

Northern Syria: Multi-Faceted Impacts of Arbitrary Detention and Torture on the Victims and Their Families



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Detention has multi-faceted impacts on men, women and children including both physical and mental harm. Families of the detainees and enforced disappeared by factions of the opposition Syrian National Army (SNA) suffer from a general feeling of hardship and confusion, as legal protection was not provided to them, and they are left to fend for themselves

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Executive Summary:

In mid-March 2023, Nisreen Mohammed, an alias, was astonished when a group of armed men stormed her house in Ras al-Ayn/Serê Kaniyê City, blindfolded her husband, handcuffed him and started beating him on the head and the back with the butts of their guns Kalashnikov in front of her eyes and her children who were panicked and scared. After that they took her husband away.

The fate of Nisreen's husband remains unaccounted for despite her repeated attempts to clarify any information about him. He was arrested by forces of the Military Police, which is affiliated with the SNA. Like many other families of the arbitrary detained and forcibly disappeared by the SNA, Nisreen is suffering from a general feeling of anguish, hardship, and confusion as protection was not provided to her and she was left to manage her affairs alone.

The above-mentioned incident reflects the situation of human rights in areas of Ras al-Ayn/Serê Kaniyê, Tall Abyad and Afrin, which are occupied and controlled by Turkey and armed groups affiliated with the opposition SNA of the Syrian Interim Government (SIG)/National Coalition of Syrian Revolutionary and Opposition Forces.

During the first eight months of 2023, Synergy Association for Victims documented the arrest of no less than 287 persons, including 21 children and 14 women, in areas of Afrin, Ras al-Ayn/Serê Kaniyê and Tall Abyad in northern Syria. Out of the total toll of detainees, only 87 were released while the fate of the 200 others, among them 18 children and 13 women, is still unknown.

In a [report](#) published on July 10, 2023, titled "No End in Sight: Torture and ill-treatment in the Syrian Arab Republic 2020-2023", the Independent International Commission of Inquiry on the Syrian Arab Republic said "**The Commission has previously found that in the context of detention, the SNA committed war crimes of torture and cruel treatment, hostage-taking, rape and sexual violence, as well as acts tantamount to enforced disappearances.**"

The Turkish-funded and supported SNA did not meet any minimum standards that should be applied to the persons detained at the hands of its forces. All of the interviewees reported being detained in overcrowded cells or incommunicado for prolonged periods without any justifications. Women were interrogated by men and were subjected to multiple insults. Inhuman detention conditions were imposed on all the victims in which the perpetrators aimed to either increase pressure on the victims to extract confessions, information, and ransoms from the family, or without any specific purpose just to cause more suffering to the victims. The majority of the victims underwent the same experience of sleep deprivation, exposure to freezing temperatures, depriving from any means of warmth, the least of which were blankets. Nor did any victim state that they had access to adequate nutrition or clean drinking water. Furthermore, all the victims were subjected to insults,

expressions and conducts that touch their honor according to the prevailing social norms. Victims of the Kurdish origin were often described as pigs and infidels.

The accounts documented by Synergy indicate that the frequent and purported pretexts charged against the detainees are affiliation to the Syrian Democratic Forces (SDF) and/or dealing with the Autonomous Administration. A brother of one of the detainees, who was arrested while attempting to cross the border into Turkey illegally seeking asylum abroad, said his brother confessed under torture that he was an SDF fighter just to let them stop torturing him. The torture included: beating with quadruple cables, frequent slapping and punching, in addition to psychological threats with insults and killing. The family paid USD 2,000 for his release after he was kept for 73 days in custody.

Motives behind the majority of detention and deprivation of liberty operations in areas of Afrin, Ras al-Ayn/Serê Kaniyê and Tall Abyad were to extort the victims and their families to get financial ransoms or for intimidation purposes to push them to leave the area.

A human rights activist working on documenting human rights violations in northern Syria told Synergy that **“Since the occupation of Afrin five years ago, its remaining Kurdish residents have been repeatedly arrested on alleged charges of previous connections with the Autonomous Administration or working with one of its civil or military institutions. However, the main purpose behind that is to intimidate the Kurdish residents and push them to leave the area then seizing their properties, let alone extorting families of the detainees to get ransoms.”**

Sometimes, detention is carried out for incomprehensible reasons. One of the witnesses interviewed by Synergy said that during the process of distributing humanitarian aid following the February earthquake 2023, a physical altercation broke out between a member of the SNA, who wanted to control the distribution, and a civilian, who was one of the earthquake victims. The civilian man fled fearful of retaliation or accountability, which really took place as a joint patrol of the Turkish Intelligence and forces of the SNA’s Military Police raided his house and arrested his brother instead of him.

A civil activist from [Ash Shaddadi](#) area, southern al-Hasakah, reported that forces of the Military Police, affiliated with the SNA, arrested him along with 18 others while they were attempting to cross the border into Turkey. The activist was blindfolded, interrogated and was charged of dealing with the SDF. He was also subjected to psychological torture represented in repeated insults and threats of murder, in addition to physical torture represented in kicking and slapping, all along the interrogation period that lasted for three days.

