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الشبكة السورية لحقوق الإنسان
SYRIAN NETWORK FOR HUMAN RIGHTS

# The Syrian Network for Human Rights Calls for Disclosing the Fate of Thousands of Syrian Detainees Transferred from Northeast Syria to Iraq and for Guaranteeing Their Legal and Human Rights

The Syrian Democratic Forces transferred no fewer than **6,547 detainees** to Iraq, among them **4,743** Syrians, including dozens of children and adolescents, and **1,804** foreigners from nearly **61** nationalities

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The Syrian Network for Human Rights (SNHR), founded in June 2011, is a non-governmental, independent group that is considered a primary source for the OHCHR on all death toll-related analyses in Syria.

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# FIRST: EXECUTIVE SUMMARY

In this brief report, the Syrian Network for Human Rights monitors large-scale transfers and handovers of detainees who were held by the Syrian Democratic Forces and the bodies affiliated with the Autonomous Administration in northeast Syria to the Iraqi authorities, from 2019 up to the last period in which the detention centers concerned remained under the control of the Syrian Democratic Forces.

According to the information documented by the Syrian Network for Human Rights, these operations involved no fewer than **6,547 detainees**, against the background of the suspicion that they belonged to, or were affiliated with, ISIS.

The available information indicates that the transfers were carried out in successive stages and separate batches, within the framework of security arrangements and bilateral coordination, without any comprehensive official announcement that includes the lists of names, the transfer dates, the individual legal basis for each case, or the judicial guarantees that preceded the removal of the detainees from Syrian territory. Likewise, there isn't sufficient information about whether the detainees were enabled to challenge the transfer decisions, to obtain independent legal assistance, or whether their files were presented before a competent and independent judicial body prior to their transfer to Iraq.

These facts highlight grave legal and human rights questions, particularly in light of the principle of non-refoulement set out in Article 3 of the Convention against Torture, and the fair-trial guarantees secured in Article 14 of the International Covenant on Civil and Political Rights. Furthermore, the international reports that have documented fundamental flaws in some of the counter-terrorism trials in Iraq, including the reliance on confessions, the allegations of torture and ill-treatment, the limited legal representation, and the risk of death sentences being issued in proceedings that don't always meet fair-trial standards, make it necessary to assess the extent to which legal guarantees are available in these cases.

The cross-border transfer of detainees also raises an additional problem from the perspective of transitional justice, since it may lead to a break in the chain of custody of the evidence relating to detention, investigation, and transfer, including biometric data, the initial interrogation records, the referral records, the records of the transfer of jurisdiction, the medical files, and any allegations of torture or ill-treatment. This directly affects the ability of future Syrian judicial mechanisms, and the relevant international mechanisms, foremost among them the International, Impartial and Independent Mechanism, to preserve, analyze, and use the evidence in fair and independent criminal proceedings.

The Syrian Network for Human Rights affirms that counter-terrorism, and holding accountable those responsible for the crimes attributed to ISIS, don't justify the mass transfer of detainees, nor do they exempt any party from respecting the guarantees of non-refoulement, fair trial, the prohibition of torture, the protection of children, and the right of families to know the fate of their relatives. It also affirms that this file must be part of the priorities of transitional justice in Syria, including the disclosure of the truth, the preservation of records, the guaranteeing of accountability, and the prevention of the loss of evidence or its selective use.

In preparing this report, the Syrian Network for Human Rights relied on its own database, and on the information that was gathered from multiple sources, including the statements of families, the analysis of the available documents and records, and the information issued by the parties concerned. The data were verified through cross-checking among the multiple sources whenever that was possible. The figures contained in this report represent the minimum number of cases that the Syrian Network for Human Rights was able to document and verify in accordance with its adopted methodology.

## SECOND: BACKGROUND OF THE DETAINEE TRANSFERS FROM SYRIA TO IRAQ

Following the territorial defeat of ISIS in Syria and Iraq, the Syrian Democratic Forces and the bodies affiliated with the Autonomous Administration detained large numbers of persons suspected of belonging to, or being affiliated with, the organization. The detention operations encompassed Syrians, Iraqis, and foreigners, in addition to children, adolescents, and women, and they were held in a number of detention facilities and camps.

