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Syria

Briefing to the
Committee against
torture

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Syria

Briefing to the Committee Against Torture

1. INTRODUCTION

This briefing is submitted to the Committee against Torture (hereafter the Committee) in connection with its consideration of Syria's first periodic report on its implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereafter the Convention). It details Amnesty International's concern about a persistent pattern of torture and other ill-treatment of political detainees while held in often prolonged incommunicado detention for interrogation by Syria's security and intelligence agencies (notably, Military Intelligence, Political Security and State Security); unfair trials, including the acceptance by courts of "confessions" allegedly obtained under torture or other ill-treatment; beatings and other ill-treatment of inmates by prison guards; and the failure of the authorities to ensure that all allegations of torture and other serious violations of human rights are independently investigated and that those responsible for abuses are brought to justice.

This briefing which covers the period from 2004 to date, describes laws and practices in Syria which lead to or amount to human rights violations and contravene Syria's obligations under the Convention.

2. PATTERNS OF TORTURE AND OTHER ILL-TREATMENT IN SYRIA

Amnesty International has received information from a wide range of sources indicating that torture and other cruel, inhuman and degrading treatment or punishment (hereafter: ill-treatment) of prisoners remains common and widespread in Syria. Political suspects, in particular, are frequently subjected to prolonged incommunicado detention without charge or trial, secret detention or enforced disappearance, and a number have died in custody in suspicious circumstances, yet their deaths have not been independently investigated.

While torture and other ill-treatment of criminal suspects by the police is reported to be common, Amnesty International's information refers primarily to persons arrested or detained for expressing dissent or criticizing the government or its policies and who are perceived by the authorities as opponents of the government. They include human rights defenders (HRDs), including leading human rights lawyers; advocates of political reform and democracy, members of the Kurdish minority campaigning against discrimination and advocating greater respect for the rights of the Kurdish minority; independent journalists and bloggers; suspected Islamists; and people suspected of involvement in terrorism. As well, some Syrian nationals who returned to the country after living abroad have also been arbitrarily detained on arrival or shortly after their return; to seek asylum abroad is perceived as a manifestation of opposition to the Syrian government, so returned asylum seekers face the likelihood of arrest.

In a number of cases reported to Amnesty International, family members of persons wanted for arrest by the authorities have been detained to induce them to surrender themselves.

Over the years, Amnesty International has documented a wide variety of methods used by Syrian security officials to torture and otherwise ill-treat both untried detainees and sentenced prisoners in their custody, many of which reportedly remain prevalent (see below).

Those at particular risk are political detainees who are generally held incommunicado at detention centres run by the main security and intelligence agencies (including the Military Intelligence Palestine Branch and centres run by Political and State Security) and who are subject to interrogation, often for long periods during which they have no access to legal counsel, contact with their families or independent inspection of their conditions. Compounding this, the Supreme State Security Court (SSSC) and military courts, as well as the criminal courts, continue to rely heavily on “confessions”, and to admit as evidence and convict defendants on the basis of “confessions” which defendants allege they were forced to make under torture or other duress while they were held incommunicado. The SSSC and other courts routinely accept such questionable “confessions” as evidence of guilt and do so without undertaking adequate, or any, independent investigations into defendants’ allegations of torture.

In addition, on a number of occasions sentenced political prisoners are reported to have been assaulted by prison guards. The most serious incident reported in recent years occurred at Sednaya Military Prison in July 2008 when a number of prisoners and others were reported to have been killed and others injured as a result of a major confrontation between prisoners and prison guards. Almost two years later, what precisely occurred at Sednaya Military Prison has yet to be fully clarified, and the identities of the prisoners who were killed and the circumstances of their deaths have yet to be disclosed by the Syrian authorities. No independent investigation has been carried out and a number of families of prisoners still do not know whether their relative is alive and still held at the prison or elsewhere, or whether he is dead.

2.2 DEATHS IN CUSTODY

Between 2004 and 2010, Amnesty International recorded more than 40 deaths in custody. Of these, 17 are reported to have occurred during the events at Sednaya Military Prison around 5 July 2008, while others may have resulted from torture or other ill-treatment. Some deaths occurred in pre-trial detention, others in prisons where the deceased were serving prison terms. No official investigations are known to have been carried out into any of the deaths recorded by Amnesty International.

In one case, Sheikh Muhammad Ma'shuq al-Khiznawi, an Islamic religious leader and outspoken member of the Kurdish minority, is reported to have died on 30 May 2005 while in detention at an undisclosed location 20 days after he was detained by Military Intelligence officials and became the victim of an enforced disappearance. Sheikh al-Khiznawi was being harassed by the Syrian security forces shortly before his abduction.

The authorities have always rejected any involvement in the abduction and killing of Sheikh al-Khiznawi and the official line has been that he was abducted by a criminal gang who killed him and buried him in a shallow grave. According to reports received by Amnesty International, Sheikh al-Khiznawi was detained for some of the period between 10 May and 30 May 2005 at the Palestine Branch of Military Intelligence, at Sednaya Military Prison and later at Tishreen Military Hospital, where he was said to have been in a very critical state of health. His body was handed over to his family in June 2005. Ten cars containing Military Intelligence personnel reportedly accompanied relatives taking Sheikh al-Khiznawi's body on the journey from Damascus to his home in Qamishli. His body showed signs of torture and other ill-treatment including burn marks to the back and arms, broken front teeth, a broken nose, a lesion to the side of the head and with his beard shaved off.

Amnesty International believes that no independent or impartial investigation into Sheikh al-Khiznawi's death has ever been conducted by the authorities. The Initial Report submitted by the Syrian government makes little reference to deaths in custody or such mechanisms as may be employed to prevent such deaths, to investigate them when they occur and to ensure accountability for those who cause or contribute to such deaths by their acts or omissions. The government's report makes reference only to six cases in which it is stated that officials were sanctioned for torturing or otherwise ill-treating prisoners, including two cases involving "fatal bodily harm" (see Chapter 5). None of these cases is known to Amnesty International.

