

## Annex I

### **Terms of reference of the Independent Institution on Missing Persons in the Syrian Arab Republic**

1. On 29 June 2023, the General Assembly adopted resolution [77/301](#), by which it decided, in paragraph 2, to establish, under the auspices of the United Nations, the Independent Institution on Missing Persons in the Syrian Arab Republic. The Independent Institution is mandated “to clarify the fate and whereabouts of all missing persons in the Syrian Arab Republic and to provide adequate support to victims, survivors and the families of those missing, in close cooperation and complementarity with all relevant actors”.

2. By that resolution, the Secretary-General was requested, with the support of the Office of the United Nations High Commissioner for Human Rights (OHCHR), and in consultation with all other relevant actors, including with the full and meaningful participation of victims, survivors and families, to develop the terms of reference of the Independent Institution.

3. These terms of reference provide a framework and guidance both for the operationalization of the Independent Institution and for its future work. They should be interpreted in the light of General Assembly resolution [77/301](#), as a whole, and other relevant resolutions of the Assembly, the Security Council and the Human Rights Council, taking into account the report of the Secretary-General on missing people in the Syrian Arab Republic ([A/76/890](#)) as well as the views gathered through the consultative process held by OHCHR and provided by it to the Independent Institution. They should also be interpreted in the light of the continuing nature of the phenomenon of missing persons and associated harms. They are to be further detailed through the adoption by the Independent Institution itself, also following appropriate consultations, of its own working methods, as well as applicable frameworks, strategies, policies, protocols and standard operating procedures to give effect to its mandate.

#### **A. Legal basis and status**

4. The Independent Institution was established by a resolution of the General Assembly as a subsidiary organ of the Assembly. As such, it enjoys the legal capacity and related powers and authorities, including the legal capacity to conclude agreements with any State or entity. As a United Nations entity, the Independent Institution and its personnel, records, archives, property and assets will also enjoy the privileges and immunities, exemptions and facilities provided for in the Convention on the Privileges and Immunities of the United Nations and other applicable rules of international law.

#### **B. General mandate and definition of key terms**

5. The Independent Institution is mandated both to clarify the fate and whereabouts of “all missing persons in the Syrian Arab Republic” and to provide adequate support to “victims, survivors and the families of those missing”. In implementing its mandate, the Independent Institution should give equal weight to overlapping categories of persons concerned by these two components of the Independent Institution’s mandate and the respective rights and needs of persons in each group. The two functions of the mandate should be interpreted in full and whole conjunction with each other.

6. In the absence of a specific definition in international law for “missing persons”, the Independent Institution shall draw, for consistency and coherence, on the definitions used by existing specialist actors, interpreting its mandate to cover any person whose fate and/or whereabouts are not clearly known, irrespective of the reasons and causes for them going missing, whether they relate to acts of other persons or not, and whether there is a link or not to the armed conflict. The Independent Institution shall also construe “missing persons” to include persons who have already been reported missing to another institution, national or international, and persons whose fate and/or whereabouts have only been partially clarified.

7. For the purpose of the mandate of the Independent Institution, different categories of individuals and circumstances under which they go missing are covered under the expression “missing persons”, including those individuals who went missing as a result of abductions or enforced disappearances or following any form of arbitrary deprivation of liberty. It also covers people who go missing in other contexts such as displacement or as a result of military operations, whether or not directly connected to specific human rights violations or abuses or, in situation of armed conflict, to specific violations of international humanitarian law.

8. Persons are no longer considered as “missing”, for purposes of clarifying their fate and whereabouts, after their families and/or another legitimately concerned individual have received reliable information clarifying their fate and whereabouts. However, even when the fate and whereabouts have been clarified, the mandate of the Independent Institution may encompass additional tasks relevant to the full discharge of its mandate, such as seeking the release of detainees or facilitating the return of human remains to families, in coordination with relevant actors.