During the subsequent years, repeated transfers and handovers took place from northeast Syria to Iraq. According to what the Syrian Network for Human Rights has monitored, these operations encompassed thousands of persons, and they were carried out in separate batches, within security arrangements and direct or indirect coordination between the bodies that were running the detention centers in northeast Syria and the competent Iraqi authorities.

These operations resulted in transferring the detainees from a non-state de facto authority inside Syrian territory to the jurisdiction of another state, including investigation, trial, detention, and the enforcement of sentences. This transfer doesn't only raise security and administrative questions; it also raises legal problems relating to the legal basis for the transfer, the individualization of the procedures, the detainees' right to challenge and to judicial review, and the guarantee that they will not be transferred to a place where they face the risk of torture, ill-treatment, an unfair trial, or execution.

This matter takes on additional importance in the context of the transitional phase in Syria, and the review it imposes of the files associated with detention, transfer, trial, and the preservation of records, as well as guaranteeing the right of families to know the fate of their relatives, and enabling the judicial and oversight bodies to assess the measures taken during the years of the conflict in accordance with the applicable national and international legal rules.

# THIRD: THE LEGAL FRAMEWORK FOR CROSS-BORDER TRANSFERS AND HANDOVERS

The detention of persons and their transfer from one authority to another are subject to a set of rules derived from international human rights law, international humanitarian law, and international criminal law. The scope of the obligations differs according to the nature of the detaining body, the circumstances of the conflict, and the de facto or legal jurisdiction over the detained person; however, certain fundamental guarantees remain due for respect in all circumstances.

## 1. The Prohibition of Torture and the Principle of Non-Refoulement

Article 3 of the Convention against Torture stipulates that no person may be expelled, returned, or extradited to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture. This obligation may not be treated as a formality; rather, it requires an individual assessment of the risks prior to transfer, particularly when the person is exposed to the risk of torture, ill-treatment, disappearance, coerced confessions, or an unfair trial that may lead to severe penalties.

The principle of non-refoulement applies regardless of the nature of the charges attributed to the person, including the cases relating to terrorism or national security, and this principle may not be derogated from under any exceptional circumstance.

In the context of this report, the transfer of thousands of Syrian detainees to Iraq, without sufficient information about individual risk assessments or independent judicial review, raises serious concerns regarding the extent to which the principle of non-refoulement is respected. These concerns increase when the transferred person is accused or suspected in counter-terrorism cases, which are cases that may involve higher risks relating to torture, confessions extracted under coercion, or cruel penalties, including the death penalty.

## 2. The Right to a Fair Trial and Judicial Guarantees

Article 14 of the International Covenant on Civil and Political Rights guarantees the right to a fair trial before a competent, independent, and impartial court. These guarantees include the presumption of innocence, the right to a defense, the right to obtain legal assistance, the right to examine the evidence, the right not to be compelled to confess guilt, and the right to have the sentence reviewed before a higher judicial body.

These guarantees take on special importance in the cases related to the suspicion of belonging to ISIS, because security suspicion doesn't equal judicial conviction, and it may not take the place of individual, examinable evidence. Likewise, confessions extracted under torture or coercion, or general intelligence information that isn't susceptible to judicial testing, may not be a basis for conviction or for the issuance of severe sentences.

## 3. The Protection of Detainees in Non-International Armed Conflicts

In the context of the non-international armed conflict in Syria, the fundamental rules of international humanitarian law require humane treatment for all persons who are under the authority of a party to the conflict, prohibit torture and cruel and degrading treatment, and oblige respect for the fundamental judicial guarantees. These guarantees apply to all detainees regardless of the suspicion attributed to them or the body that detained them.

