

# SYRIAN CIVIL SOCIETY CONSULTATION

## PROPOSALS ON DETENTION RESPONSE AND REFORM

including  
PRINCIPLES FOR DETENTION  
OVERSIGHT REQUIREMENTS  
DISCUSSION DRAFT RELEASE MECHANISM OUTLINE  
IMMEDIATE RESPONSE - ACTION PLAN

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## Introduction and Explanatory Note

Based on a large body of credible, reliable and corroborated evidence, people are dying every day in Syria's detention centres. Detainees face brutal physical and psychological torture, cruel, inhuman and degrading treatment, sexual violence, enforced disappearance, summary executions, and life threatening conditions of detention which do not meet the basic determinants of health sufficient to sustain life (including food, water, air, medical care).

The number in detention is not accurately known. Estimates of political opponents imprisoned since 2011 range from a conservative 100,000, but the numbers are likely to be far higher in reality. There has been long-term use of detention as a means of repressing political opposition or dissent. After 2011, this extended to using "terrorism" charges to cover any opposition and beyond into those providing medical or humanitarian services in any areas not under government control. This involved mass arrests and detentions, with insufficient space in existing detention centres and the creation of secret and *ad hoc* detention centres run by a multitude of actors/groups (e.g. houses, stores, schools, barracks, hospitals, airport hangars, stadiums, factories). International NGOs state that over 17,000 have been killed, with at least 13,000 summarily executed in Sednaya prison alone. The acute need for humanitarian intervention is overwhelming. The long term consequences of this type of detention in Syria is catastrophic and generational.

The United Nations Security Council has repeatedly required 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" (United Nations Security Council Resolutions 2139, 2165, 2191, 2258, 2332), and has called on all States to use their influence [...] to advance [...] the early release of any arbitrarily detained persons, including women and children (United National Security Council Resolution 2268).

The Six Point Plan in the Geneva Communique in June 2012 also requires the rapid release of arbitrarily detained people and persons detained who were involved in peaceful political activities. In addition to this rapid release, all parties must provide:

1. A list of all places where people are detained;
2. Immediate access to all places of detention; and
3. Prompt response to all written requests for information, access or release of such persons.

Syrian and international organisations have been pressing for access and monitoring of all places of detention, and for the immediate release of all political prisoners. Despite all this and the acute humanitarian imperative, the issue of detention has been repeatedly side-lined or ignored. Further there have been few discussions about how to be prepared to respond to the vast needs and human destruction arising from the crises and crimes within Syria's detention centres, or how to intervene to prevent and protect current and future detainees from human rights violations and deaths.

In recognition of this need to progress thinking, actions and response on detention, 15 leading Syrian civil society organisations and stakeholders held a series of round tables in the second half of 2017 to discuss, identify and develop some tangible and practical proposals to try to address and prepare to respond to this long term problem.

As an outcome of those discussions, the 15 organisations and stakeholders have prepared some draft foundational principles, standards and responses to detention in Syria. These drafts are not presented or circulated as final solutions but are offered as advanced drafts to inspire and drive wider discussions and momentum on this critical issue. The drafts include:

- Ten Fundamental Guiding Principles for Detention
- Minimum Legal Protections to be enshrined in Constitution and protected by strong oversight and enforcement mechanisms
- Minimum Standards and Protections in all Places of Detention

- Principles for Oversight over Detention Centres
- An Outline for a Release Mechanism
- Immediate Required Steps
- Overview of Detention Impact and Needs

It is the hope of the 15 participating organisations and actors that these drafts will be discussed and used widely. The sooner agreement and concrete solutions can be found, the closer we will be towards protection of detainees.

We urge all parties, stakeholders and actors in Syria to commit to the application and enforcement of such principles and standards immediately in relation to any places of detention within their control. We also urge the United Nations and its Member States to set up a Detention Release Committee, as detailed below, to start a formal, effective release process as soon as possible, in line with the above United National Security Council Resolutions.

## **The Participants**

The participants and contributors included members of the Woman's Advisory Board, the Syrian Judicial Council and the Free Syrian Police, as well as other Syrian judges, lawyers and human rights activists.

### *Organisations:*

Lawyers and Doctors for Human Rights LDHR

The Day After TDA

Dawlaty - My Country

Barakat Amal- A Glimmer of Hope

People Demand Change PDC

Women Now

Syrian Civil Platform

Human Rights Guardians

Syrian Centre for Legal Studies and Researches

Syrian Judicial Council

APJD

Adalah - Justice

Free Syrian Police (Aleppo, Idlib)

Free Syrian Lawyers Association

All participants would like to express their thanks to the international experts who attended the Detention Response and Reform Round Tables offering insights from their expertise and experience in other countries. This includes:

- REDRESS.
- Penal Reform International (PRI).
- International Commission for Missing Persons (ICMP).
- Professor Dirk van Zyl Smit, Professor of Comparative and International Penal Law, University of Nottingham.
- Mikko Sarvela, Prison and Detention Expert (EU).
- Dr Ingrid Elliott MBE, International Criminal Justice Expert (Synergy for Justice).

The contents of this document do not necessarily reflect the views of those experts or their organisations. This document was drafted by the Syrian participants at the Round Table.

