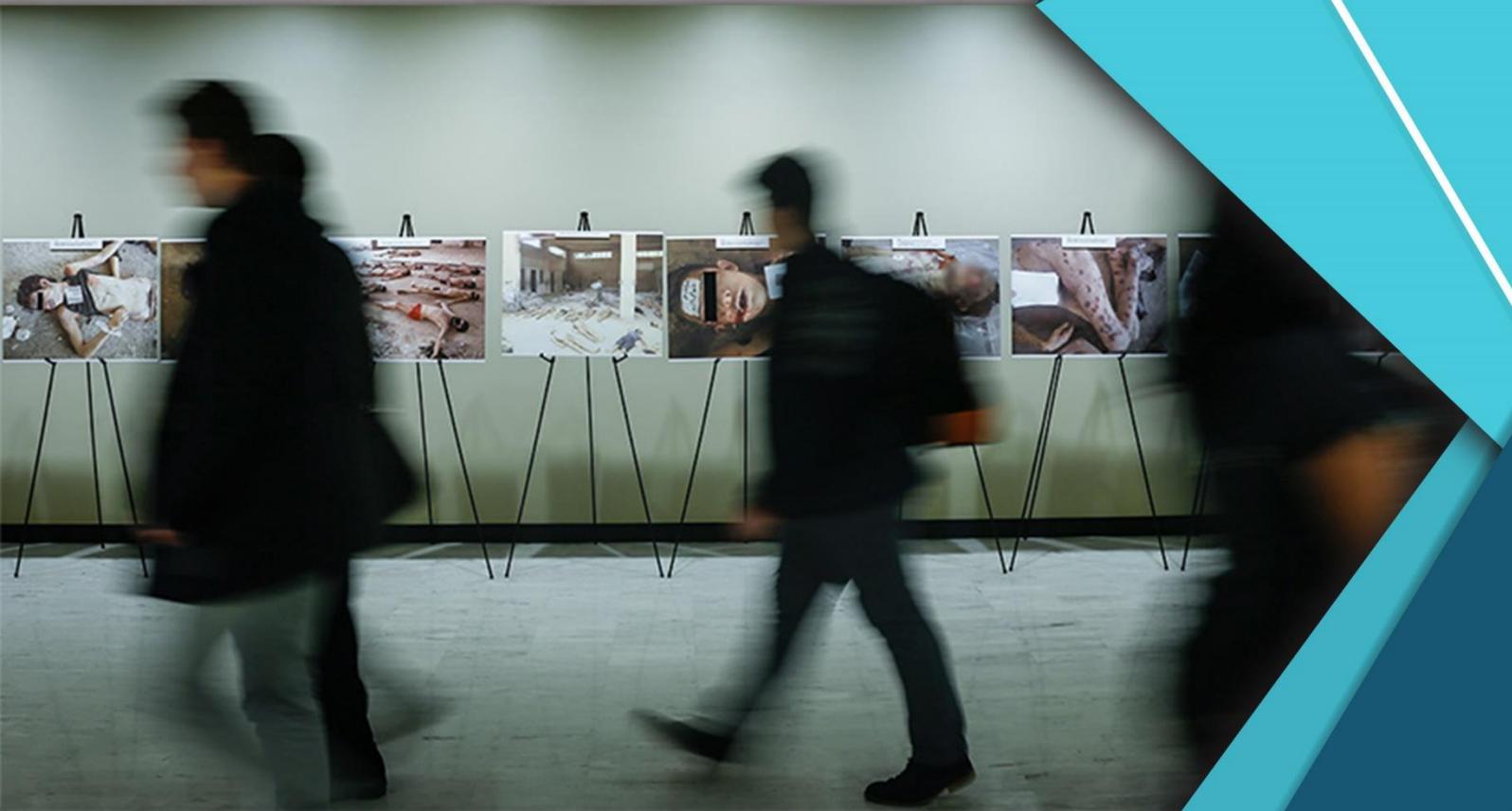
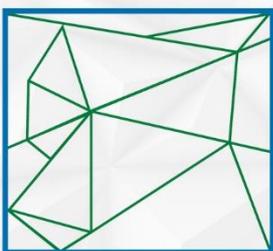