While in custody, many interviewees reported they were allowed to use restrooms/toilets only once a day, and sometimes once in few days. They were provided with one small meal daily and sometimes they were forced to pay for it, let alone depriving the victims of any hygiene measures. Women’s health needs were not considered; three women victims were

denied sanitary pads during the period of their detention that lasted for over a month, in addition to deliberately depriving them from the normal use of toilets and baths and forcing them to be escorted by male guards when using toilets, resulting in diseases in the reproductive system for these female victims.

It should be mentioned that in July 2021,¹ the US Department of the Treasury's Office of Foreign Assets Control (OFAC) designated several SNA's factions and commanders due to their involvement in committing gross human rights violations in Syria, such as Tajammu Ahrar al-Sharqiya and its leader Ahmed Ihsan Feyyad al-Hays, known as Abo Hatem Shaqra, among others. Moreover, the US Treasury has recently sanctioned al-Hamza/al-Hamzat Division, its commander Sayf Boulad Abu Bakr, Suleiman Shah Brigade and its commander Mohammed al-Jasim, also known as Abu Amsha, in addition to his brother Walid al-Jasim, a senior commander in the armed group, for connections to committing serious human rights violations against the Kurds residents in Afrin region in northern Syria, including abduction, detention, extortion, rape, torture, and property seizure.²

The United Nations must prioritize and give adequate attention to this issue, given the outrageous of violations perpetuated and the absence of legal protection for hundreds of thousands of civilians and actual and potential victims over a prolonged period. Non-state armed groups (NSAGs) in control of areas in northern Syria must not feel they have impunity or that they are not concerned to respect and protect human rights of the residents under their control.

Failure to take actions and possible measures to address what the victims are continuously subjected to at the hands of those factions represent an implicit permit for them to continue their practices and forfeit of victims' rights. Sanctioning some of these factions by the US Treasury for their documented record of committing human rights violation is an indication of the credibility of what we have included in this report and also indicates the atrocity they commit against the civilian population.

Synergy Association for Victims conducted 30 direct interviews with victims of arbitrary detention and torture, survivors, and their families in areas in Ras al-Ayn/Serê Kaniyê and Tall Abyad in northern Syria. The analysis of these interviews was further strengthened by our years of work and extensive expertise in documenting and defending the victims' rights, and through our field researchers and other sources, including UN reports and other reports from international human rights organizations.

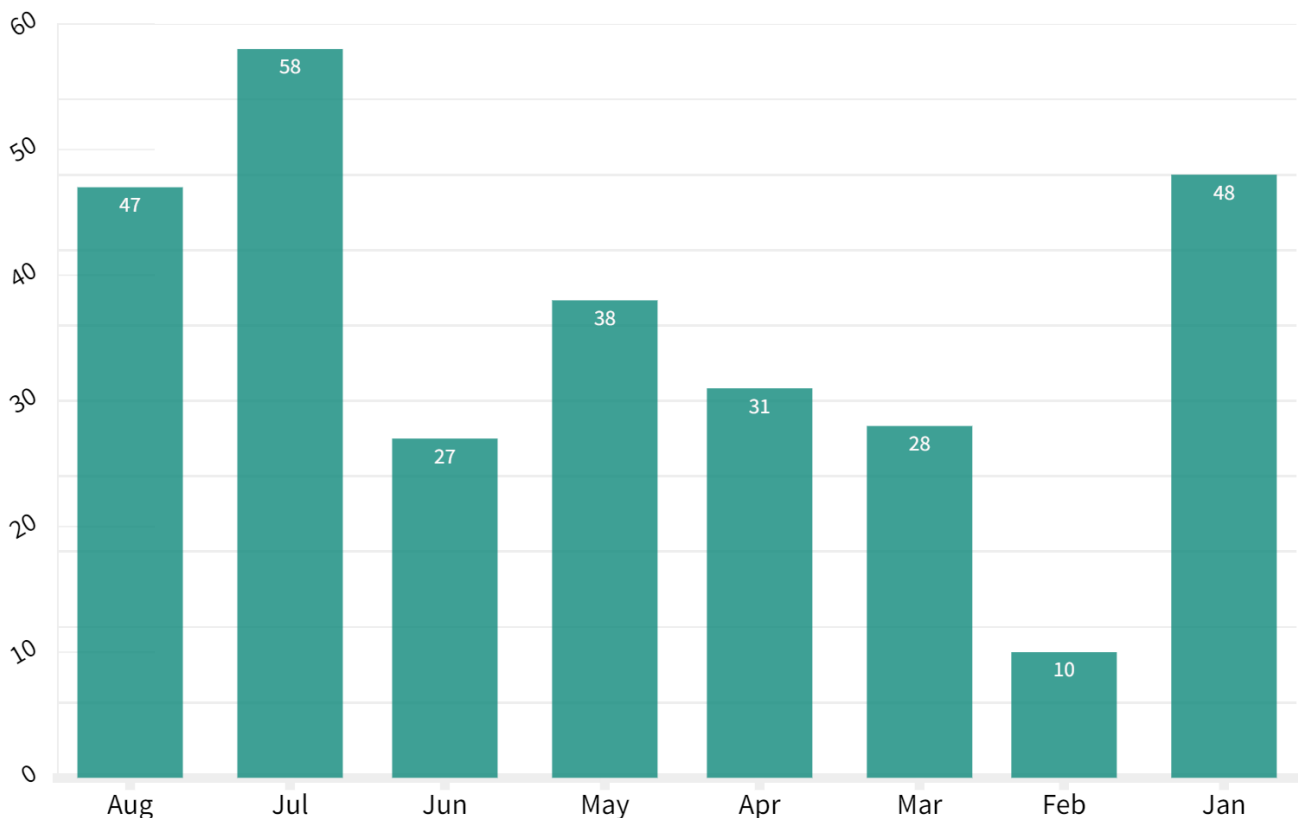
¹ U.S. Department of the Treasury, Treasury Sanctions Syrian Regime Prisons, Officials, and Syrian Armed Group, 28 July 2021 (Available at: <https://home.treasury.gov/news/press-releases/jy0292>).

