



International, Impartial and Independent Mechanism - Syria

Spotlight: The Missing

Message from the Head of the IIIM



For many of you active with Syrian Civil Society, you will have seen that the past year's events on accountability, in meetings, webinars and international conferences one key issue was reiterated: the call for an international response to the missing.

Recently, the International Day of the Victims of Enforced Disappearances highlighted the devastating effect on many Syrian families and communities. The numbers of those missing, though difficult to verify, are estimated to be over 100,000 since the start of the conflict.

The serious crimes under international law that have been committed in Syria, which have contributed to these high numbers include enforced disappearances, unlawful attacks, detention related crimes and killings.

These crimes have all been reported to be systematically used by various actors in the Syrian conflict since 2011. It is a particularly cruel and complex tactic that creates victims in the person disappeared as well as those left behind.

IIIM colleagues recently attending an event for the families of the missing, heard voice after voice directly asking for action to help reveal the fate of their loved ones. In sharing their lived experience of pain and uncertainty they also revealed the psychological, material, social and legal impact that compounds their loss.

The families of those who went missing in Syria tell us of the immense anguish

they experience not being able to find any information about the state or whereabouts of their loved ones. Those Syrians who returned having survived their ordeal, have expressed how knowing that their families were also suffering added to the physical and mental torture they went through in detention.

What role does the IIIM play?

We have a responsibility to make sure that the cases we build at the IIIM are sufficiently representative of the impact disappearance crimes had on the missing and continue to have on those who survived and their families.

Upon taking up my functions as Head of the IIIM, I committed to listen to and consider the needs and priorities of victims and survivors in the work of the Mechanism. This manifests primarily in fulfilling our mandate to assist in the investigation and prosecution of core crimes in Syria. The conducts and circumstances underlying the commission of crimes against humanity, war crimes and genocide, invariably result in large numbers of missing victims. This may be an intentional result by the perpetrators, such as in the case of enforced disappearances, or in order to conceal, for instance, detention related crimes, killings and unlawful attacks. It may also be because of the sheer number of victims of these crimes or a consequence of the conduct of hostilities. The IIIM of course investigates serious crimes irrespective of the affiliation of the suspects.

Our primary resource in all these efforts is, as always, the IIIM's central repository of material and evidence. We search our collections and conduct targeted investigations, identifying and filling any gaps, allowing for further analysis of material gathered in support of the prosecution of such crimes. Though we do not initiate prosecutions, we can proactively share our findings, and the material underlying them, with

prosecutors and competent jurisdictions holding trials which also may allow for the fate of the disappeared to be revealed.

However, we also play another role, again within the scope of our mandate but guided by our experiences of courts and tribunals of other conflicts, where material with information on the missing was not shared until years after they had been collected. At the IIIM we determined from the beginning that we would integrate the search for the missing component into our working processes and develop systems to maximise the use of information that can support such searches in a timely manner rather than years later. While these frameworks are still being developed, my team is making important steps towards a process that we hope will support the work of others, who in turn may spare the victims', survivors' and their families' years of anguish. The decision to begin work on this was not only to position the IIIM to respond to the inevitable requests that would later be made, but to also enable us to pro-actively identify and - consent permitting - share with the relevant institutions the type of data they would need to support their work.

Given the importance of this issue for so many, I wanted the bulletin to give a broad picture of our on-going work as we develop it. We will continue to consult and listen to families, victims and survivors to further feed into our strategy. Once complete we will share more details, in the hope that it offers insights to those of you for whom this is not only an accountability issue, but one with personal stakes.

Catherine Marchi-Uhel

In the Aftermath of Disappearance

On the 11th of June 2019, the UN Security Council adopted its first ever resolution on **persons reported missing during armed conflict**.

Resolution 2474 (2019) was unanimously voted in after an escalation of numbers of missing persons worldwide, a significant rise in part due to those disappeared in Syria.

The historic resolution stressed that parties in an armed conflict should **collect, protect and manage data** related to missing persons, recover and identify the dead, offering where possible their return to relatives. However, as in many past conflicts, these measures are not often taken. They are also difficult to enforce since they rely on compliance of actors with no interest in providing details many believe may incriminate them.



Figure 1 UNSC Vote on Resolution 2474 (2019)

The challenges to address these sensitive topics, as well as the many harms and violations, are further compounded by the scale of Syria's displaced, migrants and refugees. Dispersed geographically inside and outside the country, some of those missing are untraceable due to the different circumstances of their departure.

