



Syria

Universal Periodic Review (UPR)

12th Session; 3 to 14 October 2011

14 March 2011

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Alkarama recalls that it concentrates its work on four priority areas: arbitrary detention, enforced and involuntary disappearances, torture, and extrajudicial executions. We base our work primarily on the documented individual cases we submit to UN Special Procedures and Treaty Bodies, as well as our contacts with local actors including victims, their families, lawyers and human rights defenders.

1. National and International Context

The American invasion of Iraq in March 2003 caused significant destabilization in a region already deeply affected by the Arab-Israeli conflict. Syria – separated from a part of its own territory since the occupation of the Golan in 1967 by Israel – is right in the middle of this conflict and has suffered the direct impact of regional conflict since 1948 by hosting a large community of Palestinian refugees (almost half a million people). More recently, since 2003, more than 1.5 million Iraqis who fled from the chaos that followed the invasion of the country by multinational forces have sought shelter in Syria.

Syria is accused of supporting the Iraqi resistance to the American occupation and of being part of the “Iran-Syria-Hezbollah axis” (described as the “Axis of Evil”), which is viewed as an obstacle to regional peace. The American Congress adopted sanctions on 12 December 2003 in the form of a law called the “Syrian Accountability and Lebanese Sovereignty Restoration Act”, which permitted the freezing of the assets of official Syrian institutions and for measures to boycott Syria economically. Accused for years of having a part in the assassination of the former Lebanese Prime Minister Rafik Al-Hariri in 2005, the Syrian government was forced by Security Council Resolution 1559 (proposed by the United States and France and adopted on 2 September 2004) to withdraw its troops from Lebanon, which Syria did by the end April 2006.

Despite the strained relations between Syria and the United States, the two countries are paradoxically partners in the international fight against terrorism. After the events of 11 September 2001, the Syrian intelligence services gave important information to the U.S., according to American officials. William Burns, the Assistant U.S. Secretary of State for the Near East, said on 18 June 2002 that “American lives had been saved”¹ as a result of this information.

Syria was ruled by Hafez Al-Assad with an iron hand until his death in 2000. His son Bashar Al-Assad inherited a political system that concentrated all essential power in the hands of the president and reduced parliament to a mere formality. Article 149 of the Constitution for example provides the President with the right to propose constitutional amendments, which was necessary in 2000 in order to reduce the minimum age for eligibility to the presidency to allow Bashar Al-Assad to succeed his father as president of the country.

The principle of the separation of powers is guaranteed by the Constitution. Nevertheless, the President of the Republic has powers that violate this principle. The Syrian constitution allows the President to legislate and Article 132 provides that the President of the Republic is also President of the highest judicial authority, the Supreme Judicial Council, which is supposed to ensure the independence of the justice system. Also, the President may intervene in the appointment of the five-member Supreme Constitutional Court, and he directly appoints the chairperson of this court.

2. A State of Emergency in force for nearly half a century

Article 113 of the Syrian Constitution relates to the proclamation of a state of emergency and permits the suspension of certain rights and liberties. Originally intended to allow for the managing of exceptional situations, the State of Emergency has in reality become permanent. It was declared on 22 December 1962 and complemented with martial laws, which are still in force to this day. The Syrian authorities downplay the importance and scope of these laws by stating that “the law of the State of Emergency is in partial disuse and is not applied except for in very limited cases concerning only the security needs of the state.”²¹ In reality, this legislation provides vast special powers, in particular to the security forces, without requiring government agents to submit to the control of a judicial authority.

Article 3 of the law of the State of Emergency authorizes the Prime Minister to name an Administrator of Martial Law (hakim al-‘urfi) who commands all of the internal and external

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security forces.³ Article 4 grants the Administrator, the Prime Minister and the Minister of the Interior (in his capacity as Deputy Administrator) powers that severely limit the rights of the Syrian population. Particularly curtailed are the rights set down in Article 28 of the Constitution, which relate to the right to habeas corpus, the presumption of innocence in penal matters and the prohibition of humiliating treatment. For example, it allows for the “preventive arrest of suspects and of individuals who present a threat to security and public order”.⁴

Articles 38 and 39 of the Constitution guarantee freedom of opinion and the right to peaceful protest. The Syrian Information Minister declared in 2008 on the Aljazeera news channel that Syrian citizens may express themselves freely and may hold demonstrations.⁵ In practice the exercise of these rights is illusory and arrests have been on the increased.

