SLDP
Syrian Legal Development Programme
البرنامج السوري للتطوير القانوني

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# FALSE FACTS

# NOT FACTS

A critical legal study of the national report submitted by the Syrian Arab Republic in the third cycle of the universal periodic review in 2022

(Original: Arabic)

# Fallacies not Facts

**A critical legal study of the national report submitted by the Syrian Arab Republic in the third cycle of the universal periodic review in 2022**

(Original: Arabic)

## The Study is conducted by:

**The Syrian Legal Development Programme (SLDP):** A non-aligned and non-governmental organization. It was established in 2013- registered in the UK in 2014 – to respond to complex human rights matters triggered by the Syrian conflict that erupted in 2011. It works through the utilization of international law.

SLDP has a highly qualified team of Syrian and international researchers and analysts in various aspects of international law, who enjoys a unique skill set and a comprehensive understanding of the Syrian political and strategic dynamics at the local, regional, and international levels with strong access to the ground and policymakers.

SLDP's multilingual law specialists and qualified lawyers have acquired, through years of academic and practical experiences, unique analytical skills and awareness of the Syrian context and the conflict's consequences. SLDP has positioned itself as a principal legal organization to which other Syrian civil society organizations could refer to obtain expert review and guidance on international law issues arising from the Syrian context. We have contributed to the training of many actors working within the Syrian justice and accountability system and built and enhanced their abilities to participate in the present and future justice and accountability initiatives that focus on international law and its utilization in documentation, advocacy, and direct engagement with different actors.

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## Under the coordination of:

**We Exist:** An Alliance of Syrian Civil Society organizations, supported by international partners, working together to ensure the role of Syrian Civil Society is present and central to any thinking and planning on Syria. The We Exist alliance challenges the marginalization of Syrian voices in all spheres and ensures that Syrian Civil Society voices from inside Syria and outside are heard. To achieve this, We Exist organizes and coordinates public campaigns, participates in advocacy opportunities, works closely with the media, and coordinates lobbying that targets policymakers in Europe.

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## Intellectual Property Rights



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| # | The Name of the Entity in English | The Name of the Entity in Arabic |
|---|---|---|
| 1 | American Coalition for Syria | التحالف الأمريكي من أجل سورية |
| 2 | The White Helmets | الخوذ البيضاء |
| 3 | The Syrian Expatriate Doctors Association (SEMA) | الرابطة الطبية للمغتربين السوريين |
| 4 | Syrian Network for Human Rights (SNHR) | الشبكة السورية لحقوق الإنسان |
| 5 | Justice for Life (JFL) | العدالة من أجل الحياة |
| 6 | Justice and Sustainable Development | العدالة والتنمية المستدامة |
| 7 | Syrian Center for Policy Research (SCPR) | المركز السوري لبحوث السياسات |
| 8 | The Syrian Forum (USA) | المنتدى السوري (الولايات المتحدة) |
| 9 | The Day After (TDA) | اليوم التالي |
| 10 | Urnammu for Justice & Human Rights | أورنامو للعدالة وحقوق الانسان |
| 11 | Basmeh & Zeitooneh for Relief and Development | بسمة وزيتونة للإغاثة والتنمية |
| 12 | Baytna | بيتنا |
| 13 | The Coalition of Families of Persons kidnapped by ISIS (MASSAR) | تحالف أسر الأشخاص المختطفين لدى تنظيم الدولة الإسلامية (مسار) |
| 14 | Ta'afi | تعافي |
| 15 | Jana Watan | جنى وطن |
| 16 | Release Me | حررني |
| 17 | Dawlaty | دولتي |
| 18 | Free Syrian Lawyers Association (FSLA) | رابطة المحامين السوريين الأحرار |
| 19 | Caesar Families Association | رابطة عائلات قيصر |
| 20 | Syrians for Truth and Justice | سوريون من أجل الحقيقة والعدالة |
| 21 | The Syrian Women's Network | شبكة المرأة السورية |
| 22 | Hurras Network | شبكة حراس |
| 23 | Families for Freedom | عائلات من أجل الحرية |
| 24 | Lamsat Ward | لمسة ورد |
| 25 | Lawyers and Doctors for Human Rights (LDHR) | محامون وأطباء من أجل حقوق الإنسان |
| 26 | The Cairo Institute for Human Rights Studies (CIHRS) | مركز القاهرة لدراسات حقوق الإنسان |
| 27 | Center for Civil Society and Democracy (CCSD) | مركز المجتمع المدني والديمقراطية |
| 28 | ASO Center for Consultancy and Strategic Studies | مركز آسو للدراسات و الاستشارات الاستراتيجية |
| 29 | Amal Healing and Advocacy Center | مركز أمل للمناصرة والتعافي |
| 30 | Access Center for Human Rights (ACHR) | مركز وصول لحقوق الإنسان |
| 31 | The Tahrir Institute for Middle East Policy (TIMEP) | معهد التحرير لسياسات الشرق الأوسط |
| 32 | Local Development & Small-Projects Support (LD-SPS) | مكتب التنمية المحلية ودعم المشاريع الصغيرة |
| 33 | Start Point | نقطة بداية |

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# Executive Summary

## Overview of the study:

On 28th of January 2022, Syria's session of the Universal Periodic Review UPR was held before the Human Rights Council as part of the third cycle of the review. In this session, the Syrian government submitted its national report in addition to the compilation report submitted by the Office of the High Commissioner for Human Rights and the summary of stakeholders' submissions. On 30th of June 2022, the final outcomes of the reports of this round were adopted. The session was concluded with a reference from the Syrian government to the progress made by Syria in protecting human rights despite facing exceptional external challenges. According to the Syrian government, these challenges consist in the existence of the Israeli, Turkish and American occupation, the unilateral coercive measures imposed on Syria, the presence of externally supported armed terrorist groups in some areas of the country, and the politicization of humanitarian action under pressure from donor countries. In addition to that, the Syrian government, through its report and national plans attached to it, imposed its vision for a post-conflict Syria.

This argument presented by the Syrian government in the Universal Periodic Review cannot be isolated from the broader scene of the arrangements that the government is undertaking before the international community. It has become noticeable recently that the Syrian government is deliberately repositioning itself in the international scene as the victorious, tolerant, and cooperative party that seeks the full realization of human rights in the country under long-term strategic plans and new legislations for post-war Syria, but it is subject to external pressure impedes it from achieving that.

Here is the significance of this critical legal study; it is trying objectively to refute the government's argument based on the obligations of international law and the proven and documented context at the international level of the ongoing violations in Syria. This critical legal study argues that the Syrian government has relied on providing erroneous information and neglecting the whole aspects of the truth of the human rights situation in Syria - leading to an unrealistic portrayal of the state for the human rights situation in the country. This study also argues that there is **a vicious cycle of legislative and judicial violations that are in no way related to the external challenges that the Syrian government has indicated, such as violations of judicial guarantees, enforced disappearance, torture and ill treatment, as well as summary executions and persisting impunity. This indicates that the post-conflict phase that the Syrian government is promoting is nothing else but a victory announcement and an attempt to impose the government model of "justice" over the justice path, ignoring all the previous violations and forcing the victims to reconcile and reform to prevent the reoccurrence of the violations perpetrated by the government.**

This study was prepared by Syrian lawyers who have been practicing the legal profession in Syrian courts and who are specialists in international law. This was to provide a critical reading for the national report from the perspective of domestic law and its practical applications in comparison with Syria's international obligations and the general context of the reality of human rights in Syria. This study presents its legal argument after the introduction through two main sections. The first section clarifies a set of fallacies contained in the national report submitted by the Syrian government, paving the way for entering into the details of the second section, which details the vicious circle of legislative and judicial violations for which the Syrian state bears responsibility. This cycle of violations will be addressed in the second section of the report within six main subheadings that will handle violations of; arbitrary detention, impunity and fair trial, enforced disappearance, torture and ill treatment, summary executions, and amnesty for perpetrators. Each subheading will review what the Syrian government has mentioned in its national report and critically analyze it relying on the national and international legal framework and assessing its implementation in the context of the human rights reality in the country.

## Challenges that face full implementation of respect, protection, and fulfillment of human rights obligations in Syria

The Syrian government claims in its national report that it is taking all necessary measures to improve the human rights situation in the country, but these efforts are disrupted by external challenges only, such as unilateral coercive measures and the occupation of some areas of the region. By presenting that, the Syrian government is trying to undermine the fact that the state is primarily responsible for ensuring respect, protection and full realization of human rights on its territory. Actually, the process of attributing the deteriorating reality of human rights in the country to external challenges is nothing more than a repudiation of the state's responsibility, which is regulated by international law. Thus, the full responsibility of the state for the effective implementation of human rights in the country must not be disregarded, and the focus should not be limited only to the external challenges indicated by the Syrian government.

Additionally, the Syrian government is trying to conceal all the violations committed by its various agencies which are not related at all to these challenges. For instance, the presence of occupying powers on some state territories or external sanctions do not justify acts of torture, ill-treatment, enforced disappearances, summary executions, and unfair trials. This is clear in the national report submitted by the Syrian government, which contained some false information and a lot of information that evaded a full understanding of human rights concerns in Syria. This could draw the attention of the international community to the reality of the massive human rights violations practiced by state agencies in the country. At the same time, this false information raises doubts about many of the information provided by the Syrian government in the report in the first place, especially when the state's practices prevent independent observers from verifying this information, such the information related to the number of cases that are currently presented in front of the courts against the State officials and the number of the individuals released.

## Post-war Syria?

Within its national report, Syria presented a set of development plans, the most prominent of which was the National Development Program for Syria in the Post-War Phase, which is the strategic plan prepared by the government up to 2030. The plan presents the future government's vision for Syria as a country of stability, tolerance, coexistence, democracy, human rights, rule of law, economic well-being and social justice,[1] while completely forgetting about the reality of human rights violations which are rooted in state practices, legislation and judicial system. Consequently, the government has endeavored with its plans to divert the eyes of the international community to future promises, ignoring the past and present of the massive human rights violations in the country and its victims.

> The argument that Syria has now entered a post-conflict phase is inappropriate to assess the current human rights reality in Syria. Indeed, despite the decrease in the frequency of hostilities, the continuation of the systematic and widespread violations against Syrian communities will only lead to a return to pre-2011 Syria. This scenario will firmly consolidate the exact root causes that led to the Syrian revolution and the subsequent conflict; it will be based on ignoring everything that happened during a decade of ongoing international crimes against civilians. Accordingly, no opportunity for transitional justice will ever come to light as long as the root causes of the violations are not addressed and Syrian victims are prevented from realizing their rights to truth, justice, reparation and guarantees of non-recurrence.

**A vicious cycle of legislative and judicial violations within the general context of widespread and systematic violations of human rights in Syria.**

The Syrian government abdicates its responsibilities to respect and protect human rights and to ensure their full realization. It attributes this failure to external challenges only, ignoring the existence of a vicious and continuous cycle of violations that amount to a systematic policy enshrined in the law, the practices of the judiciary and the various state organs. This cycle begins with arbitrary arrests and detentions on vague charges and vague legal texts and continues to include the presentation of the accused before non-independent and biased judicial bodies. This is in addition to providing an impenetrable wall to prosecute alleged criminals from the state agents, investigate their actions and refer them to an independent judiciary. All this places victims in a state of complete denial of their rights to justice, effective remedy and reparation. Moreover, it even puts the victims into a metaphorical confrontation with the President of the Republic, who alone decides whether to grant them amnesty and lift the immunities of state agents.

> The cycle of violations doesn't end here, but local legislation ensures its continuation due to the lack of effective legal texts that criminalize and punish acts that can be committed by state agents with penalties appropriate to their gravity, such as arbitrary detention, enforced disappearance, torture and ill treatment. Moreover, these legislative texts and judicial practices do not genuinely protect people from being victims of summary executions before non-independent judicial bodies on vague charges.

1 - Annexes to the national report of the Syrian Arab Republic to third cycle of the Universal Periodic review, Annex 3, p 93. available at: https://lib.ohchr.org/HRBodies/UPR/Documents/Session40/SY/A_HRC_WG.6_WG.6_40_SYR_1_Syrian Arab Republic_Annexes_AE.pdf.

Syrian legislations, especially Legislative Decree No. 55/2011, legalizes the extension of the period of pre-trial detention for a period of 60 days based on the approval of the defendant's opponent who is the Public Prosecutor. This is particularly true when it comes to state security charges that are ambiguous in texts, and their material and moral elements cannot be objectively determined. Additionally, the Syrian Penal Code is also lax in protecting against arbitrary detention and does not state on penalties that can be commensurate with its gravity. Therefore, the Syrian government's compliance with its international obligations must be scrutinized in terms of providing legal and procedural guarantees in the legal text and in the actual practice of arrests carried out by its agencies before being brought before the judiciary.

The state's continued reluctance to prosecute members of its organs jeopardizes victims' right to an effective remedy, comprehensive reparation, and the guarantees of non-repetition of these same acts since the alleged perpetrators are not prosecuted before an independent and impartial judiciary. Consequently, believing what the Syrian government has indicated regarding bringing its members before the judiciary is nothing but an omission of the reality of this non-independent judiciary and the many obstacles placed in the way of prosecuting these agents and investigating the alleged crimes.

The analogy presented by the Syrian government between the crimes of enforced disappearance, kidnapping and deprivation of liberty is not only legally inaccurate, but also perpetuates the violation of the victims' rights to have real access to comprehensive reparation. This comes in light of rendering the state agents immune from legal prosecutions and investigating the acts of enforced disappearance they commit and punishing them with penalties commensurate with the seriousness of these acts. Also, the national mechanism referred to by the Syrian government cannot be isolated from the general context of the situation of enforced disappearance in the country. As the state's overt refusal to criminalize enforced disappearance as an independent crime, its reluctance to join the International Convention for the Protection of All Persons from Enforced Disappearance, its failure to cooperate with the Working Group on Enforced and Involuntary Disappearances, its refusal to disclose lists of names of detainees in security branches, its issuance of death notifications after several years with the names of some of the disappeared, the failure to hand over the bodies to their families or reveal the cause of their death, the complexity of remedies for victims and the provision of immunity to perpetrators, all of this is an indication of the government's lack of sincere intention to reveal the fate of the missing. Moreover, this mechanism does not enjoy any form of independence, clarity, effectiveness and comprehensiveness, and therefore it is not trustworthy for the families of the missing who would already be afraid of reviewing state agencies to ask about their loved ones (as will be discussed more below). Thus, it is definite that this mechanism cannot be relied upon to reduce the crime of enforced disappearance and to guarantee the victims' right to truth, access to information, effective remedy and non-repetition. Therefore, continuing advocacy efforts to criminalize enforced disappearance as a separate crime, acceding to the International Convention for the Protection of All Persons from Enforced Disappearance and establishing an international tracing mechanism are of paramount importance for the protection of victims and their families.

The legislations referred to by the Syrian government in its report is insufficient to criminalize torture and ill-treatment and to punish them in a manner that commensurate with their gravity. In addition, the immunities granted by domestic legislation to perpetrators of such acts from state elements will not allow any guarantee of victims' rights to comprehensive reparation and effective remedy. Additionally, the new law of criminalizing torture that Syria issued after submitting its national report does not effectively lead to overcoming the aforementioned obsta-

cles, especially with victims of torture in the previous ten years. Therefore, the continued demand for the lifting of immunities from state agents, the accountability of alleged perpetrators of torture and ill-treatment, not granting them any amnesty, the suspension of the statute of limitations for their actions, and the inclusion of clear provisions criminalizing acts of ill-treatment in the new law is one of the effective legal steps in order to ensure effective redress for victims and non-repetition.

The existence of death penalty in a wide range of domestic legislation, and the state's repeated refusal to abolish this punishment and its excessive use in the military field court by summary procedures confirms the state's intention to use the execution as a tool to get rid of its opponents as part of the entire cycle of human rights violations by state agencies. Consequently, the procedures for implementing this punishment should not be discussed in isolation from the broader understanding of the context of human rights violations in Syria, and the demands for the abolition of the exceptional judiciary, which does not guarantee any form of fair trial and deviates from due process, must also be continued.

Syria's amnesty laws do not guarantee that people will not be detained again arbitrarily, tortured in detention centers, or forcibly disappeared. This is because at the time when any amnesty may result in releasing some detainees, it grants amnesty for the perpetrators under the same law. Moreover, the amnesty laws cover part of the crimes and keep another part of vague charges pending before non-independent judicial bodies that do not guarantee fair trial measures. Therefore, any amnesty decree should not be seen as a tolerant approach that contributes to the release of detainees and the disclosure of the fate of the missing, but rather it should be studied from all its dimensions that could harm the rights of the victims more than benefiting them.

Finally, this study seeks to emphasize that this cycle of legislative and judicial violations has become entrenched in legislation, the court system, and the practices of state agencies. It is not possible in any way to address one aspect of this cycle without addressing the rest, because this cycle of violations feeds each other and ensures the continuation of a coherent system of human rights violations. Therefore, any attempt or promises to address one aspect of this cycle is an unrealistic promise, because the rest of the aspects will ensure the continuation and recurrence of these violations.