Syria: Anti-Torture Law Issued 35 Years After the Convention against Torture Went Effective



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12 July 2022

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*Syria's new Anti-Torture Law has been met with rising concern
as commentators fear that the law will be used to provide
"impunity" for all crimes of torture committed before the law's
entry into force, based on the general principle of non-
retroactivity*

Executive Summary

On 30 March 2022, Syrian President Bashar al-Assad issued [Law No. 16 of 2022](#), criminalizing torture. According to the Syrian Presidency's [Facebook account](#), the Anti-Torture law has been issued in compliance with the "Constitutional obligations of the Syrian State, which prohibit torture" and with the [Convention](#) against Torture of 1984, to which the government of the Syrian Arab Republic acceded on August 19, 2004— the Syrian Government (SG) is compelled to abide by all the Convention's provisions owing to its status as a signatory State.

Notably, this Anti-Torture Law has been issued nearly 18 years after the SG acceded to be a State Party to the convention, and over 35 years after the Convention entered into force, on 26 June 1987.

The Convention was adopted by the United Nations General Assembly, and opened for signature, ratification, and accession by resolution 39/46 of 10 December 1984. Currently, there are 173 States Parties to the Convention.

On 1 July 2004, the SG issued [Legislative Decree No. 39](#), approving the accession of the Syrian Arab Republic to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, by which Syria became legally bound by the Convention's provisions. However, the SG evaded the responsibilities entailed by membership, because it did not incorporate the provisions of the Convention into its national laws, providing no relevant legal texts.¹

Importantly, the law does not only meet the Convention's membership obligations. The law tends to several government-level calls to hold the SG accountable for the large-scale human rights violations perpetrated against the Syrian people.

This law has been passed nearly a year after the Canadian government [asked](#) for formal negotiations, under the UN Convention Against Torture, to hold Syria liable for the countless human rights violations it has inflicted on Syrians since 2011. In a 4 March 2021 request, Canada stressed their repeated demands that the Assad regime end the egregious human rights abuses against its own citizens.

These violations formed the basis of a similar request by the Netherlands in September 2020.

Torture remains one of the most major, and extensively documented, human rights abuses committed at hands of the SG. To this effect, the UN International Commission of Inquiry and other international organizations described prisons and unofficial detention centers run by the SG-affiliated security services as "the most lethal", including the notorious [Sednaya Military Prison](#).

Prisons and detention facilities are mainly operated by the Air Force Intelligence Directorate, the Military Intelligence Directorate, the Political Security Directorate, and the General Intelligence Directorate.

Even though the SG issued Law No. 16 of 2022 as part of its commitment to the Convention, the law falls short on a major aspect of the international treaty's mechanisms. The law does not provide any clauses that legalize, permit, or facilitate the activities of concerned human rights

¹ Countries that ratify international treaties and conventions are obligated to include the provisions of those treaties in their national laws, and to notify the Secretary General (in his capacity as the depositary of treaties).

bodies, whether international or independent organizations, including the UN Committee Against Torture (CAT). Under the Convention, these organizations are entitled to monitor prisons or security headquarters, preside over the SG's measure of compliance with the Convention, send periodic reports, and see to the application of the anti-torture law.²

Given this gap, the SG must be pressed to align its domestic legislation with its [international obligations](#) relating to the protection of all individuals from all forms of violations they may be subjected. The SG has repeatedly emphasized that it adheres to the principle of the supremacy of international law over national law in the 2011 [Comments and Follow-Up Responses](#) of the Syrian Arab Republic to the Concluding Observations of the CAT.

Torture in Syrian Legislation

Successive Syrian constitutions have collectively prohibited the act of torture. Article 28 of the [1973 Syrian Constitution](#) bans physical or mental torture, as well as degrading treatment, rendering these acts punishable by the law.

