

The Independent Institution on Missing Persons in the Syrian Arab Republic: Ensuring the Full and Meaningful Participation of Victims of Disappearance

Submission by the Truth and Justice Charter Groups regarding victim participation in the Terms of Reference of the Independent Institution for Missing Persons in Syria

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I- Introduction

On the 29th of June 2023, the UN General Assembly passed resolution A/77/L.79 to create the Independent Institution on Missing Persons in the Syrian Arab Republic (IIMP). This new institution aims: (1) to clarify the fate and whereabouts of missing persons in Syria and (2) provide adequate support to victims, survivors and the families of those missing. Its establishment is a response to the efforts of Syrian victims and survivors of arbitrary detention and enforced disappearance and families of missing persons, as reflected in the UNGA resolution. The resolution calls for the inclusion of a structural component that guarantees meaningful participation and representation of victims, survivors, and families of missing persons. Additionally, it calls for engagement with women's organizations and other CSOs in a regular and sustained manner (Article 3). It will have a victim-centred approach and will be inclusive of families, guided by fundamental principles listed in Article 4 including "*gender inclusivity*", "*non-discrimination*" and "*do no harm*", and will build on survivor-informed existing capacities and best practices (Article 6).

This note aims to put forward recommendations to ensure that the forthcoming Terms of Reference (ToR) of the IIMP effectively, practically and realistically turn the resolution's strong language on victim participation into concrete and efficient measures and mechanisms for meaningful and full participation of victims. The note builds on the Truth and Justice Charter's associations experience and endeavors to strengthen the search of the disappeared and the missing, and to successfully open up spaces for the participation of victims and the families of the missing in justice mechanisms. It emphasizes the need for an actor-oriented, eco-systemic conceptualization of participation, with victim groups engaging in both formal and informal spaces to advance context-specific justice initiatives. As the institution faces unique challenges, being the first multilateral institution that is endowed with the search of missing persons while access to the territory where the persons disappeared remains limited, we insist that the ToR and the operationalization of the IIMP are based on a) existing expertise of Syrian victims, survivors and families of those missing, b) international instruments and standards such as the Guiding Principles for the Search of Disappeared Persons developed by the Committee on Enforced Disappearances¹, and c) previous examples of victim participation in similar endeavors such as Colombia, even though the contexts are distinctly different.

For the IIMP to realize its victim-centred approach, the ToR must understand victim participation as embedded in victims' trajectories, including both the involvement in formal

¹ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/134/11/PDF/G1913411.pdf?OpenElement>

processes and mechanisms (e.g. allowing victims to advise the IIMP on relevant policies and methodology, provide data, evidence and analysis, participate in search endeavors and inform decision-making) combined with engagement in informal spaces (e.g. advocacy, mobilization, organizing, awareness raising and provision of services to victims such as MHPSS, capacity building, protection). We advocate for the ToR to adopt an eco-systemic perspective to victim participation, recognizing multifaceted forms of engagement, and grounded in victims' agency and knowledge that were both demonstrated by the activism that led to the adoption of Resolution A/77/L.79.

The creation of the IIMP presents a distinct chance to enhance victim participation in justice initiatives in a context of ongoing conflict and mass displacement, and to fully integrate the experience and knowledge of victims and families of the missing in a novel institution. Given that the creation of the IIMP stems from the efforts of victim groups to strengthen the search for the missing, its policies and procedures need to build on victim groups' knowledge and their capacity to assimilate international justice principles and tools, and be creative and innovative when making them relevant in a context marked by ongoing crimes, territorial fragmentation, refugee communities spread out in multiple countries and lack of physical access to all victims. The experience of victims and families of the missing in search operations and assistance services (e.g. MHPSS and capacity building), and their intricate knowledge of local contexts should complement other existing legal, administrative, and technical expertise. For victim participation to be meaningful, the ToR needs to ensure that this participation extends beyond formal procedures and resonates with the justice needs of victims and address the obstacles that may obstruct or complicate their effective participation and engagement. Therefore, the Truth and Justice Charter groups present specific contributions to enrich the conceptualization and forthcoming implementation of a victim-centred approach in the search of the missing.