The legal arsenal in place for prosecuting opponents is vast. Generally, the charges brought forward against them are vague and multi-faceted: the pretext of the violation of state security is invoked often and regularly, as are accusations of “spreading false news” (Art. 287 of the Penal Code), “contempt of public administration,” “weakening national sentiment or provocation of racial or sectarian tensions while Syria is at war or anticipates war” (Art. 285 PC), “disseminating false information that could affect the morale of the nation” (Art. 286 PC), and “taking initiatives or making written or oral statements that may put the state in danger or harm its relations with a foreign country or expose the state to hostile action” (278 PC).

One of the most controversial laws is Law 49 of 7 August 1980, which allows for the death penalty for membership of the Muslim Brotherhood.⁶ This violates the principle of the presumption of innocence set down in the Constitution (Art. 28). Also, this law has a retroactive effect in violation of the Criminal Code and Constitution (Art. 30). Even before the enactment of this law, thousands of Muslim Brotherhood members had been arrested, from 1979 onwards, and nearly 17,000 of them have been victim of enforced disappearances to date. Most disturbingly, in recent years this law has been applied to children of Muslim Brotherhood members, simply for having parents who were members. They were sentenced to the death penalty before their sentences were finally commuted to 12 years imprisonment and hard labor, along with the deprivation of their civil rights. For example, Oman Hayyan Al-Razzouk, who was born in Baghdad in 1986, where his father had taken refuge, returned to Syria after being encouraged to do so by the Syrian authorities. Upon his arrival on 15 November 2005 he was arrested and sentenced to death on 13 December 2009, before having his sentence reduced to 12 years imprisonment.⁷

Political opponents have very limited possibilities to express themselves, to gather, and even simply to organize themselves. They are systematically persecuted and prosecuted by the Syrian authorities, with those close to political opponents also regularly becoming victims of state repression. This persecution includes travel bans – whereby political opponents and their families may not leave the country, and those abroad are sometimes prevented from obtaining a passport.

3. A System of Special Courts

The Supreme State Security Court was established under Decree No. 47 in 1968. It is composed of three judges, two civil and one military, appointed by the Administrator of Martial Law. The Court, authorized to treat cases concerning state security, is generally seized through a military order (amr ‘urfi) signed by the Minister of the Interior, by virtue of the powers granted to the directors of the intelligence services by the Emergency Law. In reality the role of the Minister is purely formal, as the contact between the Intelligence services and the Court is direct.⁸

The prosecution department of the court is, as defined under Article 3 of Decree No. 47/68, equipped with extensive powers: it may initiate legal action, conduct preliminary investigations and contribute to the criminal investigation, all of which violate the principles of a fair trial. According to a number of lawyers, the trials before this Court are expeditious. The defence is not authorized to intervene in any stages of the proceedings unless authorized to do so by the General Prosecutor. Even though the public nature of the proceedings is guaranteed by law, hearings are held behind

closed doors and even the families of the accused are not allowed to attend trials. On 9 March 2011, 20 Syrian lawyers, who normally present cases before the court, decided to boycott the court until the rights of the defence and the defendant are recognized and respected in accordance with domestic law and the provisions of Article 14 of the International Covenant of Civil and Political Rights.

The only evidence taken into account by the Court are the verbal proceedings of interrogations carried out by the intelligence services. Many of those convicted and their lawyers report that confessions obtained under torture are systematically used in trials, with judges neither challenging the confessions, nor ordering investigations into the allegations of torture.

Proceedings before the Court can last many years – on average, two and a half – before the accused even appears before court.⁹ The decisions of the court are not subject to appeal and only the President of the Republic can revoke or modify them as laid out in Decree No. 47/68 (Art. 8).