9. The Independent Institution shall interpret the expression “victims, survivors and the families of those missing”, which may encompass overlapping categories of persons, in line with the whole mandate of the Independent Institution and in accordance with relevant international obligations and standards. The term “victim” shall be understood to encompass the missing person and any individual who has suffered harm, whether directly or indirectly, as a result of the person going missing. This approach implies, in particular, that family members of a missing person are in themselves victims as well, including where their right to know the truth and their right to know the fate and whereabouts of a person missing as a result of armed conflict are violated, or when a person went missing as a result of a violation or abuse of international law. The Independent Institution shall take full account of the specific rights, needs, circumstances and challenges, in particular those faced by women and children, when they or their relatives go missing, especially in cases of deprivation of liberty.

10. The Independent Institution shall construe the expression “family”, or derivatives such as one or more family members, in a broad sense in accordance with the mandate and purpose of the Independent Institution, bearing in mind that this term is relevant both for the registration of cases of missing persons in relation to the search and for the scope of support provided by the Independent Institution. As a consequence, relatives should be interpreted to include, at a minimum, all children, whether born in or out of wedlock, adopted children and stepchildren, de facto partners, whether by marriage or not, parents, including mother-in-law, father-in-law or any adoptive parents, siblings born of the same parents, different parents or adopted, or, where applicable, other members of the extended family or community, as provided for by local law, custom or settled practice.

11. The geographical and temporal scopes of the Independent Institution’s mandate shall be interpreted and applied broadly in the light of the continuing nature and uncertainty characterizing the phenomenon of missing persons, as well as associated

harms, taking into account the need to ensure that the Independent Institution can effectively carry out the full range of its work. These aspects should be further refined as part of both the search and the support components of the mandate, and related prioritization policies. The expression “all missing persons in the Syrian Arab Republic” encompasses all persons, irrespective of nationality, who went missing before or after the creation of the Independent Institution, whenever their situation or circumstances are related to the Syrian Arab Republic. This includes persons who are currently believed to be missing in the country, regardless of where they may have gone missing initially, as well as those who initially went missing in the country, irrespective of where they may be believed to be currently missing. Similarly, while in resolution 77/301 it was “noted with deep concern that, after 12 years of conflict and violence in the Syrian Arab Republic, little progress has been achieved in alleviating the suffering of families by providing answers as to the fate and whereabouts of all missing persons”, the temporal scope of the mandate of the Independent Institution is not specified. The Independent Institution may decide to prioritize those who went missing since 2011, while, taking into account the principle of presumption of life, not necessarily excluding cases prior to this date, as they would continue to be considered as missing after 2011.

### C. Guiding principles and applicable legal frameworks

12. As required in resolution 77/301, the Independent Institution shall apply a victim- and survivor-centred approach, shall be inclusive of families and shall be guided by principles and fundamental features of gender inclusivity, non-discrimination, “do no harm”, independence, impartiality, transparency, and confidentiality of sources and information. It shall be guided by a presumption of life and adhere to operational standards of complementarity and non-duplication, sustainability and accessibility, adopting and applying a multidisciplinary approach to its work.

13. Given the many gendered dimensions of the phenomenon of missing persons, in particular regarding the impact of enforced disappearances, gender sensitivity and inclusivity shall inform all aspects of the operationalization and work of the Independent Institution. The Independent Institution shall ensure that a gender analysis is included across its programming, from identifying the gender-differentiated reasons as to why persons are forcibly disappeared to the specific gendered impact, risks and challenges faced by all those whose relatives went missing, in particular women, in order for the Independent Institution to fulfil its mandate effectively.

14. This approach and set of principles and standards shall inform the structural design of the Independent Institution, the interpretation of its terms of reference, and the development of its subsequent working methods and related documents to be adopted and followed in the implementation of its mandate.

15. The Independent Institution shall take into account existing international standards relevant to the situation of missing persons in the Syrian Arab Republic and their families. These include those reflected in international human rights instruments, notably the International Convention for the Protection of All Persons from Enforced Disappearance and the 1992 Declaration on the Protection of All Persons from Enforced Disappearance, as well as those under international human rights law and international humanitarian law, where applicable. These encompass, in particular, the obligation of all the parties to the conflict to account for the missing and, when necessary, to recover their bodies, as well as the families’ right to know the fate and whereabouts of their missing relatives, including the right to receive information on the circumstances under which the person went missing or, if the

person is dead, the circumstances of the death and place of burial, if known, and to receive the person's mortal remains.