# Introduction:

1. Within the context of the third cycle of the Universal Periodic Review, the Syrian Arab Republic submitted its national report. This report provided a picture of the most important developments that the government worked on in the field of respecting, protecting and fulfilling its international human rights obligations between 2017 and 2021.[2] The Syrian Arab Republic also attached 16 documents to the national report, the most prominent of which was the National Development Program for Syria in the Post-War Phase (the Strategic Plan for Syria until 2030). It is a long plan that clarifies the Syrian government's vision for a country where the rule of law and the principles of democracy and human rights are firmly established,[3] as well as a set of reform plans aimed at supporting and empowering women[4] , promoting gender equality[5] and dealing with child victims of recruitment.[6]

2. It is worth noting that within the national report and the reform plans attached to it, the Syrian government suggests to the international community that Syria has now entered a post-conflict phase while depicting a bright picture of the human rights situation in the country. It argues that Syria is fulfilling its international obligations and it is cooperating with the international community and United Nations mechanisms.[7] The report also indicates the steps taken at the domestic level to enhance judicial guarantees and the situation inside prisons and detention conditions. This is accompanied by information on how Syria is prosecuting the alleged perpetrators and fighting impunity, especially those guilty of international crimes such as torture and enforced disappearance, while adopting a tolerant approach within the framework of national reconciliation agreements with those "whose hands are not stained with blood". The report also emphasized the state's efforts to enhance the protection of civilians, especially women, children, displaced people, medical teams, and civilian infrastructure from indiscriminate targeting or attacks.[8] However, this bright picture is clouded by the main challenges facing the Syrian government

2 - UNGA, Human Rights Council, National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1, Syrian Arab Republic, 17 November 2021, UN Doc A/HRC/WG.6/40/SYR/1, para 3.

3 - Annexes to the national report of the Syrian Arab Republic to third cycle of the Universal Periodic review, Annex 3, p 25. available at: https://lib.ohchr.org/HRBodies/UPR/Documents/Session40/SY/A_HRC_WG.6_WG.6_40_SYR_1_Syrian Arab Republic_Annexes_AE.pdf.

4 - Annexes to the national report of the Syrian Arab Republic to third cycle of the Universal Periodic review, Annex 10. available at: https://lib.ohchr.org/HRBodies/UPR/Documents/Session40/SY/A_HRC_WG.6_WG.6_40_SYR_1_Syrian Arab Republic_Annexes_AE.pdf.

5 - Annexes to the national report of the Syrian Arab Republic to third cycle of the Universal Periodic review, Annex 11. available at: https://lib.ohchr.org/HRBodies/UPR/Documents/Session40/SY/A_HRC_WG.6_WG.6_40_SYR_1_Syrian Arab Republic_Annexes_AE.pdf.

6 - Annexes to the national report of the Syrian Arab Republic to third cycle of the Universal Periodic review, Annex 14. available at: https://lib.ohchr.org/HRBodies/UPR/Documents/Session40/SY/A_HRC_WG.6_WG.6_40_SYR_1_Syrian Arab Republic_Annexes_AE.pdf.

7 - UNGA, Human Rights Council, National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1, Syrian Arab Republic, 17 November 2021, UN Doc A/HRC/WG.6/40/SYR/1, s 3.

8 - UNGA, Human Rights Council, National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1, Syrian Arab Republic, 17 November 2021, UN Doc A/HRC/WG.6/40/SYR/1, s 4.

to improve human rights in Syria. These challenges are external only, and include the Israeli, Turkish and American occupation, the unilateral coercive measures imposed on Syria, the presence of externally supported armed terrorist groups in some areas of the country, and the politicization of humanitarian aid under pressure from donor countries.[9]

3. This study seeks to present a different and objective legal perspective to the information presented by Syria in its national report. For this purpose, this study finds that the Syrian government has relied on stating facts and details that are erroneous and has neglected the whole aspects of the truth, leading to an unrealistic portrayal of the human rights situation in Syria. This study also argues that there is a systematic and widespread cycle of legislative and judicial violations that are in no way related to the external challenges that the Syrian government has indicated, such as violations of judicial guarantees and protections against enforced disappearance, torture and ill-treatment as well as summary executions and persisting impunity. This critical analysis of the information provided by Syria calls for considering the "post-war" phase that the Syrian government is promoting as a victory announcement and an additional attempt to impose control over the justice path while ignoring a decade of continuing human rights violations.

## 1. Fallacies not facts:

4. The research team of lawyers noted that some of the information contained in the Syrian government's national report is erroneous. For example, the national report referred to Article No. 216 of the Military Penal Code as an article criminalizing acts of torture in all its forms.[10] However, the Military Penal Code contains only 172 articles, and Article No. 216 does not exist.[11] If this was a typographical error, and the Syrian government intended in its report Article 116 instead of Article 216, then the aforementioned article criminalizes only acts of severity and threats by the military against superiors and their guards.[12] Knowing that acts of torture are expected to be committed under the command and supervision of those in a higher rank against their subordinates, and not the other way around.

5. The report also referred to the issuance of twenty amnesty laws between 2011 and 2020[13]. But in fact, during this period, 17 amnesty laws were issued, and three laws were issued to extend the effectivity of previous amnesty laws. [14] These numerical details may not be of great importance at first glance, but the

9 - UNGA, Human Rights Council, National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1, Syrian Arab Republic, 17 November 2021, UN Doc A/HRC/WG.6/40/SYR/1, p 98.

10 - UNGA, Human Rights Council, National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1, Syrian Arab Republic, 17 November 2021, UN Doc A/HRC/WG.6/40/SYR/1, para 45.

11 - Military Penal Code and Procedures No. 61 1950. Available in Arabic here.

12 - Military Penal Code and Procedures No. 61 1950, art 116. The Military penal only prohibits the use of "severity or threat" against superiors and their guards but not against subordinates, according to article 116.

13 - UNGA, Human Rights Council, National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1, Syrian Arab Republic, 17 November 2021, UN Doc A/HRC/WG.6/40/SYR/1, p 43.

14 - The amnesty laws between 07.03.2011 and 30.04.2022 are (without the extension laws) No.34 of 2011, No.61 of 2011, No.72 of 2011, No.124 of 2011, No.10 of 2012, No.30 of 2012, No.71 of 2012, No. 23 of 2013, No.70 of 2013, No.22 of 2014, No.4 of 2015, No.32 of 2015, No.8 of 2016, No 15 of 2016, No.18 of 2018, No.20 of 2019, No. 6 of 2020, No.1 of 2021, No.13 of 2021, No.3 of 2022, No. 7 of 2022.

Syrian government's lack of accuracy in simple numbers such as the numbers of legal articles or combining the numbers of the amnesty laws with the numbers of laws that extend their effects only raises doubts about the intention of the Syrian government to provide reliable and detailed information when asked to do so.

6. In addition, the research team of lawyers noted that the national report by the Syrian government presents a set of facts that show an incomplete side of the truth, therefore providing an inaccurate picture of the human rights situation in the country. For example, the national report indicated that the Syrian government cooperates with United Nations mechanisms, such as the Special Rapporteur on Unilateral Coercive Measures, the Special Rapporteur on Water, the Working Group on Mercenaries, the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and others of the Arab population in the occupied territories; as well as cooperating with treaty-based bodies and submitting periodic reports thereon.[15] However, the report did not mention the other side, which is that the Special Procedures of the Human Rights Council sent 53 communications to Syria between January 2011 and December 2021, and Syria responded only to 15 communications from them.[16] Interestingly, the responses to these communications were either very brief and did not accurately answer the questions of the Special Procedures mandate holders,[17] or were aimed at placing the responsibility for such violations on Non-State Armed Groups or other states.[18] Additionally, a number of Special Rapporteurs have requested to visit Syria several times, but the Syrian government has not responded to them, such as the Special Rapporteur on Extra-judicial Executions, the Working Group on Arbitrary Detention and the Working Group on Enforced or Involuntary Disappearances.[19] This is accompanied by a huge delay in submitting the periodic reports to the most prominent treaty-based bodies. An example of this is the twelve years delay in submitting the periodic report to the Human Rights Committee, and the eight years delay to the Committee against Torture. The same applies to the periodic report to the Committee on Economic, Social and Cultural Rights which has been due since 2006, and the initial report to the Committee on the Rights of Persons with Disabilities, which has been due since 2011.[20]

7. In another example, the Syrian government referred to "a body of laws and decrees have been enacted in response to the rightful demands of citizens, including laws on political parties, the media, peaceful demonstrations and general elections. A law was issued dissolving the Supreme State Security Court as well as a decree lifting the state of emergency. These were followed in 2012 by the adoption of a new constitution for the country, one rooted in political pluralism and the repeal of article 8."[21] Although this happened, the report neglected that these developments were inefficient due to the issuance of other legislations obstructing that.

15 - UNGA, Human Rights Council, National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1, Syrian Arab Republic, 17 November 2021, UN Doc A/HRC/WG.6/40/SYR/1, para 15.

16 - See, the OHCHR Database on Special Procedures Communication, available at: https://spcommreports.ohchr.org/Tmsearch/TMDocuments

17 - See for example, the response of Permanent Mission of Syria to the joint urgent appeal SYR 2/2014, available here; See also, the response of Permanent Mission of Syria to the joint allegation letter SYR 5/2014, available here.

18 - See for example, the response of Permanent Mission of Syria to the joint urgent appeal SYR 1/2015, available here; see also, the response of Permanent Mission of Syria to the joint allegation letter SYR 1/2021, available here.

19 - See the OHCHR Database on Special Procedures Country visits, available at: https://spinternet.ohchr.org/ViewCountryVisits.aspx?visitType=all&lang=en

20 - See the UN Treaty Bodies Database, available at: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx?CountryCode=SYR&Lang=EN

21 - UNGA, Human Rights Council, National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1, Syrian Arab Republic, 17 November 2021, UN Doc A/HRC/WG.6/40/SYR/1, para 16.

8. It is true that the state of emergency in Syria was lifted by Legislative Decree 161 of 2011 and the Supreme State Security Court was abolished by Legislative Decree 53 of 2011.[22] However, in the middle of the year following these decrees, the Counter-Terrorism Law No. 19 of 2012 was issued and a specialized court was established to try individuals guilty of terrorism crimes, opening therefore the door to the application of broad and vague charges against the state's political opponents and their trial before a court that does not respect the basic guarantees of a fair trial (as will be discussed more below). Moreover, the lifting of the state of emergency in Syria also coincided with granting greater powers to the Syrian security sectors in relation to their ability in investigating crimes against state security, as well as collecting their evidence, interrogating suspects, entering their homes, and arresting them for a period of sixty days.[23] Accordingly, it can be said that the emergency powers have been nominally abolished, but have been legislated and normalized in ordinary laws, and the executive branch has become able to use this extraordinary power in ordinary circumstances.

## 2. A vicious cycle of legislative and judicial violations of human rights

9. States have an obligation under International Human Rights Law to ensure that these rights are respected and protected for all within their territory. This requires the country not only to refrain from violating the rights, but also to take all necessary measures to provide protection against the occurrence of this violation. This is in addition to conducting prompt and impartial investigations when they occur, prosecuting the perpetrators and holding them accountable, providing the victims with a comprehensive reparation that guarantees the restoration of their rights, compensation and satisfaction, and ensuring that this violation is not repeated. To this end, the state must ensure that all necessary legislative, executive and judicial guarantees are in place to ensure the protection and fulfillment of human rights, as well as to refrain from committing violations.[24]

10. It is notable in the national report submitted by the Syrian government that the reality of human rights violations is hidden behind the guise of domestic legal frameworks. However, this study confirms that the law can only be accurately understood in the context in which it is applied. The law itself can be a sword in the hands of the executioner rather than being fair to the victim. Accordingly, it must be emphasized that the reports prepared by local and regional organizations, the reports of the Independent International Commission of Inquiry on the Syrian Arab Republic (hereinafter the CoI) and other international and local human rights reports prepared during a whole decade indicate the presence of thousands of Syrians who have been subjected to a wide range of human rights violations. These violations include arbitrary arrest, enforced disappearance, torture, inhuman treatment, summary or extra-judicial executions, and

22 - Legislative Decree No. 161 on Lifting the State of Emergency 2011; Legislative Decree No. 53 on Abolishing the Supreme State Security Court 2011.

23 - Legislative Decree No. 55 of 2011 on Amending the Criminal Procedure Code, available here in Arabic; Legislative Decree No. 109 of 2011.

24 - Human Rights Committee, General Comment No. 31, May 2004, CCPR/C/21/Rev.1/Add. 13, para 6-8.; See also, Ilias Bantekas and Lutz Oette, International Human Rights Law and Practice (3rd edn, CUP 2020), 79-80.

presentation before unjust courts.[25] This general context, which confirms the presence of widespread and systematic policies of gross violations of human rights that amount to crimes against humanity, must not be separated from the applicable legal framework, otherwise, the abstract view of the texts of domestic and international law will be deficient in understanding the actual reality. However, this study will show how the same national law behind which the state hides is also deficient and does not meet the relevant international obligations.

11. It is true that Syria has indicated in its national report that it has enhanced the institutional framework for human rights to ensure the fulfillment of its commitments, such as issuing new laws, for instance the Child Rights Law, twenty amnesty laws, as well as a set of laws and decisions that facilitate the return of refugees. This is in addition to the states' claim to strengthen the role of the judiciary, licensing new political parties, and establishing national committees to protect human rights and ensure the proper application of International Humanitarian Law. In addition, there has been a set of promising reform plans for post-war Syria.[26] However, all of these measures in no way constitute a solution to the core human rights violations in Syria. There are still fundamental legal and judicial issues that the national report did not address, such as the details of guarantees of judicial independence and genuine protection from torture, enforced disappearances, and summary executions. The absence of these guarantees constitutes a vicious cycle of legislative and judicial violations of human rights in Syria, which makes no sense in entering Syria in the post-conflict phase as long as these violations exist. In addition, these legislative and judicial problems violate a set of non-derogable rights in international law. Thus, alleging with the existence of unilateral coercive measures, occupying forces or terrorist groups cannot in any way be mitigating circumstances for the Syrian government not to fulfill these obligations and safeguard the rights associated with them.

25 - See, UNGA, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic (Feb 2022), UN Doc A/HRC/49/77; Amnesty International, 'It Breaks the Human: Torture, Disease and Death in Syria's Prisons' (2016) MDE 24/4508/2016; Amnesty International, Human slaughterhouse: Mass hangings and extermination at Saydnaya Prison, Syria, Index Number: MDE 24/5415/2017, (Feb 2017); Hanny Megally and Elena Naughton, 'Gone Without a Trace: Syria's Detained, Abducted, and Forcibly Disappeared' (ICTJ 2020).

26 - UNGA, Human Rights Council, National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1, Syrian Arab Republic, 17 November 2021, UN Doc A/HRC/WG.6/40/SYR/1, para 34 and Annex 3.

## 2.1 Legalizing arbitrary detention

12. The cycle of violations that this study refers to begins with the arrests carried out by state agencies. As the report of the CoI issued in March 2021 indicates that arbitrary detentions and the accompanying violations during the period of detention were committed by all parties, especially the Syrian government, as a form of systematic policy that it is impossible to claim that it happened without the awareness of the competent chain of command. Arbitrary detention was carried out in various forms, such as mass arrests of demonstrators and during military operations as well as detention at borders and checkpoints. Arbitrary arrests have included human rights defenders, males of military service age, humanitarian workers, relatives of wanted individuals and other opponents of the state, women, men, girls and boys.[27]

13. In this regard, Article 9 of the International Covenant on Civil and Political Rights (hereinafter ICCPR) affirms that all persons who are arrested or detained on a criminal charge must be brought promptly before a judge or other official authorized by law to exercise judicial functions. The Human Rights Committee has emphasized in this regard that the Public Prosecutor cannot be considered an official person who is authorized to exercise judicial power, as they are a party to the litigation. Moreover, the Committee considers that the period of pretrial detention should not exceed a few days, and that the period of forty-eight hours is usually sufficient to transport an individual and prepare for a court hearing, and everything beyond that must be in extreme exceptional cases and be justified.[28] These exceptional justifications must be provided by the state on a case-by-case basis and in accordance with and without prejudice to the essence of Article 9 of the ICCPR and its guarantees to the detainee, such as providing a legal representative and giving them the opportunity to challenge the legality of their detention without delay before a competent court and to obtain appropriate compensation in the event of their unlawful arrest.[29] All this is not achieved in the Syrian context, as will be explained below.

14. The national report of the Syrian government states that "no one may be investigated or arrested except by order or decision of the competent court, unless arrested in flagrante delicto or detained to be brought before the judicial authorities on charges of having committed a more or less serious offence. All arrested persons must be informed of the reasons for their arrest and of their rights. No one may be held in custody by the administrative authorities except by order of the competent court.[30] The Syrian Penal Code also punishes any official who arrests or imprisons a person in cases other than those stipulated by law with temporary imprisonment. The law also punishes with jail every official of the directors and guards

27 - UNGA, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic (March 2021), UN Doc A/HRC/46/55, para 1-3, 14-15.

28 - Human Rights Committee, General Comment No. 35, Article 9 (Liberty and security of person), December 2014, CCPR/C/GC/35, para 32-33.