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## DRAFT MINIMUM PRINCIPLES FOR DETENTION IN SYRIA

The following draft principles are proposed as a set of minimum basic principles, legal protections and standards which should govern all deprivations of liberty and all places of detention in Syria. These principles are proposed by a group of judges, lawyers, human rights activists and other stakeholders from Syrian civil society, and are based on Syrian Constitutional protections and international obligations ratified and binding upon Syria such as the ICCPR, ICESCR and others. These principles are presented for confirmation/adoption by all parties, stakeholders, actors and citizens in Syria in order to protect and respect the dignity of all Syrian citizens.

### Ten Fundamental Guiding Principles

1. All persons deprived of liberty should be treated with respect and dignity.
2. All aspects of detention should be founded upon the principle of “Do No Harm”.
3. No one should be subjected to torture, cruel or inhuman treatment, without exception. Everyone should be protected at all times.
4. The safety, security and well-being of all those in places of detention must be given priority.
5. There should be no discrimination against any person on any grounds.
6. Anyone detained before conviction shall be afforded the presumption of innocence until proven guilty.
7. A presumption in favour of liberty should prevail, and deprivation of liberty should only be imposed as an exception and only by an independent, impartial court established by law and in accordance with the Constitution.
8. The only consequence of detention is the deprivation of liberty – there should be as little impact on other human rights as possible.
9. Deprivation of liberty shall never be used against non-violent political opponents or to suppress free expression of opinions (or any other basic human rights contained within the Constitution, the ICCPR and ICESCR).
10. To be fair and safe, the detention system must be a transparent one in which detainees have enforceable rights and protections, and over which there is independent, impartial oversight with all necessary powers to remedy deficiencies and effectively investigate wrong-doing.

### Minimum Legal Protections to be enshrined in Constitution and protected by strong oversight and enforcement mechanisms

1. Liberty is a fundamental right and first principle, and therefore no one may be preventively detained. There should be non-custodial alternatives to imprisonment.
2. There is no justification for the arrest or detention of political opponents or those expressing political opinions. The crime of “terrorism” must be defined narrowly and accurately, and must exclude any peaceful, non-violent expressions of political opinion, beliefs or criticism.
3. It is prohibited to detain anyone without a legal justification and a judicial order issued by a competent authority. The only exception is for those caught in the course of committing a crime (*flagrante delicto*).
4. At the point of arrest,
  - a. detainees must be notified of their rights and the charges against them, be given access to defence counsel of their choosing, allowed a medical inspection by an independent medical examiner at point of entry to a place of detention and be brought before a court as soon as possible (within 24 hours).
  - b. A detainee’s relatives must be notified of the detainee’s arrest and place of detention.
  - c. Visitation and communication should be permitted as soon as possible with legal counsel, family members and independent medical examiners.
5. There shall be no unofficial detention. All places of detention must be declared, be under the control of appropriate lawful detention authorities, under civilian authority oversight and subject to full regulation and protection of the constitution and law.
6. There must be full transparency and access to all places of detention and all records relating to any one deprived of liberty.

7. Discrimination between detainees on any grounds shall be prohibited.
8. There must be an independent and impartial judiciary with preventative and protective supervision responsibilities over places of detention and for the safety of individuals who are detained there on their order.
9. There shall be no indefinite detention. There shall be a system of careful, regular review of any deprivation of liberty by an independent impartial tribunal (applying the presumption in favour of liberty) protected by and enforceable under the law.
10. All persons who have a role in the detention process are subject to the law and are responsible for the acts they perform while carrying out their duties. There shall be no indemnity, impunity, amnesty, pardon, limitation or exceptions to criminal, civil and professional liability for acts of torture, cruel, inhuman or degrading treatment, ill treatment or abuse within places of detention or during arrest.
11. Acts of torture and cruel, inhuman and degrading treatment, including sexual violence, are grave crimes which require severe penalties, are imprescriptible, and any exceptions in this regard are strictly prohibited. The prohibition and punishment for torture and cruel, inhuman and degrading treatment is absolute and non-derogable.
12. All obligations under the Convention Against Torture shall be fully implemented into Syrian law.
13. The judiciary shall undertake to open a full, expeditious and effective investigation of any allegation of torture or ill-treatment and shall have the broad authority to take such preventive measures as it deems necessary in all confessions obtained by physical or moral coercion.
14. All detainees shall have the legal right to independent medical examination and treatment upon request while they are deprived of liberty.
15. All detainees accused of a crime shall be granted full fair trial rights, which shall be enforceable before all courts.
16. All investigations and interviews with detainees shall be recorded using audio-video recordings.
17. No conviction for a crime can be based solely on a confession.
18. All places of detention shall be governed by an effective multi-level regulatory system based in Syrian law that ensures effective internal, national, regional and international oversight. Such an oversight system shall comply with the (draft) Principles for Oversight below.
19. An effective mechanism for rehabilitation and reintegration of detainees into society shall be protected in law.