16. Syrian domestic laws and policies may also be taken into account, including when adopting specific working methods, protocols and policies, as relevant for the effective fulfilment of the mandate of the Independent Institution, inasmuch as they are compatible with the country's international law obligations.

17. The Independent Institution may also take into consideration other human rights standards, as well as protocols and guidance developed by respected actors based on international standards, drawn from best practices relevant for the search for missing persons and support to families. These may include but are not limited to the International Committee of the Red Cross *Guidance Notes on National Mechanisms for Missing Persons: A Toolbox*<sup>1</sup> and *Guiding Principles/Model Law on the Missing*,<sup>2</sup> the Committee on Enforced Disappearances *Guiding Principles for the Search for Disappeared Persons*,<sup>3</sup> the general comments and recommendations contained in the reports of the Committee on Enforced Disappearances and the Working Group on Enforced or Involuntary Disappearances,<sup>4</sup> as well as the Minnesota Protocol on the Investigation of Potentially Unlawful Death,<sup>5</sup> the Berkeley Protocol on Digital Open Source Investigations<sup>6</sup> and 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 Executions*.<sup>7</sup>

18. The Independent Institution shall prioritize the development and adoption of tailored policies on information and data collection and handling, including to facilitate, for the families of missing persons or for all those with a legitimate interest, access to and use of relevant information and data, in line with the highest international standards and fully respecting fundamental principles of information and data protection, privacy, informed consent, and confidentiality.

19. The Independent Institution shall also act in accordance with relevant United Nations regulations, rules and policies.

#### **D. Discharge of specific components of the mandate**

20. The mandate of the Independent Institution established by resolution [77/301](#) comprises two interrelated and mutually reinforcing components, clarifying the fate and whereabouts of all missing persons in the Syrian Arab Republic and providing adequate support to victims, survivors and families of those missing. These two elements and the related activities needed to fulfil the mandate shall be defined and implemented in line with the victim/survivor-centric approach, taking into account the principle of complementarity of wider activities being undertaken in this field, including close cooperation with other relevant actors, both at the national and international levels, playing a role in search and support work.

<sup>1</sup> See <https://www.icrc.org/en/publication/4601-national-mechanisms-missing-persons-toolbox>.

<sup>2</sup> See <https://www.icrc.org/en/document/guiding-principles-model-law-missing-model-law>.

<sup>3</sup> CED/C/7.

<sup>4</sup> See <https://www.ohchr.org/en/special-procedures/wg-disappearances>.

<sup>5</sup> See <https://www.ohchr.org/sites/default/files/Documents/Publications/MinnesotaProtocol.pdf>.

<sup>6</sup> See [https://www.ohchr.org/sites/default/files/2022-04/OHCHR\\_BerkeleyProtocol.pdf](https://www.ohchr.org/sites/default/files/2022-04/OHCHR_BerkeleyProtocol.pdf).

<sup>7</sup> See <https://missingpersons.icrc.org/library/international-consensus-principles-and-minimum-standards-psychosocial-work-search-processes>.

## **E. Clarification of fate and whereabouts of missing persons**

21. For the purpose of the mandate of the Independent Institution, clarifying the fate and whereabouts of missing persons shall primarily be taken to mean determining whether they are alive or dead, their whereabouts, and the circumstances in which they went missing, including for those who may have died. This shall also include consequential responsibilities that may derive from such findings, such as seeking the reunification of the person with the family if the person is alive and so chooses, seeking the release of the person if the person is found to be arbitrarily detained, or facilitating the return of the remains to the family if the person is found to be dead.

