



Brussels VI Side Event: Moving Forward on Truth and Justice: Addressing the crisis of missing persons and detention in Syria

When viewing the shocking footage from the Tadamon massacre, when looking through the excruciating images of mutilated bodies in the Caesar file, I am of course, as a criminal law lawyer, thinking about the investigative, forensic, analytical and legal tasks required to verify the materials in question and to establish their probative value. When viewing these images, I am also conscious that the families of the missing will also be viewing them. Will those on video or in a photo be a missing loved one? Each image or video of crimes that are uncovered no doubt brings with it hope and dread of an answer.

We heard Diab and Hiba powerfully explain why the needs of families of missing persons in Syria are not currently met. They shared the compelling reasons which led the Syrian civil society organisations they represent and the other authors of the Truth and Justice Charter to call for the establishment of an effective body capable of meeting those needs. It is a call that we at the IIIM fully support. While we are not mandated to search for the missing, we are committed to support broad justice objectives, including supporting the search for the missing in every way compatible with our mandate and our resources. I will explain the relevant lessons we have learned from past accountability processes on which we base our approach, the first steps we have taken in this direction, but also how a dedicated entity mandated to work on this urgent file, trusted by the families and able to receive the relevant information we identify in support of the search for missing persons, would make a significant difference.

Before my current role, I served in different courts responsible for bringing justice to victims and survivors of core international crimes. Those experiences made me acutely aware that, for the families of persons that went missing as a result of enforced disappearance, arbitrary detention, torture, killing or unlawful attacks, there could be no real justice without answering families' questions about the fate of their loved ones. At the International Criminal Tribunal for the former Yugoslavia in particular, colleagues working in the office of the Prosecutor were engaging with relevant actors on the use of their evidence collection in the search for missing persons. Their experience taught me how, information contained in materials collected by the investigators - primarily for the

purpose of prosecutions, proved valuable over time in supporting the search for missing persons. It contained crucial leads that can help entities mandated to conduct such work to answer questions from families about the fate of their loved ones. In their experience though, it was only late in the life of this court 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 these archives. And even then, it was not easy – the documents had not been organised in a way to assist such search.

Based on these lessons, it is obvious that there is a clear intersection between criminal accountability and the search for missing persons. The two are not incompatible. The families of those who are 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 have been detained, tortured and released tell us that knowing their families were also suffering, added to the physical and mental torture they went through in detention. The IIM does not have the mandate nor the capacity to answer all the needs expressed by families of missing persons. It has no access to detention facilities, to mass graves, it is not mandated to negotiate the release of detainees. However, its central repository of information and evidence is a powerful resource which can support efforts to clarify the fate and whereabouts of missing people in Syria. The interactions my IIM colleagues and I have with representatives of Syrian victims and survivors confirm that we should assist where we can. This priority of the families of missing persons must be part of our priorities and is an important part of our victim and survivor centred approach.

The events underlying the commission of crimes against humanity, war crimes and genocide that the IIM is mandated to investigate, invariably result in large numbers of missing victims. We have, as you know, on-going lines of enquiry on “detention related crimes”, as well as unlawful attacks, and crimes committed by ISIL. The review of materials we conduct to develop analytical work as part of these lines of enquiry or case files, as well as to respond to requests for assistance from competent jurisdictions, permits the identification within our central repository of information directly relevant to the search for missing persons. In order to be in a position to effectively contribute to these efforts, we have already taken some key first steps. We liaised with entities mandated to search for missing persons with a view to identify what specific information would best support their search and we developed a tagging system in our central repository accordingly. We also developed frameworks to enable us to share relevant information from the Central Repository with entities mandated to search for the missing where possible, and we are proactively transferring that material on a regular basis. We are now in the process of developing a more

comprehensive strategy, and, as requested by the General Assembly, we explore additional ways on how the IIIM can support the search for persons missing as a result of atrocity crimes committed in Syria since March 2011.

I have taken part in the consultations that followed the adoption of resolution 76/228 requesting the Secretary-General to conduct a study on how bolstering efforts to clarify the fate and whereabouts of missing people in Syria and to provide support to their families. I hope that the study will result in concrete steps permitting to do so. We just heard Michelle/reminding us that for families knowing what happened to their loved ones is a right. We heard Paulo reiterating the call made since 2016 that the international community supports the creation of a mechanism to register cases of missing, investigate their whereabouts, and identify human remains, including those found in mass graves. While we do not yet know what the conclusions of the study mandated by the General Assembly will be, nor what concrete steps will be adopted, I want to reiterate here that the IIIM stands ready to support a dedicated mechanism if and when established. We want to avoid a situation where relevant and sharable information identified by the IIIM remains in its central repository without being used in a timely way to help provide answers to families about the fate of their loved ones. Together with the information shared by the families themselves and other information gathered by entities mandated to search for the missing, the information shared by the IIIM would help a dedicated entity in its effort to clarify the fate and whereabouts of missing people in Syria. There is no doubt in my mind that such an entity could be a game changer for the families.

In all our many consultations with victims and survivors since the beginning of our work at the IIIM, the fate of loved ones who are missing in Syria has been an ever-present priority. We have seen from the outset, that although we are an accountability entity, we have to understand the bigger picture and acknowledge the connection between accountability work and clarifying the fate and whereabouts of the missing. This has been one of our earliest commitments in the vision set for the IIIM and the issue only becomes more pressing as time goes on. We have a collective responsibility to all those affected to work together, to think creatively, find ways to coordinate, share information, and ensure that this file is given the home it urgently needs. Despite the challenges, if we are genuine in our concerns for the needs of victims and survivors, we must find a solution to end the anguish of so many. For the missing and their families.