#### **Minimum Standards and Procedures Applicable at Each Place of Detention**

1. All standards and requirements set out in the ICCPR, Convention against Torture, Convention on the Protection of All Persons from Enforced Disappearance, the UN Minimum Standards of Treatment for Prisoners (2015 Mandela Rules) and the UN Rules for the Treatment of Women Prisoners (Bangkok Rules) shall be applied in respect of all places of detention in Syria.
2. There shall be a central unified prison agency with central records of all detention centers and all detainees and the existence of focal points between prisons and courts to view the most recent update of prisoner data.
3. Full records shall be kept and proper file management systems employed to ensure accountability and transparency (subject to prisoner personal data privacy). This record keeping shall include proper and transparent registration from the date of entry, transfer and date of release, and independent medical examination upon entry and release as part of standard records.
4. No person shall be admitted to detention centers without proper and binding legal order from an independent impartial tribunal.
5. Certain groups shall be separated from each other in places of detention:
  - a. Male detainees and prisoners shall be held separately from female detainees and prisoners, and gender appropriate, professional trained staff assigned accordingly.
  - b. Juvenile detainees shall be held separately from the adult detention population and in specially designed and staffed places of detention.
  - c. Those detained on remand shall be held separately from convicted persons;
  - d. Convicted persons shall be separated according to the type of offense; and

- e. Where necessary for the safety and best interest of the detainee, individual detainees may be held separately from the main detention population but only with precautionary and protective measures to avoid *de facto* solitary confinement, isolation or stigmatization.
6. Gender sensitive and protective measures should be employed. Female staff should be employed in areas where women are detained without any access for male detention staff (except where necessary and while accompanied, judges, lawyers, prison directors, medical personnel, etc. who are providing protective services or oversight). In particular, proper provisioning shall be made for health and support needs of pregnant women and nursing mothers.
7. Children born in prisons or accompanying their mothers are not prisoners and should not be treated as prisoners.
8. **Oversight:** There shall be full unlimited access to all places of detention or prisons for independent observers with frequent, unannounced visits and the activation of internal and external oversight mechanisms in accordance with the (draft) Principles of Oversight below.
9. **Accommodation:** Each prisoner shall have an allocated minimum of 4m<sup>2</sup> of floor space in dormitories, with a bed with clean, adequate bedding for each prisoner. There shall be complete and adequate personal hygiene facilities for each dormitory and to ensure privacy, cleanliness and dignity for each prisoner. There shall also be clean water whenever requested, adequate food of sufficient nutritionally to maintain health and strength, and clean adequate clothing appropriate to temperature and dignity. Suitable facilities shall be provided for the practice and timing of religious rituals.
10. **Fresh air, light and climate:** Sufficient natural light to be able to read during the day. Fresh air and sufficient heating or air conditioning to keep the climate and air conditions comfortable and healthy. All detainees shall be allowed one hour of outdoor exercise if the weather permits.
11. **Health care:** It is the State's responsibility to provide adequate health care in detention centers. There shall also be access to independent, health care professionals at the same level as those available outside, all of which shall be free of charge.
12. **Visitation and Correspondence Rights:** All detainees shall have the right to regular visitation by family and close friends, including provisioning for conjugal visits without discrimination based on gender or any other discriminatory ground. Detainees should also be allowed to communicate with family and friends.
13. There must be a system and prioritisation of rehabilitation and development, including skills and education training, and if the work is in the prison system then it must be paid in proportion to the work and should not be as a punishment.
14. All internal rules, system, practice, training and oversight must comply with the fundamental guiding principles set out at the start of this document. This includes:
  - ✓ Non-discrimination (not necessarily the same treatment but the provision of proportionate treatment).
  - ✓ Respect and dignity for all.
  - ✓ Prioritisation of the safety and well-being of detainees.

All detention and prison authorities shall strive to instill the fundamental guiding principles into the culture of the place of detention, including through leadership, motivation, incentives, training, supervision, evaluation and promotion.
15. All public areas of places of detention (subject to privacy and data privacy rules) should have CCTV monitoring at all times. CCTV tapes should be preserved for at least [1] month or longer if a court orders.
16. The prison system should seek to minimize the disparities between prison life and free life, and should demonstrate a sense of responsibility for prisoners and due respect for their human dignity.
17. There should be no punishment beyond the deprivation of liberty, no use of violence, iron chains and shackles. There should be no *de facto* solitary confinement. Where it is necessary to separate individual detainees from others for safety or protection, the detainee should be monitored and provided with human and social contact for most of the day every day.
18. All personnel working or spending time within a place of detention must be carefully selected (based on transparent, objective, merit-based criteria, and providing equal opportunities for all genders), examined and trained, and subject to clear rules of conduct that define the supervisory, management and disciplinary procedures and which adhere to international standards, due process and the rule of law. Infractions should lead to effective disciplinary action, additional training,



suspension, penalty or criminal charges (there should be no impunity for crimes within the prison system). This should be applied from guards, observers, prison administrators and directors.

## **DRAFT PRINCIPLES OF OVERSIGHT OVER PLACES OF DETENTION IN SYRIA**

As part of the legal protections and standards to ensure fair and safe detention in Syria, a strong and independent system of oversight of detention is required. The following tenets of oversight are proposed as fundamental elements to be enshrined and protected by the Syrian Constitution and law.

