Report: Side Event on
“Enforced Disappearances and Arbitrary Detention in Syria”
27 June 2018 12:00 – 13:30
Room XXVI, Palais des Nations
United Nations Office in Geneva
Co-sponsored by the Governments of Belgium, Canada, Denmark, Finland, Lichtenstein, The Netherlands and Sweden
Overview

Enforced disappearances, indiscriminate arrests and torture are being committed on a wide scale throughout Syria as a tactic of war. Over the course of the last seven years, a consistent country-wide pattern has been established, in which people, mainly adult males, but also children and women, have been seized by the Syrian security and armed forces, as well as by pro-Assad militias, during mass arrests, house searches, at checkpoints and in hospitals. Despite the fact that articles 51 to 53 of the Constitution of the Syrian Arab Republic consider arbitrary detention unlawful and guarantee fair legal processes, and that both article 53 of the Constitution and article 391(i) of the Syrian Criminal Code prohibit the use of torture, the use of political violence, arbitrary detentions and enforced disappearances have been a common feature of the Ba’ath Party’s rule over Syria. The Assad regime has perpetuated this system of arrests and incommunicado detention conducive to enforced disappearances. The disappearances appear to have also a punitive element, targeting family members of defectors, activists, fighters as well as those believed to support the opposition. Under the pretext of anti-terrorism laws, the authority, power and means to arrest, detain and torture has been progressively extended to the Syrian Army and to pro-Assad militias with the aim to ensure that no Syrian citizen could feel safe even at home or walking down the streets.

As an effective tool to instil fear among the civilian population; humiliate, punish and curb any kind of opposition to their rule and ultimately to enforce social order and political hegemony over the areas under their control, all warring parties involved in the war in Syria have used enforced disappearances and arbitrary detention. Syrians from every walk of life, women and children have been disproportionally affected, victimised on multiple grounds, irrespective of perpetrator or geographical area.

The independent international Commission of Inquiry on Syria (CoI) has dedicated a special thematic report to this phenomenon. In its report "Without a trace: enforced disappearances in Syria", the CoI concludes that there are reasonable grounds to believe that acts of enforced disappearances are part of widespread and systematic attacks against the civilian population amounting to a crime against humanity. UN Security Council Resolution 2139 strongly condemns kidnappings, abductions, and forced disappearances in Syria, and demand an immediate end to such practices and the release of all people arbitrarily detained. However, no concrete steps have been taken yet to implement these provisions, and multiple rounds of political negotiations, both in Geneva and Astana, have failed to deliver any breakthrough. The fate of thousands of Syrians remains unknown to this day.

Side Event Summary

1.1 The participants

Panelists of the meeting - co-chaired by Niccolò Figà-Talamanca, Secretary General of No Peace Without Justice, and Hussein Sabbagh, Secretary General Euro-Syrian Democratic Forum - included Yaser Alfarhan, Head of the Syrian National Commission for Missing Persons and Detainees, Alise Mofrej, Member of Syrian Negotiations Commission in charge of the detainees and missing people file, Abdulla Al-Kheir, URNAMMU for Justice and Human Rights. Ms Majd Chourbaji, Ms Hend Mujali, and Mr Yazan Awad, who are all survivors and eyewitnesses of the enforced disappearances and arbitrary detention committed by the Assad regime, provided their testimonies during the side-event. Welcome remarks were made by H.E. Amb. Carsten Staur, Permanent Representative to the UN for Denmark. Deputy Permanent Representative for the Netherlands Nathalie Olijslager, and Deputy Permanent Representative for Finland Renne Klinge provided closing remarks.

The side-event offered an opportunity for a chair-moderated panel to discuss with civil society leaders of organisations working on human rights inside Syria, eye-witnesses and representatives of UN Member States1 to share their views on the best way for the peace-seeking international community to progress in the goal of bringing peace to Syria, and to listen to the poignant stories of eyewitnesses and survivors of arbitrary disappearance and detention under Assad’s brutal regime. The meeting ensured that civil society and survivor voices were heard and raised awareness of the current conditions in Syria, as well as highlighting the importance of not letting justice and accountability for the detainees to be pushed to the side in the name of what would then prove to be a temporary, unmanageable peace.

