

**INTERNATIONAL BAR ASSOCIATION HUMAN RIGHTS INSTITUTE
SYRIAN ARAB REPUBLIC
SUBMISSION TO THE UN UNIVERSAL PERIODIC REVIEW SESSION OF THE
TWELFTH SESSION OF THE UPR WORKING GROUP OF THE HUMAN
RIGHTS COUNCIL**

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1. INTRODUCTION

The International Bar Association Human Rights Institute (IBAHRI) makes this submission under sections B, C and D as set out in the General Guidelines for the Preparation of Information under the Universal Periodic Review¹.

In section B the IBAHRI raises concern over the legal framework governing fundamental freedoms and highlights the continued application of the emergency law since 1963 to justify restrictions on the right to a fair trial, freedom of expression and assembly. Section C highlights obstacles faced by human rights lawyers imposed by the State and the Bar Associations. Section D makes recommendations to the State.

2. METHODOLOGY

In response to international concerns over the treatment of human rights lawyers in Syria, and for the purpose of this submission, the IBAHRI conducted a first review in June 2010 of the independence of both the courts and the bar associations in relation to human rights defenders. The IBAHRI is planning on a second fact-finding mission in March 2011. A report will be issued in June and its conclusions will be discussed at the occasion of the Syria UPR in October 2011.

3. SECTION B: THE LEGISLATIVE FRAMEWORK GOVERNING FUNDAMENTAL FREEDOMS

Syria is a State Party to a number of International Human Rights treaties, including both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESR), the Convention against Torture and Other Cruel, Inhuman or Degrading treatment of Punishment (CAT); not subject to major reservations.

The Constitution of the Syria Arab Republic provides for the right to equal treatment and opportunity (Article 25), the right to due process and to be free from torture (Article 28), privacy of communication (Article 32), freedom of religion (Article 35), freedom of expression (Article 38) and freedom of Assembly (Article 39)

3.1 Emergency laws:

While the Constitution theoretically guarantees fundamental freedoms, the regulation of these rights are assigned to supplementary laws, notably the emergency laws in force since 1963. The Emergency rules override constitutional and penal code provisions against arbitrary arrest and detention²; and effectively allow government agencies to suspend many constitutional protections. Pursuant to Emergency act issued I

¹ Contained in Human Rights Council Decision 6/102, Follow-up to Human Rights Council resolution 5/1, section I adopted 27 September 2007, viewed at: http://ap.ohchr.org/documents/E/HRC/decisions/A_HRC_DEC_6_102.pdf

² Country of Origin Information Report: Syria p 34; Available online at: http://rds.homeoffice.gov.uk/rds/pdfs09/syria-060209.doc#BI_History3

Legislative Decree N 51 (1962)³, the Syrian authorities are empowered to “restrict freedoms of individuals, including meetings, residence and travel as well as preventively arrest anyone suspected of endangering public security and order”. In addition, the penal code contains vague and broadly worded security provisions, such as “weakening patriotic feelings” or “encouraging sectarian or ethnical division”, spreading ‘false or exaggerated statements aimed at weakening the nation’.

3.2 Due process and fair trial:

Article 7(a) of decree Law N47 provides that “the right of defence as prescribed in the relevant laws notwithstanding, state security courts are not required to follow judicial procedures stipulated in the laws during any of the phases of investigation, interrogation and trial.”

3.3 Freedom of expression:

Under Article 38 of the Syrian constitution, “every citizen has the right to freely and openly express his views in words, in writing, and through all other means of expression. He also has the right to participate in supervision and constructive criticism in a manner that safeguards the soundness of the domestic and nationalist structure and strengthens the socialist system. The state guarantees the freedom of the press, of printing, and publication in accordance with the law”.

In spite of constitutional provisions to the contrary (Article 38), in practise the Syrian government relies on Emergency law to significantly restrict freedom of expression. Emergency law and penal code articles dealing with crimes against state security provide the government with broad discretion to determine what constitute illegal expression. On the one hand, the Emergency law⁴ prohibits the publication of “false information” that opposes “the goal of the revolution”. On the other, the relevant provisions of the penal code⁵ include:

- Article 278: undertaking “*acts, writings or speech unauthorised by the government that exposes Syria to the danger of belligerent acts or that disrupts Syria’s ties to foreign states*”.
- Article 285: issuing calls that “*weaken national sentiment or awaken racial or sectarian tensions whilst Syria is at war or is expecting a war*”.
- Article 286: spreading “*false or exaggerated information that weakens national sentiment while Syria is at war or expecting a war*”.
- Article 307: undertaking “*acts, writings or speech that incite sectarian, racial or religious strife*”.