1. Oversight must be undertaken by multiple actors at multiple levels, but as a minimum should include at least:
  - National and international monitoring and oversight;
  - Internal institutional oversight;
  - An independent oversight mechanism or institution (e.g. a NPM under OPCAT) including a constitutionally enshrined Ombudsman or National Human Rights Institution;
  - Judicial actors as part of the criminal justice system; and
  - Civil society organizations or actors.
2. All external oversight mechanisms must have full independence enshrined and protected by the Constitution. The following are minimum guarantees for independence which must be enshrined in and protected by the Constitution:
  - Transparency;
  - Autonomy;
  - Permanence;
  - Sustainability;
  - Neutrality and objectivity with strict prohibition and protection against conflicts of interest;
  - Independence from the Executive and Legislative branches in terms of personnel selection and appointment, terms and conditions, salary, discipline, duration of office, re-election/appointment;
  - Security and protection of personnel;
  - Independent and sufficient budget and funding;
  - Enforceable powers with significant sanctions for non-compliance or non-co-operation, enforceable in law and through independent and impartial courts; and
  - Protection from any outside influence, interference or threats.
3. All independent oversight mechanisms must have access and visitation rights protected in and enforceable under the law, sufficient to make:
  - unannounced, multiple visits;
  - with access to all areas, all records, all personnel and all detainees;
  - in all and any detention centres (any location where someone deprived of liberty including e.g. psychiatric wards/facilities, hospitals, checkpoints, temporary, ad hoc and secret facilities, military posts, police station holding cells, immigration/border posts); and
  - to conduct confidential interviews with anyone present in the places of detention.
4. At least one independent oversight mechanism must have public reporting and binding recommendations powers:
  - such binding recommendations must be responded to and reported against in terms of compliance and corrective measures taken in response; and
  - with enforceable sanctions for non-compliance against those responsible.

5. At least one external oversight mechanism must have the following additional powers protected in the Constitution:

- ***Investigative powers:*** to compel information/testimony and documentation, unrestricted access to all areas in all places of detention and to all records, to have conducted independent medical evaluations, independent forensic and other expert analysis and reports and to protect witnesses and sources in the event of risk.
- ***Powers to act or intervene:*** (1) in individual cases by submitting complaints, or referral for criminal proceedings; (2) in relation to detention centres, against legislation violating the Constitutional protections, against Executive Orders violating Constitutional Protections (similar to the powers of a constitutionally enshrined Ombudsperson); (3) the power to order reparations, protective or corrective measures; and (4) the power to initiate or enter court proceedings.

5. Oversight should involve multi-disciplinary experts (including medical, nutrition, MHPSS, documentation, legal experts with knowledge of international detention standards, Human Rights, structural/prison engineers/building inspection experts (infrastructure, ventilation, space, etc.), independent prison experts) who are trained, professional and experienced, and selected through a transparent procedure against objective criteria based on merit.

## DISCUSSION DRAFT RELEASE MECHANISM OUTLINE PRINCIPLES

In order to enforce the undernoted United Nation Security Council Resolution and to facilitate the effective and safe release of all political detainees, the following outline principles for a release mechanism are offered as a discussion paper for engagement and agreement.

### *United Nations Security Council Orders to Release Arbitrarily Detained Persons*

This outline is based on binding United Nations Security Council Resolutions 2139, 2165, 2191, 2258, 2332 which require 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”, and Resolution 2268 which calls on all States to use their influence [...] to advance [...] the early release of any arbitrarily detained persons, including women and children.

*The Six Point Plan in the Geneva Communique* (June 2012) also requires the rapid release of arbitrarily detained people and persons detained who were involved in peaceful political activities. **In addition to this rapid release, all parties must provide:**

- 1. A list of all places where people are detained;**
- 2. Immediate access to all places of detention; and**
- 3. Prompt response to all written requests for information, access or release of such persons.**

### **Overarching Principles based on the Syrian Constitution and Syria’s International Legal Obligations**

1. All persons are presumed to be innocent until found guilty following a fair and public hearing by a competent, independent and impartial tribunal established by law (and in accordance with the Constitution). (Constitution Article 28(1) (2012 Constitution Article 51(2)), ICCPR Article 14)
2. Freedom is a sacred right (Constitution, Article 25(1), 2012 Constitution Article 33(1)). Every person has the right to liberty. Before conviction, there is a presumption of liberty for every accused. There should be no detention except where necessary to avoid crime or flight, in accordance to due process and the law, and in a lawful, official detention facility operating in accordance with and upholding the legal protections of the Constitution. (ICCPR Article 9)
3. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent of dignity of the human person. (ICCPR Article 10)

**In order to immediately implement United Nations Security Council resolutions to ensure the rapid release of all those arbitrarily detained, and all those detained for engaged in peaceful political activities, the following definitions and categories for release are proposed:**

### *Basic Definitions based on Syria law and Syrian International Obligations:*

“*Arbitrarily detained*”: arrest and detention imposed in contradiction or violation of the lawful criminal justice system, actors and protections set out in the Syrian Constitution, the Syrian Criminal Procedure Code and with the international standards to which Syria is bound including the ICCPR. This would include arrest or detention,

- (a) without basis in law including indefinite detention without charge or after completion of sentence,
- (b) partial or total non-observance of procedures and standards for arrest or detention including pre-trial and fair trial rights, and
- (c) where the conditions of detention are unlawful (including torture, cruel and inhumane treatment, and other violations of the the Basic Principles for Protection of All Persons under any form of Detention of Imprisonment).