Alongside the Supreme Court, the Military Court is also authorized to judge offences committed in violation of certain articles of the Syrian Criminal Code (art. 6 of the Law of the State of Emergency). This provision states that these offences include violations of state security, public safety, crimes that constitute a “general danger” or those that are committed against the public authority and the public trust.¹⁰ The referral of cases to military courts is handled by the military prosecutor, who is also equipped with wide-ranging powers.

On 4 July 2010 Haithem Al-Maleh, a prominent 80-year-old lawyer and human rights defender, was condemned by the military tribunal of Damascus to three years imprisonment for “weakening national sentiment”. He was abducted on 14 October 2009 after giving a telephone interview to London-based Barada TV, in which he denounced the regular use of the Emergency Laws to enable and justify massive human rights violations. At his hearing, he was denied legal assistance and was not allowed to read his indictment. Throughout the trial, prison authorities of Adra prison did not acknowledge his right to be assisted by a lawyer, so that he had to organize his own defence.¹¹ He was finally released on 7 March 2011 because of his age, but is still prohibited from travelling.¹²

The impunity of agents of the state is guaranteed by texts which are not published in the Official Journal. Article 16 of Decree No. 14 of 25 January 1969 specifies that it is not authorized to prosecute state employees for crimes committed during the execution of certain tasks entrusted to them or while they are performing these tasks, unless the Director orders the prosecution. Further, the new Decree No. 69 of 30 September 2008, which extends a large immunity to agents of the military security, the police and the customs officers encourages impunity for torturers. The decree specifies that these agents cannot be prosecuted for crimes committed during the exercise of their functions, unless a contrary decision is taken by the General Command of the Army and Military Forces. However, these forces are under the authority of the Ministry of the Interior, not the military command. The immunity granted to certain agents of the state violates the principle of the equality of citizens and implies that those responsible for torture will be neither punished nor brought to justice.

4. Arbitrary Detention, Torture and Enforced Disappearances

A multitude of detention centres are placed under the command of different branches of the intelligence services without being overseen by any civilian court. A certain number of centres are part of prisons such as Adra and Sednaya prisons. The distinction between secret detention centres and regular prisons is not clear-cut.

A large number of people that are considered political opponents by the Syrian authorities are generally arrested by one of the intelligence services, but most often by the Military Intelligence services, often without an arrest warrant or notification of the reasons for their arrest. Arrest warrants are generally given orally. Some people have been summoned to the headquarters of one of the intelligence services where they are arrested without charge. Frequently, they disappear for

up to one year in one of these intelligence centres, without contact to the outside world and without their families knowing where they are held.

Kadar Saado was arrested on 8 January 2009 by agents of the Political Security services and brought to their offices in Qamishli. After two weeks of detention he was transferred, first to Al-Fayhaa in Damascus, then to Adra prison run by the same services. It appears that he was arrested for his connections to Munzer Oscan, who had been abducted in 2008 and detained in secret for almost one year.¹³ Kadar Saado had been deprived of any contact with the outside world for more than one year before his family was allowed to visit him in February 2010. He had still not been brought before a judicial authority by October 2010.¹⁴

Some individuals are not released upon completion of their sentences. Members of the Muslim Brotherhood and their families suffer from particularly severe treatment. In 2004, the Syrian Human Rights Committee compiled a list of 580 political detainees or prisoners of conscience, including 356 members of the Muslim Brotherhood who have been imprisoned since the end of the 1970s and the beginning of the 1980s, adding up to more than 30 years of detention in some cases. Many are in a deplorable physical and psychological state, and some have lost their minds after being exposed to torture during the early years of their detention. Others have already served their complete sentences, but have still not been released. A characteristic example is that of Abdelkader Muhammed Cheikh Ahmed who should have been released in 1979 and who in 2004 still remained detained. 175 of the other detainees come from diverse political backgrounds: Nasserites, Palestinians supporting Fatah or the Popular Front, Iraqi Baathists, Islamists or army officers. Finally, 49 members of Hizb At-Tahrir have been detained since 1999. One of the oldest detainees is Imad Shiha, who has been imprisoned since 1974.¹⁵