² U.S. Department of the Treasury, Treasury Sanctions Two Syria-Based Militias Responsible for Serious Human Rights Abuses in Northern Syria, 17 August 2023 (Available at: <https://home.treasury.gov/news/press-releases/jy1699>).

Introduction:

Arbitrary arrest and detention by Turkish forces and their allied factions of the SNA continue to take place in Afrin, Ras al-Ayn/Serê Kaniyê and Tall Abyad regions, which are occupied by Turkey as a result of operation "Olive Branch" in 2018 and operation "Peace Spring" in 2019.

During the first eight months of 2023, Synergy documented the arrest of at least 287 persons, including 21 children and 14 women, at the hands of Turkish forces and the SNA's factions in areas of Afrin, Ras al-Ayn/Serê Kaniyê and Tall Abyad in northern Syria. Out of the total toll of detainees, only 87 were released while the fate of the 200 others, among them 18 children and 13 women, remains unknown.



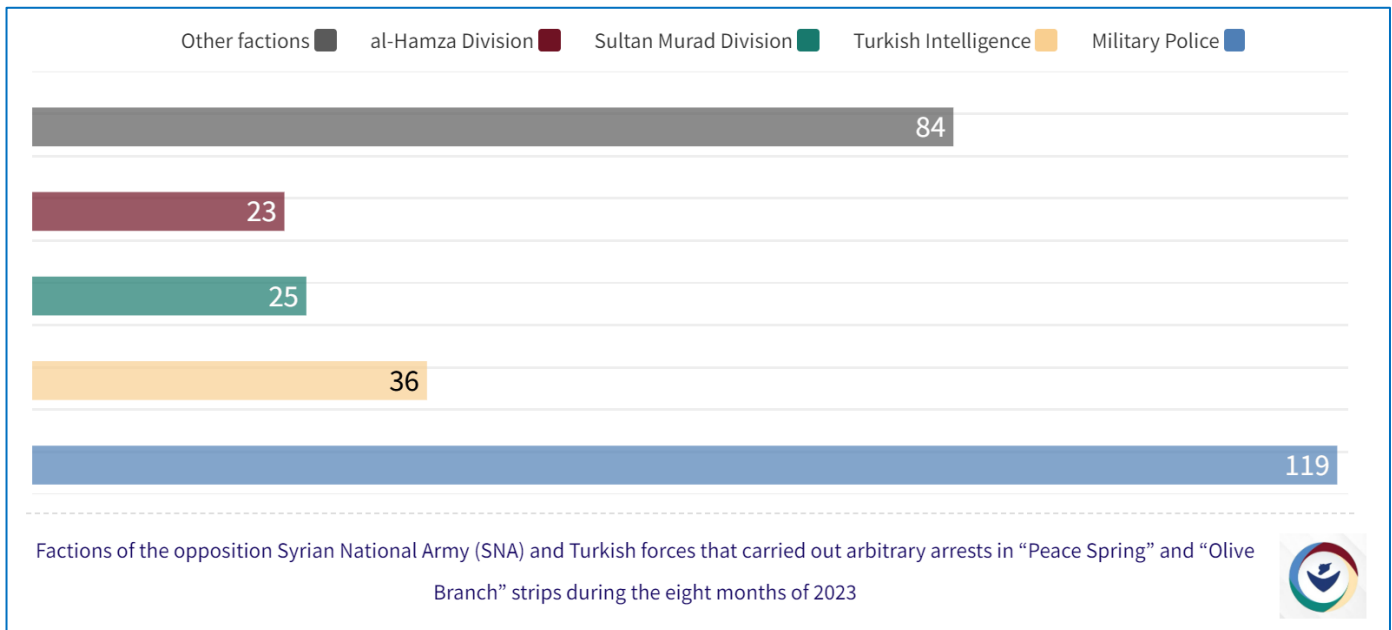
The outcome of arbitrary arrests in the "Olive Branch" and "Peace Spring" areas in northern Syria during the eight months of 2023



The biggest rate of documented arrest cases was recorded in Afrin region as no less than 217 persons (including 12 children and 11 women) were arrested. Only 62 out of them were released while the fate of 155 remains unknown.