Although the Syrian Democratic Forces and the Autonomous Administration aren't a state, the fact that they exercise de facto authority over wide areas and large detention centers imposes on them responsibilities and obligations derived from international humanitarian law and the international human rights standards, to the extent that they exercise de facto authority over the detained persons. These relate to humane treatment, the prohibition of torture, the protection of detainees, the preservation of records, and refraining from taking measures that affect the liberty, safety, or legal fate of the detainees without sufficient guarantees.

## 4. Special Protection for Children and Adolescents

The file includes dozens of children and adolescents who were transferred within some of the handover operations. This requires observing the Convention on the Rights of the Child and the international standards governing juvenile justice, particularly the principle of the best interests of the child, the right to protection, and the necessity of dealing with children in a manner that takes into account their age, their circumstances, and the likelihood of their having been exposed to recruitment, exploitation, or a coercive environment.

Children or adolescents may not be dealt with on the basis of collective suspicion, family affiliation, or presence in areas that were under the control of ISIS. Any measures taken against them must be individual, proportionate, subject to the guarantees of juvenile justice, and oriented toward protection and rehabilitation rather than collective punishment. These guarantees also rest on the Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), and other international standards relevant to juvenile justice and the protection of children.

## 5. The Preservation of Evidence and Its Importance for Transitional Justice Pathways

The gravity of this file isn't limited to the legal status of the detainees; rather, it extends to the integrity of the pathways of transitional justice and future accountability. The cross-border transfers may lead, in the absence of systematic documentation, to a break in the chain of custody of the evidence relating to detention, investigation, and transfer, including biometric data, interrogation records, referral files, handover records, medical records, allegations of torture, and the relevant digital or documentary materials.

The preservation of this evidence is a condition for disclosing the truth, protecting the right of families to know the fate of their relatives, and enabling future Syrian judicial bodies and international mechanisms to assess the files on the basis of individual, verifiable evidence.

# FOURTH: THE REPORT'S PRINCIPAL FINDINGS

## 1. Documenting the Transfer of No Fewer Than 6,547 Detainees from Syria to Iraq

The Syrian Network for Human Rights has documented the transfer of no fewer than **6,547 detainees** from detention centers that were subject to the Syrian Democratic Forces and the bodies affiliated with the Autonomous Administration in northeast Syria to Iraq, from 2019 up until the end of the Syrian Democratic Forces' control over the detention centers concerned.

These include nearly **4,743** Syrian citizens, among them dozens of children and adolescents, in addition to nearly **1,804** foreign detainees who belong to nearly **61** Arab and foreign nationalities.

## 2. The Absence of Transparency Regarding the Lists of Transferees and the Legal Basis for Transfer

The available information indicates that there is no comprehensive official announcement that includes the lists of names of all the detainees who were transferred to Iraq, the transfer dates, the receiving bodies, or the legal and procedural basis for each operation. Likewise, there isn't sufficient information about whether the transfer decisions were issued on an individual basis, on the basis of an independent judicial review, or after the detainees were enabled to challenge them or to request legal assistance.

The absence of this information weakens human rights and judicial oversight, increases the suffering of families, and limits the possibility of assessing the lawfulness of the transfer and handover operations.

## 3. Legal Concerns over the Mass Transfer of Detainees to Iraq

The transfer of thousands of Syrian detainees to Iraq, amid the absence of sufficient information about the conduct of individual risk assessments prior to transfer, calls for considering the extent to which the guarantees associated with the principle of non-refoulement are respected. As for the matter, it doesn't relate merely to the movement of persons across borders, but to the nature of the risks they may be exposed to after the transfer, particularly the risk of torture, ill-treatment, disappearance, an unfair trial, or a death sentence based on confessions or evidence that is unreliable, or that doesn't meet the required legal standards.

This matter takes on special importance in the cases related to counter-terrorism, since there isn't sufficient information that allows verifying whether all the files rested on individual evidence that is examinable before an independent judicial body, or on suspicion, security reports, or general intelligence information.