In a similar vein, Article 52 of the operative [2012 Constitution](#) states that: “No one may be tortured or treated in a humiliating manner, and the law shall define the punishment for those who do so.”

Additionally, Article 391 of the [Syrian Penal Code](#) stipulates that:

“Anyone who subjects a person to illegal acts of violence with a view to obtaining from him a confession to an offense or information pertaining thereto shall be liable to a penalty of detention for a term of three months to three years. If such acts of violence cause sickness or wounds, the minimum penalty shall be one year's detention.”

Even though the Arabic legal text does not reference the word *ta'athib* (torture), and uses the word *al-shidah* (violence) instead, the Syrian judiciary treats *al-Shidah* as implying *ta'athib*. This article has been criticized for its limited scope because it applies exclusively to crimes of torture committed during interrogation, which are perpetrated against a defendant to coerce him/her to confess or provide information. With this, the article does not cover acts committed with the aim of humiliating, inflicting suffering on, or retaliating against a person, acts that are legally defined as cruel, degrading, or inhumane.

The article is also widely criticized for classifying the act of torture as a misdemeanor, not a felony.

Although Article 391 criminalizes acts of torture committed over the course of an investigation into a crime, several subsequent laws and decrees have rendered the article meaningless and

² The CAT is composed of 10 independent experts who are persons of high moral character and recognized competence in the field of human rights. Members are elected for a term of four years by States parties in accordance with article 17 of the Convention against Torture. Members serve in their personal capacity and may be re-elected if nominated. Members are elected for a term of four years and are eligible for re-election once. States parties cast their votes by secret ballot from a list of nominees, with due consideration being given to the geographical distribution, relevant legal experience and gender representation of the candidates. The CAT meets twice a year and submits an annual report to the UN General Assembly and to all States Party to the Convention.

ineffective. [Decree No. 14 of 1969](#), which provides for establishing the State Security Department, officially called the General Intelligence Directorate, allows the directorate's employees to use torture with impunity. Security members can commit violations while carrying out their duties without being persecuted. Article 16 of the decree states that: employees of the State Security Administration *"shall not be judicially pursued for offenses they commit while carrying out their duties or specific tasks assigned to them without a warrant issued by the director authorizing legal action against them"*.

There is also [Decree No. 64 of 2008](#), which expanded the range of SG employees warranted impunity, who are exclusively persecuted under an order issued by the General Command of the Army and Armed Forces, in accordance with Legislative [Decree No. 61 of 1950](#), of the Military Penal and Procedural Code. The decree widened the scope of impunity, covering also members of the police, the Political Security Directorate and Customs. Additionally, legally only these members can carry out preliminary criminal investigations.

Based on this, it becomes evident that the aforementioned decrees were all put in place to protect these members, offering them an environment that fosters impunity.

With the exception of Article 391, torture is not addressed as a criminal act *per se*. It is often treated as an aggravating circumstance when accompanying another crime. For instance, Article 545 of the Penal Code imposes a harsher penalty against murders, when accompanied by acts of torture or cruelty. Similarly, Article 556 of the code pushes for a severer penalty for the crime of deprivation of liberty, when the victim is correspondingly subjected to physical or mental torture.

Law No. 16 of 2022

Law No. 16 of 2022 consists of only 8 articles. Some of the definitions it establishes are consistent with Article 1 of the Convention against Torture, which addresses terms such as torture, obtaining confessions, and the criminalization of torture when *"inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."* These aspects are all stressed in the body of Article 1 of Law No. 16, which prescribes:

"For the application purposes of this law, torture means any action or inaction by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him/her or a third person information or a confession, punishing him/her for an act he/she has committed or is suspected of having committed, or intimidating or coercing him/her, or for any reason based on discrimination of any kind when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It also includes acts carried out by an individual or a group for personal, material, and political ends, or with the intent of revenge or retaliation."

Notably, penalties in Law No. 16 are harsh and are compatible with the severity of the criminal acts (torture) committed. For instance, should the act of torture, or an act for the purpose of torture lead to the death of a human being, or be accompanied by rape or "indecenty", the act is punished as a felony, with the penalty becoming death.