In Ras al-Ayn/Serê Kaniyê and Tall Abyad regions, 70 persons (including nine children and three women) were arrested. Out of them, only 25 arrestees were released (including a woman and three children) while the fate of the other 45 (among them two women and six children) is still unaccounted for.

Forces of the Military Police, affiliated with the SNA, were responsible for the highest rate of arbitrary detention cases in areas of Ras al-Ayn/Serê Kaniyê, Tall Abyad and Afrin, as they were responsible for 119 arrest cases. On the other hand, the Turkish Intelligence arrested 36 persons, the Sultan Murad Division was responsible for 25 cases while al-Hamza Division was responsible for 23 arrest cases.



Motives behind the majority of detention and deprivation of liberty operations in areas of Afrin, Ras al-Ayn/Serê Kaniyê and Tall Abyad were to extort the victims and their families to get financial ransoms or for intimidation purposes to push them to leave the area.

The statements collected by Synergy showed that Turkish officials were present regularly in SNA-run detention facilities, and former detainees stated that Turkish officials were also present during interrogation sessions, in which torture was used.

The detainees were interrogated routinely about their alleged connection with the Autonomous Administration and/or the SDF. They were denied the right to retain a defense attorney and were released only after paying sums of money to members of the SNA’s factions.

The released interviewees narrated to Synergy that they were continuously subjected to ill-treatment and torture. They were also blindfolded during interrogation in the opposition SNA-run prisons in areas of Afrin, Ras al-Ayn/Serê Kaniyê and Tall Abyad.

In most of the cases documented by Synergy, the civilians were held in the Military Police-run prisons based in Afrin, Ras al-Ayn/Serê Kaniyê and Tall Abyad, in Hawar Kilis prison, which is run by the Sultan Murad Division, in Sijin al-Ma’sara (al-Ma’sara prison) based in A’zaz in the northern countryside of Aleppo, or in prisons run by the specific factions that arrested them. Some others were kept in anonymous detention places.

The victims consistently described poor detention conditions, including overcrowding, limited access to food and water, and deprivation of medical care. The SNA's factions also deliberately concealed a large number of the detainees, and when the detainees' families contacted the factions to ask about the whereabouts of their loved ones, they were often given no information, or were threatened and extorted.

Detention has multi-faceted impacts on men, women and children containing physical and mental harm. Most of the former detainees described suffering from chronic physical pain resulting from brutal torture they sustained in prisons and unhealthy conditions they experienced inside detention facilities. Let alone suffering headaches and post-traumatic stress disorder (PTSD).

Hundreds of families of those forcibly disappeared by the SNA in Afrin, Ras al-Ayn/Serê Kaniyê and Tall Abyad regions are still suffering a general feeling of anguish, hardship, and confusion as protection was not provided to them, and they were left to manage their affairs alone. Many families have tirelessly worked to obtain information about their missing ones, but to no avail.

Synergy relied in its documentation process on the information collected in its database provided by a network of field researchers, and on information they obtained from the detainees' families and eyewitnesses. Furthermore, it verified the information from publicly available sources (open sources).

Synergy notes that the violations committed by Turkey and the SNA-affiliated factions in Afrin, Ras al-Ayn/Serê Kaniyê and Tall Abyad regions are far more than what have been documented and verified by name, surname, date and place of arrest; The Association believes that the actual number of arrest cases is significantly higher than the figure given in this report.

In a previous [report](#) published on January 9, 2023, Synergy documented the arrest of at least 633 persons, including 40 women and 21 children, in Afrin region during 2022. Three of the detainees died under severe torture in the SNA-run custodies.

Furthermore, Synergy documented in another [report](#) published on February 1, 2023, the arrest of at least 228 persons, including 11 women and 15 children, at the hands of Turkish forces and the Turkish-backed SNA-affiliated factions in the areas of Ras al-Ayn/Serê Kaniyê and Tall Abyad during 2022.

Arbitrary Arrest as A Systematic Policy:

The native people in the Turkish-occupied territories of Afrin, Ras al-Ayn/Serê Kaniyê and Tall Abyad experience countless of violations on a daily basis, preventing the return of thousands of the internally displaced (IDPs) to their homes and claiming their seized properties.

Areas in Afrin, Ras al-Ayn/Serê Kaniyê and Tall Abyad are fraught with arbitrary arrest and detention, enforced disappearance, as well as other practices, such as systematic confiscation of the victims' properties, extortion, beating, killing in detention have become widespread.

The pervasive violations Turkish forces and the opposition factions of the SNA commit in areas of Afrin, Ras al-Ayn/Serê Kaniyê and Tall Abyad are often characterized with a racist background, particularly against the Kurds. Other violations, such as arbitrary arrest, enforced disappearance and property seizure among others are perpetuated on the motives of making money. No distinction was made among the victims on the basis of affiliation, religion, national or ethnic origin as the victims were from different components of the region between Arabs, Kurds, Muslims, Yezidis, Christians, Armenians, Syriacs, and Chechens.