2.3 METHODS OF TORTURE

Torture and other ill-treatment remain prevalent in Syrian prisons and detention centres and are commonly used against detainees in the custody of Military Intelligence, Political Security, State Security and Air Force Intelligence.

Allegations received from detainees, detainees' families and lawyers, and other sources have described a wide variety of methods, including: beating with fists or bamboo canes or cables; kicking; whipping; the application of electric shocks, often while the victims are suspended from the ceiling by their ankles or wrists; being burned with cigarettes; "falaka" – beating on the soles of the feet with sticks; and the "dulab" or "tyre", whereby the victim is beaten or whipped while forced into a car tyre and hung up. In some cases, detainees are reported to have been subjected to the "German Chair" (al-kursi al-almani), in which the victim is strapped to a metal chair with moving parts in which the backrest is lowered away from the body causing hyperextension of the spine and severe pressure on the victim's neck and limbs; in other cases, detainees are reported to have been subjected to the "frame", whereby the victim's limbs are tied to a large metal frame and the victim is then beaten. A further method of torture, known as the "flying carpet" ("besat al-rih"), involves the victim being tied to a piece of wood shaped like a human body and then beaten; the most recent use of this method of torture received by Amnesty International relates to December 2009¹. Detainees are also reported to be

¹ See Amnesty International's press release: Syria: Trial of Kurds likely to be a "parody of justice", 15 December 2009 at <http://www.amnesty.org/en/news-and-updates/news/trial-kurds-syria-likely-parody->

commonly subjected to sleep deprivation, and to be made to stand facing a wall, often while blindfolded and sometimes with arms outstretched, for long periods. One member of the Kurdish minority is reported to have been tortured by Military Intelligence officials in the Palestine Branch in Damascus around June 2009 with electric shocks and to have been blindfolded and had his arms tied behind his back for nine days.

Military Intelligence's Palestine Branch detention centre in Damascus, known as Far' Falastin, is particularly notorious. Detainees are held in small, tomb-like cells, some of them underground, without beds or mattresses and with only old and lice-ridden blankets, and they have virtually no access to fresh air or sunlight. The food is said to be indescribably bad, barely enough to keep a person alive, which, together with poor conditions of hygiene causes detainees to suffer from diarrhoea and other ailments.

Children have been among those reported to have been tortured and otherwise ill-treated. At least 20 Syrian Kurdish children aged between 14 and 17 were reported to have been beaten with electric cables, stripped of most of their clothes and subjected to electric shocks while detained for three months in 2004. Some were reported to have had their toe-nails pulled out and to have been beaten with rifle butts. In addition, four 12 and 13-year-old Kurdish schoolchildren, Nijirfan Saleh Mahmoud, Ahmad Shikhmous 'Abdallah, Walat Muhammad Sa'id and Serbest Shikhou were arrested by Political Security officers on 6 April 2004 in apparent connection with a quarrel they had with Arab children. The four Kurdish children were brought before the al-Hassaka Criminal Court for Juveniles and charged with "inciting sectarian strife". They were detained in the Minors' Section of Qamishli Prison where they were reportedly subjected to torture by being beaten with electric cables and having their heads clashed together. They were also reportedly ordered to strip almost naked while counting from one to three and were beaten if they did not complete the stripping in time. It was reported in December 2004 that they had been released and had the charges against them dropped, as a result of a Presidential Amnesty.

Conditions in prisons are also harsh for political prisoners, including prisoners of conscience. According to one testimony received in 2009 from a prisoner of conscience held at 'Adra prison: "[t]he prison management works on the principle of humiliation and fear and demoralizing of prisoners. They have turned the prison into a detention camp or intelligence branch. All kinds of torture are present, [including the] dulab ... busat [flying carpet] along with piling between 60-90 prisoners in each room, with only 32 beds, so most of them sleep on the floor..."

Both detainees and sentenced prisoners complain that they are subject to insults and threats, including threats against their families, and that they are commonly stripped naked especially on arrival at their place of imprisonment, frequently left to remain naked in front of others for hours and sometimes beaten by guards while they are naked. Inmates are reportedly held in severely overcrowded conditions; are subject to periodic, arbitrary beatings; held without access to light or exercise in the

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open air; made to sleep on the floor with inadequate bedding, including in extremely cold temperatures; and receive inadequate food, water and access to toilet facilities. In some cases, it is reported, conditions are so overcrowded that prisoners have to take it in turns to lie down to sleep.

2.4 METHODS OF TORTURE – CASE STUDIES

Mohammed X (name withheld), then aged 19, was detained incommunicado by Political Security from 6-28 September 2005, when he was allowed a first visit by his mother, but then held mostly incommunicado until about February 2006. He was held at a detention centre in al-Mezze, Damascus, in a tiny, filthy cell with no light, threatened and insulted, blindfolded and beaten on the soles of his feet (“falaka”) until they bled.

He was shown another detainee with whom he was acquainted, who had been so badly tortured that his legs were swollen and he could barely open his eyes.

Mohammed X was later moved to a Military Intelligence detention centre in Damascus together with 36 others; all were made to strip naked. He was held in cold, harsh conditions and continued to be interrogated and assaulted, and saw other detainees bruised and covered in blood after beatings by guards.

He was made to add his fingerprint, as a signature, to a “confession”, a typewritten statement that he was not permitted to read although he was apparently released from detention without charge in May 2006.

Seraj Khalbous is reported to have become seriously ill as a result of torture while he was detained incommunicado by Political Security officials at al-Mezze and al-Fayha detention centres in Damascus following his arrest on 12 September 2005. He was kept in a very cold cell, had cold water thrown over him, and was deprived of sleep for long periods, beaten on the head and body, subjected to the “flying carpet” and had a shoe forced into his mouth causing choking. He was also forced to strip, had his genitalia prodded with a stick and was threatened with anal rape. He is reported to have witnessed other detainees being tortured, including with electric shocks. He was released after six weeks, suffering from partial paralysis, pneumonia, an inability to stand up, and the effects of being beaten on the head.