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1 List of the countries which attended the side-event: Andorra, Australia, Bulgaria, Belgium, Canada, Costa Rica, Estonia, European Union, Finland, Liechtenstein, Maldives, Montenegro, Peru, Sweden, The Netherlands, Turkey.
1.2 The panel discussion

Co-chairs Mr Figà-Talamanca and Mr Sabbagh introduced the topic under discussion. In particular they underlined how the issue of arbitrary detention is among the root-causes of the Syrian revolution in 2011. Mass arrests and incommunicado detentions is what has sparked the upraise against the regime, and they will continue to be an obstacle to any settlement. Until enforced disappearances, indiscriminate arrests and torture are being committed on a wide scale throughout Syria there will be no prospect of rebuilding the fabric of Syrian society; this is why it is not possible to wait for a distant “political solution” to address these practices but to work from now to find a solution.

In his opening remarks, H.E. Staub introduced the topic of the day, saying that although none of the actors have been able to keep their hands clean and crimes are numerous, enforced disappearances and arbitrary detention stands out due to its systematic and long-standing use during the conflict. He highlighted that because of the systematic nature of these crimes, there is no reason to think that the regime will stop on its own. Addressing transitional justice issues during and after negotiations and the political transition processes, will thus be critical in seeking peace. Military victories will not bring lasting peace, for this reason, and thus Geneva remains the best avenue for seeking lasting peace and stability in the region.

Following the Ambassador’s remarks, the co-chairs led the panellists through a number of issues in order to explore the complexities of what is happening in Syria and drew out the panellists’ views on the necessary steps to be taken in the pursuit of a political solution to the war in Syria.

Yaser Alfarhan illustrated the mandate of the International Syrian Commission for Detainees and Missing Persons, established by the National Syrian Coalition. The Commission works independently and in coordination with local and international human rights organisations on taking concrete measures to ensure the release of detainees and putting an end to torture. Enforced disappearance and arbitrary detention are among the more widespread human rights violations in Syria, and it does not only affect those individuals who are illegally detained, tortured and disappeared; this phenomenon directly touches the daily lives of at least 5 million Syrians; not just those who are in detention, but their husbands, wives, children, siblings and parents. Detentions and enforced disappearances continue to this date, with new people being detained every moment. It is a country wide crisis, not limited to certain regions and communities. Everybody is affected. There have been several attempts at the international levels to address the fate of the detainees, most recently during the talks in Astana, where a request to release the detainees was again put forward, also on the basis of various UN Security Council resolutions, in particular Resolution 2139, which strongly condemns kidnappings, abductions, and forced disappearances in Syria, and demand an immediate end to such practices and the release of all people arbitrarily detained. Unfortunately, the Russian opposition to any release of detainees has, so far, blocked any progress on this dossier. The political objective of the request to protect the detainees’ rights is not just to free the individuals who are currently detained, but also to protect all the Syrian citizens from the oppressive and abusive behaviours of the government. Moreover, following the adoption of UNSC resolution 2254, a working group within the UN was created to, in part, keep the issue of the detainees at the forefront of political discussions around Syria. This group works under the supervision of an international mediator appointed by the U.N. to supervise the protection of the detainees, and to see progress in this dossier. The purpose is to see progress in this dossier and to inform the UN Special Envoy on Syria constantly on what is being done. Unfortunately, the opposition by the Assad regime and Iran, has not yet allowed this working group to achieve its stated goals.

Millions of Syrians are suffering, the detainees and their families, and in order to have lasting peace, the detainees must be released and there must be redress for the crimes committed. Should the regime be rehabilitated, the international community will bear direct responsibility to ensure they stop such practices, but we know that this is impossible to achieve. There is an urgent need to build a new system in Syria that respects human rights and democratic values, that protects all Syrians and provides accountability and the release of the detainees.