## 4. The Dangers of Relying on Confessions and Insufficient Security Information

The trial procedures don't conform to fair-trial standards when they rest on confessions extracted under coercion, general security information, or files that don't include specific field evidence linking the person to particular criminal acts. The reliance on such evidence weakens the presumption of innocence, limits the effectiveness of the right to a defense, and increases the likelihood of convictions being issued that don't rest on sufficient individual evidence that is susceptible to judicial examination.

The Syrian Network for Human Rights affirms that the suspicion of belonging to ISIS, however grave it may be, isn't by itself sufficient to convict the person or to transfer him to another jurisdiction without sufficient legal and procedural guarantees. Thus the international standards require conducting an individual assessment of each case, enabling the person to challenge the procedures and decisions taken against him, to obtain effective legal assistance, and to have the evidence submitted against him reviewed before an independent and impartial judicial body.

## 5. Children and Adolescents Face Compounded Dangers

The file includes dozens of Syrian children and adolescents who were transferred within some of the batches. These cases raise special concerns relating to the extent to which the principle of the best interests of the child is observed, ensuring that children aren't subjected to procedures identical to those of adults, and that they aren't dealt with as criminally responsible on the basis of family connection or presence in an environment subject to ISIS.

Any legal or administrative handling of these cases must take into account the possibility that the children are victims of recruitment, exploitation, coercion, or coercive circumstances, and must guarantee for them appropriate protection and legal, psychological, and social assistance.

## 6. The Continued Denial of Families' Right to Know the Fate of Their Sons

In many cases, the families of the detainees don't possess sufficient information about the places of detention of their sons after their transfer to Iraq, their legal situations, the outcomes of the investigations and trials, or the sentences issued against them, if any. The information gathered by the Syrian Network for Human Rights indicates that a large number of the transferred detainees are held in Karkh Prison in Baghdad; however, this doesn't provide a comprehensive and up-to-date picture of the whereabouts of all the transferees or their legal situations.

The absence of official information prejudices the right of families to know the fate of their relatives, creates a continuous state of anxiety and psychological and social harm, and prevents the detainees from obtaining the necessary legal and humanitarian support.

## 7. The Risk of a Break in the Chain of Custody of Evidence

The cross-border transfer of detainees without a clear system for preserving records and evidence may lead to the loss or dispersal of essential information, including the data of the initial detention, the reason for suspicion, the investigation records, the transfer and handover records, the records of the subsequent detention, the medical files, and any allegations of torture or ill-treatment.

This represents a direct danger to the pathways of future accountability, whether before the Syrian or Iraqi judiciary or any other competent judicial body. It may also weaken the ability of the International, Impartial and Independent Mechanism and the relevant international bodies to analyze the evidence and link persons or facts to specific crimes, and it increases the likelihood of the truth being obscured or used selectively.

# FIFTH: THE RESPONSIBILITIES OF THE PARTIES CONCERNED WITH TRANSFER, DETENTION, AND TRIAL

## 1. The Responsibility of the Syrian Transitional Government

The Syrian Transitional Government bears the responsibility of following up on the situations of the Syrian citizens who were transferred to Iraq during the past years, as part of its duty to protect its citizens, to preserve the national records, to disclose the truth, and to ensure the inclusion of this file within the pathways of transitional justice.

In this context, the establishment of a general register of names isn't sufficient; rather, an accurate national database should be established that includes, wherever possible, the data of each person, the date and place of his initial detention, the body that detained him, the date of his transfer, the body that received him, his current place of detention, his legal status, and any documents or records relevant to his file.

The Syrian government should formally request the Iraqi authorities to preserve all the records relating to the Syrian detainees, and not to destroy, modify, or withhold any documents or data that may be relevant to the disclosure of the truth or to accountability, including the medical records, the investigation records, the trial records, the visitation records, and the allegations of torture or ill-treatment.

## 2. The Responsibility of the Iraqi Government

The Iraqi authorities bear direct responsibility for all the persons in their custody after their transfer to Iraq. This responsibility includes guaranteeing humane treatment, the prohibition of torture and ill-treatment, respect for the guarantees of a fair trial, enabling the detainees to communicate with lawyers and their families, and reviewing their files on an individual basis.