The hostage-taking of the members of the families of persons sought by the security services is a common practice in Syria. For example, Zaid Al-'Issami, a 42-year-old doctor without political affiliation, was arrested on 9 January 2008 with the aim of coercing his uncle, Shabli Al-'Issami, a known political opponent, to turn himself over to the authorities. Another doctor, Sofian Bakur, was also arrested on 13 January 2007, in order to compel his father Mohammed to turn himself in.¹⁶

Paragraph 3 of Article 28 of the Constitution states that "no one may be submitted to physical or moral torture or to degrading treatment and those responsible for these acts are subject to sanctions provided by law."¹⁷ However, there is no legal definition of torture in Syrian domestic law and it is therefore up to the judge to decide what constitutes torture.

Torture generally takes place in centres under the control of the intelligence services, as well as in prisons, some sections of which are under the control of agents of the intelligence services. Political prisoners are often mistreated from the very beginning of their arrests: beaten, insulted and placed in solitary confinement, which is sometimes located underground. Agents of the intelligence services, who systematically use torture, are responsible for the interrogation of those arrested for political motives and/or accused of sympathizing with Islamist movements. The objective is to humiliate the victim, break all resistance and extract confessions to the grievances held against him or her. Many defendants die under torture. Despite the incessant demands of human rights organisations calling for authorities to undertake inquiries into such cases, in order to establish the causes of death and to punish those responsible, these demands have been met with silence.

On 16 August 2010, the Special Rapporteur on Extrajudicial Executions was informed by our organisation of the cases of two men who had died under torture: Jalal Al-Kubaisi, 33 years old, who was arrested on 27 May 2010 in Damascus and interrogated by members of the security services at their headquarters and who died on 31 May; and Wadee' Sha'bouk, 53 years old, who on 13 July 2010 turned himself into the security services in Aleppo, in order to obtain the release of his son, who had been arrested for desertion. The father was brutally beaten until he fainted and was only brought to hospital hours later, on the way to which he died.¹⁸

The problem of enforced disappearances remains a major issue: the fates of tens of thousands of missing people have never been established, including Muslim Brotherhood members arrested in the late 1970s, but also activists from other parties, as well as Lebanese arrested during the Lebanese civil war from 1975-1991. Many cases were identified this year by Alkarama and submitted to the competent Working Group. It is also necessary to recall that secret detention can last a number of months or even years, such as in the case of Adnan Qasem Zeitun, who was arrested on 2 February 1997 by agents of the intelligence services in the province of Al-Kuneitra and who has not been seen since.¹⁹

During the 1980s and 1990s, thousands of prisoners were executed, in particular at Tadmor Prison. Another fatal intervention in response to prison protests at Sednaya Prison between 4 and 7 July 2008 resulted in the deaths of a still undetermined number of inmates. Because of their magnitude, enforced disappearances and mass executions of detainees constitute a crime against humanity as defined by the Rome Statute.

5. Recommendations

Syria should:

1. Abolish the state of emergency that is in place in the country, repeal all legislation that results from it, remove special courts, and specifically the power of military courts to judge civilians.
2. Prohibit both formally and in practice all forms of torture and cruel, inhuman or degrading treatment by the agents and members of all state security services and ensure that impartial inquiries are undertaken by an independent authority into all allegations of torture, those responsible are punished, and that victims are offered adequate compensation and are indemnified.
3. Include the crime of torture in domestic law as defined in Article 1 of the Convention against Torture and establish appropriate penalties for its punishment.
4. Combat the impunity of those responsible for acts of torture and repeal all legal provisions that provide immunity for acts of torture or mistreatment, in particular Decrees No. 549 of 25 May 1969 and No. 69 of 30 September 2008.
5. End the practice of secret detention and place all detention centres, without exception, under the control of a judicial authority; apply international norms relative to the treatment of detainees; introduce a complete separation between the authorities charged with preliminary inquiries and the oversight of prisons.
6. End the practice of enforced disappearances and immediately release or place under the protection of the law all those who have been arrested and whose families remain uninformed without delay. Provide a detailed list of all those who have been reported as disappeared and create an independent and credible commission to investigate all cases of enforced disappearances, including the detainees of the prisons of Tadmor, Sednaya and all other detention centres, as well as the Lebanese nationals transferred to Syria.
7. Establish an independent commission to investigate all deaths while in detention, inform the families of the results of these investigations, return the bodies of the deceased to their families, make public the findings of this inquiry commission, bring those responsible for summary executions to justice and compensate the families of the victims.
8. Immediately release all those arrested and detained for their peaceful political activities, for the expression of their political opinions or for their activities in support of human rights and put an end to all reprisals and harassment against these people and their families.