Alise Mofrej, stressed how the Syrian Negotiation Commission has worked to carry out processes in Geneva to make the issue of the detainees a higher priority for UN Member States, but Russia has used its veto power in the Security Council to block any meaningful progress on this dossier. The Syrian Negotiation Commission has also worked to allow the entry of international organisations and independent committees into Syria to enable them to find the detainees and reveal to the world where, and hopefully who, they are. However, these efforts have not succeeded, due to a lack of political will to make the detainees a priority and a fear that Russia will veto whatever measure is introduced to accomplish this. Mofrej asserted the issue of the detainees is both a constitutional and an electoral issue. It is a
constitutional issue because arbitrary detention and disappearances is against the constitution of the Syrian Arab Republic, and it is an electoral issue because the detainees have the right to vote in any upcoming election, and so they must be released before any election is had to insure the true will of the people. Because of this, the release of the detainees is integral to any transition. Asked if accountability and a political solution are mutually exclusive, Ms. Mofrej replied that the answer depends on what we intend for political solution. If there is a need to choose between these two goals, it will be critical that we choose accountability, because can be no real peace without justice. Any façade of peace will quickly crumble, and soon there will be revolution again. Assad’s policies have been systematic rape and torture, and a pattern of systemic cruelty will not magically disappear without accountability. So, when confronting the dual aims of accountability and political peace, instead of starting from the lack of immediate war, calling it peace, and then trying to fit everything else around it in a non-contradictory way, we must start with accountability and move from there.

Abdulla Al-Kheir stressed how the international mechanisms already working on the issues of enforced detention and disappearances have not been successful in stopping the violations and protecting the victims. On the one hand, Syrians are scared and worried to work with or speak to these mechanisms. In part, this is due to fear that, should they provide information to UN bodies, the regime will find out and the friend or family member who is detained will receive worse treatment in response. Families would rather know their loved one is detained than have them become a disappeared person, potentially never to be heard from again. This fear is exacerbated by the fact that it is not known whether or not the mechanism can give any guarantees to the detained person. Furthermore, these mechanisms have proved to be slow and inefficient. Sometimes, after an international mechanism has been informed of a detainee, it can take six or seven months before the organisation takes meaningful action. In those months, it is not uncommon for the detained to be subject to more severe mistreatment or to disappear. By way of example, Mr. Al-Kheir told the story of a pregnant woman who was detained on the day she was supposed to give birth. The working group on enforced detention was notified of this woman’s fate, but it took the group ten days to respond and their only answer was that they wanted more information about her case before proceeding. Al-Kheir offered three suggestions to improve the lot of the detainees. The first was urging the situation of the detainees not to be separated and be treated as a side issue by those parties seeking peace in Syria. The second was to prioritise the importance of the sick detainees being taken to a civilian hospital where they could get treatment and medicine, instead of the military hospitals they are normally taken to where their sicknesses are not adequately treated. The third suggestion was that international mechanisms become more flexible and efficient in their work to help detainees.

1.3 Discussion from the floor

During the open debate, the three eyewitnesses had the opportunity to make their stories known and to make their voice heard.

Majd Choubaji, was arrested and detained in 2012 when the police stopped her car at a border and discovered that she was engaged in political activism. From the very beginning, she was mistreated: used as a human shield, sexually assaulted, constantly threatened with death, mocked, tortured, and stripped in front of soldiers. Then they arrested her husband. Her three young children had no idea where she or her husband had gone, because to be arrested is to disappear without a trace to anyone who knows you. Subsequently, the soldiers also arrested her children, ages 8, 7, and 2 ½. They were released two days later, and had not been subject to physical torture themselves, but the army tortured many people in front of them and forced them to watch. Ms. Choubaji was detained in an underground facility, within a cell so small that the 20 detained women had to take turns sitting down and standing up. The women were allowed to go outside of that cell three times a day, but unable to bathe or shower. Because of this, disease ran rampant. Some of the other women were mothers who had their children with them. Others were pregnant and had to deliver their children in their tiny cell. With no sterilization, medicine or doctors many women lost their child in this hell. She was released in 2013, after one year of detention.