Families of the majority of arbitrary arrests' victims were extorted by the SNA's affiliated factions, and they were eventually forced to pay financial ransoms for the release of their loved ones, confirming that the practice was systematic, aiming at displacing the indigenous people, notably the Kurds, and seize their properties.

Detention Circumstances and Accompanying Violations:

None of the interviewed victims was promptly informed about the reasons and legal bases for their detention. Some were later informed that they were detained on charges of "cooperating and communicating with the Autonomous Administration", "being [SDF] fighters", or for reasons relating to explosions, or terrorist actions, as described by the detaining parties. Most of the interviewees were not brought before a court at any stage. Nonetheless, all the interviewees confirmed they were released for ransoms or after being forced to give up their properties. In addition, personal possessions of many victims were seized either at the time of searching them or from their houses during detention operation. The possessions included money, gold, mobile phones, and property documents.

For instance, on June 13, 2023, a brother of one of the detainees, who was arrested while attempting to cross the border into Turkey illegally seeking humanitarian asylum abroad, said his brother confessed under torture that he was an SDF fighter just to let them stop torturing him. The torture included: beating with quadruple cables and frequent slapping and punching, in addition to mental threats of insults and killing. The family paid USD 2,000 for his release after he was kept for 73 days in custody. This reflects the psychological situation the families experience for fear that their loved ones would be tortured or die under torture.

While in custody, many interviewees said they were allowed to use restrooms/toilets only once a day, and sometimes once in few days. They were provided with one small meal daily and sometimes were forced to pay for it, let alone depriving the victims of all hygiene

measures. Women's health needs were not considered; three women victims were denied sanitary pads during the period of their detention that lasted for over a month, in addition to deliberately depriving them from the normal use of toilets and baths and forcing them to be escorted by male guards when using toilets, resulting in diseases in the reproductive system for these female victims.

A civil activist from [Al- Shaddadah](#) area, southern al-Hasakah, reported that eight days after his arrest, including three days of interrogation in combination with psychological and physical torture represented by threats of murder, slapping and kicking, he was moved to a yard of a huge house along with further 100 detainees, among them women, and were left outside for varying periods during July when the temperature is 40° during the day. The activist along with nine others remained there for eight days. However, he does not know the number of days the former detainees remained outside, confirming that they were all allowed to get only one sandwich daily after paying for it.

The detaining parties did not meet any minimum standards that should be applied to the persons detained by them. All of the interviewees were detained in overcrowded cells on incommunicado for prolonged periods without any justifications. Women were interrogated by men and were subjected to multiple insults. Inhuman detention conditions were imposed on all the victims in which the perpetrators aimed to either increase pressure on the victims to extract confessions, information, and ransoms from the family, or without any specific purpose just to cause more suffering to the victims. The majority of the victims underwent the same experience of sleep deprivation, exposure to freezing temperatures, depriving from any means of warmth, the least of which were blankets. Nor did any victim state that they had access to adequate nutrition or clean drinking water. Furthermore, all the victims were subjected to insults, expressions and conducts that touch their honor according to the prevailing social norms. Victims of Kurdish origin were usually described as pigs and infidels.

The interviewees detailed different forms of torture and ill-treatment they were subjected to or witnessed during their detention. The alleged perpetrators used similar and diverse means and methods to cause severe pain and suffering to the victims. The victims were hit by sticks, water cannons, and electric wires in addition to slapping, punching and kicking. Several victims were subjected to *shabah* (ghost) position/*Blanco*,³ *Farouja* (chicken)⁴ position, and putting out cigarettes on their flesh. Some other victims were suspended from the ceiling, beaten by the butts of guns and electrocuted. Other victims were subjected to a

³ The Hanging Torture Method (also known as *Blanco*): the jailers suspend the detainees by the wrists to ropes dangling from the ceiling to force the detainee stand on the tip of their toes so they are exposed to huge pressure or they remained hanged in the air so that the weight of their bodies press on their wrists and lead to the swelling of the wrists causing intense pain. Detainees may remain in such situation for hours or sometimes days in combination with severe beatings.

⁴ The *Farouja* Torture Method: the detainees' hands and legs are tied together and are suspended on a wooden or a metal bar. then, they are raised from above the ground to resemble the way of grilling a chicken in combination with beating on all over the detainees bodies.

range of other patterns of torture, such as drowning, breaking fingers, making wounds using sharp objects, pulling behind a military vehicle. Moreover, the victims were compelled to witness other individuals being severely beaten and were threatened with the same punishment in case they did not confess the information needed. The majority of the victims were threatened of killing and firearms were pointed towards the heads of some of them.

At least 34 victims shared the experience of arrest and torture by members of the SNA's factions and sometimes with the participation of the Turkish Border Guards (Gendarmerie) because of their attempt to leave the region and cross into Turkey. Despite the main purported reason for arrest was attempting to cross international borders, all the victims underwent interrogation during detention on charges of affiliation to the SDF, dealing with the Autonomous Administration, or involvement in "terrorist" actions. In general, interrogation was accompanied by various types of torture and inhuman treatment; eventually some of the detainees agreed to sign confessions they did not confess.

