Syria's Detained and Disappeared

Tens of Thousands Must be a Pillar of President Biden s Approach to the Decade-Long Crisis

May 31, 2021

By Kylee DiGregorio, senior researcher of the MENA Prison Forum

At the end of April, the American State Department's Bureau of Democracy, Human Rights and Labor (DRL) announced a funding opportunity for projects that focus among other issues on '[p]romoting the reintegration and protection' of minors in juvenile detention centers, adult detainees, and/or those adversely impacted by perceived Da'esh (ISIS) affiliation in communities of return. At the outset, such an acknowledgment of the so-called 'detainees' file' is ostensibly a positive development. Ironically, however, the State Department and the US government more broadly has proven itself unwilling to do that which it requires of DRL's funding applicants: namely, to 'realistically address the challenges and limitations' that are likely to confront and potentially undermine such an initiative.

The most obvious challenge to any detainee 'reintegration and protection' project is undoubtedly the categorical absence of progress on the release of detainees and the missing and forcibly disappeared. Indeed, it is perplexing that the State Department is now directing its programmatic attention as well as between $750,000 and $2 million to the reintegration of detainees while at the same time declining to exert any meaningful diplomatic effort to secure the release of, or the disclosure of information about, the more than 149,000 individuals who are still detained, missing, or disappeared. Though such inaction is not for lack of awareness. In its 2020 Human Rights Report on Syria published less than one month before the DRL notice the State Department affirmed bluntly: '[T]he vast majority of those disappeared since the start of the conflict remained missing [throughout the year].'

The only semi-logical, albeit baseless, interpretation of this cart-before-the-horse DRL solicitation is that it is a foreshadowing of greater US strategic diplomacy on the issue of detainees and the disappeared. As the Biden administration continues to review America's policy approach to the Syrian crisis, however, it is disappointing to find how little this dimension has factored into the analyses and recommendations put forward by foreign affairs experts and commentators, despite its magnitude and centrality.

War Crimes and Crimes Against Humanity

Since March 2011, countless Syrian and international organizations have documented the staggering scale of detention-related abuse the majority committed by the Assad government. According to the Syrian Network for Human Rights (SNHR), Syrian regime forces are responsible for more than 87 percent (131,106) of the total number of cases of arbitrary arrest recorded between March 2011 and March 2021; more than 84 percent (86,276) of the total number of cases of enforced disappearance; and more than 98 percent (14,315) of the total number of deaths in detention due to torture. After years of investigation, the Independent International Commission of Inquiry (IICI) on Syria concluded that the Syrian government has 'perpetrated the crimes of extermination, murder, rape or other forms of sexual violence, torture, and imprisonment in the context of its widespread and systematic detention of dissidents, as well as those perceived to be sympathetic to armed groups.' Emboldened by the uninterrupted impunity with which such atrocities were met, UN-designated terrorist organizations such as Da'esh and Hay'at Tahrir al Sham (HTS, previously Jabhat al-Nusra) as well as armed opposition groups including the US-backed Syrian Democratic Forces (SDF) and the Turkish-supported Syrian National Army (SNA, previously the Free Syrian Army (FSA)) gradually began to adopt similar detention practices.

The result has been a continual universalization of the horror of conflict-related detention and disappearance. Ms. Mariam Alhallak, director of the Caesar Families Association, notes that '[t]here is not a single Syrian family who does not have an immediate or a close relative whom has been detained a son, a brother, a cousin.' In 2015, Ms. Alhallak found her son, Ayham Ghazoul, among the Caesar photos a cache of some 53,275 photographs depicting the bodies of at least 6,786 individuals who were tortured, starved, and ultimately killed in government custody. It is this ubiquitous quality of detention and the enforced disappearance, torture, and, oftentimes, death that systematically follows that makes the issue of detainees and the disappeared among the most urgent human rights challenges in Syria today.

And yet, this issue has been relegated to the margins of international diplomacy, raised haphazardly and only rhetorically at Security Council briefings. In a report titled Out of Sight, Out of Mind, the IICI lamented that '[d]eaths in custody continue to occur in near-total secrecy and are largely lost to the international public and political discourse surrounding the . . . conflict, in spite of their devastating impact on the lives of hundreds of thousands of Syrians.' These words were published in February 2016. Since that time, those states that appear to be most avidly in favor of a UN-led, Geneva-based peace process have been content to cede the matter of detainees and the disappeared to Russia, Turkey, and Iran.