29 - International Covenant on Civil and Political Rights 1966 (UNTS vol 999, p 171), art 9 (4,5); Human Rights Committee, Kovsh v. Belarus, Communication No. 1787/2008, UN Doc CCPR/C/107/D/1787/2008, Views adopted on March 2013, paras. 7.3–7.5; Human Rights Committee, Borisenko v. Hungary, Communication No. 852/1999, UN Doc CCPR/C/76/D/852/1999, Views adopted on October 2002, para. 7.4; Basic Principles on the Role of Lawyers, UN Doc A/CONF.144/28/Rev.1 at 118 (1990), principle 7.

30 - UNGA, Human Rights Council, National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1, Syrian Arab Republic, 17 November 2021, UN Doc A/HRC/WG.6/40/SYR/1, para 39.

of prisons, disciplinary institutes or correctional institutions, and anyone who assumes their powers, if they accept a person without a judicial warrant or judicial decision or retains them beyond the specified period.[31]

15. The general principles in the Code of Criminal Procedure indicate that the investigative judiciary may summon the defendants for a felony or misdemeanor or order to summon them if the defendants do not appear or the judge fears their escape. The investigating judge shall interrogate the defendants within a period of twenty-four hours from the date on which they were placed in custody. Then if the period elapses without an investigation, the chief of custody must take the defendants to the Public Prosecutor, who, in turn, submits them to the investigating judge for interrogation. If this is not possible, the defendant must be released, otherwise the deprivation of their liberty shall be considered arbitrary.[32] The investigative judge, after interrogating the defendant, has the right to issue an arrest warrant against the defendant after consulting the Public Prosecutor.[33]

16. However, in 2011, following the lifting of the state of emergency in Syria, a legislative decree was issued amending the aforementioned general principles. While the general principles gave the Public Prosecution the power to investigate crimes within the general framework and obligate it to present the detainee before the investigative judge within a period of 24 hours, the new amendment allowed the judicial police and its delegates - and this opens the door to a wide range of mandates for the security branches - to do so in relation to some crimes against state security. This is in addition to collecting its evidence and interrogating the suspects. This amendment was also followed by another amendment that adds to their powers the possibility of investigating the places where the suspects exist. In addition to allowing them to detain persons for a period of seven days, renewable with the permission of the Public Prosecutor for up to sixty days.[34] Consequently, those suspected of crimes such as promoting calls that aim at weakening national sentiment or news that weaken the morale of the nation -and those are often the political opponents of the state - can be detained before they get brought before the judiciary for a period of sixty days, and this practice indicates that they do not abide by this period but rather they exceed it. This procedure is also carried out with the approval of the Public Prosecutor, who is considered their opponent before the judiciary. It is true that the Syrian legal jurisprudence considers the Public Prosecution to be a faithful guardian of the proper application of the law and an honorable opponent concerned with convicting the real criminal and protecting the rights of the innocent.[35] However, the jurisprudence of the Human Rights Committee has emphasized that the Public Prosecutor is not considered to have the institutional objectivity and impartiality necessary to consider him an "officer authorized to exercise judicial power" in the sense that is meant by Article 9 of the ICCPR. As in its views on the communication of Kulomin v. Hungary, the Human Rights Committee found that:

31 - Syrian Penal Code No.148 1949, art 357-358.

32 - Bareaa Al Koudsi, Criminal Procedures, vol 2 (Publications of the Syrian Virtual University 2018), 132-133.

33 - Syrian Code of Criminal Procedure No. 112 of 1950, Art 106

34 - Legislative Decree No. 55 of 2011 on Amending the Criminal Procedure Code, available here in Arabic; Legislative Decree No. 109 of 2011.

35 - Bareaa Al Koudsi, Criminal Procedures, vol 1 (Publications of the Syrian Virtual University 2018), 26.

"After his arrest on 20 August 1988, the author's pre-trial detention was ordered and subsequently renewed on several occasions by the public prosecutor, until the author was brought before a judge on 29 May 1989. The Committee considers that it is inherent to the proper exercise of judicial power, that it be exercised by an authority which is independent, objective and impartial in relation to the issues dealt with. In the circumstances of the instant case, the Committee is not satisfied that the public prosecutor could be regarded as having the institutional objectivity and impartiality necessary to be considered an "officer authorized to exercise judicial power" within the meaning of article 9(3).)".[36]

17. Moreover, the observations of research lawyers indicate that, in practice, detainees lose judicial guarantees and legal protections over this period, such as the ability to effectively benefit from a legal representative or communicate with their families, leaving them vulnerable to enforced disappearance, acts of torture, and ill-treatment. The CoI confirmed the aforementioned observations after interviewing more than five hundred former detainees. As the results of the interviews indicated that most of them did not bring their case to court within a reasonable period of time, and the detainees did not obtain information about the reason for their arrest, or the charges taken against them. They were also regularly tortured to extract confessions and signed statements that they were not allowed to read. As for those who were referred to the judiciary, they were subjected to systematic violations of their right to a fair trial, especially before the Counter-Terrorism Court and the Military Field Court, and this will be discussed in detail in the next section.[37]

18. It is worth noting that large numbers of detainees were not brought before a court but remained at risk of enforced disappearance or extra-judicial execution. It was also reported that their families paid bribes, either to disclose their whereabouts, facilitate their visit to detention centers, release them, expedite their presentation before the court or repeat their trial.[38] As for the minority who were brought before the judiciary, we will explain below the violations that this group is exposed to before biased and non-independent judicial bodies.

36 - Human Rights Committee, Vladimir Kulomin v. Hungary, Communication No. 521/1992, UN Doc CCPR/C/50/D/521/1992 (1996), para 11.3.

37 - UNGA, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic (March 2021), UN Doc A/HRC/46/55, para 16.

38 - Association of Detainees and the Missing at Sednaya Prison, Fraud and financial extortion for the families of detainees and forcibly disappeared, November 2021, p 7. Available here in Arabic.

## 2.2 Guarantees of impunity and lack of fair trials

19. Following the aforementioned violations in the arrests processes, the cycle of violations continues to include stages of accusation and equal access before an independent and impartial judiciary. The Syrian government indicated in its national report that the constitution guarantees the protection of human rights and public freedoms and that citizens are equal in rights and duties without discrimination. Syria also claimed that it guarantees the freedom, security and dignity of citizens and penally punishes any violations of human rights, and every citizen has the right to sue and to pursue means of appeal, review and defense before the judiciary.[39] But in reality, there are fundamental problems that make the government's allegations incorrect, namely the vague charges that may be brought against the detainees, the biased and independent judiciary that they may be brought before it, and the guarantees of impunity for state agents enacted by law.

### 2.2.1 Vague charges and ambiguous legal texts:

20. Observations during the past decade show that detainees who were referred to the judiciary were often subjected to charges related to crimes against state security and terrorism charges. These charges are vague in their formulation and do not fully explain what actions they fall under. For example, the terrorist act is defined as "every act that aims to create a state of panic among people, disturb public security or damage the infrastructure or basics of the state, and is committed by using weapons, munitions, explosives, inflammable materials, toxic or incendiary products, epidemiological or bacteriological factors whatever the type of these means or using any tool that serves the same purpose" (emphasis added).[40] This definition opens the door to broad accusations and vague criminal indictments. As the criterion of breach of public security is an uncontrolled standard, and any act contrary to the political orientations in the state can be considered a breach of public security, especially when this breach is by any means.[41] The Syrian lawyers who prepared this report have noticed this through their practice in the courts, where the prosecutions of those accused of the crime of promoting terrorist acts stipulated in Article 8 of the Counter-Terrorism Law target opponents of the government because of their political opinions on social media platforms. The same applies to the crime of financing terrorism stipulated in Article 4 of this law, which affects anyone who has brought food or medical aid to areas outside the government's control and controlled by opposition forces. Definitely, this does not coincide with the principles of drafting penal legislation, because the goal of the principle of legality is to ensure that the public is notified of what is considered a crime and the punishment resulting from it, which requires clarity of the legislator's intent.[42]

39 - UNGA, Human Rights Council, National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1, Syrian Arab Republic, 17 November 2021, UN Doc A/HRC/WG.6/40/SYR/1, para 38.

40 - Syrian Counter-terrorism Law No. 19 of 2012 Art 1.

41 - 'Syria: Counterterrorism Court Used to Stifle Dissent' (Human Rights Watch, 25 June 2013) available at: https://www.hrw.org/news/2013/06/25/syria-counterterrorism-court-used-stifle-dissent.

42 - Ahmed Fathi Sorour, Constitutional Criminal Law, 2nd edition 2002, (Dar Al-Shorouk 2002), p. 88, para 36.

21. Another example of the ambiguity of law texts is some articles on crimes against state security. Article 285 of the General Penal Code states that "Whoever in Syria, during wartime or when it is expected to erupt, makes calls aimed at weakening national sentiment or awakening racial or sectarian strife, shall be punished by temporary detention." Article 286 also penalizes those who transmit news that they know to be false or exaggerated that would weaken the morale of the nation. These articles do not clarify what is meant by national sentiment or the morale of the nation, and people cannot predict whether their actions might lead to that.

22. It is worth noting that some of these texts have been amended under Law No. 15 of 2022. But the amendment did not help remove the ambiguity of the text. For example, the phrase "weakening national sentiment" was replaced by "infringement of national identity," and the phrase "that would weaken the morale of the nation" was replaced by "that would spread despair or weakness among the members of society".[43] Thus, this legal amendment can only be understood as a form of insisting on keeping the texts of these articles vague, taking into account that they are described as criminal offenses.

23. This legal amendment was followed by the inclusion of some state security crimes, in the same vague way, in the Cybercrime Law No. 20 of 2022. As the new law stipulates that anyone who establishes or manages a website or web page or publishes content that aims or calls for the overthrow or change of the regime in the state shall be punished by temporary detention between 7 and 15 years and a fine of 10 million Syrian Liras.[44] In addition to that, anyone who, by means of information technology, publishes false news on the network that undermines the prestige of the state or prejudices national unity, shall be punished with temporary imprisonment from three to five years and a fine of up to ten million Syrian Pounds.[45] It is noteworthy that the crime of publishing news that undermines the prestige of the state is a misdemeanor crime according to the General Penal Code,[46] but if it is committed through electronic means, it becomes a felony according to the new Cybercrime Law. This asserts the existence of a general policy to suppress freedom of opinion and expression more than before by directing charges of vague felonies.

43 - Law No. 15/2022 on amending articles of the General Penal Code, art 10,11. Available in Arabic here.

44 - Cybercrime Law No. 20/2022, art 27. Available in Arabic here.

45 - Cybercrime Law No. 20/2022, art 28. Available in Arabic here.

46 - Syrian Penal Code No.148 1949, Art 287. Available in Arabic here.

### 2.2.2 A biased, non-independent judiciary:

24. Article 14 of the ICCPR affirms the obligation of states parties to respect and protect the right to a fair trial by providing a set of guarantees, such as consideration of the case by a competent, independent and impartial judicial body established by law that provides the full right of defense, appeal and public trial. In this regard, General Comment No. 32 of the Human Rights Committee clarifies that the independence and impartiality of the competent court is an absolute and non-derogable right and requires the separation of the judiciary from any influence of the legislative and executive powers. This can be guaranteed by ensuring that judges are appointed, protected, promoted, transferred and dismissed from service absolutely free from any legislative or executive interference.[47] The Committee affirms that ensuring a fair trial requires, in principle, the holding of public hearings in order to ensure that the integrity of court procedures is monitored.[48] This is in addition to guaranteeing the right of the accused to defend and be given sufficient time and facilities to prepare the defense and to challenge court decisions before a higher judicial authority. Since the Committee considers that the ICCPR does not, in principle, prevent civilians from being tried before the military or special courts, it affirms that this must be done within the narrowest limits and exceptionally for civilians. So, it should be in specific cases in which the state shows that there are objective and serious reasons for that, and ordinary courts are unable to conduct these trials. In addition, the Committee affirms that all fair trial guarantees must be available without any restriction or derogation due to the military or special nature of these courts, as the ICCPR requires that any trial be fully compatible with Article 14.[49]

25. However, in the Syrian context, the basic guarantees stipulated in Article 14 are systematically violated in the judiciary, as the judiciary is not independent and impartial, but is greatly influenced by the executive authority and security forces. This bias and lack of independence is also more evident in military and special courts.[50] As the vague charges directed against civilians because of their political opposition, the secretive nature of some of the procedures of these courts and the security and military sector, and the prevalence of the state agents' impunity, all this make the courts biased, not independent, and do not fulfill fair trial guarantees. Therefore, in the Syrian context, in addition to ensuring the independence of the judiciary in general, it is important to completely abolish the jurisdiction of military courts over civilians.

26. Since one of the most common charges brought against detainees in Syria was related to state security crimes and terrorism,[51] and since crimes against state security in Syrian law are referred to the military judiciary and terrorism crimes are referred to a special court for terrorism cases, the subsections below will address the refutation of these two bodies and clarify their disadvantages in terms of independence and impartiality.

47 - Human Rights Committee, 'General Comment No. 32' (2007) CCPR/C/GC/32 para 18,19.

48 - Human Rights Committee, 'General Comment No. 32' (2007) CCPR/C/GC/32 para 28.

49 - Human Rights Committee, 'General Comment No. 32' (2007) CCPR/C/GC/32 para 22.

50 - See, Zahra AlBarazi, Yousef Wehbe, Obai Kurdali, The Syrian Judiciary's Independence: Broader Constitutional Lenses, Konrad-Adenauer-Stiftung e. V. Rule of Law Programme Middle East and North Africa (November 2021). Available here.

51 - See for example the nature of the charges and judgments issued against Sednaya detanees, Association of Detainees and the Missing in Sednaya Prison, They Took Everything: Confiscation of detainees' assets and funds in Syria, March 2022, 18-20. Available here.

### 2.2.2.1 Military Judiciary:

27. Military judiciary is regulated by the Military Penal Code and Military Procedures issued by Legislative Decree 61 of 1950,[52] which replaced the Ottoman Military Penal Code and Military Procedures. The military justice system is primarily composed of military personnel, and it reports to the Ministry of Defense and not to the Ministry of Justice.

28. In addition to the territorial jurisdiction of this judiciary, it has personal jurisdiction over crimes committed by military personnel or against military personnel. It also has personal jurisdiction over civilians affiliated with the Ministry of Defense or employed in the interests of the army or those who attack its interests and soldiers. Moreover, it has jurisdiction over specific topics, such as military crimes stipulated in the Military Penal Code, crimes committed by allied armies in Syria (unless the two governments agree otherwise), some crimes against internal state security, and crimes of insulting the army and harming its dignity, reputation, or morale, or anything that weakens the spirit of the military system, obedience to the superiors or the respect due to them, or criticizing the actions of the General Command and those responsible for the work of the army in a way that degrades their dignity.[53] Accordingly, the actions of any soldier in the army, the Military Intelligence Service (the Intelligence Division), the Air Force Intelligence Department, or the General Intelligence Department are subject to the authority of this judiciary, as well as any civilian who commits crimes against the army or state security or slanders or criticizes one of its members or its military bodies. This opens the way for many vague charges that can be brought against civilians and then refer them based on these charges to military judiciary.

29. The military judiciary consists of a group of bodies, namely the Military Judiciary Department, the Military Judicial Police, the Military Public Prosecution, the Single Military Judge, the Military Investigation Judge, the Permanent Military Court, the Military Field Court, and the Military Court of Cassation. These bodies consist primarily of military personnel and therefore are administratively affiliated with the Ministry of Defense. In terms of the military chain of command, they are subordinate to the Commander-in-Chief of the Army and Armed Forces.

30. Although, ostensibly, the military judiciary is primarily devoted to the prosecution and accountability of the military persons, the reality is that it protects the military persons from prosecution and tightens procedures on civilians referred to it or who intend to prosecute the military persons. Since the Military Public Prosecution is responsible for prosecuting crimes that fall under the jurisdiction of the military judiciary and initiating criminal cases, it is not independent in this regard. Members of the Public Prosecution Office are military personnel and are hierarchically linked to the Military Prosecutor, who in turn is linked to the Director of the Military Judiciary Department and then to the Minister of Defense, meaning that they are affiliated with the Ministry of Defense administratively, and of the army and armed forces militarily.[54] Since the judges of the Public Prosecution may be civilian judges delegated by the ordinary judiciary and

52 - Military Penal Code and Procedures No. 61 1950. Available in Arabic here.

53 - Military Penal Code and Procedures No. 61 1950. Available in Arabic here, art 45,47,50,123.

54 - Military Penal Code and Procedures No. 61 1950. Available in Arabic here, art 34,35,39.

subordinate to it, they are not appointed to the military judiciary except after the approval of the Commander-in-Chief of the Army and Armed Forces, and they follow all military regulations in time of war.[55] This is considered the first obstacle to prosecuting a military person before the military judiciary as the Public Prosecution office, which will initiate the prosecution against the army elements, is formed by the same body.