3.4 Freedom of assembly:

In spite of Article 39 of the Syrian constitution which guarantees the right of citizens “to meet and demonstrate peacefully within the principles of the Constitution”, the government uses emergency powers and legislation, such as the 1958 Law on Associations and Private Societies (Law 93) to prevent the creation of civil society organisations.

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³ See Special report- repressive laws in Syria- <http://www.shrc.org/data/asp/d4/254.aspx>

⁴ See Emergency Law - Legislative Decree No. 51 dated 22nd December 1962’ <http://www.shrc.org/data/asp/d4/254.aspx>

⁵ See Syrian Penal code: <http://www.barasy.com/forum/showthread.php?t=2109>

such as the 1958 Law on Associations and Private Societies (Law 93) to prevent the creation of civil society organisations.

Under Law No 93, the Ministry of Social Affairs and Labour has broad powers to register, intervene in the operations and dissolve any association. Articles 7 and 9 of Law No 93 provide that any group wishing to apply for registration has to submit the relevant forms to the Ministry, which will undertake an official inspection. Further, Article 6 of the Executive Regulations grants the General Security the power to investigate the founders of the organisation.

Pursuant to Article 10, the Ministry has sixty days to respond to the request. If after sixty days the ministry has failed to provide an official response, the organisation is deemed to be registered by default; the Ministry has then an obligation to publish the organisation document of the group on the official register. Articles 10 and 27 of the Executive Regulations state that the Ministry must provide the reasons in writing where the request is refused. Under Article 11, Law No 93 and Article 11, Executive Regulations, the decision to refuse registration can be appealed. If this fails, an administrative court review can be sought of the decision to refuse registration.

Associations must notify the Ministry of any meetings and relationships with the international community are closely monitored.

3.5 The law 30 on the Legal Profession

A new Law no. 30 for 2010- on organising the Legal Profession was passed on the 28th of June 2010. While a few changes have been made, problematic provisions related to the Bar's independence and to the guaranties for the functioning of lawyers remain unchanged.

Article 7 combined with article 107 forces the Bar Association to operate at the behest and whim of the government. Respectively under article 7 and 107, the Ministry of Justice retains the power to supervise and inspect the lawyers' association and its branches and the Council Minister the one to dissolve the bar association at any time where it considers that there has been a "deviation from their duties and goals"

In addition, lawyers must seek permission from the Bar Association to visit clients in prison (article 74) or before being able to join or take office in a lawyers' union or association. (Article 79).

Under Article 78 of Law No 30, inspection, investigation and arrest of a lawyer can only occur with the permission of the President of the regional branch of the Bar Association. However these guarantees ruled out whether the charges against the lawyer fall within the State Security crimes. Yet, crimes of opinion in Syria in particular fall within this category of criminal offenses.

SECTION C CONCERNS OVER OBSTACLES FACED BY HUMAN RIGHTS LAWYERS IMPOSED BY BOTH STATE AND THE BAR ASSOCIATIONS

In the opinion of the IBAHRI urgent legal reform must be undertaken in Syria to protect human rights defenders.

The IBAHRI found that human rights defenders face substantial obstacles in carrying out their work in Syria. Human rights defenders and lawyers face criminal penalties for speaking out about human rights abuse by the state under broadly worded provisions of the Penal Code.

Restrictions on the ability to register human rights organisations under the present law No93 of Private Association and Institution means that involvement in a human rights organisation brings significant risks because they are rarely granted formal registration, there is significant disagreement over 'default'

registration (under Article 10, Law No 93) and operating without registration brings criminal penalty, which is enforced arbitrarily. These laws apply to all those working in human rights advocacy in Syria and in their operation these laws violate the rights to freedom of expression and association.

Human rights lawyers face additional obstacles in completing their role as defence counsel. In particular, in cases involving political dissent before the criminal and military courts and, most problematically, the State Supreme Security Courts (SSSC), lawyers have been denied access to their clients, denied access to case files and have received threats from security officers. Lawyers who act in such cases are not only subject to pressure from the security services for their work, but also to questioning for alleged “foreign relations”, but they are often banned from travel to prevent any reporting of cases abroad.