The deep impact on the families of the missing is not only psychological but touches on other areas that make them vulnerable. If the disappeared was the main breadwinner, the family often suffers materially; they are also legally exposed often with little to prove guardianship of children, define their marital status or protect their inheritance or property rights.

“ Enforced disappearances wreak havoc on families, tearing the social fabric of entire communities. Perpetrators intentionally create a paralysing uncertainty that leaves families hanging between hope and despair. Not knowing whether their loved ones are dead and, if so, what has happened to their bodies, they can neither mourn nor adjust to their loss. ”

[Without A Trace: Enforced Disappearances
Commission of Inquiry Thematic Report](#)

The **International Convention for the Protection of All Persons from Enforced Disappearance (CED)** defines victims as [“the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance.”](#)



Figure 2 Photo Courtesy of Families for Freedom

The impact of disappearances on families and relatives has been considered by Courts in the past when issuing judgements.

International Human Rights bodies, including **the Inter-American Court of Human Rights** and the **African Commission on Human Rights** for example in cases related to [Guatemala](#), [Bolivia](#), [Mexico](#) and **Sudan** have made pronouncements that the suffering of the relatives, families and next of kin of the disappeared was aggravated by continued disappearance and lack of information on the disappeared.

“ ...holding an individual without permitting him or her to have any contact with his or her family, and refusing to inform the family whether the individual is being held and his or her whereabouts is an inhuman treatment of both the detainee and the family concerned ”

[African Commission on Human Rights](#)

Another such example is from the **International Criminal Tribunal for the Former Yugoslavia** (The ICTY). The mass killing of Bosnian Muslim men and boys, their burial in mass

graves and relocation to more remote mass graves, meant the whereabouts of thousands of victims remained unknown for many years. There the ICTY Prosecutor

brought evidence in the Srebrenica cases about the impact of events on the surviving women and children. A particular feature of this was the so-called '**Srebrenica Syndrome**' arising from the fact that, for many, the fate of their loved ones was not known. This evidence helped the court to

understand the overall impact of these crimes on the families, which was relevant in determining that genocide had been committed in Srebrenica, and in the decision on appropriate sentencing to impose on those convicted of the crimes.

The Intersection between Accountability and the Search for the Missing

Increasingly, the international community is recognising the need for a more integrated approach across many different aspects of conflict-related redress—that all of us working in justice and accountability play a part in expanding the spaces where international criminal law meets victim and survivor needs.

While the IIIM's mandate is focused firmly on justice and accountability, we have from the outset made efforts to situate our work as part of a package of intersecting redress issues, all of which are critical for the affected Syrian communities. One such example is the intersection between accountability work and the search for missing persons.



Michelle Jarvis
Deputy Head - IIIM

The ICTY Experience:

Our work on this particular issue is informed by experiences from the International Criminal Tribunal for the former Yugoslavia (ICTY), where I was a prosecutor for many years. Over a period of more than 20 years, the Office of the Prosecutor amassed more than nine million pages of evidence to support the ICTY prosecutions. It became increasingly obvious that crucial leads were embedded in that unprecedented archive that could shed light on the fate of missing persons. It was only towards the final years of the ICTY, that comprehensive frameworks were established to facilitate access for those mandated to search for the missing so they could begin the work to find relevant information in the ICTY collection.

It was not always easy – the documents had not been organised in a way to assist the search for the missing and sometimes it was like searching for a needle in a haystack. At the same time, based on our frequent interaction with survivor groups from the former Yugoslavia, such as the Mothers of Srebrenica, we had to find every possible angle within the boundaries of our justice and accountability work to assist them. Anybody who spends time with conflict survivors who are still searching for their loved ones cannot fail to understand why the search for the missing will always be an urgent priority.

As prosecutors, it may sometimes be easier to simply focus narrowly on the legal technicalities of the cases we build. But from a humanitarian perspective, I could see that we needed to think more deeply and creatively about how we could also assist with finding the missing.

The IIIM Strategy:

I brought this conviction with me when I joined the IIIM as Deputy Head. The Head and I agreed that we should from the beginning explore how to maximise the usefulness of any evidence we collected to support the search for the missing.