Jerome Hibell (also known as ‘Abd al-Rahim), a UK national, was arrested reportedly by Military Intelligence on 20 December 2006, and held incommunicado until 26 March 2007. He was reportedly held in four detention centres, including the Palestine Branch. For the first month he said he was kept in solitary confinement and tortured. Throughout his time in custody, he was given very little food, of poor quality. He was apparently not charged with any offence, nor given any reason for his arrest. In the Palestine Branch he told Amnesty International how he was in a filthy cell with up to 50 people measuring 10 by 2.5 metres where people were forced to sleep, their arms and shoulders overlapping with no mattresses and dirty, flea-infested blankets. During the day they were forbidden from sleeping and if found praying they were beaten. They were beaten with a rubber hose as a punishment for minor “infractions”, for example, not collecting their food quickly

enough.

During his interrogation at the Palestine Branch, Jerome Hibell was verbally abused and intimidated and slapped causing him to fall to the floor. He was forced into “confessing” that he wished to fight in Iraq.

Jerome Hibell told Amnesty International that other detainees were subjected to electrocution while being suspended by their feet from the ceiling. The cries and wails of people being tortured continued day and night. One man was tortured consistently for one-and-a-half days following which he was made to stand for 24 hours facing a wall, blindfolded, and periodically beaten by guards. Female detainees – not held in the same cell – were made to dance for the guards in their underwear. A 15-year-old boy from Aleppo was apparently whipped with cables, and had his hand burnt with cigarettes. Another 15-year-old boy was held for five months in connection with his father, who had been a member of the Iraqi “resistance” and who was later killed on the border with Iraq, was also beaten with cables.

3. DEFINITION AND CRIMINALIZATION OF TORTURE: ARTICLES 1 AND 4

As stated in the government’s Initial Report, Syrian law does not provide any definition of torture as per Article 1 of the Convention. However the Constitution and the law have provisions for protection from torture and ill-treatment.

The Constitution guarantees a number of internationally recognized human rights and freedoms including that the state shall protect personal freedom, dignity and security (Article 25), and specifically that “[n]o one may be subjected to physical or mental torture or degrading treatment, the perpetrators of which shall be liable to penalties prescribed by the law.” (Article 28). The Penal Code states that “[a]nyone who batters a person with a degree of force that is not permitted by law in order to extract a confession to, or information about, an offence shall be subject to a penalty of from three months to three years in prison” and “[i]f the assault causes an illness or an injury, the penalty shall be a minimum of one year’s imprisonment” (Article 391). Article 358 allows for a one to three year prison sentence for “[a]ny warden or guard of a prison or disciplinary or correctional facility and any official vested with the functions of these persons who admits a prisoner without a court order or decision or keeps a prisoner there for longer than the stipulated terms..”. In addition Article 357 of the Penal Code allows that “[a]nyone who arrests or detains a person under conditions other than those stipulated by law shall be subject to a fixed term of imprisonment with hard labour”. Since individuals subjected to arbitrary and incommunicado detention are especially vulnerable to torture, this is an important aspect of the law as a prevention mechanism. However, Amnesty International’s research shows that many are detained unlawfully during which time they are tortured because this law is not enforced and because many political detainees are held under exceptional laws (See Chapter 4).

Repeated and consistent allegations of torture continue to go unprosecuted. As stated above, the Penal Code imposes penalties for “[a]nyone who batters a person

with a degree of force that is not permitted by law". The punishment imposed in Article 391 for causing pain and harm is equivalent to a misdemeanour (a misdemeanour is punishable by imprisonment from three months to three years). While Article 391 could potentially be used to punish crimes of torture, it fails to define the act as torture as per Article 1 of the CAT.

4. THE ROLE OF SYRIA'S STATE OF EMERGENCY LEGISLATION (SEL) – ARTICLES 2, 4 AND 5

Syria's State of Emergency legislation (SEL) - which has been in force without interruption since 8 March 1963 – has the effect of cancelling out provisions which accord some human rights protection, including against acts of torture in violation of Article 2.2 of the Convention.

Despite the Syrian government's assertions that the SEL is only an exceptional and temporary measure which is applied in some cases, Amnesty International's monitoring and documentation since 2004 indicates that the Syrian authorities have acted primarily according to the restrictions facilitated by the SEL and not by the guarantees provided for in the Constitution and other ordinary Syrian laws. In its Initial Report, the government says that the SEL "is applied in the narrowest of circumstances ... and in very special conditions. Hence, the Act does not in any way take precedence of the Constitution and Syrian laws or over any other international commitments". However, according to Amnesty International's research it is used widely against hundreds of people to repress freedom of expression and dissent.

The SEL gives wide powers and authority for the detention of individuals for offences which are not defined and that may violate their rights to freedom of conscience, expression, movement and association. For example, individuals can be detained for "crimes against public security and safety, crimes violating general trust and crimes that constitute a general threat." Since the crimes are not defined in the law they can be used widely and interpreted loosely to include various acts which are in reality not crimes but rather examples of people peacefully exercising their rights to freedom of expression or association. In addition the SEL gives explicit powers to the security forces to allow them to by-pass ordinary laws by implementing preventative detention for non-specific periods.

Under the SEL's Article 4, the Martial Law Governor (the Prime Minister) or his deputy (the Minister of Interior) "are empowered to [among other things] issue written orders for the adoption of measures, restriction of the liberty of persons, censorship of correspondence, communications and the information media...". The SEL allows the arrest of people, monitoring of their mail, surveillance, censorship, closure and confiscation of all forms of mass media and expression. It gives the authorities the power to place restrictions on people's freedom to move, travel and assembly.

Amnesty International believes that mechanisms, provided for under the SEL can be used to facilitate human rights violations. The SEL gives wide-ranging special powers to the various branches of the security forces outside any judicial control.

This results in arbitrary and incommunicado detention of political suspects for as long as the security forces please. Thus hundreds have reportedly been subjected to arbitrary arrest and detention, kept in prolonged incommunicado detention without access to legal counsel nor brought before a judge or judicial authority to challenge their detention, nor allowed visits from their families during which time many have been subjected to torture. Many have apparently simply "disappeared": the government has denied that they were detained and has denied any knowledge of their whereabouts.² In some cases, it appears that detainees have been sentenced to death after summary trials over several years; Amnesty International fears that they may have been secretly executed.

