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ICJ Submission to the Universal Periodic Review of Syria

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Introduction

The International Commission of Jurists (ICJ) welcomes this opportunity to contribute to the Human Rights Council's Universal Periodic Review of Syria. Since 1963, under the framework of a State of Emergency, serious and widespread human rights violations have been committed in Syria, including torture and other ill-treatment, enforced disappearances, and arbitrary arrests and detentions. Suspected political opponents, human rights lawyers and other defenders have been regularly and arbitrarily detained, ill-treated and, in many cases, held without charge or trial for several years. Others have been convicted and sentenced, under the emergency law and other restrictive dispositions of the Syrian Penal Code (in particular Articles 267, 273, 285, 286, 287, 288, and 307), to lengthy prison terms after grossly unfair trials before military courts, the Supreme State Security Court (SSSC), or civilian courts. In spite of the persistent and consistent reports of these human rights violations, Syrian authorities have failed to investigate them promptly and independently, and to bring to justice State officials and laws enforcement officers allegedly responsible for these violations. They have enjoyed effective impunity.

In this submission, the ICJ points to Syria's breaches of its obligations under international law, which amount to human rights violations. Over the years the state of emergency, which by definition may only be a temporary legal response to an exceptional and grave threat to the nation, has become a permanent measure that facilitates violations of international law. The ICJ also wishes to draw the Council's attention to the failure of the Syrian judicial system to administer justice and to guarantee the rights of victims of human rights violations to a remedy and to reparations, including by ending the impunity of those responsible for these serious human rights violations. The ICJ also underscores the enduring discrimination against the Kurdish minority, based on the perception of them as a security threat, and the continuing arbitrary denial of citizenship to up to 300,000 Syrian Kurds. Basic civil, political, economic, social and cultural rights of persons belonging to the Kurdish minority continue to be denied. Activists and leaders of this minority continue to be subjected to arbitrary arrests and summary and unfair trials.

State of emergency and human rights violations

Syria has been ruled under the state of emergency for 47 years. The State of Emergency Act (SEA) that was promulgated in Legislative Decree No. 51 of 22 December 1962, and amended by Legislative Decree No. 1 of 9 March 1963, is still in force in Syria. Syrian authorities have argued that, because the Syrian territory of Golan is still under occupation by Israel, the emergency law and measures are necessary to face threats imposed by this occupation. Under international law and jurisprudence, states of emergency, when used as a basis for derogations of human rights, must be of an exceptional and temporary nature. Article 4 of the International Covenant on Civil and Political Rights (ICCPR), to which Syria is a party, provides: *"In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law."* Although Article 4 of the ICCPR recognizes that States may take measures derogating from their obligations under the Covenant, it also explicitly prescribes that no derogation may be made from, amongst others, Article 6 on the

right to life, and Article 7 on prohibition of torture or cruel, inhuman or degrading treatment or punishment. Even in respect of rights for which derogations are permitted, the right may never be extinguished. Rather, states may only take derogating measures that are strictly necessary to meet a threat to the life of the nation, in line with the principles of necessity and proportionality. The Human Rights Committee, among other authorities, has affirmed that the right to challenge the lawfulness of a detention (*habeas corpus*) may not be subject to derogation¹; that the right to be tried by an independent and impartial tribunal “*is an absolute right that may suffer no exception*,”² and that most components of the right to a fair trial are also not subject to derogation.³

In the case of Syria, the state of emergency has undermined the rule of law. In its concluding observations on Syria, the Human Rights Committee “*noted with concern that the state of emergency declared some 40 years ago is still in force and provides for many derogations in law or practice from the rights guaranteed under articles 9, 14, 19 and 22, among others, of the Covenant.*”⁴ Syria has effectively derogated from a number of its human rights obligations; it has failed in its obligation to notify other State Parties of these derogations and, critically, has never provided justification as to why such derogations are strictly necessary to meet a threat to the life of the Syrian nation.

Article 4 of the SEA authorizes the Military governor to impose, through oral or written orders, “*restrictions on the rights of people to the freedom of assembly, residence, transport, and movement, and to arrest suspected people or those threatening public security on a temporary basis, and to authorize investigations of persons and places at any time, and to allow any person to perform any task.*” It also authorizes the Military governor to “[m]onitor all types of letters, phone calls, newspapers, bulletins, books, drawings, publications, broadcasts, and all forms of expression, propaganda, and advertisements prior to publication; and to seize them, confiscate them, discard, repeal their concession and to close printers.” This Article has been the basis for criminalizing the exercise for several human rights guaranteed by the Syrian constitution and several international and regional conventions to which Syria is party, including the rights to the freedom of expression, association and assembly.