“*Detained for peaceful political activities*”: “Peaceful political activities” should include any acts or conduct which (i) were non-violent, and (ii) were politically motivated or to which the detaining actor ascribed political motivation or intent.

“Non-violent” meaning the act or conduct did not directly result in the severe physical or psychological injury or death of a civilian/non-combatant.

“Political” relating to the mechanisms of society and civil order and the principles, organization or conduct of government or public affairs (AI definition).

[*Note: Some organisations tie this to exercise of fundamental freedoms e.g. Council of Europe “if the detention has been imposed in violation of one of the fundamental guarantees set out in the ECHR and its Protocols, in particular freedom of thought, conscience and religion, freedom of expression and information, freedom of assembly and association”.*]

#### Explanatory Notes:

A. It is not possible to readily identify or categorise all those detained for engaging in peaceful political activities with reference to a single or even set of charges in the Syrian Penal Code. Some political prisoners have been charged or convicted with ordinary crimes, or not charged at all. In addition, while certain State agencies have played central roles in the arrest and detention of “political prisoners”, detainees are now held across a large variety of facilities and by a myriad of state and non-state actors. Location or the actor involved cannot be seen as definitive either. Therefore, this should include all those arrested in relation to political activities regardless of who arrested them, where they are held, and under what charges they are accused or convicted of.

B. There is no date range mentioned in United National Security Council Resolutions. This release mechanism should include all persons arbitrarily detained or detained for peaceful political activities, regardless of the date they were detained (including those detained prior to 2011).

**Release should not be permitted for any detainee who committed an international crime (genocide, crimes against humanity, or war crimes/serious violations of the laws and customs of war, torture), regardless of political motivation.**

#### **Procedures and Categories**

The immediate formation of a multi-national/international (or multi-party with internationals) Detention Release Committee (based on existing UNSC Resolutions including 2688) to consider applications on behalf of any person detained by any party/actor in Syria (including applications by families of detainees) on an expedited basis based on the categories below. The Detention Release Committee should prepare lists of detainees eligible for release under each category.

The process must be transparent, neutral and based on a simple, efficient and rapid methodology weighed in favour of those deprived of liberty and their release. The application form must be simple, clear and should only require very simple supporting documentation. Decisions should be taken on a balance of probability standard. Decisions would be subject to appeal (by detaining party, any victims) within a short period of time of release (which may be delayed due to security/safety concerns by applicants). Any objection must be based on *prima facie* reliable and credible evidence (excluding any ‘confessions’).

This process must begin as soon as possible and must be an expedited process in recognition of the life threatening conditions in some detention centres.

FIRST: Initial Safety Measures (see Immediate Response – Action Plan below)

- a) All detainees in need of immediate medical or psychological treatment, including mentally ill patients, should be transferred into safe, specialist care in a hospital (as near to their family as safely possible).
- b) All children under 18 years old in adult detention facilities should be immediately released or transferred to safe juvenile facilities.
- c) All women currently detained in male detention facilities or without safe segregation and gender sensitive personnel and practices, should be immediately released or transferred to safe women-only facilities. Release pregnant and nursing women or transfer them to safe places if they cannot be released for any reason.

SECOND:

**CATEGORY 1.** All parties must order and ensure the immediate unconditional release of any person who falls within the following categories,

- a. Children who have been arrested when they were under the legal age (18 years old) allowed to sentence them under the Penal Code. [*Syrian Juvenile Delinquents Law, Articles 2-3 (from 15 years old, only reform measures under this law can be imposed).*]
- b. Any person aged 70 years old or more, proven by birth certificate or passport. If no records can be produced, an affidavit of a relative or a medical declaration should be acceptable.
- c. Persons suffering from chronic or severe disability or illness, including mental, neurological, mental or permanent disability, based on the definition of persons with disabilities in accordance with the Convention on the Rights of Persons with Disabilities. [*“Chronic or severe” to be defined. See Convention on Rights of Persons with Disabilities to which Syria is a party: “Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”*]

*And the following categories **except where they were accused/involved in violent crimes including torture, sexual violence or murder:***