22. The Independent Institution shall carry out this aspect of its mandate through a range of activities, including but not limited to the following, and prioritization and implementation of which may evolve over time with changing circumstances and the developing knowledge and experience of the Independent Institution:

(a) Map actors which hold or may hold relevant information or data on missing persons in the Syrian Arab Republic or which carry out activities relevant to its mandate, with due consideration for the type of information or data, the gender dimension and other disaggregation criteria, as well as protection concerns;

(b) Design an information and data management system capable of integrating and disaggregating relevant information and data, ensuring, in particular, full recording and respect for informed consent, privacy, and applicable confidentiality interests in relation to providers of information and data and, as appropriate, to individuals to whom such information and data relate;

(c) Elaborate systems and procedures to consider and address protection and/or security concerns of any person coming in contact with the Independent Institution;

(d) Devise and implement processes and safeguards necessary to avoid retraumatization and to provide easy procedures for victims, survivors and families to access relevant information and data;

(e) Put in place appropriate procedures and systems to register cases of missing persons, whether new cases or cases previously reported to other authorities or institutions;

(f) Design and implement a comprehensive search plan, in coordination with relevant actors, in particular families, and making use of all available technologies, which covers key elements such as consolidation of information and data on missing persons, including mapping and ways to seek the identification and protection of mass graves; objective criteria for prioritization; and appropriate referrals to rely on existing capacities and processes, in particular with respect to forensic work;

(g) Conclude necessary cooperation agreements with relevant actors, including to facilitate the exchange of information and data and to refer specific activities and tasks to other entities, in order to fully inform the search plan of the Independent Institution;

(h) Undertake structural and contextual analysis of information and data, in consultation with relevant partners, including victims, survivors and families, in order to inform the search plan of the Independent Institution;

(i) Adopt procedures to seek and facilitate the reunification of missing persons determined to be alive with their families, including regarding encouraging and facilitating the release of persons arbitrarily deprived of liberty;

(j) Adopt all feasible measures and procedures to carry out the work of identification of missing persons determined to have died, and to seek and facilitate the prompt return of available human remains to their families, including through referrals to relevant actors;

(k) Design and implement appropriate systems for the long-term preservation and archiving of relevant information and data related to missing persons in the Syrian Arab Republic in the best interests of victims, survivors and families, taking into account respective interests and international best practices in this area, including to duly secure and protect the full integrity of the archives of the Independent Institution and associated information and data.

23. Throughout these activities, the Independent Institution shall communicate regularly with families and organizations representing them to enable their full and informed participation, in a manner that respects their own integral roles in search processes. Communication shall be effective, irrespective of the degree of progress made on clarifying specific cases, and taking into account families' wider rights and well-being. This includes ensuring that victims, survivors and families and all those with a legitimate interest can promptly access appropriate relevant information and data on missing persons, easily, and in line with protection, consent and confidentiality protocols.

## **F. Support to victims, survivors and families of those missing**

24. For the purpose of the mandate of the Independent Institution, providing adequate support means, either directly or through referrals to existing actors, that families of missing persons receive support adapted to their rights and needs, be it individual or collective, taking into account that needs may change over time, and with due consideration for the gendered impact of missing persons. This part of the mandate shall be interpreted as closely linked to the search part of the mandate. It should include such tasks as ensuring victims' participation and engagement in the search for their relatives by providing them with answers not only about what happened to them but also about what steps are being taken to clarify their fate and whereabouts as long as they remain unknown.

25. The Independent Institution is expected to carry out this mandate through a range of activities, including but not limited to the following, and prioritization and implementation of which may evolve over time with changing circumstances and the developing knowledge and experience of the Independent Institution:

(a) Map the needs of families, in close consultation with them, in particular with families who contacted or registered a case with the Independent Institution, as well as with other relevant stakeholders, including civil society organizations;

(b) Undertake a mapping of all existing relevant actors, international and national, as well as an analysis of the forms of support that they already provide, to identify strengths and gaps;

(c) Design an efficient, practical, accessible and transparent system of referrals for support, including through the participation of families, to existing services by relevant actors, to ensure the complementarity of its work;

(d) Ensure that cooperation agreements negotiated with relevant actors are informed by these mapping processes to include the possibility to refer cases for the forms of support that the Independent Institution may not itself be able to best provide;