In 2010 the ICJ carried out two missions to Syria to observe the trials of Syrian lawyers and human rights defenders Muhannad Al-Hasani, who was awarded the prestigious Martin Ennals award for human rights defenders on May 2010, and Haytham Al-Maleh. They were respectively tried before the Second Criminal Court and the Second Military Court of Damascus. After grossly unfair trials, both lawyers were convicted and sentenced to three years imprisonment for “*publishing false and exaggerated information that weaken the national sentiment.*” The charges arose from, among other things, interviews they gave to the media in which they criticized the lack of the independence of the judiciary and the continuing use of emergency laws in Syria. The ICJ also carried out a fact-finding mission to Syria to assess the impact of the continuing use of emergency laws on the rule of law and human rights. During these missions the ICJ documented serious human rights violations committed under the framework of emergency law, including enforced disappearances, arbitrary detentions, torture and other ill-treatment.

In July 2008, prison authorities and military police used firearms to quell a riot in Sednaya Military Prison. More than 50 inmates have not been seen since and at least 22 of them were reportedly killed during this riot. Syrian authorities have yet failed to investigate these events or even publicly acknowledge that they have occurred. The victims’ families have not been able to find out what has happened to their relatives and do not know whether or not they are alive. The ICJ learned that the Sednaya Military Prison authorities continue to refuse to communicate about the fate or whereabouts of victims. The ICJ is therefore concerned that these individuals may have been subject to enforced disappearance, a crime under international law.

The ICJ also gathered reliable information about the routine use of torture and other ill-treatment by law enforcement and investigative officials in detention facilities and prisons, in particular during pretrial detention periods. Whippings, beatings, cigarette burns, sleep deprivation and threats of rape are common practices in Syria’s detentions facilities. The ICJ learned about the continuing use of various methods of torture, including the “*tire*”, where the prisoner would lie on his back and bend his legs, after which the tire would be put around his legs, and the “*flying carpet*” that involves the victim’s arms and legs being tied to a piece of wood and then

¹ Human Rights Committee, General Comment N° 29, op. cit. 32, paras.15-16

² Views of 28 October 1992, Communication N° 263/1987, *M. Gonzalez del Rio v. Peru*, CCPR/C/46/ D/263/1987, para. 5.2.

³ Human Rights Committee, General Comment N° 29, op. cit. 32.

⁴ *Concluding observations of the Human Rights Committee: Syria*, 9 August 2005, CCPR/CO/84/SYR, paragraph 6

beaten with cables and sticks.

The ICJ also learned about different cases of deaths in custody that have resulted from torture and other ill-treatment. Mohamed Amin Achawa was arbitrarily arrested on 24 August 2008 by officers of the Military Intelligence Service and allegedly died, according to reliable information received by the ICJ, as a result of torture while in custody. His body was handed over to his family on 10 January 2009. Security officers claimed that he died of a heart attack and that he had been arrested because he was presumably member of Al-Qaida. In its concluding observations on Syria, the Committee Against Torture urged the local authorities to take “*urgent measures to ensure prompt, thorough, impartial and effective investigation into all allegations of torture, ill-treatment, death in custody, death during military service and incommunicado detention.*”⁵

Torture and ill-treatment practices have been exacerbated by the continuing use of prolonged *incommunicado* detention, which in itself may constitute ill-treatment or even torture. *Incommunicado* and other arbitrary detentions are usually carried out by officers from different security and intelligence services, in particular the General Intelligence Service (*Idarat Al-Mokhabarat Al-Amā*), Military Intelligence Service (*Shu'bat Al-Mukhabarat Al-Askariyya*), General Intelligence Directorate (*Idarat Al-Amn Al-Amm*), State Security (*Amn Addawla*), and the Political Security Directorate (*Idarat Amn al-Siyassi*).

Tal Al-Mallouhi, a 19 years-old blogger, was summoned by officers of the General Intelligence Service on 27 December 2009 to report on some articles she wrote and published in her blog. She was then arrested and held *incommunicado* for more than nine months. On 10 November 2010, she was brought before the SSSC and charged, under Article 273 of the Syrian Penal Code, of disclosing secret information to a foreign country. On 15 February 2011, she was sentenced to five years' imprisonment after a summary and blatantly unfair trial, in which her rights to a defence, to be tried by an independent and impartial tribunal, and to be presumed innocent were all denied. According to information received by the ICJ, the prosecution failed to provide any credible evidence to support the accusations against Al-Mallouhi. Her lawyers were only able to meet with her in the courtroom in the presence of security guards.