31. The second obstacle to military prosecution is that the Military Public Prosecution cannot initiate prosecutions on its own, but rather needs to obtain a prosecution order. These orders get issued by the commander-in-chief of the army and armed forces during wartime, while they are issued by the commander-in-chief of the army or the chief of general staff in peacetime, according to the rank of the defendants.[56] It is worth noting that if the defendant is a military person, the personal claimant cannot initiate a criminal lawsuit without the approval of the Military Public Prosecution and the issuance of the aforementioned prosecution order.[57] After the prosecution order is issued and circulated by the Military Judiciary Department, the Military Public Prosecution can either file a direct complaint for misdemeanors before the court or file a preliminary complaint for felonies or ambiguous misdemeanors before the military investigative judge..

32. The military investigative judge enjoys extensive validities. In addition to carrying out interrogation and searches, issuing summons and arrest warrants, issuing release decisions and preventing trial, suspicion and accusation, the military investigative judge is the only one who issues these decisions without the presence of a referral judge, as in the ordinary judiciary.[58] The referral judge in the ordinary judiciary is considered an appellate reference for the investigating judges, monitors their work and decides to refer the accused to the judgment court. While in the military judiciary, the investigative judge is the only one that can take these decisions, which the personal claimant cannot appeal. Rather, only the Military Public Prosecution and the defendant can, within a period of five days, appeal some of these decisions before the Military Court of Cassation, which is a court that only considers the proper application of the law but not the subject of the case. Among the decisions that can be appealed are the decisions on preventing the trial and mandating the trial in felonies.[59] This means that even if an order is obtained to prosecute a military person for a crime committed, the investigative judges can take the decision to prevent the trial because they are not convinced of the sufficiency of the evidence, and only the Military Public Prosecution can challenge the legality of their decision within a very short period before the Military Court of Cassation. This is the third obstacle to the prosecution against the military elements.

33. Finally, the military judiciary only considers the criminal case without the civil case related to it. Therefore, the opponents before the military judiciary are the military public prosecution versus the defendant, and there is no room for a personal claim before this judicial body. Accordingly, the victims of a crime committed by a military person cannot appear as personal claimants before the military court, and they cannot

55 - Military Penal Code and Procedures No. 61 1950. Available in Arabic here, art 36,37.

56 - Military Penal Code and Procedures No. 61 1950. Available in Arabic here, art 53.

57 - Military Penal Code and Procedures No. 61 1950. Available in Arabic here, art 19 (1).

58 - Military Penal Code and Procedures No. 61 1950. Available in Arabic here, art 23,24.

59 - Military Penal Code and Procedures No. 61 1950. Available in Arabic here, art 26.

appeal the court's decision, as they are not a party to the litigation. This was confirmed by the Military Criminal Chamber of the Court of Cassation, which ruled that " the military judiciary is competent to consider the public rights lawsuit, and the appeal from the personal claimant has no legal support and it shall be rejected due to formal deficiency."[60] In the event that, after all the aforementioned obstacles, a guilty verdict is issued against the military person, only then can the affected parties file civil lawsuits to obtain their right to compensation. This right is subject to statute of limitations after the lapse of a period of three years from the date on which the victim became aware of the damage and its cause.[61] Moreover, the right to file a personal claim before the civil judiciary is practically a nominal right, as the filed experience indicates that the victim will hesitate to prosecute the state agents for fear of any reprisals. Consequently, the domestic remedy will become de facto unavailable.

### 2.2.2.2 Military Field Courts

34. The Military field courts are one of the military judiciary organs, which were established by Legislative Decree no.109 of 1968. These courts consider crimes that fall within the jurisdiction of the military judiciary and committed in time of war based on their referral from the Minister of Defense.[62] The Military Field Court is formed, based on a decision of the Minister of Defense, from a president and two members from the military persons, and it is not required that they hold a degree in law.[63] Additionally, the functions of the Public Prosecution Office in it are performed by judges from the Military Public Prosecution who are appointed by a decision from the Minister of Defense. What is worth noting is that the Military Public Prosecution of the Field Courts also performs the functions of the investigative judge. This means that the Public Prosecution, which is the opponent, issues the indictment or the decision of preventing the trial. Its decisions are final and not subject to appeal.[64]

35. This court is exempted from following the legal procedures stipulated in the legislation in force, which are the rules that give the accused the guarantees of a fair trial.[65] Accordingly, this court is secret and does not conduct its trials in public, does not allow the accused to seek the assistance of a defense attorney and does not provide sufficient time and facilities to prepare the defense. Moreover, its rulings are final and not subject to appeal before a higher court.[66] These rulings are subject to the approval of the Minister of Defense, but if the death sentence is imposed, it is subject to the approval of the head of state only.[67]

60 - Syrian Court of Cassation, Military Criminal Chamber, Decision 1754/2002, Case No. 1558, rule 329 of the Lawyers' Journal (2004) v 11,12.

61 - Syrian Civil Code No.84 (1949), art 173.

62 - Legislative Decree No. 109 of 1968 on Establishing Field Military Courts, art 1.

63 - Legislative Decree No. 109 of 1968 on Establishing Field Military Courts, art 3.

64 - Legislative Decree No. 109 of 1968 on Establishing Field Military Courts, art 4.

65 - Legislative Decree No. 109 of 1968 on Establishing Field Military Courts, art 5.

66 - Legislative Decree No. 109 of 1968 on Establishing Field Military Courts, art 6.

67 - Legislative Decree No. 109 of 1968 on Establishing Field Military Courts, art 8.

### 2.2.2.3 The Counter-Terrorism Court

36. Terrorism cases get referred to a special court established by Decree No. 22 of 2012 (commonly known as the Terrorism Court). The establishment of this court coincided with the abolition of the Supreme State Security Court and the lifting of the state of emergency in the country. [68] The Counter-Terrorism Court did not differ much from the State Security Court, which was formed and whose civilian and military judges are appointed by a decision of the President of the state and is not bound by the fundamental procedures followed in the roles of prosecution, investigation and trial, and its rulings cannot go under any form of appeal and review.[69] Consequently, the abolition of the Supreme State Security Court, which the Syrian government presents in its national report as a form of political reform, is only a nominal procedure aimed at showing it as a cooperating party in the political solution, but the actual reality confirms that the executive authority headed by the President of the state still controls the most sensitive judicial joints making this body a tool of revenge and repression against opponents of the state.

37. Similar to its precedent, the Counter-Terrorism Court is subject to the dominance of the executive authority in appointing prosecutors, investigation and courts judges, as they are all appointed by decree based on the proposal of the Supreme Judicial Council.[70] It should be noted that this council is composed mainly from the executive branch. The Council is composed of seven members: the President of the state, the Deputy Minister of Justice, the Public Prosecutor, the Head of the Judicial Inspection Department, the President of the Court of Cassation and his two oldest deputies.[71] The executive authority assumes the presidency of the Supreme Judicial Council through the President of the state. It also occupies, through the Deputy Minister of Justice, direct membership in the Council. In addition, the executive authority supervises the Public Prosecutor and appoints the head of the Judicial Inspection Department through the Minister of Justice.[72] Therefore, the executive branch has a control over four out of seven seats in the Council. While the remaining three members are appointed by the council by a majority of votes dominated by the executive authority.[73] Therefore, the entire formation of the Counter-Terrorism Court is subject to the influence of the executive authority.

38. The Counter-Terrorism Court exercises jurisdiction over civilians and military personnel, and has a military judge in its composition.[74] This court is not bound by the procedures of criminal trials as public trial procedures.[75] It also does not hold its sessions at its headquarters, as it is often moved to prisons and detention centers and court sessions are held there, which leads to the inability of defense lawyers and families of

68 - Legislative Decree No. 161 on Lifting the State of Emergency 2011; Legislative Decree No. 53 on Abolishing the Supreme State Security Court 2011.

69 - Legislative Decree No. 47 of 1968 on Establishing Supreme State Security Courts 1968, art 2,6,7,8.

70 - Low No. 22 on Establishing the Counterterrorism Court 2012 Art 2. available here in Arabic.

71 - Decree 98 of 1961 on the Judicial Authority Law and its Amendments Art 65. Available here in Arabic.

72 - Decree 98 of 1961 on the Judicial Authority Law and its Amendments Art 11,56. Available here in Arabic.

73 - Decree 98 of 1961 on the Judicial Authority Law and its Amendments Art 71,76. Available here in Arabic.

74 - Low No. 22 on Establishing the Counterterrorism Court 2012 Art 2(a), 4. available here in Arabic.

75 - Low No. 22 on Establishing the counterterrorism Court 2012 Art 7, available here in Arabic; 'Syria: Counterterrorism Court Used to Stifle Dissent' (Human Rights Watch, 25 June 2013) available at: https://www.hrw.org/news/2013/06/25/syria-counterterrorism-court-used-stifle-dissent.

detainees to attend the sessions. In addition, the investigative judge in the Counter-Terrorism Court has the powers of a referral judge.[76] Consequently, merging the powers of these two judges into one person results in the accused losing a degree of appeal against the investigative judge's decisions. In addition, the rulings of the Counter-Terrorism Court, such as those of the military judiciary, are not subject to appeal except by way of cassation. It should be noted that the Court of Cassation in the general framework is a court of law and not a trial court, which means that it is not a level of litigation. It only considers the well application of the law when appealing before it for the first time and does not consider the subject of the case. If the Court of Cassation found that the judgment of the trial court is legally valid, then the judgment will become final. But if the court decides to overturn the judgment and return it to the trial judge, the judgment of the last trial judge can be appealed for a second time before the Court of Cassation, and only then can the Court of Cassation consider the subject of the case.[77] The practice of research lawyers indicates that the rulings of the Counter-Terrorism Court and military courts are often not overturned in practice, especially since the cassation chambers of these courts are formed by the same apparatus.

39. In addition to all of the above, it is worth emphasizing that all the aforementioned types of courts are held after the detainee has been subjected to a series of violations in the pretrial detention stage, such as the lack of information on the reason for the arrest or the charges brought against them. In addition to being subjected to enforced disappearance or torture on a regular basis to extract confessions and sign statements and accusations without being able to read them.[78] It is worth noting that the courts in Syria have not been expressly prohibited by legal text from accepting confessions extracted under torture. Also, the jurisprudence of the Syrian Court of Cassation was not decisive in preventing this, as it gave the judge the option to take or neglect the statements extracted in the security branches. In one of its decisions, the Syrian Court of Cassation affirmed that "the confession contained in the seizure of the Military Intelligence is a non-judicial confession that its holder may retract, especially if it was taken under the authority of fear, and the court has the right to take it or neglect it (emphasis added)".[79] It is true that this decision of the Court of Cassation weakens the value of confessions extracted in the security branches, but it gives them value, even if they are weak. As the non-judicial confession is one form of evidence that is recognized by law and gives the judge the discretion to accept or omit it.[80] Therefore, the decision of the Court of Cassation is inconclusive in preventing the courts from accepting confessions extracted under the fear of the security branches.

40. Perhaps the only explicit text that stipulates the exclusion of confessions extracted under torture is the Anti-torture Law No. 16 of 2022. This law indicates that any confession or information that proves that it was obtained as a result of torture is only considered as evidence against those who practiced torture.[81] Despite this, the issuance of an explicit text excluding confessions extracted under torture at this late stage of the conflict is only an indication of the lack of fair trial guarantees in Syria for at least the previous

76 - Low No. 22 on Establishing the Counterterrorism Court 2012 Art 2(b). available here in Arabic.

77 - Mohammad Wasel, Civil Procedures, vol 1 (Publications of the Syrian Virtual University 2018), 119.

78 - UNGA, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic (March 2021), UN Doc A/HRC/46/55, para 16.

79 - Syrian Court of Cassation, Decision 701/1995, Case No. 1756, rule 414 of the Lawyers' Journal (1995).

80 - Syrian Evidentiary Law of 2014, art 91(2), 98(1).

81 - Law No. 16 of 2022, art 3. Available in Arabic here.

decade. It also raises questions on the extent to which the Counter-Terrorism and Military Field Courts are bound by the provisions of this new law, especially since the laws of its formation expressly stipulate that these courts are not bound by legal procedures, in addition to being constituted by the same body that carries out these violations.

### 2.2.3 Immunity of state agencies from prosecution:

41. In its report, the Syrian government affirmed that "Syrian legislation does not envisage immunity for anyone for offences involving torture and, if such acts are discovered, they are dealt with according to the law, irrespective of the perpetrator. Officers and other ranks of the police are held accountable if they use coercive acts during the course of an investigation." The Syrian government also mentioned statistical figures that indicate the accountability of a group of police officers and members for committing "acts of severity" during investigations or inside prisons and temporary detention centers, as well as imposing "disciplinary" penalties on these agents.[82] It is interesting to note that there was no indication of criminal penalties, but rather disciplinary penalties, which are imposed by the police disciplinary court and range from delay in promotion to dismissal from service.[83]

42. This narrative presented by the Syrian government contradicts with what is stipulated in the domestic laws. As there are national legislations in force that impede the possibility of prosecuting the members of the army and its intelligence branches, in addition to the members of the Internal Security Forces and the General Intelligence Department. These obstacles do not pertain only to their prosecution for acts of torture, but all kinds of crimes that they may be committed in the course of their duties.

43. As in the event that the crime was committed by members of the army or the Military Intelligence Division and its branches, such as the Palestine Branch, or even the Air Force Intelligence Department, then they do not get prosecuted, as indicated previously, except under a prosecution order issued by the Commander-in-Chief of the Army and Armed Forces or the Chief Staff according to the rank to be pursued.[84] This means that the judiciary cannot act on its own or based on the victim's complaint, but exclusively under the aforementioned prosecution order. Even if this happened, the lawsuit would be within the jurisdiction of the military judiciary because the defendant is a military person.[85] Thus, even if the prosecution order is obtained, this will not contribute to avoiding the remaining obstacles represented in the independence of the military judiciary and the inability to submit personal complaints as mentioned above.

44. If the crime was committed by members of the Internal Security Forces and its branches, such as the Political Security Division, Criminal Security and the Prison Administration, then it should be noted that

82 - UNGA, Human Rights Council, Working Group on the Universal Periodic Review, National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1, Syrian Arab Republic, 2021, UNDoc A/HRC/WG.6/40/SYR/1, para 46.

83 - Legislative Decree No.1 of 2012, Internal Security Forces Service Law, Art 118 (2) and 120 (1,2).

84 - Legislative Decree No. 61 of 1950, Military Penal Code, art 53.

85 - Legislative Decree No. 61 of 1950, Military Penal Code, art 50.

these members are administratively affiliated with the Ministry of Interior, and the Legislative Decree No. 64 of 2008, that was previously in force, considered members of the Political Security Forces, members of the Internal Security Forces and members of the customs police covered by the jurisdiction of the military judiciary, and it was explicitly stated that their prosecution does not take place before the issuance of an order for prosecution by the General Command of the Army and Armed Forces.[86] This decree was amended by Legislative Decree No. 1 of 2012 containing the Internal Security Forces' Service Law. As article 23 of it states, a Police Disciplinary Court shall be created to look into the disciplinary matters of the Internal Security Forces, and its jurisdiction is to decide on their referral to the judiciary, except in the case of flagrante delicto or the commission of an economic crime. Only in these two cases can they be prosecuted directly before the ordinary judiciary.[87]

45. Therefore, the criminal court does not have the jurisdiction over the Internal Security Forces considering crimes committed by them while carrying out their duties unless the Police Disciplinary Court decides so. But, if the Police Disciplinary Court considers the actions of the police and the internal security forces without agreeing to refer the case to the criminal court, then it is not possible to initiate a criminal lawsuit, and the perpetrator's punishment gets limited to "disciplinary" penalties that begin with delay in promotion and end in the most extreme case with dismissal.[88] It is worth noting here that the Police Disciplinary Court is not a judicial organ, but rather is considered one of the executive authority and is formed based on a decision of the Presidency of the Council of Ministers, and its judges are police officers appointed by decree based on the proposal of the Minister of Interior.[89] In other words, it can be said that those who have been subjected to crimes by members of the army, its intelligence services or the internal security forces will appear before courts that are formed by -and their judges appointed by - the same agencies whose members committed these crimes. This is what makes these courts biased and not independent.

46. There are similar complications that prevent the judiciary's independence in prosecuting perpetrators of crimes committed by the members of the General Intelligence Department (State Security). As Legislative Decree No. 14 of 1969 establishing the General Intelligence Department stipulates in Article 16, it is not permissible to prosecute members of the General Intelligence for crimes they commit while carrying out the tasks assigned to them without the approval of their superiors.[90] Consequently, the judiciary or the Public Prosecution cannot initiate investigations and prosecutions without obtaining the approval of the defendants' superiors. This would be very difficult, as the prosecution of members may lead to the prosecution of their superiors if they are suspected of being involved in any way in the crime, such as giving orders to commit acts of torture or ill-treatment, inciting to that, or even deliberately ignoring these practices.

86 - Legislative Decree No. 64 on The Prosecution of Police Officers, Customs and Political Security Personnel, Before the Military Court 2008, Art 1. Available at: http://www.parliament.gov.sy/arabic/index.php?node=5585&nid=16268&First=0&Last=3&CurrentPage=0&mid=&refBack

87 - Legislative Decree No.1 of 2012, The Internal Security Forces Service Law, art 23 (1-a).