Alleged Perpetrators:

Many victims identified those who were directly involved in detaining and subjecting them to different forms of torture and ill-treatment. Other victims were not able to do the same due to the way they were "kidnapped", blindfolded, and prevented from any information about the detaining power or the place of their detention. Some victims were detained and/or tortured several times either by the same actor or by different ones. Synergy concluded from the analysis of the testimonies and cross-checking the information included, especially when the victims were transferred and/or handed over to other actors, that the whole system lies under the structure and leadership of the SNA with its various factions and entities, including the Civil Police, the Military Police, and the Judiciary.

Some victims were able to identify some alleged perpetrators through direct recognition of the persons and their affiliation. Other perpetrators informed the victims about the actors they belong to, while the rest were identified according to the detention facility and the actor known to be controlling it or the area they could locate.

United Nations bodies, international, and local organizations have previously documented systematic patterns of violations against the population in areas under the control of the SNA's factions in Afrin, and in also the so-called "Peace Spring" areas, ranging from arbitrary deprivation of liberty committed on a large scale by various SNA's factions, and forcing the population, most of whom are of Kurdish origin, to leave their homes through threats, extortion, murder, kidnapping, torture, and detention. In addition to documenting sexual violence against women and girls.⁵

⁵ See e.g. the UN General Assembly, Human rights Council, report of the Independent, International Commission of Inquiry report A/HRC/45/31, August 14, 2020, paras. 46-64.

Possible violations of the International Humanitarian Law (IHL) and the International Humanitarian Rights Law (IHRL) committed by the SNA, included in this report, are only an episode of a systematic and wide scale series of similar practices that may amount to be an official policy adopted by those factions. The approach documented in the so-called “Olive Branch” areas continue by the same alleged actors and has broadened after tightening control on what are called “Peace Spring” areas. By reviewing the adopted approach, we notice the sequence of adopted patterns against the indigenous people- specially of Kurdish origin- with a view to persecute and force them to leave the area and not to return ever. The practices started in the cases of “Olive Branch” and “Peace Spring” with violations of IHL with respect to hostilities, followed by unprecedented and systematic looting.⁶ All this coincides with human rights violations documented by UN bodies against the civilians in the region.

A Frequent Pretext:

Since the Turkish occupation of Afrin, Ras al-Ayn/Serê Kaniyê and Tall Abyad regions in 2018 and 2019, thousands of the native people, notably the Kurds, have been subjected to arbitrary detention and enforced disappearance on alleged ties with the Autonomous Administrations and/or the SDF. Such pretext has become frequent to arrest civilians and extort their families.

In mid-March 2023, forces of the Military Police, affiliated with the SNA, arrested a young man in Ras al-Ayn/Serê Kaniyê. One of his relatives narrated to Synergy details of the arrest, saying:

“The young man was arrested while he was in his shop located in the center of the city’s public market. He was taken to the Military Police headquarter, where he was charged with alleged dealing with the Autonomous Administration. Since then, we know nothing about him. They have not allowed his family to see him, nor has he been presented before the court, similar to dozens of others who were arrested on the same charge.”

An activist working on documenting human rights violations in Afrin said:

“Since the occupation of Afrin five years ago, its remaining Kurdish residents have been repeatedly arrested on alleged charges of previous connections with the Autonomous Administration or working with one of its civil or military institutions. However, the main purpose behind that is to intimidate the Kurdish residents and push them to leave the area then seizing their properties, let alone extorting families of the detainees to get ransoms.”

⁶ See for instance: [Where is My Home: Property Rights Violations in Northern Syria Perpetuate Demographic Change](#), Synergy Association for Victims, January 19, 2023.

Extortion of Families of the Detained and the Forcibly Disappeared:

June 13, 2023, was not easy for Sipan Mohammed, a pseudonym. He and scores of other people attempted to cross Turkey illegally to get to the European continent. However, the Turkish Border Guards arrested and handed them over to the Military Police, affiliated with the SNA in Mabrouka Town in the west of Ras al-Ayn/Serê Kaniyê. Some were released after two days of interrogations, but Sipan remained there for more few days, during which he confessed he was a member/fighter of SDF.

The witness told Synergy he was not an SDF fighter but admitted that he was due to repeated torture of punching, kicking, slapping and threats of murder. In previous statements, some witnesses told Synergy that “the detainees, whose mobile phones contained images or videos relating to the SDF, are forced to coerced confessions under torture that they are SDF fighters even if they were not.”

Sipan’s brother told Synergy that his brother was transferred to the Military Police-run Central Prison, and they had retained a lawyer to bring his brother before a court, but to no avail. Later and after several attempts, the family was forced to pay USD 2,000 as a ransom to persons close to the Military Police for Sipan’s release after he spent 73 days in custody. Sipan’s family experienced great psychological pain and feared that Sipan might remain in custody or be killed under torture, let alone that the survivor’s mental health deteriorated.

The Earthquake-Victims Are Arrested:

On February 11, 2023, Muhammed Abd, an alias, along with one of his friends were arrested in Afrin City while they were checking Abd’s damaged house due to the earthquake that struck northern Syria on February 6.