Such arrests and detentions are typically based on secret reports by the different security services. Over the last two years, the ICJ had access to several of these secret reports. For example, in the case of Muhamnd Al-Hasani, the Director of the General Intelligence Service, in his decision 42/56900 of 20 July 2009, referred Al-Hasani to the General Advocate on the grounds, amongst other things, that “*he spread false information, such as accusing the Security Services of torturing and killing one citizen, and that he attended and documented the proceedings of the Supreme State Security Court even though he was not a lawyer involved in the proceedings.*” The Director of the General Intelligence Service ordered the General Advocate to “*initiate the necessary legal procedures against him and, after serving his prison sentence, to send him to the General Intelligence Service.*”⁶ This report reflects the discretionary and sweeping powers the security services have to arrest people; refer them to the SSSC, military or civilian courts; accuse them without presenting any credible evidence to support their accusations; and “*order*” the judiciary to convict those arrested and to retribute them to security services after serving their prison terms. Neither Al-Hasani nor Al-Maleh was informed of the existence of these reports during their arrests. They were both convicted and sentenced to three years imprisonment solely on the basis of the secrets reports of the General Intelligence Service, as the prosecutions failed to provide any credible evidence to support the accusations against them

Impunity in cases of human rights violations

Syrian officials and law enforcement officers alleged to be responsible for committing serious human rights violations under the framework of the state of emergency, including torture and ill-treatment, enforced disappearances and arbitrary detention, remain, under a sophisticated web of immunity national laws and military decrees, unpunished and shielded from any legal proceedings against them.

On 15 January 1969, Legislative Decree 14 was issued establishing the General Intelligence Service. Article 16 of the decree states “*No legal action may be taken against any employee of the department for crimes committed while carrying out their designated duties or in the course of performing such duties except by an order issued by the director.*” On 30 September 2008, the Syrian President issued a Legislative Decree 69 amending the Military Penal Code in Syria and giving

⁵ Committee against Torture, Concluding observations on Syria, 25 May 2010, CAT/C/SYR/CO/1 § 7 C.

⁶ Director of the General Intelligence Service, decision 42/56900 of 20 July 2009

the General Command of the Army and Armed Forces the authority to “initiate proceedings against members of the police, political security in cases of crimes committed by them because of the performance of their duties.”

When such immunities are ineffective, Syrian authorities ensure that members of the security services alleged to be responsible for gross human rights are tried by military and exceptional courts that generally fail to hold them accountable. Indeed, Syrian authorities have distorted the justice system through the creation of special, exceptional and military courts that violate international guarantees of a fair trial. In particular, the SSSC continue to be used by Syrian security services and authorities to silence critical and dissident voices, consistently ignoring claims by defendants that their confessions were extracted under torture and other ill-treatment. Under legislative decree No.47 of 28/3/1968, the judgments of the SSSC are not subject to appeal (Article 8) nor is it bound by the rules of the Code of Criminal Procedure (Article 7). Its jurisdiction applies to those deemed a threat to the State security, military as well as civilians, even those who have immunity (Article 6). Human rights lawyers and defenders, representatives of the Kurdish minority as well as political opponents have always been prosecuted before the SSSC. Their lawyers are usually denied access to their files and are unable to properly represent the defendants. Hearings are usually held in closed session to which national and international observers are often denied access. In June 2010, Al-Hasani was convicted and sentenced to three years imprisonment for, amongst other charges, “attending and documenting the proceedings of the SSSC even though he was not a lawyer involved in the proceedings.”

In addition, the SEA extends, in Article 6, the jurisdiction of military courts to try any violation of the Martial Governor Directives as well as any crime related to the security of the State, whether it is committed by a civilian or by a military officer. Syrian military judges cannot be considered independent and impartial because they are subject to the command structure of the armed forces. They are, under Article 39 of the Military Criminal Code, subordinated to the Ministry of Defence.⁷ Trials before military courts are held within the Military Justice Headquarters, which are considered to be a military zone. International observers and representatives of the Western diplomatic missions in Syria are usually denied access to military courts. Trials before these courts violate the most basic principles of the right to fair trial. As the UN Human Rights Committee affirmed in its concluding observations on the compliance of Syria with its obligations under the ICCPR; “the procedures of the military courts do not respect the guarantees laid down in article 14 of the covenant”.⁸

In addition, although Article 131 of the Constitution stipulates that the judicial authority is independent, Syrian authorities have distorted the justice system through consistent and enduring political interference in judicial matters. Syrian President presides, under Article 132 of the Constitution, over the Higher Judicial Council, which is mostly formed by representatives from the executive. According to Article 137, the public prosecution is a single juridical institution headed by the Minister of Justice who is also to be considered the head of the judiciary.⁹

Enduring Discrimination against the Kurdish Minority

The Kurdish minority in Syria has suffered from persistent identity-based discrimination, including enduring violations of their civil and political rights. Due to a census conducted in one day by Syrian authorities in 1962, Kurds were forced to prove that they had lived in Syria since at least 1945 or lose their citizenship. As a result, the authorities revoked the citizenship of some 120,000 Kurds. Of the 1.5 million Syrian Kurds, up to 300,000 are stateless, unable to obtain official documents, such as birth certificates or identity cards, and consequently denied their rights to work, to have access to health care and education and to travel abroad.