The Iraqi authorities should ensure that confessions extracted under torture or coercion, or undocumented information, aren't used as evidence in the judicial proceedings. In the cases that may lead to the death penalty, the highest degrees of judicial guarantees should be provided, including an independent and effective review of any allegations of torture, denial of the right to a defense, or weakness in the evidence.

The Iraqi authorities also bear the responsibility of preserving all the records and evidence relating to the detainees transferred from Syria, and of making them available to the competent bodies in accordance with legal arrangements that guarantee the protection of privacy and the safety of witnesses, victims, and families.

## 3. The Responsibility of the Syrian Democratic Forces and the Autonomous Administration

The Syrian Democratic Forces and the bodies affiliated with the Autonomous Administration, as the bodies that exercised de facto control over the detention centers in northeast Syria, bear the responsibility of fully disclosing the transfer and handover operations that took place from 2019. This includes providing the lists of names, the transfer dates, the receiving bodies, the legal or security basis on which each operation rested, and the procedures that preceded the transfer.

These bodies should hand over all the detention, investigation, and transfer records to the competent official Syrian bodies within a clear legal framework, while keeping authenticated copies that allow their use in disclosing the truth and in accountability, and in a manner that doesn't expose witnesses, victims, or families to danger.

## 4. The Responsibility of the International Parties That Participated in or Facilitated the Transfers

If any international body or foreign force (such as the International Coalition Forces) participated in organizing, facilitating, financing, or monitoring the transfer operations, then it has an independent duty to clarify the nature of its role, the guarantees it adopted prior to the transfer, whether it conducted or requested individual risk assessments, and whether it followed up on the situations of the transferees after their handover to the Iraqi authorities.

No body that participated in or facilitated the transfer may evade its responsibility merely because the detainees have moved into the custody of another state, particularly if it knew, or should have known, of the existence of serious risks relating to torture, ill-treatment, an unfair trial, or execution.

## 5. The Responsibility of the United Nations and International Mechanisms

The United Nations and the relevant international mechanisms should support the efforts aimed at disclosing the fate of the transferred detainees, monitoring their legal and humanitarian situations, providing technical support for the establishment of reliable databases, and ensuring the preservation of evidence and the chain of custody.

Cooperation with the International, Impartial and Independent Mechanism should be strengthened, particularly with regard to the evidence that may be relevant to international crimes committed in Syria since March 2011, or to violations that occurred during detention, transfer, or trial.

# SIXTH: RECOMMENDATIONS

## To the Syrian Transitional Government

1. Establishing a comprehensive central national register of all the Syrian citizens who were transferred from northeast Syria to Iraq since 2019, that includes the basic data, the places of detention, the legal status, and the trajectory of each case.
2. Opening direct official channels of communication with the Iraqi authorities to obtain complete and up-to-date lists of names of all the Syrians detained in Iraq against the background of the conflict in Syria.
3. Establishing a national unit specialized in the file of the Syrian detainees transferred abroad, that undertakes coordination with Iraq, the international bodies, the families, the lawyers, and the United Nations mechanisms.
4. Demanding that the Iraqi authorities preserve all the records relating to the Syrian detainees, including biometric data, the investigation records, the transfer records, the detention records, the medical records, and the trial files.
5. Reviewing all the documents and records associated with the transfer and handover operations, determining the legal and procedural basis for each operation, and preserving them within an official national archive.
6. Guaranteeing the right of families to submit official inquiry requests and to obtain reliable information about the fate of their relatives, their places of detention, and their legal situations.
7. Giving special priority to the children and adolescents included in the transfer operations, and studying the appropriate legal and humanitarian options concerning them in accordance with the principle of the best interests of the child.
8. Coordinating with the International, Impartial and Independent Mechanism and the competent United Nations bodies to ensure the preservation of the evidence relevant to ISIS's crimes and to any potential violations that occurred during detention, transfer, or trial.
9. Including the file of the transferred detainees within the pathways of transitional justice, encompassing the disclosure of the truth, the preservation of records, accountability, and ensuring that the evidence isn't lost or used selectively.