88 - Legislative Decree No.1 of 2012, The Internal Security Forces Service Law, art 23 (1-b), 120.

89 - Legislative Decree No.1 of 2012, The Internal Security Forces Service Law, art 23 (1,2).

90 - Article 30 of Legislative Decree 14/1969 states that "This law shall not be published and goes into effect on the day of issuance." However, you can find the analysis of the decree in: "Alternative Report to the Syrian Government's Initial Report on Measures taken to Fulfil its Commitments under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment", Damascus Center for Human Rights Studies, available online at https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/SYR/INT_CAT_NGO_SYR_48_10106_E.pdf Page 5-6.

47. It is noteworthy that the national report indicated the existence of a military investigation committee formed by the Ministries of Defense and Interior and the relevant security authorities. This committee receives and investigates citizens' complaints against members of the army, security forces, and police during the implementation of its tasks. If it is proven that there are any acts criminalized by law, the committee will refer the person to the competent judiciary to apply the criminal laws according to the offense.[91] This committee is formed by an administrative order that is not published in the gazette or media. It is a non-judicial committee that carries out work that is at the core of the of the judiciary's function, and it is unknown where its headquarter is located, where its meetings are held and where and how it receives citizens' complaints. This in itself confirms the obstacles placed in the way of pursuing the state agents, in addition to the fact that this committee is an executive body to which the complained agents belong. This executive body impedes victims from freely accessing justice, and also hinders the judiciary from genuinely prosecuting state agents, except for those whom the committee agrees to prosecute. Therefore, this committee can only be an additional obstacle to those mentioned above, which raises real doubts about the seriousness and effectiveness of the investigation and prosecution of crimes committed by members of the army and security services.

48. According to what the Syrian government stated in the national report, this committee had received only 214 complaints up to the date of preparing the report, and a number of them were referred to the judiciary. However, the report did not mention the number of complaints that were actually referred to the judiciary, which judiciary is handling these cases, and what their fate was. It might be surprising that in a decade that witnessed a wide range of human rights violations, the committee received so few complaints. This may indicate either that the committee is unknown to the citizens, or that the citizens know it but do not trust it or are afraid to file complaints through it, or that members of the army and security forces in Syria have not committed any significant violations during this decade!

49. It should be noted here that the state's continued reluctance to prosecute the perpetrators of crimes from its agencies jeopardizes the right of victims to an effective remedy and comprehensive reparation. There are no guarantees of non-repetition of such acts if the alleged perpetrators are not prosecuted. Furthermore, victims will never be able to claim compensation before the criminal or civil courts if there is no final judgment convicting the perpetrators. Thus, the victims of the crimes of these elements remain vulnerable to the occurrence of these crimes on a continuous basis, especially in the absence of sufficient legislation to criminalize these acts and punish them in proportion to their gravity, and this is what will be addressed below about the criminalization of acts of enforced disappearance, torture and ill-treatment in Syria.

91 - UNGA, Human Rights Council, Working Group on the Universal Periodic Review, National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1, Syrian Arab Republic, 2021, UNDoc A/HRC/WG.6/40/SYR/1, para 47.

## 2.3 Legalizing Enforced Disappearance:

50. The cycle of human rights violations committed by state agents continues in the absence of sufficient legislative measures to criminalize the most prominent acts that detainees may be subjected to, such as enforced disappearance, torture and ill-treatment in detention centers. The CoI has confirmed that victims of arbitrary detention at the hands of state agents are systematically and widely subjected to acts of torture and ill-treatment, as well as deaths in detention centers. The fate of tens of thousands of missing persons is still unknown and their relatives are constantly exposed to extortion, complicated bureaucratic procedures and security risks as they try to obtain information about the whereabouts and fate of their missing loved ones. Even in the rare cases in which the government issued death notices, the bodies were not handed over to the families and the cause of death was not indicated, let alone the death notices issued to them after many years.[92] Despite the seriousness and scope of the crime of enforced disappearance in Syria, the state still expressly refuses to criminalize this act as an autonomous offense, as will be explained below.

51. Enforced disappearance is defined by the Declaration on the Protection of All Persons from Enforced Disappearance of 1992 (hereinafter referred to in this paper as the 1992 Declaration) as the act occurs in the sense that "persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law".[93]

52. Accordingly, enforced disappearance consists of two main components. The first one is directly getting deprived of liberty by agents of the state or by persons acting with the authorization or consent of the state. This deprivation of liberty can take place in any form, such as detention or abduction. Additionally, the deprivation of liberty can also begin with a lawful arrest and then become unlawful while in detention.[94] As for the second element is the refusal to provide information about the fate and whereabouts of the disappeared persons and/or refusing to acknowledge of depriving them of liberty. Accordingly, the deprivation of liberty at the hands of state organs or others acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the state in conjunction with non-disclosure of information is an essential feature that distinguishes enforced disappearance from other crimes that violate the victim's right to liberty. As a result, the disappeared persons get deprived of their legal guarantees.[95]

92 - UNGA, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic (Feb 2022), UN Doc A/HRC/49/77, para 37-44.

93 - Declaration on the Protection of all Persons from Enforced Disappearance, General Assembly resolution 47/133 of 18 December 1992, Preamble para. 3

94 - WGEID General Comment on definition of enforced disappearance, para 7. available at UN doc A/HRC/7/2, para 26 (https://www.ohchr.org/en/special-procedures/wg-disappearances/general-comments); International Criminal Court, Pre-Trial Chamber, "Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Burundi", ICC-01/17-X-9-US-Exp, (25 October 2017) para 118.

95 - WGEID, General comment on the right to recognition as a person before the law in the context of enforced disappearances, UN Doc A/HRC/19/58/Rev.1, (2 March 2012), para. 42.

53. Article 4 (1) of the 1992 Declaration states that enforced disappearance is a crime that must be punished by law with appropriate penalties that take into account the severity of this crime. In this regard, the Working Group on Enforced or Involuntary Disappearances emphasized that states should criminalize the act of enforced disappearance as set out in the Declaration as an autonomous criminal offence, and it is not sufficient for Governments to refer - in their criminalization for this act - to other ordinary crimes in their laws, such as those related to deprivation of liberty for example.[96]

54. However, the Syrian Arab Republic affirmed in its national report that "[t]he term 'enforced disappearance' does not exist in Syrian law". The government stated that the law penalizes "abduction and deprivation of liberty", which are internationally classified, according to the Syrian government, as enforced disappearance. In this regard, the government explicitly referred to Legislative Decree No. 20 of 2013, which criminalizes the act of kidnapping if it is committed with a particular criminal intent to achieve a political or material purpose, or with the intent of revenge, vengeance, sectarian reasons, or with the intent to demand a ransom.[97] This was reiterated by the Ambassador, the Permanent Representative of Syria to the United Nations, in the session of adopting the final outcomes of the reports of the third cycle of Universal Periodic Review .[98] This position asserted by the Syrian government is nothing more than a fallacy that lacks legal accuracy and denies the right of victims of enforced disappearance to know the truth, as will be explained below.

### 2.3.1 Kidnapping and deprivation of liberty compared with enforced disappearance

55. Syrian law criminalizes kidnapping and deprivation of liberty under Articles 555 and 556 of the General Penal Code, in addition to Decree 20 of 2013 mentioned above. According to Syrian law, the actus reus of the crime of kidnapping is fulfilled when the offender extracts the victims from their whereabouts and takes them to another place, depriving them of their liberty, regardless of whether this act occurred through coercion or deception of the victim.[99] In this regard, the jurisprudence of the Syrian Court of Cassation shows that the kidnapping is committed by removing the kidnapped from their whereabouts and transporting them to another place.[100] Regarding the mens rea of this crime, it is sufficient to prove that the offender knows that such act will deprive the victims of their freedom, with the intent to do so.[101]

96 - WGEID, General Comment on Article 4 of the UN Declaration on the Protection of All Persons from Enforced Disappearance, Un Doc E/CN.4/1996/38, para 54

97 - UNGA, Human Rights Council, National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1, Syrian Arab Republic, 17 November 2021, UN Doc A/HRC/WG.6/40/SYR/1, para 44.

98 - Syria UPR Report Consideration, 29th Meeting of the 50th Regular Session Human Rights Council, 30 Jun 2022, the Speech of Mr. Hussam Edin Aala, Ambassador Permanent Representative of the Syrian Arab Republic to UNOG (Minutes 52:57 - 53:39), Available on UN web TV at: https://media.un.org/en/asset/k10/k10wrqezm5.

99 - Abdulkader Al Sheikh, Explanation of the Penal Code: The Special Branch, vol 2 (Aleppo University Publications 2006), 120-121.

100 - Syrian Court of Cassation, decision 1984/166 in case No 285, rule 227 of the Lawyers' Journal (1985) v 3,4.

101 - Abdulkader Al Sheikh, Explanation of the Penal Code: The Special Branch, vol 2 (Aleppo University Publications 2006), 121-122.

56. By comparing the crime of kidnapping in Syrian law and enforced disappearance in International Criminal Law, the incompatibility between the two crimes becomes clear. While the crime of enforced disappearance requires depriving the disappeared persons of liberty or refusing to disclose their fate or whereabouts, Syrian law does not require this element for the crime of kidnapping to be realized. The kidnapper usually does not deny the kidnapping, but rather communicates with the family of the kidnapped persons and informs them of their fate and may ask them for a ransom to free them. While enforced disappearance requires that the family does not know the fate and whereabouts of the disappeared persons, and this is accompanied by a denial of depriving the disappeared of their liberty or a refusal to reveal their fate. Furthermore, the Rome Statute affirms that enforced disappearance must be committed, authorized, supported, or acquiesced by a state or a political organization with the aim of removing the disappeared from the protection of the law for a prolonged period of time.[102] On the other hand, Syrian law does not require these elements in kidnapping, as the crime of kidnapping concerns ordinary individuals, and the legislature does not mean by it the state officials who arrest or detain people in the course of performing their duties.[103] Consequently, it can be said that this analogy provided by the Syrian government between the two crimes of enforced disappearance and kidnapping is legally inaccurate.

57. This legal fallacy denies the victims' right to know the truth. The refusal to disclose information about the disappeared is not an element of the crime of kidnapping, but it is an essential element of enforced disappearance. Accordingly, this fallacy ignores that the crime of enforced disappearance continues until the fate and whereabouts of the disappeared are fully revealed. While the crime of kidnapping ends at the moment the kidnapping action ends with the release or death of the kidnapped, the crime of enforced disappearance remains continuous and does not end until the individuals' fate and whereabouts are revealed, or the location of their remains are clarified or handed over to their relatives in the event of death.[104] Moreover, this legal fallacy ignores that the crime of enforced disappearance is not only initiated by kidnapping, but can also begin with arrest or detention followed by refusal to acknowledge the deprivation of liberty or to reveal the fate or whereabouts of persons. This arrest may not have been lawful from the start, or it may have been lawful, but later turned out to be unlawful.

58. Returning to what was mentioned above regarding arrests, it is noted that persons suspected of committing state security crimes can be kept in the security branches before being brought before the judiciary for a period of 60 days according to the law. In addition to the fact that this period mentioned in the law is a long period that removes the detainee from all forms of legal protection, the practice and observations indicate that the security branches do not abide by this period, do not disclose the whereabouts of the detainees and do not appoint lawyers for them during this period of detention before presenting them to the judge. Most of the detainees may remain in detention in the security branches for a period exceeding sixty days without knowing their fate and whereabouts or presenting them to a judge. It is worth noting that illegally prolonging the period of detention is only considered a misdemeanor in Syrian law but not one of the most serious crimes - the perpetrator of this crime gets punished according to Ar-

102 - Rome Statute of the International Criminal Court (last amended 2010), 17 July 1998, Art 7(2)(i).

103 - Abdulkader Al Sheikh, Explanation of the Penal Code: The Special Branch, vol 2 (Aleppo University Publications 2006), 121.

104 - Human Rights Committee, Case Prutina et al. v. Bosnia and Herzegovina, Views of 28 March 2013, Individual Opinion of Mr. Fabián Salvioli

ticle 358 of the General Penal Code, with jail from one to three years, which is a misdemeanor penalty.[105] However, it is not even possible to claim this misdemeanor without proving it, which is very difficult. As persons can be detained for long months in a security branch, and no one knows, including the detainees themselves, about their whereabouts. Accordingly, it will be very difficult to prove the occurrence of this crime and to attribute responsibility to the perpetrators. Even when this is possible, the victims will often refrain from prosecuting state agents for fear of reprisals or repeating the violations they have been subjected to again. This is in addition to all the legal obstacles that impede prosecuting state agents which were previously referred to.

59. Thus, it can be said that the members of the judicial police or those authorized to carry out their duties do detain people for a period of sixty days without publishing their names, acknowledging the confiscation of their freedom, revealing their fate to their families promptly and efficiently, do not enable them to contact a lawyer or the outside world, and all this is considered an act that does not fall under the legal framework of the crime of kidnapping or deprivation of liberty in Syrian law. Instead, it falls under the crime of enforced disappearance in international law, and the Syrian government does not recognize the importance of stipulating it as an autonomous crime. On the contrary, the law allows for the detention of suspects of state security crimes to be extended up to 60 days, subject to the approval of their legal opponent who is the Public Prosecutor. As for the prolonged period of detention, the Syrian law does not consider this act to be more than a misdemeanor if it is proven. Even if victims and their families wished to allege this misdemeanor, they would face all of the above-mentioned obstacles in terms of the availability of effective and independent remedies, the impunity of state agencies, and the fear of reprisals. Consequently, the analogy presented by the Syrian government between the crimes of enforced disappearance, kidnapping and deprivation of liberty is not only legally inaccurate, but also perpetuates the violation of the victims' rights to real access to comprehensive reparation in light of the state members immunity from legal prosecutions. This includes the investigation of the acts of enforced disappearance they commit and punishing them with penalties commensurate with the seriousness of these actions.

105 - Syrian Penal Code No.148 1949, Art 39

## 2.3.2 A national mechanism to reveal the fate of the missing?

60. The Permanent Representative of Syria to the United Nations indicated that the Syrian government had "established a mechanism to inquire about the missing during the years of war, as the ministries of Justice, Interior, and National Reconciliation previously worked to receive citizens' requests to inquire about detainees at the official authorities, and they were getting answered by the reason of the arrest, the place of detention, the offense, the judicial authority to which they were referred, and the judicial measures taken against the missing." The ambassador also confirmed that "there are no hidden lists of the names of the missing and there are circulars issued by the authorities concerned with informing the families of the missing when they are arrested, and the names of detainees in prisons and they have the right to contact their families."[106]

61. Discussing this mechanism, which the government claims is sufficient to reveal the fate of the missing, cannot be isolated from the general context of the crime of enforced disappearance in Syria referred to above. The state has shown its public refusal to criminalize enforced disappearance as an autonomous crime, its reluctance to join the International Convention for the Protection of All Persons from Enforced Disappearance, its failure to cooperate with the Working Group on Enforced or Involuntary Disappearances, its refusal to disclose lists of names of detainees in security branches, its issuance of death notifications after several years with the names of some of the disappeared, its failure to hand over the bodies to their families or reveal the cause of their death, as well as the complexity of remedies for victims and the provision of immunity to perpetrators. All of this is an indication of the government's lack of sincere intention to reveal the fate of the missing. Therefore, these indicators cannot be undermined while understanding this mechanism.

62. The same applies to the feasibility of the mechanism, as the 1992 Declaration and the Working Group on Enforced or Involuntary Disappearances in its general comment No. 3 refer to a set of measures that limit the possibility of enforced disappearances and guarantee the right of access to the relatives of the missing, their lawyers and all those who have a legitimate interest in the information. Among these measures is that each person deprived of liberty shall be held in an officially recognized place of detention in conformity with international law. Under no circumstances can secret detention centers that violate the declaration be justified or legitimized.[107] It is also not sufficient for the detention to be in an officially recognized places, but information must be available for the detainees' families, their legal advisors, and anyone who has a legitimate interest to be informed of this information. Any obstacle that obstructs or prevents this is a violation for the Declaration. In addition, official, up-to-date and centralized records of all detainees' names must be available and accessible to different authorities in accordance with national and international law, including the Working Group on Enforced or Involuntary Disappearances. These

106 - Syria UPR Report Consideration, 29th Meeting of the 50th Regular Session Human Rights Council, 30 Jun 2022, the Speech of Mr. Hussam Edin Aala, Ambassador Permanent Representative of the Syrian Arab Republic to UNOG (Minutes 53:40 - 54:35), Available on UN web TV at: https://media.un.org/en/asset/k10/k10wrqezm5.

107 - Declaration on the Protection of all Persons from Enforced Disappearance, General Assembly resolution 47/133 of 18 December 1992, art 10 (1); WGEID, General Comment No.3 on Article 10 of the Declaration on the Protection of All Persons from Enforced Disappearance, UN Doc E/CN.4/1997/34, para 22-24.

measures must be followed by bringing the detainee promptly after detention before the competent judicial authority. The Working Group emphasizes that the principles of reasonableness and proportionality require that the phrase "promptly after detention" be interpreted as a period not exceeding a few days.[108]

63. Victims' right to access information is different from their right to know the truth. In addition to the above, the state must protect the victims' right to know the truth by taking a set of procedural obligations, such as conducting investigations until the fate and whereabouts of the disappeared is revealed, and the obligation to inform the concerned parties of the results of the investigations and the specific steps taken, as well as providing full protection for witnesses and relatives, investigators, and judges. Moreover, just as the right of victims to know the truth is an absolute right that cannot be derogated, the obligation of the state to investigate is also an absolute obligation that requires the state to take all necessary measures and procedures to ensure that the missing persons are found.[109] This certainly paves the way for victims to obtain their full right to reparation, such as holding perpetrators accountable, compensation and guarantees of non-repetition.