- d. Any person who is detained without a judicial warrant unless he was arrested during the commission of a crime. [*Syrian Criminal Procedure Code, Article 112*]
- e. Any person who has been arrested or detained without organising a file about the incident. [*Syrian Criminal Procedure Code, Article 54*]
- f. Any person detained in violation of any provision of the Syrian Criminal Procedure Code which would render the detention arbitrary.
- g. Any person charged or convicted by or before the terrorism courts established under Law No. 22 of 2012 or the field courts established pursuant to Legislative Decree No. 109 dated 17/8/1967 concerning the establishment of military field courts (field courts) of the Arab Baath Socialist Party No. 2 dated 25/2/1966 and the decision of the Council of Ministers No. 109 dated 14/8/1967.
- h. Any person detained in a security branch detention centers because their detention is not based on an arrest warrant issued by a competent authority.
- i. Any person detained for six months or more due to allegations, charges or conviction for misdemeanors.
- j. Any person who is still in prison after the end of his official/lawful sentence.
- k. Any person accused or convicted of committing acts of “terrorism” in the years 2011-2012 before an armed opposition emerged in Syria. [*Syrian Penal Code Articles 303 to 308, and Terrorism Law No. 19 of 2012*]
- l. Any persons accused or convicted of offence under Articles 285-286-287-288-291-295-296-303-304-305-306-307-308 of the Syrian Penal Code.
- m. Any person detained, accused or convicted based on Syrian Penal Code articles used to criminalise free association, free assembly and the political opinions and beliefs of the Kurdish population.
- n. Any person accused or conviction of committing internal or external offenses, disobeying military orders, defection, attempt to defect and terrorism, as stipulated in the Syrian Military Code.

**CATEGORY 2.** For any persons falling within this category, all parties shall order and ensure the Conditional Release “on licence”/on bail (after obtaining guarantees and making written undertakings to attend their trial/return to detention and recording necessary data and information such as their addresses of residence and places of work) pending determination of their eligibility/application for release:

- a. Any person whose application for unconditional release under Category 1 is opposed with supporting credible and reliable evidence (other than a confession).
- b. Any persons who are detained without trial or charged with non-violent ordinary or minor offences crimes which they claim were political activities, and who do not pose a threat to society (*Using agreed objective, transparent criteria*)

**CATEGORY 3.** Exceptions for which a detainee should remain in detention pending determination of application for release (but subject to due process, pre-trial and fair trial rights, and the protection of

independent civilian oversight, access to legal advice and visitation rights - as per the Draft Principles of Fair and Safe Detention and Draft Principles for Detention Oversight Mechanisms):

- c. Detainees charged or convicted of any violent criminal offence (see suggested definition above), such as murder, torture or sexual violence.
- d. Any person charged with or convicted of an offence which could amount to an international crime.
- e. Any detainee affiliated with a group or organization which is considered to promote or embody violent extremism or to be a danger to civilians/non-combatants.
- f. Foreign nationals who committed violent crimes in Syria.

4. For all detainees not eligible under this Release Mechanism, their continued detention should be subject to due process, pre-trial and fair trial rights, and the protection of independent civilian oversight, access to legal advice and visitation rights - as per the Draft Principles of Fair and Safe Detention and Draft Principles for Detention Oversight Mechanisms. Courts should ensure all detainees pending trial appear before them to review due process, legality of detention to determine lawful ordinary due process and fair determination of charges against them by an independent impartial court established in law in accordance to the Constitution.

## IMMEDIATE RESPONSE – ACTION PLAN

### IMMEDIATE STEPS REQUIRED FOR ALL PLACES OF DETENTION IN SYRIA

#### First Priority for Immediate Implementation

- Immediate application of the Principles of Detention, and immediate cessation of all forms of torture, cruel and inhumane treatment in all places of detention.
- Immediate hiatus or end to death penalty orders and all and any executions.
- Immediate release of the locations, names of detainees held and detention records for all places of detention in Syria.
- Immediate embedding of international mentors and prison directors for an interim period with assurance of safety. (in an operational/executive role to ensure the safety and protection of detainees).
- Prioritised interventions in worst and illegal centres first (according to category/triage list) but extending to all places of detention in Syria.
- Safe transfer systems and a mapping of local support services for detainees with acute health care and MHPSS needs.
- Immediate transparency and full access with:
  - cell to cell visits and registration of names;
  - medical and MHPSS teams (also basic immediate needs – food, water, clean clothes, bedding, disease/insect control, vaccinations);
  - monitoring/preventative teams;
  - lawyers and family visits;
  - court/prosecution oversight;
  - Installation of CCTV in all public spaces in places of detention (with regard to privacy, respect and dignity for detainees) and allow civil and international monitors access to feed.
- As a matter of urgency, visitation teams should prepare:
  - (cell by cell) detainee lists with status (can be checked against central Detainee List) and families contacted immediately;
  - emergency medical and MHPSS triage/referral list (for immediate/simultaneous transfer – oversee before leaving building); and
  - needs/protection reports after visits per centre with any necessary emergency protective and preventative measures/needs specific for that centre clearly identified.
- Immediate ratification of OPCAT.
- Immediate and expedited implementation of Political Prisoner and Arbitrarily Detained Release Mechanism (see discussion draft above).
- Immediate application of fair trial rights for all pre-trial/on remand detainees. [.]
- Immediate access for independent medical evaluations as part of an independent investigation of any allegations of torture (at least going forward);
- Immediate and effective consequences and accountability going forward for torture, SV or any form of ill-treatment. Remove amnesty/impunity for security officers and any other amnesties, pardons or obstacles to accountability and criminal sanction for torture, SV and enforced disappearance.
- Close the worst centres, those in inappropriate places (like underground) and those not official/functioning under civilian law enforcement and correctional services. Immediate medical attention, MHPSS care, and release in these centres. Transfer only if Release Mechanism does not apply.