Their approach operationalized under the framework of the Astana Talks is inherently flawed, for reasons meticulously outlined by Ms. Alhallak and many other Syrian activists and civil society members. In short, the 'exchange of abductees' as it is characterized by the official Syrian Arab News Agency (SANA) conflates the unconditional release of arbitrarily and unlawfully detained civilians with negotiated, one-for-one swaps of combatants that are coordinated, conducted, and overseen exclusively by representatives of the respective armed parties to the conflict. As director of SNHR's Detainees' Division, Nour al-Khatib has observed, the overwhelming majority of those released in exchange deals thus far have been regime officers and soldiers; relatives of faction leaders; individuals detained for reasons unrelated to opinion; and those arrested immediately following the announcement of an impending exchange. According to Syrians for Truth and Justice (STJ), the latter group is arrested and detained solely to serve as a fig leaf, enabling exchange coordinators to insert ordinary civilians onto prisoner lists in order to 'cover the names of 'others important in the deal.'' Such exchanges therefore not only flout international principles and demands (as stipulated in article 5(b)(i) of the June 2012 Geneva Communiqué, article 11 of UN Security Council resolution 2139 (2014), and article 12 of resolution 2254 (2015)); they are also manipulated as a means through which warring parties benefit politically and militarily. This deceptive exercise thereby eliminates any incentive to genuinely engage in 'confidence-building' measures, and by extension undermines the prospect of a lasting ceasefire, peace process, and political transition.



Photo courtesy of Najah Albukai

In a March 2019 Security Council briefing, Under-Secretary-General for Political and Peacebuilding Affairs, Rosemary DiCarlo reported that the UN's request to move beyond one-for-one exchanges and instead focus on the simultaneous release of unequal numbers of detainees 'was met with no objection from [Iran, Russia and Turkey].' However, on March 15, 2021 two years after this seemingly hopeful update and ten years after the regime launched its widespread detention campaign UN Special Envoy for Syria, Geir Pedersen acknowledged that 'neither [his] efforts nor those of the [Astana-led Working Group on the Release of Detainees/Abductees, the Handover of Bodies and the Identification of Missing Persons] have produced the kind of progress needed.'

Indeed, three and a half years have elapsed since the Astana guarantors agreed on the formation of the Working Group, and the fate of tens of thousands remains unknown. This past March, the IICI warned that those still being held in places of incommunicado detention might 'die unless released expeditiously.' It added that states wielding influence on parties to the conflict 'have clearly not done enough to change abusive behavior by those parties on the ground.' Under both the Obama and Trump administrations, America was at the forefront of these states, forgoing every opportunity to adequately and appropriately exert its influence. Despite those who argue that the US does not have sufficient leverage and/or strategic interests, the Biden administration can and should

change course.

US Interests

Earlier this month, President Biden announced the continuation of the US-declared national emergency with respect to the actions of the Syrian government. In his notice, the president stated that the extension derives from the actions and policies taken by the regime in Damascus, which he said, 'pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States.' One particularly plausible and deeply consequential security threat remains the risk of a calculated, regime-sanctioned release of designated or otherwise known terrorist elements from state-administered places of detention. In fact, such a possibility bears historical precedent, to which President Biden himself alluded in his statement, citing the Syrian government's role in thwarting US and international efforts 'with respect to the stabilization and reconstruction of Iraq.'

It is no secret that Assad has long exploited arrests and amnesties and the definition of 'terrorism' to serve his own interests. After facilitating the entry of busloads of volunteer fighters into Iraq to wage an insurgency against coalition troops following the 2003 US-led invasion, Assad reversed tack half a decade later. Seeking to show the Obama administration that Damascus was combatting terrorism and, of course, to quash any source of peril to its own grip on power the regime rounded up and imprisoned these battle-hardened men upon their return to Syria. Yet when the source of the perceived threat shifted to unarmed civilian demonstrators in March 2011, so too did the regime's calculus. Weeks later, Assad released hundreds of radicalized prisoners some having joined Al-Qaeda's affiliate in Iraq, the precursor to ISIS in what was portrayed as a series of broader amnesties. Seizing upon protesters' demands for the release of prisoners of conscience, the regime issued new laws authorizing multiple general prison pardons, such as Decree No. 61, which included 'all members of the Muslim Brotherhood and other detainees belonging to political movements.' Despite being highly choreographed and well-publicized, however, these opportunistic amnesties were widely denounced at the time as a fraud, whereby Islamist militants and others radicalized as a result of state torture were quietly released while the regime's mukhabarat (security services) and pro-regime shabiha (thugs) continued to arrest, detain, disappear, and kill those peacefully calling for greater rights and reforms.