## To the Iraqi Government

1. Publishing or making available up-to-date official data regarding the Syrian and foreign citizens who were transferred from northeast Syria to Iraq, while specifying their places of detention and their current legal situations.
2. Ensuring that all the detainees are enabled to exercise their fundamental rights, including the right to a defense, the right to appoint a lawyer, the right to appeal the sentences, and the right to regular communication with the family.

3. Conducting an individual judicial review of all the files of the detainees transferred from Syria, particularly the cases that rest on confessions, general intelligence information, or security reports that aren't susceptible to judicial testing.
4. Ensuring that confessions extracted under torture or coercion, or undocumented information, aren't used as evidence in the judicial proceedings.
5. Suspending the execution of any death sentence against any person transferred from Syria until an independent and effective judicial review of the file is conducted, and it is verified that the proceedings are free of torture, coercion, or grave violations of fair-trial guarantees.
6. Preserving all the records and evidence relating to the transferred detainees, including biometric data, the interrogation records, the transfer records, the detention records, the medical records, and the trial files.
7. Opening independent and effective investigations into all allegations of torture, ill-treatment, disappearance, or the denial of legal guarantees raised by the transferred detainees, their families, or their lawyers.
8. Facilitating family visits and regular communication, and providing a clear mechanism for families to learn the places of detention and the legal trajectory of each case.
9. Paying special attention to children, adolescents, and women, and ensuring that they are dealt with in accordance with the relevant international standards, not in accordance with a collective security approach.

## To the Syrian Democratic Forces and the Autonomous Administration

1. Fully disclosing all the transfer and handover operations that took place since 2019, encompassing the lists of names, the dates, the receiving bodies, and the legal and procedural basis for each operation.
2. Providing the complete detention records of the persons who were transferred to Iraq, encompassing the initial investigation files, the biometric data, and any detention, referral, or transfer decisions.
3. Clarifying the procedures that preceded the transfer decisions, particularly whether the detainees were able to access lawyers or to challenge the decisions of their transfer.
4. Handing over the relevant records and documents to the competent official Syrian bodies within a legal framework that guarantees their preservation and their use in disclosing the truth and in accountability.
5. Clarifying whether any international body or foreign force participated in organizing, facilitating, financing, or monitoring the transfer operations, and stating the nature of this role, its limits, and the guarantees that were requested or provided prior to the transfer.
6. Cooperating with the relevant national and international bodies to document the fate of all the persons included in the transfer operations.

## To the International Parties That Participated in or Facilitated the Transfers

1. Disclosing the nature of any direct or indirect role in the operations of transferring detainees from northeast Syria to Iraq.
2. Stating whether individual risk assessments were conducted prior to the transfer, particularly the risks of torture, ill-treatment, an unfair trial, or execution.
3. Following up on the situations of the persons included in the transfer operations, and ensuring that they aren't exposed to grave violations after their handover to the Iraqi authorities.
4. Cooperating with the United Nations mechanisms and the competent judicial bodies in preserving the evidence and records relating to the transfer operations.

## To the United Nations and the Relevant International Mechanisms

1. Supporting the establishment of an effective mechanism for disclosing the fate of the Syrian detainees transferred to Iraq, and enabling their families to access official and reliable information.
2. Monitoring the trial and detention procedures in Iraq in the cases related to the persons transferred from northeast Syria.
3. Providing technical support to the Syrian Transitional Government and the Iraqi authorities in establishing reliable national databases for the victims of detention and transfer during the years of the conflict.
4. Supporting the Syrian government in establishing a unified system for preserving records and evidence, in accordance with the standards of data protection and the safety of witnesses, victims, and families.
5. Urging all parties to cooperate with the International, Impartial and Independent Mechanism, particularly with regard to the documents and evidence that may be relevant to international crimes committed in Syria since March 2011.
6. Including the file of the transferred detainees within the periodic reports of the relevant human rights mechanisms, particularly with regard to children and adolescents, fair-trial guarantees, and the risks of torture and ill-treatment.

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