Abd, 50, narrated the details of the arrest saying:

“My friend and I were standing in front of my house in Afrin, waiting for one of the engineers’ room staff in the city’s local council to check my earthquake-affected house. The engineer came and we [the engineer and I] entered the , but when I got out, my friend was not there. I looked for him for a little while and then a member of the Civil Police came and told me to accompany him to its headquarter near my house.”

Abd was surprised to see that his friend had been held in the Civil Police headquarter in Afrin. Concerning the reason behind the arrest, Abd said:

“My friend was kept in a room in the Civil Police headquarter. He was arrested because they claimed he was filming the headquarter, but in fact he was filming my house and the collapsed buildings around it. When I defended him, they also arrested me, and they handed us over to the Military Police forces.”

Both the witness and his friend were prevented from contacting their families. The witness recalled the details of interrogation saying:

“We were interrogated in the Military Police headquarter. Our mobile phones were checked. In my phone, I had video-clips of the destruction left by the earthquake in Jindires and in Afrin. I also had some conversations with my friend on WhatsApp application, where I was telling him about the violations the SNA commit against the Kurds.”

After discovering the conversation, the witness was ill-treated, and he told Synergy:

“The interrogator swore at me and said, ‘How dare you speak against us.’ He then threatened us and ordered our imprisonment, informing us not to reveal our identities to anyone since every prisoner is given a number to be identified with. My friend and I got two different numbers. In custody, we met people who were imprisoned for three years and others for one year and a half, without being brought before the court.”

Abd and his friend were released two days later by forces of the Military Police after news of their arrest spread on social media and some dignitaries intervened for their release.

Legal Framework:

▪ Obligations of Non-State Armed Groups (NSAGs) According to International Law:

In the context of IHL applicable on all areas included in this letter, this law regulates issues sufficiently related to the existing armed conflict. NSAGs exercise control on the civilian population by virtue of an armed conflict in which these groups have engaged in against the state. Accordingly, the IHL is applicable for the protection of those populations from exercising arbitrary authority by parties to the conflict in the absence or disruption of the protection supposed to be granted to them by national laws.⁷ Therefore, NSAGs are obligated to apply a set of legal conventional and customary laws in dealing with civilians during armed conflicts, including at least “protection provided to the wounded and sick, protection of hospitals, principle of human treatment, prohibition of collective punishment, pillage, retaliation, and hostage-taking, prohibition of forced displacement and deportation, and the right to due process and judicial guarantees.”⁸

On the other hand, despite states have the primary responsibility for the respect, protection, and fulfilment of human rights under international law, there is a growing support for the approach saying that NSAGs in control of territories, and thus populations, assume obligations of IHRL to avoid a protection gap.⁹ The UN endorsed this approach.¹⁰

⁷ Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, Vol. 8, CDDH/1/SR.22, Geneva, 1974–77, p. 201.

⁸ Sivakumaran, *The Law of Non-International Armed Conflict*, (Oxford University Press, 2012), p 530.

⁹ Committee Against Torture, 20th Sess., *GRB. v Sweden*, Communication No. 83/ 1997, UN. Doc. CAT/C/20/D/83/1997 (19 June 1998); *Sheekh v Netherlands*, App. No. 1948/04, HUDOC at 45 (11 January 2007); UN Secretary-General, Report of the Secretary-General’s Panel

Furthermore, the Human Rights Council noted that “it is increasingly considered that under certain circumstances non-State actors can also be bound by international human rights law.”¹¹ Also, in their joint statement, human rights experts of the Special Procedures of the Human Rights Council concluded that “at a minimum, non-state armed actors exercising either government-like functions or de facto control over territory and population must respect and protect the human rights of individuals and groups.”¹²

▪ **Torture and Inhuman Treatment:**

The prohibition of torture, cruel, brutal, degrading treatment or punishment is a peremptory norm of international law (*jus cogens*). Prohibition, in this context, is not subjected to any justifications, limitations or pretexts related to the legal status of the concerned party. Prohibition is absolute in times of peace and war and is applicable to all actors without exception.

Within this context, Common Article 3 to the Geneva Convention applicable during non-international armed conflicts prohibits torture, cruel treatment and outrages upon personal dignity (inhuman treatment), in particular humiliating and degrading treatment; this prohibition is considered a reflection to Customary IHL.¹³ It is important to note that the two terms of torture and inhuman treatment prohibited during armed conflicts do not require the participation or presence of a state official or of any other authority-wielding person in the torture process¹⁴, as required by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Accordingly, leaders and members of armed groups, in their capacity, assume legal liability for committing acts amount to torture or inhuman treatment without the need to argue the liability of the state in such acts. Commission of torture or inhuman treatment during non-international armed conflict entails individual criminal responsibility in case it fulfils elements of the crime of torture or inhuman treatment enshrined in the statutes of international criminal courts.¹⁵ It is worth mentioning that the duty of human treatment is applicable in all circumstances and military necessity, or reciprocity may not be invoked as arguments against fulfilling this obligation by the opposing party to the conflict.¹⁶

of Experts on Accountability in Sri Lanka, 243 (31 March 2011), p 188; Darragh Murray, *Human Rights Obligations of Non-state Armed Groups* (Hart Publishing, 2016).