#### *Immediate Next Steps for Detention System*

- Consider Detention Service Leadership needs: immediate and through change management, and with the assistance of international embedded mentors.
- Update new Prison Regulations, new SOPs and Codes of Conduct. Drafts can be prepared and agreed now with international standards and guidance.



- Professionalisation of detention and correctional services. Recruiting new staff (reflecting diverse groups in Syria), as well as training and enforcement of new standards to ensure rules match practice. [*Note: This will take a lot of time. What can be done to start training new leadership and staff now which would at least create a new small cadre of leadership and staff who can bolster and help start change from the start.*]
- Change in culture and professionalization of Detention Service (in line with Principles for Detention in Syria) – focus on lawful actors in this field - the police and correctional services which is likely to have a continuing role in safe and fair detentions.
- Vetting of Personnel: immediate but consider impact and needs for continuing functioning of sufficient detention facilities. *Some suggestions include:* e.g. 1) immediate termination of employment and criminal accountability for worst physical perpetrators murder, severe torture and SV, and leadership of places with systematic/culture of torture and life threatening conditions, 2) consider termination/demotion/re-training of those alleged to be complicit in lesser forms of torture and ill treatment, consider other forms of accountability and reparation/recompense for their actions, 3) consider re-training and supervision of those alleged to be complicit in running detention centres with life threatening health conditions. Consider what work can be done to compile lists of those within these categories. [*Note: Overlap with accountability/transitional justice.*]
- Take immediate steps to counter corruption, bribery, drugs and other criminality in the prison system: create immediate disciplinary and accountability procedures for violations.
- Education and start awareness raising campaigns (in association with human rights culture building) in the community around detention centres values and principles. Unify civil society and leadership, with stronger messaging through community leadership and media engagement.

## OVERVIEW OF IMPACT AND NEEDS FOR DETENTION RESPONSE

Medical
<i>Likely to find:</i> acute and chronic injury, disease and disabilities arising from violence including sexual violence, malnutrition, disease and infection, insects, lack of light and air.
<i>First Response:</i> Triage needed for life saving interventions – quickly identify those who need emergency medical interventions, first aid response <i>in situ</i> then referral to trusted hospital (or monitored/supervised). Women’s reproductive health and other health needs to be met.
<i>Medical Teams are needed including first aider/SV first responders, crisis management/large scale incident emergency response managers, sexual violence experts of both genders, women’s reproductive health providers, paediatricians.</i>
<b>Suggested preparatory actions:</b>
<ol style="list-style-type: none"> <li>1. geographical mapping and estimates of needs assessments for health for detainees, released and families, as well as mapping existing services and expertise;</li> <li>2. planning for detention centre preventative disease control - vaccinations/antibiotics, quarantines/segregation of infectious and contagious, and cleaning/sanitation to remove diseases/infection/bacteria;</li> <li>3. planning for detention centre health visits including triage protocol (addressing/planning for as many known life-threatening factors as possible), referral pathways/services (addressing as many known issues as possible), rosters of available medical personnel, lists of equipment, medicine and tools needed, including gender attuned medical visits and intervention capabilities.</li> </ol>
Mental Health and Psycho-Social Support (MHPSS)
<i>Likely to find:</i> trauma, psychological impact of torture, sights/sounds and conditions, solitary confinement and long term incarceration, loss of loved ones. PTSD, anxiety, depression have a high statistical association with torture. Suicide risks seen in those surviving torture and detention.
<i>First Response:</i> triage protocol needed, lower level psychological first aid/immediate response, with referrals for high risk. Child MHPSS support. Counselling and family support for released with in-community support for traumatised family members and grievance support. MHPSS protective/preventative measures and support around reducing/tackling domestic/community violence upon release. Also consider the breeding of extremism in detention centres and children indoctrinated: there needs to be an appropriate response around rehabilitation, education, support and countering radicalisation (CVE).
<i>Teams of psychiatrists and psychologists, trained crisis counsellors, SV experts of both genders, child specialists for centres with child detainees, child demobilisation and CVE programming and specialist support/care/expertise. NOTE: Severe shortage of available trained professional to meet this need.</i>
<b>Suggested preparatory actions:</b>
<ol style="list-style-type: none"> <li>1. geographical mapping and estimates of needs assessments for MHPSS for detainees, released and families, as well as mapping existing services and expertise;</li> <li>2. planning for detention centre MHPSS visits including triage protocol, rosters of available specialist personnel, lists of equipment, medicine and tools needed, including gender attuned intervention capabilities.</li> <li>3. Planning and development of (free of charge) community services and responses (including mobile units, home visits) around trauma, reintegration, psychological impact, effects of stigma, etc. plus referrals for psychiatric interventions where necessary. To include child trauma services and community groups. [Capacity building and further training will be necessary in many, if not all, geographic areas.]</li> <li>4. Research/expert input around de-radicalisation/CVE response programmes as part of any release for people who have been radicalised or exposed to extremist ideology.</li> </ol>
Humanitarian/Forensic
<i>First Response:</i> hygienic and humane collection of remains immediately found in cells or corridors. Recovery of remains through probes, excavation, exhumation. Identification through DNA comparators where possible. Return of remains to loved ones for burial.
<i>Teams of legal expert oversight, forensic archaeologists, forensic anthropologists, forensic medicine/pathologists, crime scene/grave technicians.</i>
<b>Suggested Preparatory Actions:</b>
<ol style="list-style-type: none"> <li>1. Centralised List of Missing with all necessary biological data and DNA comparators ready for tracing and identification, with family contact details.</li> <li>2. Planning for humanitarian access to detention centres, protocols and procedures around collection of remains to international humanitarian (and criminal) standards, rosters of available specialist personnel, lists of equipment, medicine and tools needed, preparation of secure, appropriate mortuary spaces for identification and examination of remains. [Capacity building and training will be needed for all phases - recovery, exhumation, identification and forensic examination.]</li> </ol>