A harsher penalty is also leveled when the act of torture is inflicted upon a child, or upon a person with a disability—that is vulnerable groups, who are often given special protection, or when it results in a permanent disability which would render the victim incapable of practicing normal life as it used to be prior to torture. These acts are punished with life imprisonment.

Both the harsher penalties and their related circumstances are laid out in Article 2, paragraphs (e) and (f):

e. The penalty shall be life imprisonment if the torture is perpetrated on a child or a person with a disability, or if it results in a permanent disability.

f. The penalty shall be death if torture results in the death of a person, or if he/she has been assaulted with rape or any act of indecency during or for the purpose of torture.

Additionally, the law imposed a penalty on persons who may commit, participate in, or incite torture (the perpetrator - the partner - the instigator) in order to obtain/ extract confessions, which in most cases are forcible and perpetrated under pressure.

The law also stipulated a penalty for torture for which the purpose is to achieve personal profits, whether financial or aimed at changing a political viewpoint, family or personal reprisal, and/or revenge against an individual.

The law also tightened the penalty for the perpetrator of torture against a public official in a context related to the employee's official capacity.

Furthermore, the law imposed a penalty for torture carried out by the "state employee" or under his/her supervision or with his/her knowledge for obtaining confessions about a specific incident.

These penalties are established in Article 2, paragraphs (a), (b), (c), and (d):

a. Whoever intentionally commits, participates in, or incites torture shall be punished with temporary imprisonment for at least three years.

b. The penalty shall be at least six years if torture is committed by an employee or under his/her supervision and with his/her consent, with the intent of obtaining a confession or statement about a crime or information.

c. The penalty shall be at least eight years if torture is committed by a group to achieve personal, material, or political ends, or with the intent of revenge or retaliation.

d. The penalty shall be at least ten years if torture is inflicted on an employee due to the exercise of his/her duties.

Law No. 16 is commendable for theoretically widening the scope of acts aggregated under torture, and classes deemed punishable for the act. Criminalization is not limited to the act of torture carried out or supervised by a public official or any person acting in an official capacity, as is the case with Article 1 of [the Convention against Torture](#). In Law No. 16, a perpetrator of torture is any person or a group to whom the definition of torture applies.

Shortcomings of Law No. 16

The issuance of Law No. 16 is a legally and theoretically positive and advanced step for the SG, in terms of observing international anti-torture legislation and integrating it into the structure of Syrian domestic laws. This is important especially since the Syrian penal legislation lacks independent laws relative to violations of individual freedoms. No Syrian laws, in their own merit, evidently and overtly ground respect for human rights and fundamental freedoms.

However, there are several aspects that the law neglects.

Inadequate Complaint and Protection Measures

In theory, the body of the law cites a few positive measures. The law stresses that authorities in charge of receiving complaints, including public prosecutors or police departments, must take the necessary measures to guarantee the right to filing complaints or reporting cases of torture, provide protection to the complainant and maintain the confidentiality of information related to him/her, and information related to the torture incident.

Also related to protection, the law emphasizes the need to protect witnesses and experts involved in a reported case, along with their families. Experts include forensics who examine torture victims and issue medical reports that function as legal documents presented to courts and official departments.

However, the law does not support these measures with practical steps. It does not expressly list the measures to be taken to guarantee protection for victims, witnesses, experts, or any other party who might be at risk due to the consideration of the complaint.

Therefore, to address the ambiguity gap in the relative Article 7, the Minister of Justice or the Attorney General must issue executive instructions that approach protection measures in a detailed and explicit manner. Additionally, these measures must oblige the Public Prosecution to immediately run an investigation, helped by the officials in charge of a torture report or complaint as to bring the report's subject, who displays signs of torture, before the court in person.