II- Prioritizing victim perspectives while addressing obstacles: Some general considerations

- Victims and families of the missing are active drivers in decision-making. The mandate of the IIMP is to clarify the fate and whereabouts of the missing and advance the fulfilment of their right to know, ending the families state of not knowing and addressing their "ambiguous loss". As such, it should ensure that it places victims at the centre of its endeavor: from the conceptualization of the institution, design of policies and procedures, and concrete operations, identify needs and risks, and inform decision-making.
- Victims' agency takes precedence. Syrian victims and their families are justice entrepreneurs who have created a robust victim movement despite formidable challenges. The acknowledgement of that agency needs to be reflected in the IIMP's policies and operations: setting in place procedures to inform victims and families of the missing, maximize their inclusion in processes, reach out to groups that have not been involved both inside and outside Syria, and raise their awareness, recognize the key role of women and women organizations as emphasized by the resolution, and

offer a space for communication and exchange with the broader civil society as stipulated by the resolution.

- Victims and their families have the right to know. They have been deprived of the truth and accurate information by perpetrators. The IIMP needs to ensure that it develops procedures to maximally inform victims and families of the missing about the progress of operations, the results of investigations, relevant new information and the challenges it faces. In doing so, it needs to have in place processes that differentiate between communicating generalized information about its actions and communicating to relevant families information about individual cases.
- Victim participation comes with a cost. Participation exacts a huge toll on victims, encompassing psychological and material dimensions. The IIMP must duly consider factors such as re-traumatization, exhausting bureaucracy, socio-economic considerations, and consult victims on which initiatives meet their concrete justice needs.
- Victim participation has consequences for safety. Victims and civil society groups mobilizing for victims continue to face safety risks and often operate in hostile environments where perpetrators are still active. The IIMP must take proactive measures to assess risks, and work towards a safer environment for individuals and groups involved in victim participation.

III- International standards and best practices

This is a small and non-exhaustive selection of standards, guidelines and precedents that have inspired this note and should serve to inform the development of the IIMP ToR.

International standards and guidelines

- The Guiding Principles for the Search of Disappeared Persons²
- The Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016)³
- The international Consensus on principles and minimum standards for psychosocial work in search processes and forensic investigations in cases of enforced disappearances, arbitrary or extrajudicial executions⁴

Precedents

Because of its unique challenges, it is hard to draw strongly on similar experiences of victim participation in the search of the missing. Yet, the IIMP can learn from other contexts to conceptualize its approaches:

- a. In its victim-centered approach it can learn from the Unit for the Search of Disappeared Persons in Colombia. Its starting point is the knowledge and experiences of the persons who are searching and other relevant social actors for the search process. Families can initiate individual and collective search

² Ibid.

³ <https://www.ohchr.org/sites/default/files/Documents/Publications/MinnesotaProtocol.pdf>

⁴ <https://missingpersons.icrc.org/library/international-consensus-principles-and-minimum-standards-psychosocial-work-search-processes>

actions. It allows the interaction and participation of the different relevant actors (relatives and close friends, CSOs, collectives, platforms, movements, ethnic groups and institutions).

- b. In its inclusion of representation mechanisms including an advisory body.
- c. In its gendered and LGBTBI-sensitive approach, it can equally learn from the Unit for the Search of Disappeared Persons in Colombia.

IV- Proposed Participation mechanisms:

In this section, we propose concrete victim participation mechanisms that IIMP could include:

Rationale and cross-cutting matters

- Comparative experience has shown that meaningful participation would entail the **presence of representatives** from the community of victims of disappearance in the structure of the IIMP. It has also shown that **representation alone is not sufficient** and should be completed by **ongoing processes of external engagement** to ensure as many regular and diverse interactions and exchanges as possible.
- Based on previous experiences, representation could be ensured through the establishment of an **advisory council including representatives of victims** that will contribute to shaping the institution's policies and procedures and inform its decisions.
- Representation inside the institution, through the advisory council, should be completed by **regular processes of external engagement, outreach and consultation** of victims, women organizations and other relevant civil society actors.
- In addition to collective processes of engagement, the IIMP should develop specific protocols to ensure the institution's staff engage and communicates with individual victims and families through **safe channels and spaces** and that **their interactions are guided by "do-no-harm", "one-stop-shop", transparency and empathy-based approaches**.
- Giving the centrality of victim participation to the IIMP's mandate and operations, but also the complexity of the task and its time-consuming character, the institution will need to include in its structure a well-staffed **victims' unit** which will be responsible for all victim participation, engagement and outreach activities. Without precluding interaction with other units or the leadership of the institution, the unit will be the central point of contact and entry for victims who interact with IIMP. The victims' unit should consider opening **field offices** in geographical areas where large communities of victims are located.
- In shaping its recruitment policies and criteria, the IIMP should consult with victims and families of the missing. This will ensure that alongside technocratic profiles, there is a **meaningful inclusion of individuals with expertise rooted in victim experiences**. The recruitment approach should underscore the commitment to leverage "on existing capacities and survivor-informed best practices, including recruiting or allocating impartial and experienced staff with relevant skills and expertise" (art. 6).
- **Access to information** and a **two-way communication** between the IIMP and victims is an essential element of victim participation and outreach. Facilitating access to information for victims should be one of the goals of the different mechanism of participation at IIMP.

- IIMP must have a **strong data protection system** that secures, preserves and shields the confidentiality of information and personal data shared by families or witnesses for the purposes of search or support. The IIMP must ensure that any future transfer of its mandate to a national or hybrid body will not compromise the confidentiality of the information and data it has collected in a way that may endanger victims and families.
- Every family should, at all times, **have access to the information and data collected by IIMP and pertaining to the disappearance of their loved one**. The IIMP will only be able to refrain from sharing information whose revelation may endanger witnesses. In addition, **a family will always be able to obtain a copy of the dossier** pertaining to the disappearance of a loved one.

The Advisory Council

An advisory council (AC) should be established **to inform decisions of the IIMP's leadership, advise and provide input on the institution's policies, strategies and prioritizations, monitor and assess its operations, and recommend ways to improve them.**

That AC's line of communication with the IIMP is through the head of the institution and any other permanent staff designated by her/him.

The AC will be composed of **12 members** with the possibility to extend this number in the future to ensure broader representation. The composition will be as follows:

- Six members representing victim associations or groups.
- One member representing Syrian women's organizations or feminist activists.
- One member representing other Syrian civil society organizations including documentation groups.
- One member representing a legal Syrian civil society organization
- Three international or Syrian independent individuals with experience or expertise in the area of the search for the missing, support for victims or victim participation.

The **AC members will be appointed by the head of IIMP** following mutatis mutandis the same procedure as the appointment of independent commissioners sitting in bodies established by the Human Rights Council such as commissions of inquiry. However, the head of IIMP will select the AC members from a pool of candidates who would have applied beforehand and after consultations with victim organizations and groups.

The members will serve for a period of three years. They may be reappointed to the AC six years after the expiration of their first term as AC members. The ToR will ensure that a third of the victim associations or groups and a third of the rest of the AC members are renewed every year. The renewal of the third of the members of the AC should start at the end of the second year following the appointment of the first AC. This will be made possible through a draw at the end of the second year. Through this draw, 2 of the representatives of the victims and 1 of the international or Syrian independent individuals and 1 of the Syrian civil society organizations will be picked to be replaced by 4 new members which will open the door for the renewal of a third of the AC every year.

At least **6 members of the AC will be women**. Diversity and non-discrimination should guide the selection of AC members.

Once appointed to the AC, victim representatives will be representing the whole community of victims regardless of their affiliations. Members of the AC will have to adhere to its mandate and guiding principles. Representatives of victim associations in the AC will be selected from associations that include a minimum number of members and that have a minimum number of years of longevity. These numbers may be determined by the first AC.