(e) Set up clear protocols on eligibility of persons to receive different forms of support from the Independent Institution;

(f) Make arrangements to provide appropriate support to families, including psychosocial and legal support, and refer them to other existing actors for complementary forms of support;

(g) Identify means, including through coordination with other actors, to support families requiring necessary documentation, including certificates regarding the status of the missing person, taking into account the degree to which such documentation may help them to better enjoy other relevant rights, including, for example, rights to education, housing, land and other property;

(h) Convene regular meetings with actors providing forms of support to families in order to refine cooperation and coordination, avoiding duplication and overlap, and to procure views on enhancing best practices and identifying and addressing operational challenges.

## **G. Working methods**

26. Following a victim/survivor-centric and rights-based approach that is fully accessible to families, the Independent Institution shall adopt procedures, policies and protocols that are easily understandable, in accordance with best practices, and that take into account a gender-sensitive approach and respect the “do no harm” principle, including in relation to the following specific areas:

(a) Registration of cases;

(b) Criteria for initiating searches, including on the initiative of the Independent Institution;

(c) Design and implementation of a comprehensive search plan;

(d) Development of parameters of processes of informed consent and verification of information and data;

(e) Consideration of prioritization of cases, starting with those already reported to one or more other organizations, to reduce and mitigate risks of retraumatization of families.

27. The Independent Institution shall develop a set of policies and procedures specifically addressing the purposes, ways and means of engagement and participation of victims, survivors and families with the Independent Institution.

28. The Independent Institution shall also design and implement a comprehensive outreach strategy to inform potential persons coming within its mandate, their families and other relevant actors of its work, its activities and the progress made in fulfilling its mandate. This shall include a specific component directed at the victims, survivors and families.

29. The Independent Institution shall also put in place review processes to adapt its working methods over time, in the light of experience and the views of persons affected by the work of the Independent Institution. These shall include clear processes for victims, survivors and families to provide feedback on their engagement with the Independent Institution, and for reviewing the provision of services to that end, with a view to maximizing effectiveness.

30. The Independent Institution shall take appropriate measures to respect and to ensure respect for the confidentiality, privacy, interests and personal circumstances of victims, survivors and families, including age, sex, gender and health.

31. The Independent Institution shall develop a specific policy to ensure the comprehensive integration of protective approaches to mental health approaches and psychosocial support into its work, including for its staff.

32. The Independent Institution shall also adopt procedures and methods of work regarding the establishment of a protection component for victims, survivors and families, so as to ensure due protection and support for victims, survivors and families and any other persons who cooperate with the Independent Institution.

33. The Independent Institution shall ensure that its working methods adequately balance the need to provide families with access to the relevant information and data related to cases of family members and the principles of confidentiality, protection, privacy, safety and security of information and data, while ensuring effective cooperation with other relevant actors.

## **H. Structure and composition**

34. The Independent Institution shall be headed at the level of Assistant Secretary-General. The Head shall be of high moral character and integrity, possessing the highest level of professional competence and extensive experience in dealing with missing persons; working with victims, survivors and families in conflict and post-conflict settings; and conducting complex and sensitive negotiations. Consistent with applicable regulations, rules and policies of the United Nations, the Head shall demonstrate commitment to ensuring victim and survivor-centric approaches and gender equality in the structure and work of the Institution. The Head shall be assisted by a Deputy at the D-1 level.

35. Both the Head and the Deputy shall be appointed by the Secretary-General, upon consultation with the United Nations High Commissioner for Human Rights.

36. The Head of the Independent Institution shall recruit a secretariat composed of impartial and experienced professionals to assist in the work of the Head, with expertise in such areas as search and support work on missing persons, engagement with victims, survivors and families, gender-inclusive approaches, building partnerships with relevant international organizations, Member States, civil society and other entities, as well as in areas of information and data management, outreach and communication. In appointing the secretariat, due consideration shall also be given to equitable geographical distribution and gender balance, as well as necessary language skills and regional expertise.