In relation to the judiciary, a few positive steps have been taken by the Syrian government to improve judicial training and to eradicate corruption. However, problems of corruption and political influence persist, as well as concerns over the role and composition of the Judicial Service Commission. The general lack of independence of the judiciary from the executive – most obviously demonstrated in the SSSC- requires a radical transformation of the relationship between the judiciary and the executive and the repeal of the Emergency Laws and the SSSC.

The IBAHRI recognises the difficult situation and context in which the Syrian Bar Association and its regional branches, including the Damascus Bar Association, operates. The Syrian legal system criminalises the work of human rights defenders and lawyers. Historically, the Syrian Bar Association has itself been subjected to government repression for taking action on human rights issues. However, some lawyers interviewed reported that they receive no support from the Bar Association and, in fact, that they felt that the Bar Associations were part of, or acted in concert with, the state machinery that oppressed them and prevented them from carrying out their work.

The problems confronted in Syria raises important questions regarding the role of bar associations in oppressive societies and, in particular, the proper course of action for a bar association facing a situation where lawyers have acted in contravention of domestic law where that domestic law contravenes internationally accepted human rights standards. However, the IBAHRI notes with concern that rather than offering assistance to human rights lawyers and defenders persecuted by the government, the Bar Association has actively used its powers to deny permission for visiting clients in prison and has instituted several disciplinary proceedings against lawyers acting in cases of human rights violations.

SECTION D RECOMMENDATIONS

In relation to the State of Emergency:

- a) Given that the prolonged state of emergency in Syria is not sufficient to justify derogation from the rights protected under the ICCPR, the Syrian Government is urged to repeal all repressive laws, including Emergency Law issued through Legislative Decree No. (15) dated 22nd Dec. 1962 ; the legislative Decree Nr. 47 28.03.1968 ; Legislative Decree No. 61 that provides all members of the Military, Air and Public Security Services with immunity from prosecution; 2008 Legislative Decree No 69 which expands immunity to cover political security, police and customs officials.
- b) At minimum, the Syrian Government is urged to explicitly specify limitations and derogations on rights and repeal subsequently vague and broad provisions which restrict individual freedoms.

In relation to due process and the ability of human rights defenders to adequately defend their clients, the Syrian government is urged to:

- a) Implement Article 14 of the ICCPR before all courts, including the SSSC;

b) Allow lawyers to discharge their functions freely and to fully protect the rights of their clients; including to:

- ensure that lawyers have better access to their clients in prison and access to their case files;
- allow lawyers to meet in private with their clients; at minimum, lawyers should be permitted to waive the requirement of the presence of security officials in situations where they deem it unnecessary to ensure their safety.
- allow access to all courts, including the SSSC and military courts, for international observers.

In relation to the restrictions to the freedom of expression:

The Syrian government must take urgent measures to ensure that domestic law is brought into line with the UN Basic Principles on the Role of Lawyers notably with respect to the Freedom of Expression, including to:

- (a) Guarantee in all circumstances that human rights lawyers are able to discharge their functions freely and speak out about human rights issues without fears of being harassed, intimidated or prosecuted;
- (b) Repeal all laws criminalising legitimate criticism of the state and, in particular, laws which operate to impose criminal sanction upon lawyers raising awareness about human rights abuse by the state.
- (c) At minimum, the Syrian government should review, amend and repeal the laws that are too vague too be complied with; and, in particular should specify what ‘weakening the national sentiment entails’ in the Penal code.

In relation to the restrictions to the freedom of association

- (a) Law No 93 of Private Associations and Institutions should be made available to the public and the Ministry should provide clear explanation as to the process and legal requirements of registration.
- (b) The Syrian government must take urgent measures to clarify registration requirements, including the process of registration, how registration will be officially recognised and with specific timeframes set. There should be a requirement for written reasons to be provided to unsuccessful applicants and appeal made available by way of judicial review.

In relation to the bar associations and the law N30 on the legal profession, the Syrian government is urged to:

- a) Allow the Bar Associations to work freely without being obliged to obtain a clearance from security services to carry out their duties;
- b) Amend Law 30 on the legal profession to ensure the Bar Association’s independence from the government. Specifically, Articles 107 and 108, which provides the Prime Minister with the Power to dissolve the Bar Association at any time and put in place a politically appointed governing Council, must be repealed.
- c) The Syrian government is urged to remove the need of lawyers for permission of the Bar Association and Prosecutor-General before visiting clients.