The AC will pick a coordinator, a deputy coordinator and a secretary among its members.

The AC member will serve on a voluntary basis as is the case for independent experts in UN human rights special procedures or HRC-appointed commissions of inquiry.

The AC will develop its own bylaws which will have to be approved by the head of IIMP before coming into force.

Other processes of participation and engagement

Parallel to the AC's role, other processes of participation will be developed based on the specificity and needs of each of the IIMP's functions. In the operationalization of its functions, the IIMP must adopt a differential approach regarding **collective participation** and the **individual participation** of relatives. On the one hand, victim participation should ensure that victims collectively inform decisions, strategies and policies of the IIMP. On the other hand, victim participation needs to ensure the participation of individual relatives or families in the search for their loved ones and the determination of requested support. We detail below what are the matters and issues that require victim consultation/contribution (what?) and propose processes of collective participation to **complement the AC's role** for each of the IIMP functions:

i- Search function

What is it?

For years, victims and their organizations have navigated the Syrian national system and international fora in search for their loved ones. Through these efforts they have acquired a wealth of knowledge and expertise in areas such as gathering information, collecting evidence, filing complaints and tracing requests. It is essential for IIMP to integrate these knowledge and experience in its search endeavors. Therefore, victims seek to be consulted on or contribute to the following matters or issues:

- Search protocols;
- Determining search priorities;
- Analyzing and understanding the context and patterns of disappearance;
- Protection of mass graves and exhumation processes;
- Defining protocols for return of human remains and reburials;

- And protocols for the individual participation of victims in search, exhumation and return endeavors.

How to apply it?

Participation in shaping or informing the above matters *may* involve:

- Bilateral meetings with victim organizations;
- Informal online or virtual group meetings with victim organizations;
- Workshops and awareness raising activities;
- A more permanent platform of engagement similar to the IIM's Lausanne Platform, provided that lessons learned from that platform are taken into account (such platform could also include other Syrian civil society actors);
- And/or surveys.

ii- Support function

What is it?

The support function of the IIMP holds great significance for victims as it entails acknowledging their pain and addressing the profound impact of "ambiguous loss". It is crucial that this support function is designed with their full and meaningful participation. Therefore, victims seek to be consulted on and contribute to the following matters or issues:

- Identifying/assessing needs and designing services and modalities of delivery;
- Developing the IIMP's MHPSS system and policies;
- Identifying external resources including those provided by Syrian CSOs;
- Designing a referral system;
- And designing a monitoring mechanism that allows victims to provide direct feedback on the effectiveness of the support services and suggest improvements.

How to apply it?

Participation in shaping the above matters *may* involve:

- Bilateral meetings with victim organizations;
- Informal online or virtual group meetings with victim organizations;
- Workshops and awareness raising activities;
- A more permanent platform of engagement similar to the IIM's Lausanne Platform (see above);
- And/or surveys

iii- Victim participation and outreach function

What is it?

Victims and their organizations have demonstrated through their decade-long efforts to advocate for their rights and the international campaign that led to Resolution A/77/L.79 their

broad experience and innovative approaches in mobilizing and organizing communities inside and outside Syria. Therefore, we seek to ensure that victims are consulted on or contribute to the following matters or issues:

- The development of the IIMP victim participation and outreach policies and practices;
- Outreach activities and awareness raising about the IIMP in order to facilitate the access of victim communities inside and outside Syria to IIMP;
- And efforts to promote the work of IIMP and persuade UN Members States, international institutions and NGOs to cooperate with it and support its mandate.

How to apply it?

Participation in shaping the above matters may involve:

- Bilateral meetings with victim organizations;
- Informal online or virtual group meetings with victim organizations;
- IIMP-led Workshops and awareness raising activities;
- A more permanent platform of engagement similar to the IIMP's Lausanne Platform (please see above);
- Surveys;
- Direct participation in IIMP's outreach efforts as resource people and trainers;
- Direct participation in IIMP's mental health and psychosocial support endeavors as resource people and trainers;
- And/or Victim-led advocacy and awareness raising efforts.

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