5. IMPUNITY – ARTICLE 12

On 23 February 2010, President Bashar al-Assad issued a decree granting an amnesty for crimes committed prior to that date, including misdemeanours. It is unclear, however, whether those who benefited included any persons convicted according to Article 391, possibly including security personnel.

Syria's security and intelligence agencies operate with virtually total impunity although, each year, there are many new reports of torture and other ill-treatment of detainees by these agencies. Both before and since 2005, Amnesty International has drawn many allegations of torture and other ill-treatment of detainees and sentenced prisoners to the attention of the Syrian authorities but we are not aware of any cases where the authorities instituted independent investigations or took any steps to ensure that alleged perpetrators of torture were brought to justice.

Since 1950, members of Intelligence agencies including Military, Air and Public Security forces, have been immune from prosecution under Legislative Decree No. 61. On 30 September 2008, the Syrian government issued an additional Legislative Decree No. 69 expanding immunity against prosecution to include Political Security, police and customs officials for crimes committed on duty except in cases where a warrant was issued by the general leadership of the army and military forces. In other words, no cases can be brought against members of the security services, including against those who are in active service and those who are retired, except pursuant to special permission granted by the Head of the Army. Thus, Decree Nos 61 and 69 make it virtually impossible for individuals to bring cases against members of the security forces. If permission is granted, such persons can be brought to trial before military courts and the SSSC. The law also provides that current cases against members of the security forces before civilian courts must be transferred to the military justice system. This effectively hampers any efforts on the part of the judiciary to ensure impartial and thorough investigations and trials in torture cases.

We note that the government's Initial Report refers to six cases, including two which

² For example, the fate of some 17,000 people, mostly Islamists who were victims of enforced disappearance in the late 1970s and early 1980s, and hundreds of Lebanese and Palestinians who were detained in Syria or abducted from Lebanon by Syrian forces or Lebanese and Palestinian militias, remain unknown.

resulted in “fatal bodily harm” in which action was taken against alleged perpetrators, but few details of the prosecution processes are provided. These cases do little to diminish our concern that, in practice, officials of the security and intelligence agencies are permitted to operate, and to engage in torture or cruel, inhuman or degrading treatment and other serious human rights violations, with impunity.

In June 2006, it was reported that two senior officials at the Ma’dan Court building in Raqqa were each sentenced to two months in prison for their treatment of Amna al-‘Allush in March 2002 in order to extract a confession of a murder. According to witnesses, she was tortured using the “tyre” method and beaten with cable wire in front of an investigating judge and the local mayor while she continued to denying the charge of murder. This confession was used to convict her. Despite the sentencing of the two officials, she continued serving the 12-year prison sentence imposed on her in April 2004.³

In August 2005, the UN Human Rights Committee said in its Concluding Observations on Syria (see CCPR/CO/84/SYR, 9 August 2005) that “[w]hile noting the information provided by the State party on measures taken against some law enforcement personnel for acts of ill-treatment of prisoners, the Committee remains deeply concerned at continuing reports of torture and cruel, inhuman or degrading treatment or punishment. The Committee is also concerned that these practices are facilitated by resort to prolonged incommunicado detention, especially in cases of concern to the Supreme State Security Court, and by the security or intelligence services...”. The Committee went on to say that “[t]he State party should take firm measures to stop the use of incommunicado detention and eradicate all forms of torture and cruel, inhuman or degrading treatment or punishment by law enforcement officials, and ensure prompt, thorough, and impartial investigations by an independent mechanism into all allegations of torture and ill-treatment, prosecute and punish perpetrators, and provide effective remedies and rehabilitation to the victims.”⁴

5.1 IMPUNITY RELATING TO SYRIAN PRESENCE IN LEBANON: ARTICLES 9 AND 12

During Syria’s 29-year military presence in Lebanon, human rights violations including enforced disappearance and torture were carried out by Syrian military and intelligence personnel against Lebanese nationals, Palestinian refugees and others⁵.

Even after the end of Lebanon’s civil war in 1990 and up until the withdrawal of Syrian troops from the country in April 2005, individuals in smaller numbers were subjected to questioning and at times enforced disappearances by Syrian

³ See Al Press Release Syria: Amna al-‘Allush, allegedly tortured in the presence of a judge and senior local officials, MDE 24/006/2005, January 2005.

⁴ See <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/435/11/PDF/G0543511.pdf?OpenElement> .

⁵ See Amnesty International’s report: Syria: Caught in a regional conflict: Lebanese, Palestinian and Jordanian political detainees in Syria, MDE 24/001/1999, January 1999.

intelligence and security officials based in Lebanon. Some disappeared for days, others for weeks, months or even years. Others never returned.

On March 6, 2010, that is five years after Syrian troops withdrew from Lebanon, Elias Lutfallah Tanios, a former sergeant in the Lebanese Internal Security Forces, filed a lawsuit in Lebanon against four Syrian intelligence officials whom he accused of responsibility for torturing him at former Syrian-run detention facilities in Lebanon and later in Syria. One of the intelligence officials, who served at the Beau Rivage intelligence and detention centre in west Beirut, had subsequently been promoted in 2008 to be head of Syria's intelligence service in the city of Deir al-Zour, north-east Syria, close to the border with Iraq.

The case that Elias Lutfallah Tanios lodged included named Syrian officials who had served, prior to 2005, at another detention centre in Anjar, eastern Lebanon, and at Sednaya Military Prison in Syria where he was transferred. He accused them of kidnapping, torturing and depriving him of his liberty for some 10 years. It is expected that the Lebanese investigating judge may eventually issue an arrest warrant against the four Syrian officials if he summons them to appear before him and they fail to do so.

According to the lawyer representing Elias Lutfallah Tanios, the four accused Syrian officials would not have immunity under Lebanon's amnesty law of 1991, which covers crimes committed before March 28, 1991, as Elias Lutfallah Tanios was not abducted until December 1991 and his detention and alleged torture were committed after that.

According to Article 9 of the Convention, "States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings. States Parties shall carry out their obligations under paragraph 1 of this article in conformity with any treaties on mutual judicial assistance that may exist between them."