Additionally, the law places the burden of obtaining effective redress on the victim, because the law's articles are not only ambiguous regarding protection measures, but also do not expressly make authorities the party responsible for conducting necessary investigations and prosecutions as soon as they receive any information or have reasons to believe that torture has been committed. This runs against the provisions of Article 12 of the Convention against Torture, which states:

“Each State Party shall ensure that its competent authorities proceed to a prompt and Impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.”

The impact of loosely provided protection measures, as well as the indecisive role assigned to authorities on potential victims is heightened when observed in the context of provided penalties.

The law warrants a pattern of discrimination against victims because it provides harsher punishment when the victim subjected to torture is a state official. This discrimination violates several international legal texts, including Article 7 of The Universal Declaration of Human

Rights ([UDHR](#)) and Article 2 of the [International Covenant on Civil and Political Rights](#), which prohibit discrimination on any grounds, including race, color, sex, language, religion, political or other opinions, national or social origin, wealth, or lineage.

Absence of Transparent Internal Government Oversight

In Syria, there are two types of “official” internal oversight on the work of SG-affiliated security institutions, one cannot be trusted and the other is dysfunctional.

Administrative/internal oversight within security services: The extent of oversight, its independence, transparency, and credibility cannot be trusted, because the security services are blocked by independent bodies.

Judicial oversight: This type of control is not practiced, disrupted by the structure and composition of the Supreme Judicial Council (SJC) in Syria, whereby judges are subsequent to the executive authorities administratively and functionally.

The operative 2012 Syrian constitution provided for the independence of the judiciary. However, independence is obstructed by Article 133 of the constitution itself. The article states that the President of the Republic is the head of the SJC, represented by the Minister of Justice. Notably, both the president and the minister are pillars of executive authority.

Additionally, half of the SJC’s members are employees of the Ministry of Justice, including the deputy justice minister, the head of the Judicial Inspection Department, and the justice minister, who heads the Public Prosecution as stipulated by Article 137 of the constitution, thus becoming in charge of the attorney general who obeys his orders.

The SJC appoints, promotes, disciplines, and dismisses judges based on the proposal of the justice minister, the SJC’s president, or three of the SJC’s members. Additionally, the SJC refers judges to retirement or deposition, accepts their resignation, and tackles everything related to their duties, and other competencies related to their work in accordance with Article 67 of the Judicial Authority Law No. 98 of 1961.

This structure and dynamics of operation deny the SCJ its independence because they establish the executive authorities’ dominance over the judicial system.

Additionally, while it remains theoretically easy to exercise control over the agencies affiliated with the Ministry of Interior, including police departments, police stations, criminal security branches, etc., other security branches are out of the oversight mechanisms’ reach. This can be attributed to the branches’ ambivalent legal status. These branches are legally and theoretically considered administrative police whose responsibility is to combat crime, while jurisprudence considers them as judicial police whose responsibility is to investigate crimes after they occur.

In practice, however, these security services perpetrate torture against SG critics.

Despite the deliberate legal ambiguity with regard to the tasks and functions of the security services and their legal status, they must abide by the law and their personnel and employees must observe their law enforcement duties. Therefore, new mechanisms must be put in place to exercise additional control over these services, make them abide by Law No. 16 of 2022, and press them to adhere to their designated jurisdiction.

Banning the CAT from Investigating Torture (Reservations on Article 20):

Syria “acceded” to the Convention against Torture on 1 July 2004. However, the SG had reservations regarding the convention’s Article 20, included under Part II, which provides for establishing the CAT as a committee emanating from the agreement, and defines its main competence. The CAT monitors the implementation of the States Party’s obligations in accordance with the Convention and submits periodic monitoring reports accordingly.

With its reservations on the article, the SG rendered a key segment of the Convention ineffective and meaningless, which includes conducting relevant investigations with regard to information received by the CAT, cooperating with the concerned State to conduct field visits, and then filing confidential reports to the State with proposals to improve or change the existing situation.