Our unique role and mandate have the scope to develop this vision. In particular we are directed to:

- **Create a Central Repository of information and evidence of crimes in Syria** –We have, and will continue to, collect vast amounts of documentation, including the immense volume and variety of digital evidence of information and evidence of events in Syria. We are also adding evidence collected by the IIIM as part of its own direct investigations. The Central Repository will potentially be unprecedented in size and provide a powerful and valuable resource to support our work and that of others, including those actors searching for the missing.
- **Investigate and Analyse evidence of crimes committed** –Many of the crimes we are investigating have resulted in the disappearance of victims. It is not the IIIM's specific mandate to find out where they are, however, in analysing what crimes may have been committed against the victims we are often reconstructing events that could shed light on the ultimate question of where they are.
- **Prioritise engagement with Syrian victim and survivor associations.** Not only is this an important part of the IIIM's victim and survivor centred approach, but it also provides a valuable opportunity to hear directly from the families of missing persons about their experiences, priorities and insights. We've prioritised hearing these voices as part of the **Lausanne Platform** as well as in our regular participation in external events specifically for Syrian victims and survivors.

We wanted to avoid a situation where the valuable information we could potentially collect concerning missing persons sat within the confines of our Central Repository for many years, perhaps even until the end of our work. We committed to integrating this focus into our work from the initial stages, informing the General Assembly in our [first report](#) of our plans and making it clear that it was a central pillar of our victim and survivor-centred approach.

The Security Council's unprecedented 2019 resolution on missing persons, calling for system wide cooperation by all UN actors on this issue, affirmed our assessment that it was not only valid, but mandatory, for the IIIM to play its part on this issue.

Responding to the Challenges:

However, we also knew the challenges. At ICTY, given the mass of information gathered, finding relevant information late in the day was a challenge.

At IIIM we identified key steps to face these challenges:

- Reach out to actors mandated to search for the missing, to **understand the categories of information** and evidence that they needed to assist their work.
- Create **frameworks to directly channel information** or insights from our evidence and/or analytical work to actors mandated to search for the missing.
- Reach out to missing persons actors with experience of engaging with accountability actors to help us identify not only relevant evidence categories but also to **gain insights into storage and cataloguing techniques** that would make searching more effective – helping find that needle in the haystack faster.
- Set up information management systems and analytical processes to **facilitate the identification of information** as needed by those mandated to search for the missing.

With these insights we have been investing in systems to implement our commitments to assist in the search for the missing. From the language used within our MOUs to facilitate sharing of information – privacy and confidentiality parameters considered – to leveraging our state-of-the-art technology to seek creative and automated analytical capabilities to assist in searching through the collections. In brief, to make the relevant information within our central repository 'findable' and easy to share.

Key Intersections:

With the benefit of past experience, supplemented by the early phase of the IIIM's work, we are building a clearer picture of where the key intersections between our justice and accountability work and the search for the missing lie:

- **The information and evidence** we collect from others will invariably contain leads.
- The IIIM can use its own **investigative mandate** in a way that assists in the search for the missing. E.g. when interviewing a witness, asking additional questions that could provide important insights on the whereabouts of missing persons.
- The IIIM's **analytical work**, for example on detention crimes, can potentially yield information on the movement of detainees, and perhaps reveal clues as to the location of those missing within detention centres.
- Including in the case files we build the **impact of disappearance** crimes on the families of the missing to ensure the full nature and gravity of the crimes is accurately reflected.

In future, as the IIIM's work evolves further, it may be possible to explore other intersections.

While the Mechanism's mandate is firmly focused on preparatory work to facilitate criminal prosecutions, it nevertheless recognizes that criminal accountability is an element of a broad transitional justice approach...Certainly, past experience has shown that work done by criminal justice bodies, particularly the development of a comprehensive and well-structured collection of evidence, can significantly facilitate other transitional justice objectives. These include the search for missing persons as well as vetting and reparations processes. The Mechanism has those objectives in mind as it commences its work and in particular, is seeking to integrate approaches to the construction of its evidence collection that will maximize its utility for such broader processes...

[IIIM Report to the UN General Assembly](#)
28 February 2018

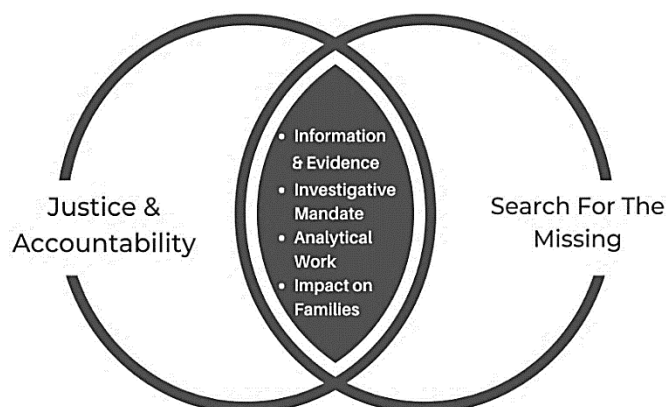


Figure 3 IIIM-Syria's Key Intersections
To Support the Search for the Missing

The Limitations of the IIIM Mandate:

At the same time, it is important to be realistic about the limitations and to communicate clearly with affected families and communities about that.