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- ¹ Stephen Grey, *Das Schattenreich der CIA* (Ghost Plane. The True Story of the CIA Torture Program), DVA, 2006, p. 102.
- ² *Third periodic report of the Syrian Arab Republic presented to the Human Rights Committee pursuant of article 40 of the International Covenant on Civil and Political Rights*, Damas, 19 October 2004 (CCPR/C/SYR/2004/3), p. 21, para. 70.
- ³ Other laws refer to the President of the Republic as the administrator of martial law.
- ⁴ Decree No. 51 of 22 December 1962 regarding the state of emergency, art. 4.
- ⁵ Statement by the Syrian Minister of Information during an interview with the satellite tv channel Aljazeera on 23 January 2008, available on Youtube: <http://www.youtube.com/watch?v=-4G7erB4JCA>, at 3'30 into the video (accessed on 14 March 2011)
- ⁶ Law No. 49 of 7 August 1980, <http://www.cdf-sy.org/low/49.htm> (accessed on 6 April 2010)
- ⁷ Syrian Human Rights Committee (SHRC), *Omar Hayyan al-Razzouk sentenced pursuant to Law 49/1980*, <http://www.shrc.org/data/asp/D19/4049.aspx> (accessed on 6 April 2010).
- ⁸ See article 5 of Decree No. 47 of 1968 regarding the creation of the Supreme State Security Court.
- ⁹ Razan Zeituna, *What equality in Special Courts? The example of the Supreme State Security Court* - Report by the Damascus Centre for Human Rights Studies, May 2007, p. 13 - 18.
- ¹⁰ See the text of the Criminal Code: <http://www.thara-sy.com/thara/modules/news/article.php?storyid=606>
- ¹¹ Alkarama press release, *Syria: Prominent human rights lawyer delivered unfair sentence*, 5 July 2010, 5 July 2010, http://en.alkarama.org/index.php?option=com_content&view=article&id=542
- ¹² Alkarama press release, *Syria: Haitham Al-Maleh released*, 8 March 2011, http://en.alkarama.org/index.php?option=com_content&view=article&id=678
- ¹³ Alkarama press release, *Syria: Enforced disappearance of eight members of the Kurdish community in Qamishli*, 14 May 2009, http://en.alkarama.org/index.php?option=com_content&view=article&id=233
- ¹⁴ Alkarama press release, *Syria: Kurdish Syrian held incommunicado for one year*, 20 October 2010, http://en.alkarama.org/index.php?option=com_content&view=article&id=658
- ¹⁵ Syrian Human Rights Committee, *The ongoing human tragedy of Sednaya Prison* (in Arabic), May 2004, <http://www.shrc.org/data/asp/d6/1746.aspx> (accessed 14 March 2011)
- ¹⁶ Syrian Human Rights Committee, *Annual Report 2009*, January 2009, p. 43 (in Arabic), <http://www.shrc.org/data/pdf/AnnualReport2009ar.pdf> (accessed 14 March 2011)
- ¹⁷ *Third periodic report of the Syrian Arab Republic presented to the Human Rights Committee pursuant of article 40 of the International Covenant on Civil and Political Rights*, Damas, 19 October 2004 (CCPR/C/SYR/2004/3), p. 29, para. 101.
- ¹⁸ Alkarama press release, *Syria: Two further deaths at the hands of the security services*, 20 August 2010, http://en.alkarama.org/index.php?option=com_content&view=article&id=570
- ¹⁹ Alkarama press release, *Syria: Adnan Zaitoun Forcibly Disappeared For Over 14 Years* 4 May 2011, http://en.alkarama.org/index.php?option=com_content&view=article&id=679