Hend Mujali was a teacher in Deraa, before the revolution. She took part in the revolution from the very beginning and she was the first woman arrested in Deraa on 25 April 2011, the day the regime came into Deraa with tanks and bombs, one month after the beginning of the revolution. When she woke up on 25 April, she discovered that water,
electricity, and all lines of communication have been cut and that the security forces had surrounded her house. A few minutes later they broke into the house, robbed and arrested her. She was transferred to Damascus, where she was questioned three or four times every day, accusing her of having pictures of armed forces shooting civilians, speaking with foreign journalists, and welcoming them into her home. She was blindfolded for 5 days, and her cell was almost just a toilet, with just enough room for her to sit. This first arrest lasted 11 days. The second arrest was a year and four months later. This time she was arrested after the regime had arrested her twenty-two-year-old daughter, and then reached out to Ms. Mujali, telling her that if she gave herself up, they would release her daughter. She turned herself over to the authorities, and they let her daughter go. However, they continued to threaten her daughter throughout her detention. Ms. Mujali was not physically tortured, but she was psychologically tortured by hearing the voices, cries, and screams of nearby young people being tortured. Ms. Mujali was released the second time after four months of detention. When she was released, the guard told her that her daughter had been detained in the cell sharing a wall with her for the past three months and was going to stay detained. That same day, she heard that two of her brothers had been arrested, as well as her grandson, and that her nephew had been killed at a checkpoint in Damascus. After she was released, she could not speak for months, and was subsequently laid off. She was also prevented from traveling and leaving Syria. A few months after her liberation, her younger brother was arrested for the third time. This time he was detained in the Ministry of the Environment. There are many secret detention facilities in Syria. They are not prisons, they are not detention centres, people are detained in places nobody knows of. The Ministry of Industry is a place of detention; the water-treating plant in Damascus is also used as a place of detention and torture.

Yazan Awad, was arrested in 2011, when the armed forces stopped his car. He was detained from 14 November 2011 to March 2012. There were two phases of his detention: first, physical torture, then, psychological torture. During the physical torture, he was beaten and tortured up to forty-eight times a day. The thirty-sixth day was the worst, with the torture lasting ten hours straight. Yazan Awad brought his case regarding his detention in Syria before a German court. Germany’s prosecutor has issued a warrant within Germany for the arrest of Jamil Hassan, the head of the area security apparatus.

Nathalie Olijslager thanked the eye-witnesses for their bravery and the survivors that everybody in the room heard their voice and that everyone would take their stories into meeting rooms with them. She acknowledged that that is, unfortunately, the only real power that the international community has at the moment but ensured everybody that the pressure will be maintained, and that international humanitarian law will prevail. Renne Klinge, echoing Olijslager, said that the stories of the survivors must be kept alive and used as pressure for change in international law, and assured the survivors that he and his colleagues would do their best to do just that. In the future peace process, when transitional justice questions will be on the table, a victim-sensitive approach is a must. The right to know and the duty to remember will be an essential element to bring peace to Syria.

Conclusions

The side-event highlighted the impact of enforced disappearance and arbitrary detention on Syrian society and fostered a discussion on the fundamental issues of transitional justice as an essential component of any negotiation on Syria’s future. The meeting also served as a reminder that victims of political violence and their families are critical actors for the elaboration of policies and strategies to put an end to the war. Without appropriate social, political and legislative reforms, the victims of political violence will not be able to find any form of redress within the Syrian judicial system, endangering any meaningful political solution to the war. Proper mechanisms and procedures need to be set up to protect victims of enforced disappearances, the detainees and their families and to ensure that legislative and regulatory measures are elaborated to provide redress for victims, including non-repetition of the crimes, as fundamental elements for any lasting political settlement. International mechanisms, such as the CoI and the International, Impartial and Independent Mechanism for the crimes committed in Syria (IIIM), have a crucial role in supporting and enhancing the accountability process for serious international crimes committed in Syria.