64. Returning to the mechanism referred to by the Syrian ambassador, it is clear that it is totally incompatible with the international obligations outlined above. The ambassador pointed out that the lists of the names of detainees in prisons are made public, ignoring those who are missing in security branches and unofficial places of detention as their names are not announced nor their whereabouts are known. In addition, the mechanism referred to by the Syrian government is based on offices in the aforementioned ministries that receive requests from families of missing persons, but without any significant effectiveness. These offices do not provide the families of the missing, their lawyers, or anyone who has a legitimate interest, any adequate answers about the missing, especially those detained by the security branches. In addition, this mechanism is unable to provide any information about the disappeared in areas outside the control of the state, and the details of its work, composition, procedures and results are not published. All of this results in prolonging the period of enforced disappearance against the missing and depriving their families of any real, detailed and sufficient information about the fate and whereabouts of their loved ones. The CoI confirmed that in its push for the establishment of an international mechanism to search for missing persons. As the CoI concluded that the Syrian government had established a group of entities that ostensibly aim to reveal the fate of missing and forcibly disappeared persons and to assist families in finding their relatives. But in fact, only little information came to light. The families claim that in many cases the state deliberately withholds information rather than actively seeks to clarify the fate and whereabouts of missing persons. According to the Office of the High Commissioner for Human Rights, family members of detainees and missing persons in Syria reported that they were unable to obtain critical information about the whereabouts of their relatives despite communicating with these entities referred

108 - Declaration on the Protection of all Persons from Enforced Disappearance, General Assembly resolution 47/133 of 18 December 1992, art 10; WGEID, General Comment No.3 on Article 10 of the Declaration on the Protection of All Persons from Enforced Disappearance, UN Doc E/CN.4/1997/34, para 26-29.

109 - WGEID, General Comment No.10 on the right to truth in relation to enforced disappearance, UN Doc A/HRC/16/48, para 39 (subparagraphs on the right to truth in relation to enforced disappearance 4-5).

to by the Syrian ambassador, which confirms the limited effective communication of these entities with the affected families.[110] Thus, this mechanism is unclear, ineffective, not comprehensive, and therefore unreliable for victims.

65. In any case, this mechanism does not put an end to the prolonged detention of detainees before they are brought to the judiciary, which was codified by Legislative Decree 55/2011 (refer to section 2.1 of this study). Additionally, it doesn't guarantee that the necessary investigations will be conducted, the perpetrators will be identified, and they will be held accountable. Thus, it cannot be said in any way that this mechanism can be relied upon to reduce the crime of enforced disappearance and to guarantee the victims' right to truth, access to information, effective remedy and non-repetition. On the contrary, this mechanism should not be isolated from the state's clear intention not to disclose the fate of the missing, and it does not enjoy any form of independence, clarity, effectiveness and comprehensiveness, and therefore it is not effective mechanism for the families of the missing who would, in the first place, fear approaching state agencies to ask about their relatives.

## 2.4 Insufficiency of Laws that criminalize torture and ill-treatment

66. Syria acceded to the Convention against Torture (CAT) in 2004,[111] and thus is obligated to criminalize torture and ill-treatment in its national legislation and to punish such acts with penalties that commensurate with their gravity without derogation.[112] Furthermore, the state is obligated to initiate prompt and impartial investigations as soon as its authorities have reasonable grounds to believe that an act of torture or ill-treatment has occurred.[113] Besides, the state must guarantee the right of victims to file a complaint to its competent authorities.[114] In this regard, the Committee against Torture has stressed that the duty of states in providing redress to victims includes the concepts of "effective remedy" and "reparation". Accordingly, it is comprehensive reparation that guarantees restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.[115]

67. In its national report, the Syrian government emphasized that "Syrian law criminalizes torture in all its forms, and the Constitution states that no one may be made to suffer torture or degrading treatment (art. 53). The Criminal Code envisages severe penalties for persons who use acts of coercion in order to obtain a confession to, or information about, a crime. Such persons can face a term of imprisonment of up to 3

110 - HRC, Independent International Commission of Inquiry on the Syrian Arab Republic, Syria's Missing and Disappeared: Is there a Way Forward? Recommendations for a Mechanism with an International Mandate, (17 June 2022), Page 2 and footnote 2(Why is the Commission Recommending a Mechanism with an International Mandate?), Available online here.

111 - OHCHR, UN Treaty Body Database, available at: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=170&Lang=en

112 - Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter "CAT") 1984 (UNTS 1465), Art 2,4,16.

113 - CAT 1984 (UNTS 1465), Art 12.

114 - CAT 1984 (UNTS 1465), Art 13

115 - Committee against Torture (hereinafter CteeAT), General Comment No. 3 (2012), UNDoc CAT/C/GC/3, para 2.

years (art. 391). Article 216 of the Military Criminal Code also criminalizes coercive acts in any form".[116] However, these legislative texts are totally insufficient to curb crimes of torture and ill-treatment and do not contribute to providing reparations to the victims of these violations or ensuring that perpetrators do not enjoy impunity.

### 2.4.1 Inadequacy of legislation mentioned in the report to criminalize torture and ill-treatment

68. Although acts of torture and ill-treatment have become the distinguishing feature of detention centers in Syria, the legal articles referred to by the Syrian government in its report are insufficient to criminalize these acts and punish them with penalties that commensurate with their gravity. In its report, the Syrian government referred to Article 216 of the Military Penal Code as an article criminalizing torture.[117] Perhaps this is a mistake in the report, because the Military Penal Code contains only 172 articles, and therefore there is no article 216.[118] But returning to the fourth periodic report submitted by Syria to the Human Rights Committee, we find that the government has referred to Article 116 of the mentioned law.[119] It is noteworthy that this article does not criminalize acts of torture in all its forms, as stated by the government, but it is limited to "acts of severity or threat" that the military subordinates perform against their commanders or higher rank or the soldiers assigned to protect them. The first and second paragraphs of the article state the following: "The military person who inflicts any act of severity or threat on the commander or someone higher in rank during service or because of the service, shall be punished with temporary detention. This penalty shall be passed if the act is committed against the military personnel assigned to guard the commander or the higher-ranking."[120]

69. As for Article 391 of the General Penal Code, it states: "Whoever inflicts a form of severity on a person that is not permitted by law, with the desire to obtain a confession about a crime or information about that crime, shall be punished by jail from three months to three years. And if the acts of severity result in illness or injury, the minimum punishment is jail for one year."[121] It is noteworthy that the definition of torture according to the text of Article 391 is not precisely defined. The phrase " acts of severity " is loose in meaning and does not explicitly state what is meant by it. In addition, this provision calls into question whether there are forms of severity "permitted by law" in order to obtain a confession of the crime. The

116 - UNGA, Human Rights Council, Working Group on the Universal Periodic Review, National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1, Syrian Arab Republic, 2021, UNDoc A/HRC/WG.6/40/SYR/1, para 45.

117 - UNGA, Human Rights Council, Working Group on the Universal Periodic Review, National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1, Syrian Arab Republic, 2021, UNDoc A/HRC/WG.6/40/SYR/1, para 45.

118 - See, Legislative Decree No. 61 of 1950, Military Penal Code. Available at: https://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=58a5e1fc4

119 - The Fourth Periodic Report Submitted by the Syrian Arab Republic under Article 40 of the Covenant, which was due in 2009 (27 May 2022), UN Doc CCPR/C/SYR/4, para 38.

120 - Legislative Decree No. 61 of 1950, Military Penal Code, art 116 (1,2).

121 - Syrian Penal Code No.148 (1949), Art 391 (1,2)

Syrian government argues that this general text has the advantage of being broad, as it includes torture in its simplest forms and cases. Moreover, Syria's accession to CAT makes its provisions superior to any effective national legislation, as it is considered part of the national law and amends all legislation that contradicts it.[122] Nevertheless, the Committee against Torture considers that Syria should amend its national legislation to conform to the definition of torture contained in the Convention and to include all its elements. The Committee justifies its view that including a precise definition of torture in national law, in line with the definition contained in the Convention, enhances society's awareness of the seriousness of this crime and enhances its deterrence.[123]

70. The problem of Article 391 was not limited to the failure to provide an accurate definition of torture, but the most prominent problem was that this act was considered a misdemeanor and not a felony, which means that it is not one of the most serious crimes.[124] This is reflected in the mild punishments imposed on the perpetrator. The Committee against Torture expressed its concern about this and indicated that Syria should review its domestic legislation and criminalize and punish acts of torture with penalties commensurate with their gravity.[125] However, the Syrian government's response to the Committee's comment was that the punishment stipulated in the first paragraph of Article 391 relates to torture in its simplest form, which is "torture that does not leave the victim with any injuries". But if the torture is accompanied by a permanent disability or "bodily" harm, the penalty will be higher.[126] What is remarkable about the response of the Syrian government is its certainty that there are acts of torture that do not cause harm to the victim, and that the harm that warrants aggravating the punishment is only bodily harm or permanent disability. This calls for a prompt reconsideration of the phrase "severity that is not permitted by law" in the text of Article 391, since the legislative text and the government's responses to the Committee against Torture suggest the existence of a margin of severity that is permitted by law and does not, according to the government's opinion, cause harm to the person, and therefore it can be used in interrogation. This is confirmed by the aforementioned jurisprudence of the Court of Cassation, which gave the judge the discretion to take the confession contained in the intelligence reports or neglect it as a form of non-judicial confession.[127]

122 - Committee against Torture, Consideration of reports submitted by states parties under Article 19 of the Convention, Comments of the Syrian Arab Republic and follow-up responses to the concluding observations of the Committee against Torture (CAT/C/S Y R/CO/1) (2011), UNDoc CAT/C/SYR/CO/1/Add.1, para 1-5.

123 - Committee against Torture, Consideration of reports submitted by states parties under Article 19 of the Convention, Concluding observations of the Committee against Torture (2010), UNDoc CAT/C/SYR/CO/1, para 5.

124 - The perpetrator according to article 391 is liable to jail, and the penalty of jail in Syrian Penal Code is a misdemeanour penalty, see article 39 of Syrian Penal Code No.148 1949.

125 - Committee against Torture, Consideration of reports submitted by states parties under Article 19 of the Convention, Concluding observations of the Committee against Torture (2010), UNDoc CAT/C/SYR/CO/1, para 6.

126 - Committee against Torture, Consideration of reports submitted by states parties under Article 19 of the Convention, Comments of the Syrian Arab Republic and follow-up responses to the concluding observations of the Committee against Torture (CAT/C/S Y R/CO/1) (2011), UNDoc CAT/C/SYR/CO/1/Add.1, para 6.

127 - Syrian Court of Cassation, Decision 701/1995, Case No. 1756, rule 414 of the Lawyers' Journal (1995).

### 2.4.2 A new Anti-torture law?

71. Despite the insistence of the Syrian government that domestic laws are sufficient to criminalize torture and comply with the provisions of the Convention, a new law was issued in early 2022 that criminalizes acts of torture and increases its punishment.[128]The head of the Constitutional and Legislative Affairs Committee in the People's Assembly expressed through the media that the new Anti-torture Law complies with Syria's international obligations of amending its national legislation in correspondence with the CAT, and that Syria had intended to do so previously, but this process was delayed because of the war .[129]

72. Perhaps the most prominent challenges that torture victims of the past ten years will face is the principle of non-retroactivity of criminalization and punishment except for what is best for the accused. This means that in the case of criminalizing an act that was not previously criminalized, or increasing the penalty for an act that was punishable by the old law with a lighter penalty, then the old text only gets applied to the acts that occurred during its validity period.[130] In other words, as long as the Anti-torture Law amends the elements of this crime and increases the penalty for it, its provision will only apply to acts committed after its entry into force. For acts of torture that were committed before that, i.e., before the date of March 29, 2022, the previous law will apply to them, the most prominent of which is Article 391 of the Penal Code. This is a great jeopardy to the interests of the victims. In addition to the obstacles of prosecuting members of the army, internal security and general intelligence mentioned above, the commission of ''severity" acts stipulated in Article 391 is a misdemeanor, not a felony.[131] This means that the right to claim these acts will be forfeited by the statute of limitation after the lapse of three years from the date on which the act was committed, if no prosecutions were conducted regarding it during that period.[132] As long as the prosecutions against the state's agents are restricted, as mentioned above, their victims of acts of torture and ill-treatment will lose the right to a remedy before fair courts if the statute of limitations has expired.

73. Although the new law explicitly criminalizes torture and defines it in accordance with the CAT, it does not refer to other forms of ill-treatment known in Syrian detention centers. It might be argued that ill-treatment is already criminalized under Article 391 of the Penal Code. However, the text of this article is weak and unclear as the article punishes those who commit acts of severity that are not permitted by law, in the desire to obtain a confession for a crime or information about it. It is noted that the term "severity" in the above-mentioned article does not refer precisely and explicitly to the prohibition of all forms of cruel, inhuman or degrading treatment or punishment. Moreover, ill-treatment in detention centers may occur outside the context of interrogation, such as failure to provide the necessary medical care to detainees, placing them in overcrowded cells, or not providing adequate standards of food, water or sanitation, which are not covered by the text of Article 391.

128 - Law No. 16 of 2022, available in Arabic here.

129 - Al-Kuzbari justifies the delay in issuing the "anti-torture" law in Syria, Enab Baladi, 30 Mar 2022, available at: https://www.enabbaladi.net/archives/560826#ixzz7RU4GZrir

130 - Syrian Penal Code No.148 (1949), art 1-6. Available in Arabic here.

131 - The penalty of jail in Syrian law is a misdemeanour penalty, see Syrian Penal Code No.148 1949, Art 39.

132 - Syrian Code of Criminal Procedure No. 112 of 1950, art 437, 438.

74. It is true that the Prison System Law No. 1222 of 1929 prohibits all prison guards and employees from using force against detainees, calling them derogatory nicknames, or addressing them with a vulgar language.[133] In practice, however, it is clear that this law is not optimally applied to detainees in security facilities.[134] In addition, the published laws regulating the work of the internal security forces and the army do not contain provisions expressly prohibiting ill-treatment. This clearly contradicts Syria's duty to explicitly criminalize such acts and punish their perpetrators with penalties commensurate with their seriousness.[135]

75. This reluctance to explicitly criminalize ill-treatment should not be read in isolation from the beginning of the definition used in the Anti-torture Law 16/2022, which is "every act or omission that results in severe pain or suffering, whether physical or mental, inflicted on a person." as there is no clear standard in law for what is meant by severe pain and suffering, it would be easy for perpetrators to commit many forms of ill-treatment under the pretext that they did not reach the threshold of severe pain and suffering, which are not identified by law.

76. Certainly, Syria has not, under Anti-torture Law 16/2022, repealed the laws that protect members of the army, the Internal Security Forces, and the General Intelligence Department from prosecution. In this regard, the Committee against Torture stresses the state's duty not to place any legal or procedural obstacle to the prosecution of alleged perpetrators, as this is in violation of the principle of the non-derogability of the absolute prohibition of torture and ill-treatment.[136] In addition, the state must, on its own initiative, initiate prompt and impartial investigations as long as it finds grounds pointing to the occurrence of such acts.[137] Referring to the laws and procedures that impede the prosecution of members of the army, internal security and the General Intelligence Department in Syria, and the possibility of the Police Disciplinary Court's reluctance to refer the defendants to the criminal judiciary despite its knowledge of the possibility of such acts, we find that the state has failed with two fundamental obligations: Not to derogate the right to be free from torture and ill treatment, and to initiate investigative procedures promptly and impartially as soon as they become aware of the occurrence of such acts.

77. Moreover, the state should organize rehabilitation programs in a comprehensive and long-term manner to ensure the effective and comprehensive rehabilitation of victims of torture and ill- treatment. This includes, and not limited to, the provision of medical, psychological and social reintegration services, family and community assistance services, professional and educational capacity building services, as well as any private services provided directly to the victim when necessary. This, in addition to the state's obligation to take measures of satisfaction, such as memorialization, disclosure of the whereabouts and remains of victims, and public apologies.[138] However, there are no such measures in the Anti-torture Law or other Syrian legislations. As for Syria's strategic plans, which the government presented in the last UPR session

133 - Prison System Law No. 1222 of 1929, art 30.

134 - Amnesty International, 'It Breaks the Human: Torture, Disease and Death in Syria's Prisons' (2016) MDE 24/4508/2016.

135 - The Internal Security Forces Service Law (Legislative Decree No.1 of 2012) does not prohibit ill-treatment whatsoever even in section 12 of the (obligations, prohibitions, and punishments) of the Security Forces. Similarly, the Military penal Code (Legislative Decree No. 61 of 1950) only prohibits the use of "severity or threat" against superiors and their guards but not against subordinates, according to article 116.