In addition, Article 12 states, "[e]ach state shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable grounds to believe that an act of torture has been committed in any territory under its jurisdiction."

Enforced disappearances of Lebanese, Palestinians and others from areas that were under the control of Syrian forces, and the refusal of Syrian authorities to acknowledge that these persons are in Syrian custody or to account for them and clarify their fate and whereabouts, continues to give grave cause for concern and to perpetuate the suffering of the families of the disappeared.

6. SAFEGUARDS AGAINST TORTURE – ARTICLES 11 AND 16

Torture and other ill-treatment are most prevalent during pre-trial detention and especially in incommunicado detention. Arrest and detention practices in Syria

allow the practise of torture and ill-treatment to flourish. Syria's own laws should – in theory – go some way to providing protection from the torture and ill-treatment which is so often a consequence of incommunicado detention. For example Article 104(1) and (2) of the Code of Criminal Procedures (CCP) requires the arresting authorities to bring a suspect before a judicial authority within 24 hours; failure to do so renders him or her legally entitled to immediate release. According to Article 105 of the same code, if the detainee is kept in custody for more than 24 hours without having appeared before a judge, the authority holding him or her is acting arbitrarily and is liable to prosecution for the crime of deprivation of personal liberty, punishable by imprisonment for one to three years, as stipulated by Article 358 of the Penal Code. Similarly, according to Article 72 (2) of the CCP, suspects are guaranteed the right to contact their lawyers at any time and in private, except in cases of espionage.

Syria's Initial Report highlights the Constitution's stipulations that "[n]o one may be investigated or arrested except in accordance with the law [and that] ... [t]he right to seek a legal remedy and to mount an appeal and a defence in court is guaranteed by law." (Article 49). It also asserts that "Syrian law ensures expeditious proceedings in the interest of the accused. For example, article 104 of the Code of Criminal Procedure places the examining magistrate under an obligation to promptly question an accused person who has been summoned to appear before him. Any suspect who is arrested under the terms of a warrant must be questioned within 24 hours from the time of his arrest and, on the expiration of this deadline, the senior officer at the police station automatically sends the suspect to the public prosecutor, who requests the examining magistrate to question the suspect. If the examining magistrate is absent or refuses to question him, the public prosecutor requests another examining magistrate, a president of a court of first instance or a justice of the peace to question him and, if they were unable to do so, the public prosecutor must release the suspect immediately [and that] [p]rovisions of Syrian laws underline the need for speedy implementation of procedures in the interest of the accused person." It also highlights Article 69 of the [Penal] Code which states that the "Investigating judges shall, upon presentation of accused persons ... caution them about their right not to respond without their lawyer being present..." and that only "[w]here speed is of the essence due to a fear of losing evidence, the accused may be interviewed before his/her lawyer is summoned to attend."

These legal requirements, however, are routinely ignored by the authorities and have been subordinated to the SEL provisions and to the power given to the various security forces to act without judicial oversight and to hold detainees for extended periods without access to legal counsel or representation or to visits from their relatives.

6.1 ACCESS TO LEGAL COUNSEL

In practice, a detainee must provide his defence lawyer with a "wakala" (power of attorney or authorization) before the lawyer can be legally recognized as his or her representative counsel. The "wakala" must be signed by the defendant in the presence of the lawyer and a representative from the Bar Association. The detainee must also pay a fee for the "wakala". At the same time, the complicated process is

not available for political detainees, who are frequently held incommunicado and their whereabouts unknown even to their families. In addition, lawyers experience great difficulties in trying to contact detainees while they are in the custody of the security forces, and are deterred by the fear of being associated with the defendant's political views or activities and the risk of being detained themselves.

Over the last six years, Amnesty International has received reports of many people held incommunicado for weeks, months and, in some cases, years. For example, Ziad Ramadan has been held without charge for more than four-and-a-half years most of the time in incommunicado detention without access to legal counsel or representation in Military Intelligence's Palestine Branch. According to the latest reports in late 2009 and early 2010, Ziad Ramadan is seriously underweight as a result of his long incarceration, held in a tiny underground cell without natural or even electric light, and is not permitted any reading materials or to exercise outside his cell. Apart from a visit from his family in September 2007, August 2009 and February 2010, he has been kept in isolation. Ziad Ramadan was detained by Military Intelligence on 20 July 2005 after he was questioned by the Lebanese authorities as part of the investigation in Lebanon into the assassination of former Lebanese Prime Minister Rafic Hariri but then released. The Special Tribunal for Lebanon has formally notified the Syrian authorities that it has no intention to call him as a witness or any grounds to detain him, but the Syrian authorities have failed to release him, bring charges against him or to explain his continuing detention. In February 2009, responding to a joint intervention by the UN Special Rapporteur on the independence of judges and lawyers and the UN Working Group on Arbitrary Detention (WGAD), the Syrian authorities said Ziad Ramadan could face trial in Syria on terrorism-related charges once he had appeared before the Special Tribunal for Lebanon. Ziad Ramadan is being denied the right to any means to challenge his continuing detention or obtain effective remedy.

In another example, Bahaa' Mustafa Joughel was arrested on 24 December 2005 by plain-clothed security officers who took him from his home in Damascus, following which he was held for several months in incommunicado detention in the Palestine Branch of Military Intelligence, Damascus, before being moved to Sednaya Military Prison. His current whereabouts are unknown. He has had no access to a lawyer and has not been seen by his family except in a very brief meeting in July 2008. He was permitted a brief phone call to his family in March 2010. Amnesty International wrote to the Syrian government in January 2009 expressing concern for his well-being and for clarification on where he was detained and his legal status, particularly in view of the violent incidents in July 2008 in Sednaya Military Prison (see under Chapter 6.2). At the time of writing we had not received a response.

Twelve prisoners of conscience⁶ – arrested between the end of 2007 and February 2008 – are serving sentences of two-and-a-half years in connection with their membership of a coalition which urged the authorities to release all political prisoners, suspend the SEL, allow the safe return of Syrian exiles and uphold the

⁶ See AI: Repressing dissent - Pro-democracy activists on trial in Syria, MDE 24/024/2008, October 2008.