37. The staff shall include a Victims' Advocate, to assist, advise and facilitate, as appropriate, victims, survivors and families in their engagement with the Independent Institution. Specific functions and responsibilities of the Victims' Advocate will be further detailed by the Head of the Independent Institution.

38. Governance of the Independent Institution shall include an advisory board, composed of Syrian and international independent experts, sitting in their personal capacities, including representatives of victims, survivors and families, who will meet regularly to provide confidential views and advice to the Head of the Independent Institution on its programmes and operations.

39. As required in General Assembly resolution [77/301](#), the Independent Institution shall also include a structural element to ensure the full and meaningful participation and representation of victims, survivors and families, and shall engage with women's organizations and other civil society organizations in a regular and sustained manner. To this end, the Independent Institution shall integrate in its structure an avenue for the victims, survivors and families to contribute to and take part, as appropriate, in



its work, and to provide space for interaction with civil society organizations, including women's organizations. Such means shall at least include:

- (a) Representation in the Independent Institution's advisory board/governance bodies;
- (b) A formal collective platform for two-way exchange on the work of the Independent Institution;
- (c) Flexible and needs-based additional means of participation, such as bilateral meetings, written submissions and thematic working groups;
- (d) Engagement through the Victims' Advocate to address specific concerns by victims, survivors and families regarding their interactions with the Independent Institution.

## **I. Cooperation**

40. By its resolution [77/301](#), the General Assembly called upon all States as well as all parties to the conflict in the Syrian Arab Republic to cooperate fully with the Independent Institution, in line with their obligations under international law.

41. The General Assembly also called upon other relevant actors, including international institutions and civil society organizations, in particular Syrian civil society organizations, to cooperate with the Independent Institution. The Independent Institution shall understand civil society organizations to encompass women's organizations.

42. The General Assembly requested the United Nations system as a whole to cooperate fully with the Independent Institution and to promptly respond to any requests, including access to information, data and documentation, in particular, to provide the Institution with any information and data it may possess, as well as any other forms of assistance necessary to fulfil the mandate of the Institution.

43. To give effect to these directions of the General Assembly, the Independent Institution shall develop a cooperation framework to cover a range of actors and different forms of cooperation relevant to the effective discharge of its mandate, including with respect to information- and data-sharing, requests for access to the territory of the Syrian Arab Republic and other States, and conduct of processes of search, identification, assistance and support to victims, survivors and families wherever they are, including the issuance by relevant States of documents necessary for families of missing persons to procure greater legal certainty as to their situation and its legal consequences.

44. The Independent Institution's modalities for cooperation shall be further developed in its procedures and methods of work, as well as through tailored specific agreements with relevant actors and, where applicable, collective agreements.

## **J. Seat of the Independent Institution**

45. The Secretary-General shall determine the seat of the Independent Institution, taking into account accessibility, security, efficiency, cooperation with other relevant organizations and entities, cost-effectiveness and any other relevant considerations.

46. The Head of the Independent Institution may consider establishing field presences, as appropriate and necessary, in accordance with applicable United Nations regulations, rules and processes.

**K. Reporting**

47. The Secretary-General shall report annually to the General Assembly on the activities of the Independent Institution, as requested in resolution [77/301](#). This reporting shall be undertaken in consultation with the Head of the Independent Institution.

48. The Head of the Independent Institution shall also ensure that its outreach strategy includes regular reporting, communication and updates on the activities of the Independent Institution, in particular for families.

**L. Amendment**

49. The present terms of reference may be amended at any time by the Secretary-General. The Head of the Independent Institution may make recommendations to such effect.

**M. Commencement of operations**

50. The Secretary-General shall determine, in consultation with the Head of the Independent Institution, the date on which the Independent Institution is deemed to be operational.

**N. Completion of mandate**

51. Upon completion of its mandate, the information, data and documentation collected, analysed and held by the Independent Institution shall be transferred to the Secretariat, consistent with United Nations rules, regulations, policies and procedures, under conditions commensurate with the sensitivity of the material held and fully respecting the rights of individuals concerned by the material in question.