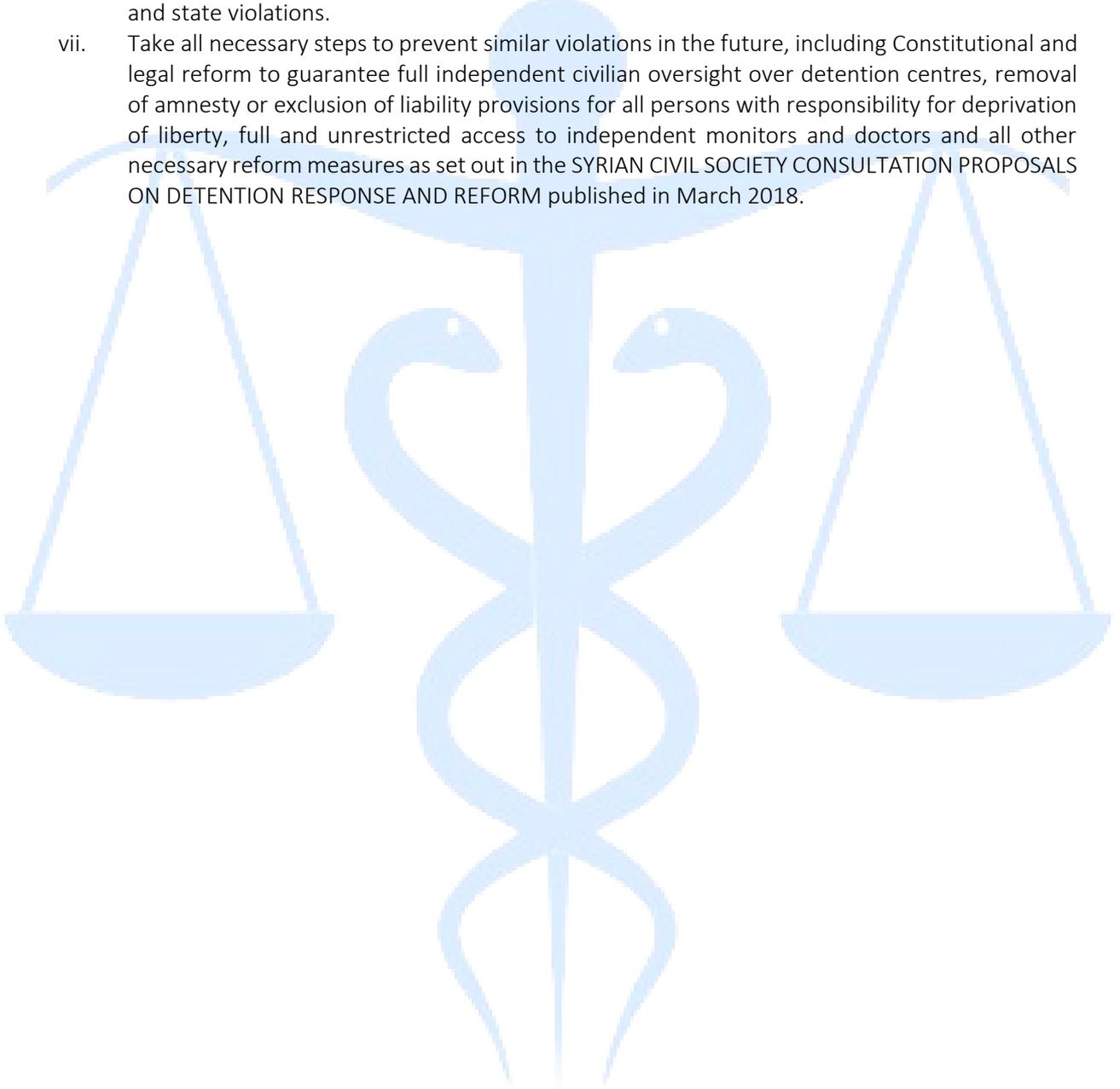
1. The collection and preservation of all civil registry changes or notices (through criminal evidence chain of custody), provision to IJMM, and use in ongoing and future criminal trials, as well as in strategic litigation and the UN Special Procedures, such as the Working Group for Enforced or Involuntary Disappearances (WGEID).
2. All states, UN agencies and actors should require that the Assad regime take all steps to fulfil its commitments as part of any transition/end to the conflict and as a priority prerequisite (including many others) before any recognition, normalisation or support be provided. In particular, to
 - i. provide full, truthful and accurate information about the status and location of all detainees, alive or now deceased, to their loved ones and publicly;
 - ii. immediately and unconditionally comply with binding United Nations Security Council Resolutions 2139, 2165, 2191, 2258, 2332 by the “immediate release of all arbitrarily detained persons starting with women and children, as well as sick, wounded and elderly people and including UN and humanitarian personnel and journalists”;
 - iii. immediately provide unrestricted access to fully independent, international monitors and doctors into all places of detention (given state’s own confirmation of the threat to life in those places);
 - iv. provide accurate and truthful information about the circumstances of any detainees who have died, the whereabouts of the remains and to involve the family/internationals in the exhumation and identification of those remains, before their return to the families for burial.
 - v. Assist international mechanisms to provide independent, impartial, fair, effective and thorough investigation and criminal proceedings against those responsible for enforced disappearance,

¹⁷ Working Group on Enforced or Involuntary Disappearances, General Comment on the Right to the Truth in Relation to Enforced Disappearances, *A/HRC/16/48 (emphasis added)*. See also International Convention for the Protection of All Persons from Enforced Disappearance, Art.24(2), *Oscar Romeo v. El Salvador*, IACHR 13 April 2000, para.144.

¹⁸ *Sarma v. Sri Lanka*, CCPR Comm No. 950/2000, 16 July 2003, para. 11. See also *Edriss El Hassy v. Libya*, *ibid*, para.8; *Mariam Sankara et al. v. Burkino Faso*, *ibid*, para.12; *El Alwani v. Libyan Arab Jamahiriya*, *ibid*, para.8; *Cyprus v. Turkey*, ECHR, para.136;

deaths, torture, sexual violence and other inhumane treatment against the detainees and their families.

- vi. Pay compensation for the immeasurable harm, anguish and suffering caused by these crimes and state violations.
- vii. Take all necessary steps to prevent similar violations in the future, including Constitutional and legal reform to guarantee full independent civilian oversight over detention centres, removal of amnesty or exclusion of liability provisions for all persons with responsibility for deprivation of liberty, full and unrestricted access to independent monitors and doctors and all other necessary reform measures as set out in the SYRIAN CIVIL SOCIETY CONSULTATION PROPOSALS ON DETENTION RESPONSE AND REFORM published in March 2018.


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