Universal Declaration of Human rights (UDHR). They were held incommunicado by the State Security branch for up to two months during which time at least eight of them were tortured and otherwise ill-treated during interrogation. The torture included being punched in the face, kicked and slapped and forced to sign false confessions. One of them – Riad Seif - was forcibly shaved. During this time they were not permitted to see defence lawyers or relatives. During January and February 2008 they were moved to 'Adra prison in Damascus. At least one was prevented from speaking to his lawyer during his four hours of questioning by the investigating judge. Other lawyers involved in the case were present at the hearings but the judge refused to give them copies of the case file.

Amnesty International remains concerned that in 2009 alone, there were dozens of reported cases of people held well beyond 24 hours with no access to a lawyer and without referral to the Public Prosecutor who were usually held in one of the security or intelligence agency detention centres away from the outside world until being transferred to prison. This period prior to transferral is crucial in terms of access to legal counsel and representation since it is during this time that individuals are most likely to be subjected to torture or otherwise ill-treated in order to obtain confessions that will be used to secure conviction. It should be noted that the Syrian legal system places a high value on confession. There are little efforts to use modern methods of investigation, including the utilisation of forensic laboratories (see also Chapter 7).

It should be noted that those held in prisons can also be denied access to lawyers. For example, lawyers are not allowed to visit prisoners and detainees in Sednaya Military Prison.

6.2 ACCESS TO FAMILY VISITS

Syria's Initial Report states that Syrian law "safeguards the right of the accused person at all stages of the investigation to contact his family, either at his residence or at the place of his work, to inform them of the charges against him." It also states that detainees "can contact their relatives and families using the direct dial telephones installed in each prison. They are entitled to receive visits ...".

Since 2004, there were hundreds⁷ of reports of cases where detainees during pre-trial stages, but also post conviction, were denied visits from their relatives for weeks, months and in some cases years increasing their isolation and therefore the likelihood of their being subjected to torture. The problem is chronic in detention centres under the control of Military Intelligence, State Security, Political Security and Air Force Intelligence. (This can also be relevant to prisons in particular Sednaya Military Prison (see below) and also to a lesser extent in 'Adra prison).

The problem is compounded by the fact that relatives of those held incommunicado by the intelligence and security agencies are generally not informed of the place of detention where their relative is held, nor are they afforded a means to communicate with, let alone visit, them. This is despite the repeated attempts by

⁷ Due to lack of access to the country and the restrictions placed on local lawyers, activists and human rights defenders, it is not possible to say exactly what the scale of this problem is.

families to ascertain the fate and whereabouts of their relatives. Relatives who enquire with the security agencies are generally told that the person is not being detained, or that the place of detention is unknown. Sometimes families may be told informally of who is holding a relative or perhaps where they are through bribery or because they have a contact in one of the security agencies, or through released prisoners who saw their relative in prison. Even in these cases, though, it is difficult for the family to confirm their relative's whereabouts. Furthermore, some detainees are moved around to different detention centres during their incommunicado detention and even transferred between different security agencies. The families are not likely to be given access to relatives until they are moved to one of the prisons, often in the case of political detainees, to 'Adra prison or Sednaya Military Prison where many of the Islamist prisoners including those accused of affiliation to the Muslim Brotherhood are held. This, understandably, causes many relatives grave anxiety.

For example, Syrian Kurd, Berzani Karro, aged around 20 years was arrested from Damascus airport after he was forcibly returned from Cyprus on 27 June 2009. He was held in the custody of the al-Fayha Political Security Branch in Damascus in incommunicado detention for three months. His father made numerous inquiries with the Syrian authorities about his fate and whereabouts, including at a number of detention centres and prisons around the country, but they denied holding him in their custody. Towards the end of September Berzani Karro was moved to 'Adra prison where his family were finally allowed to visit him every two-to-three weeks. He was brought before a military court on 14 March, and sentenced to five years' imprisonment, immediately commuted to two-and-a-half years for "attempting to sever part of the Syrian territory and annex it to a foreign state". Amnesty International believes that Berzani Karro may be a prisoner of conscience, held due to his perceived political opinion. During his incommunicado detention he was tortured including by being subjected to prolonged beatings to his legs and face. According to KurdWatch⁸ he was also subjected to "falaka".

Following the reported killing of at least 17 prisoners and five other people⁹ in Sednaya Military Prison in July 2008, the authorities forbade any family visits to the prison between July 2008 and July 2009. At the time of writing the families of at least 51 detainees have still not been permitted to visit or have any contact with their imprisoned relatives, increasing concern that they may have been among those killed in July 2008 or that they are being subjected to ongoing torture or other ill-treatment while hidden away from the rest of the world. (The authorities failed to clarify the circumstances which led to the killings for which no investigation is known to have been carried out.) For example, prisoner of conscience, Nizar

⁸ KurdWatch is website detailing reports of human rights violations against the Kurdish population in Syria. See: <http://www.kurdwatch.org/>.

⁹ On 5 July 2008 disturbances erupted in Sednaya Military Prison. Military Police were reported to have killed at least 17 detainees. Five other people were also said to have been killed during the disturbances. The circumstances of the violence and the fate of many of the prisoners have remained unclear since then. The authorities have at no point announced whether they have investigated or intend to investigate the killings; neither have they given any details of the people killed or injured.

Ristnawi has not been seen by his family since June 2008 though he was due to be released in April 2009 having served a four year sentence after an unfair trial before the SSSC which convicted him of “spreading false news” and “insulting the President of the Republic”. In May 2009, Nizar Ristnawi's brothers went to the Military Intelligence branch in the town of Hama, to the north of Damascus, where he was originally detained, to ask about his whereabouts. They were not given any information¹⁰.

Amnesty International received a testimony from a family which we believe is by no means an isolated case: they said that their relative - thought to be held in Sednaya Military Prison – has not been permitted to see him for one year and nine months. However, they were informed by the Syrian authorities that they could visit him in August 2009. They were told to go to the military police to collect a visitor permit. On arrival they found many other families waiting to enter the building. The family waited over two hours until a police officer read out names of those allowed to visit their relatives which included their relative's wife. However, when she tried to collect her permit she was told she would have to seek permission from the Political Security branch in al-Mezze instead. On reaching Political Security the family were sent from office to office and even to another building some 500 metres away and were finally ordered to wait outside on the pavement. After waiting another 45 minutes they were told they would not be allowed to visit their relative that day since he had been transferred to an unnamed location. They were told they could try to visit the following month if they wished. After some months the family were allowed to submit another request but their requests were rejected twice.