Whether or not Assad 'helped forge ISIS' deliberately remains a topic of fierce debate. What is indisputable, however, is the fact that several of those whom Assad released from Sednaya military prison throughout the

spring and summer of 2011 subsequently went on to form extremist groups. These men include Hassan Abboud and Abu Khalid al-Suri, founding members and top commanders of Ahrar al-Sham (both killed in 2014 in separate incidents); Zahran Alloush, the leader of Jaish al-Islam (killed in 2015); and Amr al-Absi ('Abu al-Atheer'), senior ISIS operative and leader of its Mujahideen Shura Council (killed in 2016).

The Biden administration should realize that to disengage from the 'detainees' file' is also to forfeit any international oversight capacity vis-à-vis prisoner release processes and protocols. In practical terms, such a decision grants the Assad regime carte blanche to continue politicizing and weaponizing detainees. This prospect should give pause to policymakers and security analysts alike, particularly in light of the ongoing resurgence of ISIS in Syria and Iraq.

Recommendations and Points of Leverage

It is therefore squarely within US national security interests to prioritize detainees and the missing and disappeared within America's policy approach toward the Syrian crisis. The Biden administration can start by refusing to legitimize the Astana-led 'exchanges' and instead publicly identify them as the counter-productive sham that they are. In turn, the US should work with its allies to ensure that this issue is entrusted to the UN, in constant consultation and partnership with Syrian victims' and family members' organizations. The importance of this latter point cannot be overstated, and thus it is encouraging that Ambassador Linda Thomas-Greenfield utilized her platform as President of the Security Council this past March to call on UN personnel to engage 'directly and more regularly' with former detainees, families of those who are currently detained or missing, and representatives of Syrian civil society. It is critical that US State Department appointees and civil servants including those at DRL as well as USAID practitioners and American Congressmen and women also heed this call.

To this end, America's adopted policy approach regarding the matter of detainees ought to be informed by the Truth and Justice Charter 'a common vision on the question of enforced disappearance and arbitrary detention in Syria,' formulated by those most immediately affected: survivors, relatives, victims, and witnesses. Rooted in a victim-centered approach, the Charter presents a multi-stage 'roadmap' delineating a list of consolidated demands with respect to truth, justice, and accountability. In so doing, its signatories seek to provide a framework to guide current and prospective efforts "to build a future Syria that upholds the dignity and rights of all its citizens."

This vision dovetails with the stated aim of the US government, and that of DRL's detainee rehabilitation and protection funding, which endeavors to 'strengthen democracy, human rights, and the rule of law for Syrians.' The DRL request for proposals also emphasizes that programs ought to promote and advance the ability of Syrian civil society representatives and activists 'to coalesce and advocate effectively for their shared interests' in support of human rights and fundamental freedoms. The broader US government would do well to implement such guidelines.

As a first step in doing so, the Biden administration ought to collaborate with victims' and family members' organizations currently advocating for the creation of an international mechanism to reveal the fate and whereabouts of the detained, missing, disappeared. Although the full details of President Biden's 'Syria policy' have yet to be formally disclosed, several members of his administration have expressed time and again that the US remains committed to achieving a political solution to the conflict, per the parameters outlined in UN Security Council Resolution 2254. Yet to date, exceptionally little consideration has been granted to the fact that one of the five priority objectives prescribed within resolution 2254 is, of course, the release of all 'arbitrarily detained persons.' As such, former US Acting Ambassador to the UN, Jonathan Cohen was right to state plainly that progress on the issue of detainees 'is essential to the success of any political solution' a point that Syrian survivors have repeated for years. Last August 30, on the International Day of the Victims of Enforced Disappearances, SNHR published its ninth annual report on Syria's forcibly disappeared, in which the organization stated unequivocally that 'there is no political solution without resolving the issue of the disappeared.' Those eager to shirk diplomatic engagement on this topic by highlighting the semantic difference between 'detained' individuals and 'the disappeared' should recall that '[i]n most cases, to be imprisoned in Syria is to disappear.'

And yet, as the Truth and Justice Charter reminds us, the crimes of arbitrary detention and enforced disappearance do 'not affect the prisoners and disappeared alone: there are hundreds of thousands of relatives who are also direct victims' of these violations of international law. The architects of this Charter have also reiterated the position expressed by SNHR, reaffirming: 'No real negotiations or real peace process can take place while these families are unaware of the fate of their loved ones, in the absence of the confidence-building measures stipulated in Resolution 2254, and without addressing the question of detention and enforced disappearances as an urgent priority.'