136 - Committee against Torture, General Comment No.2 (2008), UNDoc CAT/C/GC/2, para 5.

137 - CAT 1984 (UNTS 1465), Art 12.

138 - Committee against Torture, General Comment No. 3 (2012), UNDoc CAT/C/GC/3, para 11-16,

before the Human Rights Council, the Syrian government indicated that there are plans for care and assistance for victims of physical, sexual and gender-based violence and trafficking of children and women.[139] In addition to that, there are plans for rehabilitation programs for child soldiers and protection programs for the "wounded and the families of the martyrs".[140] However, no plan to rehabilitate victims of torture and ill-treatment was explicitly addressed. In the overarching scene, it is clear that the state's intention to redress is based on its unilateral understanding of the concept of victim. As anyone who has been a victim of violations committed by parties opposing the state can benefit from reparation and redress programs, but for the victims of state agents' violations, the path to judicial redress before them is blocked by all the challenges mentioned in this study. Moreover, ongoing violations such as torture and enforced disappearance also prevent individuals from trusting the state and frighten them from further risk of persecution and harm, resulting in their lack of recourse to domestic justice, as well as the unavailability of any non-judicial compensation or rehabilitation programmes.

78. In sum, the legislation referred to by the Syrian government in its report is insufficient to put an end to the crimes of torture and inhuman treatment and to punish them in a manner commensurate with their gravity. In addition, the immunities granted by domestic legislation to the perpetrators of these acts by the state agents will not allow any guarantee of the rights of the victims to comprehensive reparation and effective remedy, for whom the state did not include any attempt to redress their harm even by non-judicial means. Additionally, the new Anti-torture Law that Syria issued after submitting its national report does not effectively lead to overcoming the aforementioned obstacles, especially with victims of torture in the previous ten years.

## 2.5 Death penalty as a non-exceptional punishment with hollow judicial guarantees

79. The Universal Declaration of Human Rights affirms the right of everyone to life, liberty and security of person.[141] The ICCPR also states in Article 6 that the right to life is inherent in every human being, no one may be arbitrarily deprived of life, and the law must guarantee this. In addition, the death penalty may not be imposed except by virtue of a final judgment issued by a competent court. Any person sentenced to death shall have the right to seek a pardon or commutation of the sentence in all cases.[142]

139 - Annexes to the national report of the Syrian Arab Republic to third cycle of the Universal Periodic review, Annex 9: Proposal to prepare a national plan to implement programs in line with Security Council Resolution No. 1325, p 32 et sec; Annex 10: The National Program to Support Women in the Syrian Arab Republic (2018), Chapter 7. Available at: https://lib.ohchr.org/HRBodies/UPR/Documents/Session40/SY/A_HRC_WG.6_WG.6_40_SYR_1_Syrian%20Arab%20Republic_Annexes_AE.pdf.

140 - Annexes to the national report of the Syrian Arab Republic to third cycle of the Universal Periodic review, Annex 3: The National Development Program for Syria in the Post-War, p 200; Annex 14: The National Plan for Dealing with Child Victims of Recruitment. Available at: https://lib.ohchr.org/HRBodies/UPR/Documents/Session40/SY/A_HRC_WG.6_WG.6_40_SYR_1_Syrian%20Arab%20Republic_Annexes_AE.pdf.

141 - Universal Declaration of Human Rights 1948, UNGA Res 217 A, art 3.

142 - International Covenant on Civil and Political Rights 1966 (UNTS vol 999, p 171), art 6 (1,2,4)

80. Although the international law did not absolutely prohibit the use of the death penalty, understanding the Syrian context and the entire cycle of the aforementioned violations makes it dangerous to accept any form of application of this punishment in Syria, where, for instance, the mass summary executions without any judicial guarantees in Sednaya Prison cannot be ignored. In a 2017 Amnesty International report titled "Human Slaughterhouse", it noted that in addition to the death of large numbers of detainees because of torture and systematic deprivation of food, drink, medicine and medical care, since 2011 thousands of people have been extrajudicially executed in hangings collectively carried out in absolute secrecy. These executions were carried out after they were sentenced to death by the Military Field Court located in al-Qaboun neighborhood of Damascus. Each trial lasted between one and three minutes maximum. Those sentenced to death were also taken blindfolded to the gallows after being severely beaten for two or three hours, without knowing that they were being led to execution. After that, the bodies loaded into a truck and taken to Tishreen Hospital for registration, and then buried in mass graves on military lands.[143] Therefore, it must be considered that the death penalty in Syria is used as a tool by the state to get rid of its opponents. Thus, it is not acceptable to keep this punishment and isolate it from the broader picture of the cycle of legislative and judicial violations committed by state agents.

81. Despite this, the Syrian government claimed in its report that it had fulfilled its international obligations in terms of making the death penalty in Syria an exceptional measure subject to all procedural guarantees that protect the rights of the accused and provide them with the means to seek pardon and commutation of punishment. As it was stated in the fourth paragraph of the report that "the death penalty is applied only in rare cases and for the most serious crimes, and its use is surrounded by restrictions and safeguards. In fact, a sentence of death is not carried out until the views of the Amnesty Commission have been canvassed and until the Head of State has given approval (art. 43 of the Criminal Code). Condemned persons can also benefit from amnesty laws under which their sentence is commuted to life imprisonment. This is consistent with article 6 of the Covenant on Civil and Political Rights.".[144] The report probed to some statistics that indicate the implementation of a limited number of death sentences, as well as reference to the amnesty laws that have benefited those sentenced to death.[145] It is striking that the Syrian government insisted that it does not intend to abolish the death penalty in Syria, as 13 recommendations were made to the Syrian government in the review session to abolish the death penalty, but it did not accept any of them.[146] This reinforces the indications that the state wants to keep this tool in its hand to use it against its opponents in the absence of sufficient judicial guarantees, as will be explained below.

143 - Amnesty International, Human slaughterhouse: Mass hangings and extermination at Saydnaya Prison, Syria, Index Number: MDE 24/5415/2017, (Feb 2017), 5-6.

144 - UNGA, Human Rights Council, National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1, Syrian Arab Republic, 17 November 2021, UN Doc A/HRC/WG.6/40/SYR/1, para 4.

145 - UNGA, Human Rights Council, National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1, Syrian Arab Republic, 17 November 2021, UN Doc A/HRC/WG.6/40/SYR/1, para 4, 34.

146 - See UN Doc A/HRC/50/6; A/HRC/50/6/Add.1, recommendations No 133.4 -133.5 - 133.6 - 133.7 - 133.8 - 133.9 - 133.66 - 133.103 - 133.104 - 133.105 - 133.106 - 133.107 - 133.108.

### 2.5.1 The exception from the scope of amnesty or commutation of punishment

82. The Human Rights Committee considers that the death penalty should be imposed only for the most serious crimes, such as those intentionally causing death. As for other crimes, such as political crimes, for example, they can never be grounds for a death sentence.[147] This is especially if the death penalty is imposed for conduct that may not be criminalized in the first place under the ICCPR, such as the right to join or form an opposition political group.[148] In addition, the death penalty may not be applied to crimes that are vaguely defined, such as terrorism crimes if they are given a vague definition.[149] It is true that international law and the Committee's opinion do not prevent the application of the death penalty,, but keeping the door open to the application of the death penalty in Syria raises many concerns. This is specifically true as the Syrian government in its report does not reflect objectively and accurately the reality of the death penalty in Syria. As the use of execution as a punitive measure is widespread in Syrian legislation, and the procedural guarantees for the accused are insufficient, especially before the exceptional, biased and independent judiciary. In addition, the amnesty decrees that the government mentioned do not include a large number of crimes punishable by death. All of this points to the state's intention to use the death penalty as a tool to get rid of its opponents.

83. As with regard to the death penalty in Syrian legislation, and contrary to what was stated in the report that the death penalty is imposed only in rare cases, the Syrian legislature actually imposes this punishment on many crimes. Some of these crimes are contained in the General Penal Code, some are contained in the Military Penal Code, and some are contained in some special laws, such as the Counter-Terrorism Law. In addition, this penalty was mentioned in other special laws that punish mere political activity with the death penalty, as the first article of Legislative Decree No. 4 of January 2, 1964, which punishes anyone who, in any way, obstructs the implementation of the socialist legislation. Law No. 53 of April 8, 1979, known as the Law (Security of the Arab Socialist Baath Party), which in Article 10 of it punishes anyone who attacks a party headquarters if the act is instigated or interfered by an external party or if the act results in the killing of a person with the death penalty. In addition, there is the first article of Law No. 49 of July 8, 1980, which punishes anyone affiliated with the Muslim Brotherhood with the death penalty simply because of the affiliation with this political organization. It should be noted that these legislations are still in force so far, and the state cannot allege not activating them. As long as these laws have not yet been repealed, there is nothing to prevent the competent authorities from applying its texts whenever they want, because every legal text is repealed only with an equivalent or a higher-level legal text.[150]

147 - UN Human Rights Committee (HRC), General comment no. 36, Article 6 (Right to Life), 30 October 2018, CCPR/C/GC/36, para 35.

148 - UN Human Rights Committee (HRC), General comment no. 36, Article 6 (Right to Life), 30 October 2018, CCPR/C/GC/36, para 36.

149 - UN Human Rights Committee (HRC), General comment no. 36, Article 6 (Right to Life), 30 October 2018, CCPR/C/GC/36, para 38; CCPR, Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, Concluding observations of the Human Rights Committee, Algeria, December 2007, CCPR/C/DZA/CO/3, para. 17.

150 - See, Abdel-Wahab Houmd, The Detailed Explanation of the Penal Code, 1990 ed, p. 361.

84. Since the right to life contained in Article 6 of the ICCPR is non-derogable, the Human Rights Committee has relied on this to confirm that any trial that leads to a death sentence must be consistent without derogating from the provisions of the Covenant, especially Article 14.[151] Also, any breach of the procedures that lead to the death sentence will make this sentence arbitrary and incompatible with the content of Article 6 of the Covenant.[152] Here, it should be noted that the most important procedural guarantees that are ensured by Article 14 of the ICCPR are the non-use of confessions extracted by force, enabling the accused to question witnesses, and providing them with private meetings with their lawyers during all stages of the criminal procedure, including the interrogation stage, with full facilities and sufficient time to prepare the defense. As well as presuming the accused's innocence, presenting the case before an independent and impartial court, and ensuring the possibility of appealing the verdict before a higher court to reconsider the conviction and sentence.[153] In this regard, the Committee stresses that the court issuing the death sentence should be a competent, impartial court independent of the legislative and executive authority, and that civilians accused of capital crimes should not be tried before military courts. In this context, the Committee stresses that the courts of customary justice are not considered judicial institutions that have sufficient fair trial guarantees to adjudicate crimes punishable by death.[154] The Committee also affirmed the right of the person sentenced to death to seek a pardon or commutation in all cases, and that this punishment shall not be implemented except by virtue of a final judgment that exhausts all procedures of appeal, supervisory review, and consideration of pardon and commutation requests. In addition, it is not permissible to exclude any category of convicts from these pardon and commutation measures or to link the measures to discriminatory, arbitrary, onerous or useless conditions.[155]

85. The Syrian government has avoided referring to the death sentences issued by the Military Field Court. As a reminder, this court is an exceptional criminal court that is exempted from adherence to the rules and procedures stipulated in the legislation in force, as it does not allow the accused to seek the assistance of a defense attorney and does not provide sufficient time and facilities to prepare the defense. Moreover, its verdicts are issued final and not subject to appeal before a higher court,[156] but the death sentences it issues are subject to ratification by the head of state only.[157] If the head of the state approves it, the sentence gets implemented immediately without going through the Amnesty Committee referred to in the national report. As the Amnesty Committee considers judgments issued by the ordinary judiciary (criminal court) only, and the law establishing the Military Field Courts did not provide for the presentation of death sentences issued to this committee. This court considers crimes referred to it by the Minister of Defense,[158] and the security services that undertake the investigation usually suggest to the Minister of

151 - UN Human Rights Committee (HRC), General comment no. 32, Article 14, Right to equality before courts and tribunals and to fair trial, 23 August 2007, CCPR/C/GC/32, para 6.

152 - UN Human Rights Committee (HRC), General comment no. 36, Article 6 (Right to Life), 30 October 2018, CCPR/C/GC/36, para 41.

153 - International Covenant on Civil and Political Rights 1966, UNTS vol 999, p 171, art 14 (1,2,3,5); UN Human Rights Committee (HRC), General comment no. 36, Article 6 (Right to Life), 30 October 2018, CCPR/C/GC/36, para 41.

154 - UN Human Rights Committee (HRC), General comment no. 36, Article 6 (Right to Life), 3 September 2019, CCPR/C/GC/35, para 45.

155 - UN Human Rights Committee (HRC), General comment no. 36, Article 6 (Right to Life), 30 October 2018, CCPR/C/GC/36, para 46-47.

156 - Legislative Decree No. 109 of 1968 on Establishing Field Military Courts, art 6.

157 - Legislative Decree No. 109 of 1968 on Establishing Field Military Courts, art 8.

158 - Legislative Decree No. 109 of 1968 on Establishing Field Military Courts, art 1.

Defense the referral to this court. It is also specialized in examining a wide range of crimes that are considered by the military judiciary and are punishable by death, whether under the Military Penal Code or the General Penal Code. (See tables no. 1 and 2 below). Consequently, it can be said that those referred for capital offenses before the Military Field Court lose their right to seek pardon in the absence of procedural guarantees for a fair trial and this court's non-compliance with general legal rules.

86. As for the amnesty laws that the Syrian government indicated that they replace the death penalty with life imprisonment, they are 7 laws.[159]These laws in principle replace the death penalty with life imprisonment with hard labor, but they exclude in the text of the amnesty law itself a group of crimes punishable by death. In fact, there are many of these crimes that law punishes by death and are not covered by all of the amnesty laws issued since 2011.[160] For example, all amnesty laws have excluded the only two capital offenses in Counter-Terrorism Law No. 19 of 2012.These two crimes are: Smuggling, manufacturing, possessing, stealing or embezzling weapons, ammunition, or explosives of any kind with the intent of using them in the execution of a terrorist act, if these acts are accompanied by the killing or incapacitation of a person.[161] In addition to the crime of threatening the government by carrying out a terrorist act with the aim of making the government do or refrain from doing something, if the threat is accompanied by the hijacking of a public or private air, sea or land transportation or the seizure of real estate of any kind or the seizure of military objects or kidnapping a person, if this act leads to the death of a person.[162] Moreover, all the amnesty laws issued since March 2011 until now have excluded 14 crimes punishable by death under the Military and General Penal Codes, and there are four other crimes that were included in the amnesty laws until 2013, but were excluded in all subsequent amnesty laws. These excluded crimes considered by the Military Field Court. (Refer to tables no. 3 and 4 in the annexes).

87. Thus, it can be argued that the death penalty is present in a wide range of domestic legislation. Moreover, the above legal analysis indicates the state's intention to use the execution as a tool to get rid of its opponents as part of the whole cycle of human rights violations committed by state agencies. Therefore, death punishment should not be discussed procedurally in isolation from the broader understanding of the context of human rights violations in Syria, but rather should be abolished at all.

159 - See, No.61 of 2011, Art 1; No.71 of 2012 Art 1; No. 23 of 2013, Art 1; No.22 of 2014, Art 1; No.20 of 2019, Art 1; No. 6 of 2020, 1; No.13 of 2021, Art 16.

160 - No.71 of 2012 Art 13; No. 23 of 2013, Art 5(4); No.22 of 2014, Art 18; No.20 of 2019, Art 14; No. 6 of 2020, 5; No.13 of 2021, Art 17; No. 7 of 2022, Art 1.

161 - Syrian Counter-terrorism Law No. 19 of 2012, art 5 (2).

162 - Syrian Counter-terrorism Law No. 19 of 2012, art 6 (3).

## 2.6 Amnesty for the victims or an indulgence for the perpetrators?

88. In its national report, Syria indicated that it had taken a tolerant approach by releasing, under twenty amnesty laws between 2011 and 2020, all those "whose hands are not stained with blood". According to the Syrian government, the number of beneficiaries of these amnesty laws has reached 344,684 detainees and convicts.[163]

89. In fact, during the period mentioned in the report, Syria issued 17 amnesty laws and three laws extending the effectiveness of previous amnesty laws, in addition to the issuance of four amnesty laws in 2021 and 2022. [164]It should be noted here that the benefit of 344,684 persons from the amnesty laws cannot be verified with accuracy, especially when lists of names of amnesty beneficiaries or those who have been released are not available and the government explicitly refused to provide these lists. Judge Ammar Bilal, head of the Judicial Experience Office and member of the Legislation Department at the Ministry of Justice, confirmed in his comment on the recent Amnesty Decree No. 7/2022 that the state will not issue lists of those who are included in the amnesty or released because this procedure is illegal and harms the proper application of the law.[165]

90. Since the Syrian government has mentioned amnesty laws in its national report under the title "Strengthening the Institutional Framework" and implementing constitutional and legal obligations, it is worth noting that all the amnesty laws were issued in the form of legislative decrees issued by the President. According to the Syrian constitution, the People's Assembly is competent to issue general amnesty laws, while the President has only the powers to issue a private amnesty.[166] Additionally, the President can exercise legislative powers and issue legislative decrees that have the force of law in specific circumstances only, and they are either outside the sessions of the People's Assembly or during it if absolutely necessary or during the period in which the People's Assembly is dissolved.[167] It is noteworthy that almost all of the pardon decrees issued by the President of the Republic were during the sessions of the People's Assembly, knowing that the People's Assembly can be called for exceptional sessions if necessary. In other words, the amnesty laws were not issued in accordance with what guarantees the strengthening of the institutional framework and respect for the constitution, but on an exceptional basis by the President. This may not have different legal repercussions, but at the very least the President is presented as the initiator of forgiveness, while this practice should not be portrayed as a bounty from the President. Moreover, the President's issuance of amnesty laws also raises the question about whether there are other dimensions to these laws other than those related to the tolerant approach referred to in the national report, especially

163 - UNGA, Human Rights Council, National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1, Syrian Arab Republic, 17 November 2021, UN Doc A/HRC/WG.6/40/SYR/1, para 43.