¹⁰ OHCHR, ‘International Legal Protection of Human Rights in Armed Conflict’, Geneva and New-York (2011), pp 23-27 (Available at: https://www.ohchr.org/sites/default/files/Documents/Publications/HR_in_armed_conflict.pdf).

¹¹ Ibid. p. 24

¹² OHCHR, Joint Statement by independent United Nations human rights experts on human rights responsibilities of armed non-State actors, 25 February 2021 (Available at: <https://www.ohchr.org/en/press-releases/2021/02/joint-statement-independent-united-nations-human-rights-experts-human-rights?LangID=E&NewsID=26797>).

¹³ Rule 90 of International Committee of the Red Cross (ICRC) regarding Customary International Humanitarian Law.

¹⁴ ICTY, *Kunarac* Trial Judgment, 2001, para. 496, confirmed in Appeal Judgment, 2002, para. 148. See also *Simić* Trial Judgment, 2003, para. 82; *Brđanin* Trial Judgment, 2004, para. 488; *Kvočka* Appeal Judgment, 2005, para. 284; *Limaj* Trial Judgment, 2005, para. 240; *Mrkšić* Trial Judgment, 2007, para. 514; *Haradinaj* Retrial Judgment, 2012, para. 419; and *Stanišić and Župljanin* Trial Judgment, 2013, para. 49.

¹⁵ Rome Statue, Article 8, C, (i) and (ii), statute of the international criminal tribunal for the former Yugoslavia, Article 2 (b), statute of the international tribunal for Rwanda, Article 4.

¹⁶ ICRC 2020 Commentary on Common Article 3, para 596.

Article 5 of the Universal Declaration on Human Rights (UDHR) provides that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. Similarly, Article 2 of the CAT obliges state parties to refrain from acts of torture and to take effective legislative, judicial, and administrative measures to prevent acts of torture on their territories. Article 16 of the CAT obliges state parties to prohibit and prevent other acts of cruel, inhuman, or degrading treatment or punishment that does not amount to torture under their jurisdiction. Article 7 of the International Covenant on Civil and Political Rights (ICCPR) provides that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

Article 2 (2) of the CAT provides that “no exceptional circumstances, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.” Likewise, Article 4 (2) of the ICCPR clarifies that the obligation under Article 7 (prohibition of torture) cannot be derogated from in times of war or any kind of public emergency.

- **Arbitrary Deprivation of Liberty:**

As a rule of the Customary IHL¹⁷, arbitrary deprivation of liberty is prohibited. This is applied by analogy to its application to international armed conflict and also under IHRL. Accordingly, deprivation of liberty must be legitimate in the applicable law and comply with the essential procedures, most importantly: the arrested person must be informed of any charges, the person arrested or detained on a criminal charge shall be brought promptly before a judge, anyone who is deprived of liberty by arrest or detention has the right to take proceedings before a court to decide the lawfulness of the detention.¹⁸ With respect to the legitimacy of deprivation of liberty, imperative reasons imposed during international armed conflict for an actor are limited to this deprivation only for utmost necessities if not for criminal causes are cited generally.¹⁹ In addition, regardless of the causes of deprivation of liberty, all parties to the conflict are obligated to treat all persons under their control humanely and without discrimination in accordance with the first paragraph of the Common Article 3.

In the context of the IHRL, Article 9 of the UDHR prohibits acts of arbitrary arrest, detention, or exile. Article 9 of the ICCPR protects the right of individuals to liberty and security. Additionally, in paragraph 4, it provides that that anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

In General Comment No. 35, the Human Rights Committee addressed the applicability of Article 9 of the ICCPR to situations of armed conflict, given that IHL regulates the detention

¹⁷ Rule 99 of the ICRC regarding Customary International Humanitarian Law.

¹⁸ See for instance, Human Rights Committee, General Comment No. 35, 2014.

¹⁹ For instance, articles 42 and 78 of the Fourth Geneva Convention.

of enemy fighters and civilians differently. The Human Rights Committee clarified that “article 9 [of the ICCPR] applies also in situations of armed conflict” and that IHL and IHRL are complementary spheres of law, not mutually exclusive.

Furthermore, while Article 9 is not included as a non-derogable clause under Article 4(2) of the ICCPR, there is a limit on state’s power to derogate. Any exception to Article 9 (which has not been done in the situation of Syria) must be “strictly required by the exigencies of the actual situation.” Lastly, “If, under the most exceptional circumstances, a present, direct, and imperative threat is invoked to justify the detention of persons considered to present such a threat, the burden of proof lies on states parties to show that the individual poses such a threat and that it cannot be addressed by alternative measures, and that burden increases with the length of the detention. States parties also need to prove that detention does not last longer than absolutely necessary, that the overall length of possible detention is limited and that they fully respect the guarantees provided for by article 9 in all cases.

By the growing consensus on the responsibility of NSAGs to respect and protect human rights in the areas they control, above-mentioned provisions are applicable to the SNA’s factions due to the fact that they continue to control the so-called “Peace Spring” and “Olive Branch” areas and perform functions similar to those of the Government.