Kurdish associations and political parties are unauthorized. Not only do the Syrian authorities ban them, they also subject their activists and leaders to increasing persecution, travel bans, arbitrary arrests, and unfair trials. Under Article 267 of the Syrian Penal code, which provides that: “i) Any Syrian who attempts, through acts or speeches or writings, to undercut a part of the Syrian territory and/ or to annex it to a foreign country, is liable to being condemned to up to 5 years imprisonment,” and Article 307 which provides that: “Any act, writing and/ or statement, that aims or that results in racial or doctrinal prejudices, or in the incitement of conflict between communities and different components of the nation, is

⁷ Legislative Decree number 61 of 27 February 1950.

⁸ Concluding observations of the Human Rights Committee: Syrian Arab Republic. 24/4/2001. CCPR/CO/71/SYR. §17.

⁹ Article 65 of law on the judicial authority (Decree No.98 of 1961)

punishable with between 6 months and 2 years imprisonment,” Kurdish activists and leaders have been regularly prosecuted before the SSSC and military courts and convicted, after unfair trials, to heavy sentences.

Hassan Saleh, Ma'rouf Mulla Ahmed and Muhammad Ahmed Mustafa, three leaders of Kurdish Yekiti Party in Syria, are presently being prosecuted before the SSSC after being formally charged under Articles 267, 288 and 307, with “*aiming at separating part of the Syrian lands*” and “*joining an international political or social organization*”. They continue to be denied their right to a defence, including having access to a legal counsel.

Since November 25, 2010, Abdessalam Haji Ibrahim, a Kurdish writer and activist, has been prosecuted before the Military Judge of *Kamacheli* after formally been charged, under Article 307, of “*undertaking acts that aims or that results in racial or doctrinal prejudices, or in the incitement of conflict between communities and different components of the nation.*” The Military prosecution has failed to present any credible evidence to support the accusations against him.

The ICJ therefore calls on the Working Group and the Council to urge the Government of Syria to:

- i) End immediately the state of emergency;
- ~~ii~~ ii) Investigate in a prompt, transparent and independent manner the consistent reports of torture and ill-treatment of convicted prisoners and detainees, and bring to justice military and civilian state officials and law enforcement officers who carried out or ordered such practices;
- ~~iii~~ iii) Investigate every case of reported enforced disappearances in order to guarantee the rights of victims and their families to truth and to reparation, and ensure that those responsible for such disappearances are held to account;
- iv) End immediately the policy of *incommunicado*, secret and other arbitrary detentions and ensure that the apprehension of suspects complies with international standards;
- v) Ensure that all persons detained are fully and promptly registered at detention facilities;
- vi) Repeal the sweeping powers of arrest and detention by the General Intelligence Service, Military Intelligence Service, General Intelligence Directorate, State Security, and the Political Security Directorate, and provide for independent judicial oversight of the grounds for detention;
- vii) Ensure that the process leading to criminal prosecution of those arrested and detained on criminal charges meet international standards of a fair trial before an independent and impartial tribunal, including the right to have prompt access to a lawyer, to be informed of their rights at the time of detention, including about the charges laid against them, and to appear before a judge within a reasonable time;
- viii) Abolish the State Security Court and other special courts, and stop all forms of interference in the judiciary by the Executive, which compromises the independence of the courts;
- ~~viii~~ ix) Limit the jurisdiction of military courts exclusively to military offences, and ensure that ordinary crimes are tried by civilian courts using established procedures in line with international standards;
- x) Repeal military and legislative decrees providing for immunity from legal proceedings in cases of crimes committed by law enforcement officers and State officials on duty, resulting in practice in systematic impunity for human rights violations;
- xi) Repeal Articles 267, 273, 285, 286, 287, 288, and 307 of the Syrian Criminal Code and all other legal dispositions that criminalize the enjoyment of civil, political, economic, social and cultural rights;
- xii) Immediately and unconditionally release all political leaders, activists and human rights defenders, including Kurdish minority rights defenders, that have been arbitrarily arrested and convicted for carrying out their legitimate work in promoting rule of law and human rights in Syria;
- xiii) Comply with their legal obligations under Article 27 of the ICCPR on the rights of minorities, and to this end guarantee, through constitutional, legislative and

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administrative measures the civil, political, economic, social and cultural rights of persons belonging to the Kurdish minority.