The IIIM is **not** mandated to search for the missing.

It does **not** have the resources to undertake dedicated investigations into the fate of the thousands of individuals still missing in Syria.

Our key contribution will come from strategic and timely efforts to channel the IIIM's relevant information, evidence, analysis and factual conclusions into the work of other bodies who are mandated to search for the missing. This has the potential to be an important contribution, but it does **not** remove the need for a well-resourced and effective mechanism to focus specifically on the issue of missing persons in the Syrian conflicts.

Model for Future Intersections:

The IIIM's developing strategy on missing persons offers a model for not only the intersection between justice and accountability and the search for the missing, but also potentially on how to approach the intersection between justice and accountability work and other redress measures, such as **restitution, compensation and even truth and reconciliation proceedings**. Realistically, given our resource limitations, the IIIM cannot simultaneously develop strategies on these many other angles. We are convinced that of all these important issues, the question of the missing is the most pressing and should take priority.

We hope the new territory we are forging in this area can be of benefit to Syrians. We also hope it will, in the future, inform other strategies to help the international community approach conflict-related redress in a more comprehensive and coordinated way.

The IIIM's Support to On-Going Justice Efforts

The Mechanism is receiving an increasing number of requests from competent national jurisdictions to assist them in their investigations and prosecutions of crimes committed in Syria since March 2011.

To date, the Mechanism has assisted **30 different investigations** conducted at the domestic level by providing supporting evidence and relevant information, establishing contacts between the judicial authorities and witnesses, and providing analytical products in two instances.

Some of these investigations concern cases where a suspect is in detention or has led to **trial proceedings**.

The Mechanism has also served as a bridge between civil society organizations and national judicial authorities to support discrete investigations.

It is now working closely with investigators, prosecutors and investigative judges to support **14 other investigations, and has received requests concerning 19 other proceedings**.

Update on Activities

- The Head of the IIIM and the Co-ordinator for collections spoke to Syrian former detainees about documentation at an event in Turkey organised by Syrian NGO 'The Day After'.
- The Deputy Head of the IIIM answered questions and heard directly from families and survivors with relatives forcibly disappeared or missing at an event organised by LAW and Syrian NGO Freedom Jasmine.
- The Deputy Head attended an expert meeting on strengthening accountability for crimes against children, to further inform the IIIM strategy on this topic.
- Consultations on each of our thematic strategies are on-going and the IIIM continues to reach out directly to those who have a track focused on priority areas, especially amongst victim, survivor and family associations.
- The IIIM will be holding a short series of online consultations with Syrian CSOs to further inform its gender strategy. A further event to present details of the strategy will be held and details for those wishing to attend will be shared closer to the date.

Feedback

We welcome your feedback and encourage you to comment or send any questions relating to the Mechanism's work and mandate. Respecting our clear confidentiality parameters, we aim to maximise transparency in our activities while not negatively impacting the long-term justice and accountability goals of the Mechanism.

The bulletin features are often shaped by the questions and feedback we receive from Syrian Civil Society, and we plan to keep expanding our communication channels - especially in light of Covid-19 restrictions on in-person meetings - to allow for further conversations and dialogue.

We look forward to hearing your thoughts.



Glossary

Competent Jurisdictions: Term for the jurisdictions that the IIIM shares information with. Those that respect international human rights laws and standards and do not apply the death penalty to the offences being considered.

Cooperation Framework: The basis for establishing terms of cooperation between IIIM and external entities. Determines and reflects the clear parameters for structured and lasting working relationship.

Enforced Disappearance: An arrest, detention or abduction, followed by the captors' refusal to acknowledge it occurred. The fate or whereabouts of those disappeared is therefore concealed from family and friends, placing the detainee outside the protection of the law.

ICTY / International Criminal Tribunal for Former Yugoslavia: *ad hoc* United Nations criminal court for the war crimes committed during the conflicts in the Balkans in the 1990s. Its mandate lasted from 1993 – 2017. It contributed to changing the landscape of international criminal law, provided victims an opportunity to testify to what they had witnessed and experienced. Held accountable many of those suspected of responsibility for conflict atrocities.

RFA / Request for Assistance: Prosecutors and investigators from different jurisdictions and war-crimes units submit RFAs to the IIIM for support with investigations. To date 84 RFAs have been received by the IIIM. (See Bulletin #3 June issue for further details on RFA process).