Once families are permitted access to their detained relatives, they find their visits are closely monitored by prison guards who may report their conversations to the security and intelligence agencies. As one prisoner of conscience held in 'Adra prison said in a testimony given to a Syrian human rights NGO in 2009, “our families do not talk of anything personal, for fear of it being used by the intelligence service against our families, or to exert pressure on us. It becomes even worse when the visitor is the lawyer who wishes to discuss aspects of the case in private. There have been verbal fights with one of the officers as a result of his eavesdropping on every conversation.”

7. THE COURTS' USE OF “CONFESSIONS” AS EVIDENCE – ARTICLE 15

Once charged detainees often face grossly unfair trials before the Supreme State Security Court (SSSC) and the military courts¹¹. The SSSC is placed outside the

¹⁰ In March 2009, the UN Working Group on Arbitrary Detention (WGAD) announced that Nizar Ristnawi's imprisonment was arbitrary. They requested the Syrian government “to take the necessary steps to remedy his situation”. See Amnesty International, Syria: UN experts' opinion on arbitrary detention of Syrian human rights defender (MDE 24/008/2009) at <http://www.amnesty.org/en/library/info/MDE24/008/2009/en>.

¹¹ Military Courts were granted exceptional powers under the SEL including the jurisdiction to hear cases against civilians under Decree No. 46 of 1966. These courts do not appear to be independent and impartial and do not respect the right of the defendant to be present at trial and to present a defence

ordinary criminal justice system and is accountable only to the Minister of Interior, who is by delegation the Martial Law Governor in charge of overseeing the implementation of the SEL). Although the SEL allows for trials before the SSSC and for civilians before the military courts, these courts can continue their jurisdiction - even if the SEL is lifted (see also Articles 11 and 13 of the Convention).

The government's Initial Report asserts that precedents have been established in Syria derived from court judgements which state that a "confession extracted using violence or force" may not be relied upon; and that "[d]efendants are not bound by their previous statements or prior confessions". It further states that "the court [should] ... widen an investigation in order to determine the validity of a confession" and "[i]f a court suspects that a confession has been extracted by force, it shall investigate the matter in accordance with due process principles in order to ensure that justice is done". Amnesty International acknowledges these claims but is not aware of these steps being taken in court cases and particularly not in relation to the SSSC and military courts, nor in recent political cases which have been tried before the criminal court.

Indeed, the powers of the SSSC are limited to the courtroom and do not extend to control or supervision of the activities of the various security forces and the procedures followed in relation to arrests, detention and treatment of political suspects. The SSSC is also unable to ensure that those acquitted are actually released. The lack of independence and impartiality of the SSSC is compounded by the fact that its verdicts are not subject to appeal, rather only the approval of the Minister of Interior (under the State of Emergency Law) and the fact that it is not bound by the rules of the Code of Criminal Procedures which otherwise applies in all ordinary criminal courts in Syria.

One of the main purposes of torture and other ill-treatment in cases reported to Amnesty International is to extract information or confessions from the detainees about their political activities. Many claim to have made forced confessions which have been used as evidence against them during their trials. In both the SSSC and the military courts, confessions extracted under torture are systematically used as "evidence" and the defendants' claims that they have been tortured are almost never investigated.

Our research indicates that torture is routinely inflicted on detainees tried before the SSSC and yet the SSSC has systematically failed to investigate numerous allegations of such torture and of the extraction of "confessions" under duress brought to its attention by defendants. The UN Human Rights Committee has observed that the SSSC has rejected complaints of torture, even in flagrant cases.¹²

with or without the assistance of legal representation. Trial sessions before Field Military Courts (FMCs), which may also hear cases against civilians, may consist of one or two hearings, in many cases inside a prison, wherein the defendants appear only to plead guilty or otherwise to hear the charges filed against them. In other cases defendants are reportedly informed about their sentences without ever being asked to attend a hearing.

¹² Human Rights Committee, Concluding Observations, Syrian Arab Republic, UN Doc.

For example, Mus'ab al-Hariri, was sentenced in June 2005 when he was aged 17 years to six years' imprisonment for membership of the Muslim Brotherhood organization.¹³ While in incommunicado pre-trial detention he was reportedly tortured, including by Military Intelligence by being subjected to the "dulab", the "German chair" and beaten with sticks and cables. The Court is not known to have investigated the allegations of torture, nor to have received evidence that Mus'ab al-Hariri was either a member of or affiliated to the Muslim Brotherhood.

In the trial of 24 alleged Islamist activists from Qatana who were convicted on 11 March 2007 of being part of a "group established with the aim of changing the economic or social status of the state" and "weakening nationalist sentiments", the SSSC reportedly ignored and failed to investigate claims that all of them had been beaten and otherwise tortured into signing false "confessions". The men were arrested in 2004, detained for more than one year in incommunicado detention and then sentenced to between four and 12 years' imprisonment. In a similar case, the SSSC reportedly ignored and failed to investigate claims that some of the 11 alleged Islamist activists men from al-'Otaybe were tortured during incommunicado detention. They had been arrested in April 2004 and were sentenced in November 2006 to up to nine years' imprisonment for being part of a "group established with the aim of changing the economic or social status of the state".

In a trial before the SSSC, seven peaceful advocates of political reform (Maher Isber Ibrahim, Tareq al-Ghorani, Hussam 'Ali Mulhim, Diab Siriyeh, 'Omar 'Ali al-'Abdullah, 'Allam Fakhour and Ayham Saqr) appeared before the Court on 26 November 2006, for the first time since they were arrested between January and March 2006. All denied the charges against them, each saying that he had been tortured into "confessing" while held in incommunicado detention. However, the court failed to investigate these allegations and accepted the contested "confessions" as evidence against the defendants. The seven men were all convicted of "taking action or making a written statement or speech which could endanger the State or harm its relationship with a foreign country, or expose it to the risk of hostile action", with two of them also convicted of "broadcasting false news". Five of the men were sentenced on 17 June 2007 to five years' imprisonment and two of them to seven years' imprisonment.