3. Consider how large-scale identification processes can be achieved. Consider ICMP role in capacity building and technical assistance around exhumations, identification using DNA, etc.
4. Collation of mass grave/location of missing remains information from all sources.
5. Consider any necessary legal reform or legislation to allow and facilitate these processes within Syrian law.

### Basic Needs in Facilities

*First Response:* Each detention centre will need a rapid needs assessment on basic steps to improve conditions to sustain health and do no harm (to some extent the centralized detention places list could forecast some of this). There should be a programme/supplies ready to provide adequate/sufficient food, water, clothes, furniture/beds, bedding, heating/ventilation.

### Tracing and connecting with family:

There needs to be a centralised list of up-to-date contact details for families as part of the list of detainees. So that when someone is located in detention, their family can be given an update as soon as possible and that communication can be established.

There should be an agreement/law and scheme to support family visits if release is not immediate or imminent.

### Investigation/Documentation

While almost all detention centres may be crime scenes, the reality is that this response may not be allowed or agreed to at first. It should not take priority over life-saving interventions and protections.

### Legal status: *addressing the legal consequences of detention and consequences of missing persons/enforced disappearance.*

*Response:*

- Access to defence lawyers free of charge for all pre-trial detainees with legally ‘privileged’ lawyers’ visits.
- Access to release mechanism process and/or access to court for challenge legality of detention and detention conditions.
- Legal advice around any personal status issue, identification documentation, etc. for detainees including in particular for children born in detention (ensuring no indication or stigma around their birth place).
- Free legal advice and court/legal process to families on legal status of missing detainees and rights (personal status, marriage/divorce, property, inheritance, declaration of death/presumed dead – under Syrian law, 10 years until presumption of death except in war – three years.)

Given the scale of the numbers missing, suggestion of a dedicated national mechanism, free to all. Or a National Missing Institute. Mechanism, processes, resources and trained personnel all needed.

### Return and Reintegration after Release

Following release, immediate first basic needs are clothes, transportation back to their homes and/or families (depending on displacement, local situations).

Recognising and **tackling stigma** and prejudice against former detainees (where perceptions as “criminals”/survivors of sexual violence, includes

- a. stopping and reducing stigma;
- b. mitigating and addressing the impact of stigma on people; and
- c. Consider differences in stigma between male and female detainees and the challenges those present to both.

Including awareness raising, advocacy, community leadership, identification of stigma (patent and latent) and mapping how and where it impacts people, action plan for community measures and work around tackling stigma, counselling and work with families, protection (physical and psychological), shelters, MHPSS counselling and support, broader social support, care centres, recovery/reintegration programmes targeting community, training with support services and support service personnel around awareness and sensitization/recognition of stigma and its impact (myths and assumptions about sexual violence): all gender attuned and sensitised. Create ethnic standards, codes of conduct with legal and disciplinary consequences where stigmatisation manifests/harm done (some suggestion of penalising or criminalising stigma or harm against survivors).

Participants commented on the scale of this programme and the time it would take to change behaviour and attitudes in all communities.

Continuing physical and psychological rehabilitation and care; individual, family and community trauma and resilience. Heightened risk of domestic violence. Risk of generational impact.

Infrastructure in return area, security in return area, return of property and homes ‘lost’ during detention – basics to allow them to return home.

### Interruption of education

Many students and young persons detained and their educations interrupted.

- Programme needed to support the re-start and completion of their education or skills/vocational training. Consider access to online training, scholarships and back to school programmes.
- For children under 18 years old in detention, intensive programme of trauma support, rehabilitation, recovery and education.
- Skills training and educational grant in communities, specifically targeting detainees and the families of detainees or enforced disappeared.

*Longer term needs:* build academic, professional and vocation training system in detention centres, including on-line degrees, language training, libraries, books and curricula, access and provision for study and examinations (Mandela Rules).

### **Economic impact**

Detention has incurred massive financial/economic consequences on families and detainees. The detainee may have been the breadwinner for the family. Huge bribes have been paid and families, desperate for information and release of loved ones, exploited. Families/detainees may have lost their homes during detention or once men in the family have been detained.

Some organisations have emerged already which support families of the detained. Such support should include housing, food, job/skills training/livelihood, visits and needs assessments (in addition to medical, MHPSS, legal, etc. support needed for these families).