Article 20 of the Convention against Torture states that:

1. If the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practiced in the territory of a State Party, the Committee shall invite that State Party to co-operate in the examination of the information and to this end to submit observations with regard to the information concerned.
2. Taking into account any observations which may have been submitted by the State Party concerned, as well as any other relevant information available to it, the Committee may, if it decides that this is warranted, designate one or more of its members to make a confidential inquiry and to report to the Committee urgently.
3. If an inquiry is made in accordance with paragraph 2 of this article, the Committee shall seek the co-operation of the State Party concerned. In agreement with that State Party, such an inquiry may include a visit to its territory.
4. After examining the findings of its member or members submitted in accordance with paragraph 2 of this article, the Commission shall transmit these findings to the State Party concerned together with any comments or suggestions which seem appropriate in view of the situation.
5. All the proceedings of the Committee referred to in paragraphs 1 to 4 of this article shall be confidential, and at all stages of the proceedings the co-operation of the State Party shall be sought. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2, the Committee may, after consultations with the State Party concerned, decide to include a summary account of the results of the proceedings in its annual report made in accordance with article 24.

Based on this reservation, it is likely that the SG had at the time intended to evade any commitment with the UN bodies, which could cause the SG future embarrassment regarding monitoring results and investigations into the torture file in Syria.

Notably, the SG had these reservations despite the cooperation and confidentiality clauses. The article necessitates that the CAT, at all stages of received information examination, cooperates with the concerned State and relies on the information and observations it

provides. This article also requires that all procedures and their results, including any visits agreed upon with the concerned international community, be confidential.

Local Decrees Conferring Legal Protection on Torture Perpetrators

Several local legislations exist that grant complete immunity from prosecution to security personnel and others who commit torture when this crime is perpetrated because of or during the security members' performance of their duties.

In addition to impunity, these laws violate the human right to life and liberty and deny the judiciary the right to consider any complaint that may be submitted against those accused of committing the crime of torture. Such legal frames include Legislative Decree No. 14 of 1969, establishing the General Intelligence Department. Article 16 of the Decree states that:

“No legal action may be taken against any employee of the Department for crimes committed while carrying out their designated duties except by an order issued by the director.”

A second decree that warrants similar impunity measures is Legislative [Decree](#) 549 of 1969, on the internal organization of the General Intelligence Department and the rules of service. Article 74 of the decree states that:

“No legal action may be taken against any State Security Department employee, those assigned or detailed to the department, or those contracted with it, for crimes incurred on the job... before referral to a department disciplinary board and before an order is obtained from the director.”

The Public Prosecution (the Judicial Authority) is generally concerned with filing and initiating a Public Interest Litigation (PIL) against the perpetrators of crimes. Therefore, the Criminal Procedure Code issued in Legislative [Decree](#) No. 112 of 1950 stipulates that the Public Prosecution is forced to file a lawsuit if the aggrieved party files a personal claim, and that is applicable regardless of the official capacity of the defendant.

Article 1 of Legislative Decree No. 112 of 1950 prescribes:

1. The public prosecutor's office is competent to initiate and conduct a Public Interest Litigation (PIL), and such litigation shall not be initiated by other entities except in the cases specified in the law.
2. Nevertheless, the public prosecutor's office is obliged to institute [PIL] if the affected party establishes him/herself as a personal claimant in accordance with the conditions specified in the law.
3. [PIL] may not be abandoned, suspended, or disrupted except in the cases specified in the law.

Accordingly, Legislative Decrees No. 14 of 1969 and No. 549 of 1969 are used to prevent the Public Prosecution from bringing a case against members of the security forces, even if the aggrieved party, the person subjected to torture, establishes himself as a personal claimant. With this, the two decrees privilege security members, violating the principle of equality before the law.

Absence of Other Forms of “Cruel, Inhuman or Degrading Treatment and Punishment”

Notably, there exists a large consistency between the definition of torture in Law No. 16 and that established in the 1984 Convention against Torture:

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984	Anti-Torture Law No. 16 of 2022 Syria
For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.	For the application purposes of this law, torture means any action or inaction by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him/her or a third person information or a confession, punishing him/her for an act he/she has committed or is suspected of having committed, or intimidating or coercing him/her, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It also includes acts carried out by an individual or a group for personal, material, and political ends, or with the intent of revenge or retaliation.