Amnesty International is aware that the Criminal Court also accepts forced confessions as evidence against defendants. For example, of the 12 prisoners of conscience referred to in paragraph four of Chapter 6.1¹⁴ at least eight were beaten by being punched in the face, kicked and slapped, and forced to sign false confessions. They informed the investigating judge that State Security officials had beaten them during interrogation and that they were forced to "confess" to

CCPR/CO/71/SYR, 24 April 2001, paragraph 16.

¹³ Under Law 49 of 1980, membership of or affiliation to the Muslim Brotherhood is punishable by execution, although this is usually commuted to 12 years' imprisonment.

¹⁴ See AI: Repressing dissent - Pro-democracy activists on trial in Syria, MDE 24/024/2008, October 2008.

supporting Kurdish separatism and to receiving funds from foreign governments. Their claims that they were coerced into giving false confessions have not been investigated.

8. REFOULEMENT – ARTICLE 3

We note the government's Initial Report states that "the general legal principles which regulate all the relevant treaties on judicial matters prohibit the extradition to a foreign State, on any grounds whatsoever of any person who is a resident of the Syrian Arab Republic, where the person being extradited would risk being subjected to torture, degrading treatment or intimidation". However, although Amnesty International is not in a position to provide exact figures on the number of individuals returned to countries in contravention of Article 3, we are aware of at least 22 cases since 2005¹⁵ where Syria has forcibly returned people to countries where they may face torture.

Of particular concern to Amnesty International is the Ahwazi ethnic group (Iranian Arabs) who have claimed asylum in Syria and some of whom are recognized refugees and have been forcibly returned to Iran. Between 2005 and 2010 for example at least 12 people were forcibly returned to Iran, including children aged between four and 14 years. They were all at risk of arbitrary arrest and detention, torture and other ill-treatment by the Iranian authorities. Of these 12, seven were said to have applied for asylum in Syria and four were said to be UN-recognised refugees. All of them were immediately arrested on arrival in Iran and at least six were sentenced to prison terms of between four-and-a-half to 15 years. One of them, Sa'id 'Awda al-Saki, is reported to have been sentenced in August 2009 to have four figures amputated.

On 27 September 2008, Ma'soumeh Ka'bi and her five children aged between four and 14 were forcibly returned to Iran, despite the fact that they had applied for asylum. She had been due to travel to Denmark with her children to join her husband and the children's father, Habib Nabgan. Ma'soumeh Ka'bi and the children were immediately arrested upon arrival in Tehran. Her five children were released in late October 2008. On 1 January 2009, Ma'soumeh Ka'bi was sentenced by the Revolutionary Court in Ahwaz, Khuzestan province, to four-and-a-half years' imprisonment for leaving Iran using false travel documents and reportedly in connection with her links to her husband's political activities. She appealed the sentence and was released on bail of around US\$151,000. Amnesty International does not have updated information on the outcome of her appeal.

Amnesty International is also aware that Iraqi refugees have been forcibly returned from Syria. The majority of Iraqis who manage to enter Syrian are in an irregular situation with no legal status leaving them vulnerable to refoulement to Iraq, something which UNHCR seeks to prevent but is not always able to do. Those most at risk of deportation are individuals convicted – or sometimes merely accused – of a crime, including minor offences such as prostitution, having entered irregularly or

¹⁵ AI believes that this statistic may not reflect the real number since we have not been in a position to document each and every case.

possessing forged documents. While the number of forced deportations of Iraqis from Syria remains low, Amnesty International delegates in Syria were informed in February and March 2008 that between mid-December 2007 and the end of February 2008, UNHCR was aware of 10 UN-registered refugees who were deported to Iraq. Efforts to halt these deportations were not successful. The majority of deportations were men, although some women and children have also been returned. In late January 2008, for example, an unaccompanied 16-year-old girl was deported following a period of detention in Syria.

Yasin Taha, an Irish citizen who had been recognized as a refugee in Ireland, believed to be of Tunisian and Palestinian origin, was removed to Tunisia around mid-December 2005, where he faced torture and other ill-treatment. He was reportedly tortured in Syria to force him to confess to being a leading member of al-Qa'ida. He arrived in Syria on 23 October 2003, but was arrested by the authorities there on 16 November 2003. The reasons for his arrest are not known.

9. REDRESS AND COMPENSATION FOR VICTIMS OF TORTURE – ARTICLES 13 AND 14

Despite the prohibition on torture in the Syrian Constitution (Article 28) and the fact that the Penal Code (Articles 319 and 391), allows penalties for “[a]nyone who batters a person with a degree of force that is not permitted by law...” in practise Syria contravenes Article 14 of the Convention and despite repeated and consistent allegations of torture, Amnesty International’s research shows that Syrian laws penalizing the use of illegal force against detainees are rarely, if ever, implemented. In fact, Legal Decree no.16 of Constitutional Decree No. 14 of 1969 states that employees of the State Security administration shall not be prosecuted for offences they commit while carrying out their duties.

Amnesty International notes that the Initial Report states that under the CCP victims of the crime of torture “have the right to obtain compensation by applying to a competent court which will award fair and appropriate compensation depending on the circumstances of the case. The award will take account of the damage suffered, loss of earnings and other losses and all other circumstances. Compensation will be awarded taking into account all material and psychological damage incurred.” In addition, the State and perpetrator “may be held liable” and “may be ordered to provide appropriate compensation”.

However, we remain concerned that thus far no steps have been taken by the authorities to provide redress or compensation for past and continuing human rights violations; we are not aware of any investigations into claims and reports of torture and ill-treatment, including deaths in custody. Despite numerous allegations of torture, some of which were made in court by the victims themselves, no proper investigations appear to have been carried out by the Syrian authorities. Neither are we aware of other forms of compensation being granted to victims including reparation, restitution or rehabilitation.

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