Thus, if the Biden administration genuinely wants to revive multilateral diplomacy and resuscitate the process toward a negotiated settlement, then it must first utilize its political capital to achieve considerable

progress in securing the release of detainees and the disclosure of the fate and whereabouts of the missing and disappeared. American leaders, lawmakers, and diplomats should therefore collaborate with European counterparts who have already endorsed the establishment of an independent international mechanism tasked per the IICI's recommendation with the mandate to identify, track, and locate detainees and the missing and disappeared or their remains, including those found in mass graves. The US should also work to garner the support of members of the Global Coalition to Defeat ISIS and other allies. One year ago prior to the US presidential election, and thus prior to his appointment as Secretary of State Antony Blinken asserted that America has 'a greater capacity than any country on Earth to mobilize others to help in Syria's rebuilding and reconstruction at the right time.' Although now is certainly not the right time to entertain the topic of reconstruction, the US should exercise its unparalleled mobilization capacity to facilitate and ensure the formation of this mechanism.

However, playing a constructive role on the 'detainees' file' also entails confronting Moscow, which is not only Assad's most politically influential (i.e., obstructive) backer, but also directly implicated in perpetuating the arbitrary arrest and enforced disappearance of Syrians through Russian-brokered 'reconciliation' agreements. Contrary to his predecessor, President Biden must engage critically with the Kremlin on the issue of detainees and the missing and disappeared, and he must be willing to bring to bear the strategic points of leverage that the US still maintains in order to guarantee credible and tangible results. For example, Russia has signaled for some time now that it is seeking a political resolution to the conflict. Yet, if such a settlement is to be accorded any semblance of international legitimacy, then Moscow 'needs the US, Europe, and others as signatories.' Russia has likewise expressed its eagerness to begin the process of Syria's reconstruction both infrastructural and economic. Yet such an immense endeavor will require the investment dollars of the US, Europe, and/or other American allies such as Saudi Arabia. Washington should therefore leverage these cards to press Moscow to in turn press the Assad regime to finally fulfill the longstanding demands presented in the IICI's latest report on arbitrary arrest and detention. This issue should be on the agenda of every bilateral meeting, including President Biden's proposed summit tentatively scheduled to take place in June. In the course of these discussions, the president must make clear both publicly and privately that concrete, internationally monitored and verified progress on these demands transcends the scope of any political talks and is, as such, non-negotiable.

The same message ought to be consistently delivered to other states as well, particularly those in favor of normalizing diplomatic ties with

Damascus in order to reintegrate Syria into the Arab League and rehabilitate Assad within the wider international community.

In an effort to prevent further arrests, President Biden must make it clear to all governments that the forced return of refugees is unacceptable. To alleviate the cause of this disgraceful trend, the US should also take the lead in mobilizing and coordinating increased humanitarian assistance to Syrian refugees, as well as sufficient financial support to refugee-hosting countries.

On the other hand, the US should press Turkey to cease its unlawful transfer, prosecution, and detention of Syrian nationals, and remind Turkish authorities that such measures contravene Ankara's obligations per the Fourth Geneva Convention as an occupying power in northeast Syria.

At the same time, the Biden administration must press other allies such as the UK, Canada, and France as well as all affected governments to repatriate their citizens whom are currently being held in unlawful detention by the Autonomous Administration of North and East Syria (AANES), an Anti-ISIS Coalition ally. Commander of US Central Command (CENTCOM) Gen. Kenneth 'Frank' McKenzie has, on numerous occasions, warned that governments' unwillingness to repatriate nearly 43,000 nationals including 27,500 children linked to ISIS has the strong potential to directly facilitate the organization's resurgence. As the leader of the Global Coalition to Defeat ISIS, it is therefore also incumbent upon the US to continue and expand its efforts to improve current detention conditions in order to bring them into compliance with international minimum standards, as well as ensure that all detainees are guaranteed their due process rights.

During his presidential campaign, Biden told the Arab American community that, as president, he would 'use the full range of [America's] diplomatic tools and foreign assistance to protect and advance human rights and development, and actively combat violence and discrimination.' Such action is long overdue for the tens of thousands of people who are still detained, missing, and disappeared in Syria, as well as for the hundreds of thousands of family members and loved ones who continue to search for them alone and at great risk to their own personal safety.

As Assad embarks on his fourth seven-year term, the Biden administration ought to recall Caesar's words to the Senate Committee on Foreign Relations more than a year ago: '[S]ince I left Syria . . . detentions have increased. Killing has increased in the same places and in the same ways and at the hands of the very same criminals . . . And the reason is that the

international community has been a bystander to what's unfolding in Syria while only issuing statements of concern.'

It is simply not enough to limit America's engagement on Syria to military operations and economic sanctions. Detainees and the missing and disappeared must be firmly at the foreground of any comprehensive and holistic policy on the Syrian crisis, and President Biden must guarantee that their family members play an active role as partners in its implementation. It is illogical to expect the Assad regime to address the conflict's root cause when we ourselves are unwilling to do so.

Supported with German Federal Foreign Office s funds by ifa (Institut für Auslandsbeziehungen), Funding programme zivik.