However, Law No. 16 of 2022 ignored other related acts, which are essential to the Convention against Torture and are labeled as other forms of "cruel, inhuman or degrading treatment or punishment." Several widespread activities in Syria fall under these labels, including humiliation, insults, "light beating", and conditions of detention. Many such acts will remain unpunishable because the new law does not legally criminalize them, nor provide specific definitions to address them.

Therefore, even though Article 16 of the Convention against Torture explicitly states that all of its provisions apply to practices that do not meet the definition of the crime of torture, but amount to cruel, inhuman, or degrading treatment or punishment, Law No. 16 does not ground these violations. This offers room for perpetrating these practices with impunity, justifying these acts by their exclusion from the definition of torture.

Conclusion

It has been established that Syrian security services use torture as a policy, underlaid with patterns aiming at silencing SG critics and opponents, as well as a means to intimidate those who consider following in the steps of SG opponents. Therefore, if the SG does act to change its mentality and the way it manages issues of human rights and fundamental freedoms, all the steps it takes will remain incomplete. Establishing these rights and freedoms in legal texts and the constitution will continue to be insufficient unless measures are made to guarantee they are observed in practice.

It is inconsistent to criminalize torture and simultaneously provide a climate that fosters impunity for those accused of committing the crime of torture, including the two decrees cited above, which protect several SG agents, among them security and police personnel.

It is also inconsistent that Syria ratified the Convention against Torture while maintaining reservations about the CAT duties, especially since the CAT activities revolve around receiving complaints related to cases of torture and monitoring the extent to which States Party comply with their obligations under the Convention.

If the SG is serious about abandoning the method of torture and degrading treatment in its prisons, holding perpetrators accountable, and willing to be a State governed by the rule of law and institutions, the SG must:

- Repeal legislation that bans accountability efforts against security and police personnel for the crimes they commit.
- Rescind its reservation regarding the work of the CAT, established under the Convention against Torture.
- Release all prisoners of conscience, missing and forcibly disappeared persons, and conduct serious investigations regarding cases of extrajudicial killings and deaths under torture.
- Abolish exceptional courts (Military Field Courts and the Anti-Terrorism Court, which replaced the Supreme State Security Court) and prohibit their establishment in the future, in addition to putting various necessary measures in place, which discussion is beyond the space of this report.

In light of this analysis and the cautious optimism engulfing the law, one of the most essential questions remains, will the SG use Law No. 16 to legalize impunity for crimes of torture committed before the date of its adoption, based on the well-established legal principle of non-retroactivity?

Additionally, and related to the SG's commitment to its international obligations, another controversial question still requires an answer. Will the SG send periodic reports on torture to concerned international bodies about violations that may occur, whether on a date prior to the law's issuance or subsequent to it? This question is of great importance, especially because Syria has not submitted to the CAT any due reports.

After the only, and initial, report the SG filed upon acceding to the Convention against Torture, the SG has not sent any of the obligatory periodic reports, nor has it responded to the CAT's call to submit a special report and answer specific questions related to the provisions of the Convention under the changing circumstances in Syria and the frequent reports documenting systematic torture in the country.



About Us:

Syrians for Truth and Justice (STJ) is a nonprofit, nongovernmental organization monitoring human rights violations in Syria. Founded in 2015, STJ has been based in France since 2019.

STJ is an impartial and independent Syrian human rights organization operating across Syria. Our network of field researchers monitor and report human rights violations occurring on the ground in Syria, while our international team of human rights experts, lawyers, and journalists gather evidence, examine emerging patterns of violations, and analyze how violations break domestic Syrian and international law.

We are committed to documenting violations of human rights committed by all parties in the Syrian conflict and elevating the voices of all Syrians victimized by human rights violations, regardless of their ethnicity, religion, political affiliation, class, and/or gender. Our commitment to human rights monitoring is founded on the idea that professional human rights documentation meeting international standards is the first step to uncovering the truth and achieving justice in Syria.



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