164 - The amnesty laws between 07.03.2011 and 30.04.2022 are (without the extension laws) No.34 of 2011, No.61 of 2011, No.72 of 2011, No.124 of 2011, No.10 of 2012, No.30 of 2012, No.71 of 2012, No. 23 of 2013, No.70 of 2013, No.22 of 2014, No.4 of 2015, No.32 of 2015, No.8 of 2016, No 15 of 2016, No.18 of 2018, No.20 of 2019, No. 6 of 2020, No.1 of 2021, No.13 of 2021, No.3 of 2022, No. 7 of 2022.

165 - Interview with Judge Ammar Bilal, head of the Judicial Experience Office and member of the Legislation Department at the Ministry of Justice (minutes 22:09 - 30:44), Sham FM TV (4 May 2022). Available in Arabic at: https://youtu.be/BSaZk1bryvU

166 - The Syrian Constitution of 2012, art 75(7), 108. Available in Arabic here.

167 - The Syrian Constitution of 2012, art 113(1). Available in Arabic here.

that they were issued by the Commander-in-Chief of the Army and Armed Forces and the Chief of the Executive Authority, and this is what will be discussed below.

91. The amnesty laws issued so far can be informally categorized under two main types. The first type is the amnesty laws for crimes related to military service and desertion. The number of amnesty laws dedicated solely to this purpose is 8 laws.[168] As for the second type, it is an amnesty for a wider range of crimes, and this type includes crimes with multiple descriptions between felonies, misdemeanors and infractions, and the number of these laws amounted to 13 laws.[169]

92. It is worth recalling here that Syrian law criminalize acts of torture under Article 391 of the Penal Code as a misdemeanor prior to the issuance of Anti-torture Law 16/2022. Moreover, the Syrian government has also confirmed, as mentioned earlier, that the term enforced disappearance does not exist in Syria, but the law punishes this act under the framework of the crimes of kidnapping and deprivation of liberty. It is also worth recalling that the admission by detention centers' officials of persons without warrants or judicial decisions or their retention beyond the specified period is also a misdemeanor, although this act may amount to enforced disappearance when accompanied by the state's denial or refusal to disclose the person's whereabouts and fate, which will result in prolonging the period of deprivation of legal guarantees.

93. In this regard, within the second type of amnesty laws, 8 laws were issued that pardon the entire penalty for misdemeanors, except for those excluded by a special provision in the law. It is worth noting that the crime of torture that the government referred to its criminalization under Article 391 of the Penal Code, which is a misdemeanor, is not excluded from the inclusion of amnesty in these eight laws.[170] The misdemeanor of accepting persons by state officials in detention centers without warrants or judicial decisions, or keeping them beyond the specified period, was also included in 7 previous amnesty laws.[171] The situation was not different for the kidnapping felony, as it was included in 5 previous amnesty laws.[172] In other words, what the state claims of prosecuting crimes of torture, kidnapping and deprivation of liberty, which are classified, according to the Syrian government, under the concept of enforced disappearance is false, as the state has repeatedly pardoned these crimes and facilitated the impunity of perpetrators and deprived the victims of their right to an effective remedy under the guise of its tolerant approach.

94. It is true that the amnesty laws have stipulated that persons shall surrender themselves to be included in the amnesty for felonies, but it did not request that for misdemeanors.[173] This means that offenses such as torture and arbitrary deprivation of liberty become included in the amnesty and their prosecutions and investigations stop once the amnesty law is issued. Therefore, with the issuance of the new Anti-torture

168 - See (without extension laws), No.124 of 2011; No.30 of 2012; No.70 of 2013; No.32 of 2015; No.8 of 2016; No.18 of 2018; No.1 of 2021; No.3 of 2022.

169 - See (without extension laws), No.34 of 2011; No.61 of 2011; No.72 of 2011; No.10 of 2012; No.71 of 2012; No. 23 of 2013; No.22 of 2014; No.4 of 2015; No 15 of 2016; No.20 of 2019; No. 6 of 2020; No.13 of 2021; No. 7 of 2022.

170 - See, No.34 of 2011,Art 1,2; No.61 of 2011, Art 1,2; No.71 of 2012 Art 6,13; No. 23 of 2013, Art 10, 15; No.22 of 2014, Art 12, 18; No.20 of 2019, Art 10, 14; No. 6 of 2020, Art 10, 13; No.13 of 2021, Art 2, 17.

171 - See, No.61 of 2011, Art 1,2; No.71 of 2012 Art 6,13; No. 23 of 2013, Art 10, 15; No.22 of 2014, Art 12, 18; No.20 of 2019, Art 10, 14; No. 6 of 2020, Art 10, 13; No.13 of 2021, Art 2, 17.

172 - See, No.22 of 2014, Art 6; No 15 of 2016, Art 2; No.20 of 2019, Art 5; No. 6 of 2020, Art 6; No.13 of 2021, Art 7.

173 - See, No.61 of 2011, Art 5; No.71 of 2012 Art 15; No. 23 of 2013, Art 18; No.22 of 2014, Art 22; No.20 of 2019, Art 17; No. 6 of 2020, Art 15; No.13 of 2021, Art 20.

Law and its non-retroactive application, all those who committed torture before the issuance of the new law enjoy impunity under these amnesty laws. It is true that the amnesty laws preserved the personal right to file a claim for compensation before the competent criminal court or before the civil court, but this process is only nominal in practice. It is possible to pressure and intimidate the claimants to forfeit their personal right, especially since the public right has already been forfeited by amnesty. The victims will not pursue this right in light of their fear of the state agents. In addition, the personal civil right falls under the statute of limitations within a period of three years from the knowledge of the injured party of the injury and the person caused it.[174] Therefore, it won't be possible to claim compensation after this period. As a practical example of this, in the event that a member of the notorious Palestine branch committed a crime of torture against a person before the date of September 14, 2019 (which is the date of one of the amnesty laws that included the crime of torture), the criminal penalty has fallen by amnesty and the right to civil compensation will lapse by statute of limitations on September 14, 2022. After that, victims will have no access to any form of reparation.

95. On April 30, 2022, Amnesty Law No. 7/2022 was issued to grant a general amnesty for terrorist crimes committed by Syrians before the mentioned date, except for those that led to the death of a human being.[175] Syria has promoted this amnesty as a legal precedent in Syria. As the Ambassador, the Permanent Representative of Syria to the United Nations, stressed in the session for the adoption of the final outcomes of the reports of the third UPR cycle, that this amnesty is distinct from all that preceded it. It differs in its legal, social and political nature, its scope, its implementation mechanism, and its dedication to an advanced stage of the state's efforts to achieve national reconciliation, the return of displaced persons and refugees, and reintegration.[176] It is remarkable that the United Nations Special Envoy for Syria, Pedersen, in the context of stressing the importance and vitality of the file of detainees and missing persons in Syria, he saw progress in this amnesty made by the state in the field of confidence-building and the release of detainees.[177]

96. It is wrong to consider this amnesty law as a way to release detainees or reveal the fate of missing persons in Syria. Although this amnesty included a group of crimes that had been directed against the state's opponents and resulted in their arrest or imprisonment for an extended period according to rulings issued by the Counter-Terrorism Court, this amnesty did not include those accused of other crimes, including crimes against the state security considered before the military judiciary. Therefore, discussing of this amnesty should not be separated from the vague state security charges contained in the Penal Code and its amendments, the new cybercrime law and other charges mentioned above. Judge Ammar Bilal, head of the Judicial Experience Office and member of the Legislation Department at the Ministry of Justice, confirmed that not everyone covered by the amnesty will be released in the event of multiple crimes.[178]

174 - Syrian Civil Code No.84 (1949), art 173. Available in Arabic here.

175 - Amnesty law No.7 (2022), art 1. Available in Arabic here.

176 - Syria UPR Report Consideration, 29th Meeting of the 50th Regular Session Human Rights Council, 30 Jun 2022, the Speech of Mr. Hussam Edin Aala, Ambassador Permanent Representative of the Syrian Arab Republic to UNOG (Minutes 11:45 - 12:35), Available on UN web TV at: https://media.un.org/en/asset/k10/k10wrqezm5.

177 - Office of the Special Envoy of the Secretary-General for Syria, United Nations Special Envoy for Syria Mr. Geir O. Pedersen Remarks at Brussels Conference, 10 May 2022. Available at: https://specialenvoysyria.unmissions.org/united-nations-special-envoy-syria-mr-geir-o-pedersen-remarks-brussels-conferences-brussels.

178 - Interview with Judge Ammar Bilal, head of the Judicial Experience Office and member of the Legislation Department at the Ministry of Justice (minutes

In this regard, human rights organizations have confirmed that thousands of Syrians are still missing or detained in state prisons and have not yet been released.[179]

97. Therefore, these amnesty laws should not be seen as a tolerant approach that ends the cycle of violations by the state, but rather as an indulgence for the perpetrators. These laws do not guarantee that people will not be repeatedly arbitrarily detained, tortured in detention centers, or forcibly disappeared. This is true because, at the time when any amnesty results in releasing some detainees, it gives amnesty for the perpetrators in the exact text, or it pardons part of the crimes and keeps another part of the vague charges pending before judicial bodies that are not independent and do not provide fair trial guarantees. Thus, it is a seemingly tolerant approach, a veiled and systematic obliteration of the features of the alleged crimes and a guarantee of the possibility of their recurrence. Since a person who has been subjected to torture, enforced disappearance, or arbitrary detention cannot have an effective remedy before an independent judicial body due to the obstacles previously mentioned in this report, there is nothing to provide the least guarantee of non-repetition which is holding the perpetrators accountable and putting an end to their impunity. Here, the question remains open about whether the state's approach will lead to the non-recurrence of the cycle of violations that this study clarified, or whether it will hold the victims themselves responsible for not repeating their attempt to oppose the ruling regime again.

02:00 - 04:20), Sham FM TV (4 May 2022). Available in Arabic at: https://youtu.be/BSaZk1bryvU.

179 - Syrian Network for Human Rights, 'The Syrian Regime Has Released 476 People Under Amnesty Decree 7/2022 and is Still Detaining Some 132,000 of Those Arrested Since March 2011', 16th May 2022. Available at: https://snhr.org/blog/2022/05/16/the-syrian-regime-has-released-476-people-under-amnesty-decree-7-2022-and-is-still-detaining-some-132000-of-those-arrested-since-march-2011/.

# Annexes

| Table 1: Capital crimes that are considered by the Military Field Court and stipulated in the Military Penal Code. | | |
|---|---|---|
| **Crime** | **Article number in the Military Penal Code** | **Penalty** |
| Escaping to the enemy if committed by a military person. | (Article 102) | Execution |
| Escaping in wartime with a plot when confronting the enemy. [Plotting is the agreement of two or more military persons to escape] | (Article 103) | Execution |
| The military person who refuses to obey the orders to attack the enemy or the rebels. | (Article 112) | Execution |
| Disobedience and incitement of disobedience when confronting the enemy. [Disobedience is resorting to violence by at least two military persons using weapons and refusing to obey the orders of their superiors to disperse and return to order] | (Article 113) | Execution |
| Incitement to disobedience during time of war or martial law. | (Article 114) | Execution |
| Inflicting violent acts on wounded or sick soldiers that increase the severity of their condition with the purpose of disarming them. | (Article 132) | Execution |
| Every soldier who intentionally and by any means burns, demolishes or damages buildings, constructions, warehouses, water courses, railways, telegraph and telephone lines and centers, flight centers, ships, boats or any immovable object owned by the army or used in civil defense. | (Article 137) | Execution |
| The military persons who abandon the place of their duty when confronting the enemy. | (Article 144) | Execution |
| Soldiers who try to or intentionally made themselves temporarily or permanently not suitable for the legal military service if they commit this crime when confronting the enemy. | (Article 146) | Execution |
| Commander or leader who hand their location to the enemy without exhausting all available defense means and doing everything required by duty and honor. | (Article 152) | Execution |
| Leaders of armed troops who surrender during fighting in a way that result in stopping the fight, or if they communicated with the enemy before doing everything required by duty and honor. | (Article 153) | Execution |
| Any military person who carries weapon against Syria. | (Article 154 / 1) | Execution |

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|---|---|---|
| The prisoner of war who has been retaken after breaking the deal and taking up arms. | (Article 154 / 2) | Execution |
| The military persons who surrender to the enemy or in the interest of the enemy the soldiers under their command or the position assigned to them or the army's weapon, ammunition, supplies, maps of military sites, factories, harbors, docks, passwords, or secrets of military actions, campaigns and negotiations. | (Article 155 / 1) | Execution |
| Any military person who communicates with the enemy to facilitate their work. | (Article 155 / 2) | Execution |
| Any military person who participates in the conspiracies that are intended to pressure the decisions of the responsible military chief. | (Article 155 / 3) | Execution |
| Whoever discloses the password, special signal, alerts, or secret media related to the guards and stations, or distorts the news, or orders related to the service when confronting the enemy, or directs the enemy to the locations of the army or allies forces, or directs the mentioned forces to follow an incorrect path, or causes panic in one of the Syrian forces or making them taking wrong moves or actions, or obstructs the gathering of dispersed soldiers, if the offence was committed during the war or in an area where martial law was declared with the intent of aiding the enemy or harming the army or the forces of allied governments. | (Article 156) | Execution |
| Any military person who enters a war site, a military center, a military institution, a military workshop, a camp, or any of the army's premises in order to obtain documents or information that benefit the enemy or the military person believes so. | (Article 158 / A) | Execution |
| Any military person who gives the enemy documents or information that might harm military actions or affect the safety of sites, centers and other military institutions or the military person believes so. | (Article 158/B) | Execution |
| Every military person who intentionally hides spies or enemies by himself or through others. | (Article 158/C) | Execution |
| Every enemy enters in disguise a war site, a military post, a military institution, a military workshop, a camp, an encampment, or any of the army's premises. | (Article 159) | Execution |
| Persons who intentionally incite the military persons to join the enemy or the rebels or facilitate the means for them to do so or recruit themselves or others for the benefit of a country that is in war with Syria. | (Article 160) | Execution |

| Table 2: Capital crimes that are considered by the Military Field Court and stipulated in the General Penal Code. | | |
|---|---|---|
| **Crime** | **Article number in the General Penal Code** | **Penalty** |
| Every Syrian carries a weapon with the enemy against Syria. | (Article 263) | Execution |
| Every Syrian incites a foreign country or contacts it to push it to initiate aggression against Syria or to provide it with the means to do so if the action leads to a result. | (Article 264) | Execution |
| Every Syrian conspires with the enemy or communicates with them in order to help them in any way to achieve victory. | (Article 265) | Execution |
| Every Syrian makes any action with the intention of paralyzing the national defense, damages installations, factories, ships, aerial vehicles, tools, ammunition, livelihoods, means of transportation, and in general all things of a military nature or intended for the use of the army and its affiliated forces (or was a cause for that), if the act occurred during wartime or if war is expected to happen or this action led to the death of someone. | (Article 266) | Execution |
| Any person who steals, for the benefit of an enemy state, things, documents or confidential information that must be kept hidden in order to ensure the safety of the country. | (Article 272) | Execution as a form of aggravating the penalty according to articles 274 and 247 of the General Penal Code |
| Whoever possesses in the capacity as an official, worker or employee for the state, some documents or information that must remain concealed in order to ensure the safety of the state and informs or discloses them without a legitimate reason for the benefit of an enemy state. | (Article 273) | Execution as a form of aggravating the penalty according to Articles 274 and 247 of the General Penal Code |
| Persons who assign themselves as leaders for armed groups or assume a position or leadership of any kind, either to invade a city, a locality or some state property or the property of a group of people, or to attack or resist the public force duty against the perpetrators of these crimes, if they carry a visible or hidden weapon, wear a uniform or carry another civilian or military emblem, or commit acts of sabotage or destruction in buildings designated for public interest or owned by the intelligence or related to transportation means. | (Article 299) | Execution as a form of aggravating the penalty according to Articles 301 and 247 of the General Penal Code |

| | | |
|---|---|---|
| Participants in armed groups formed with the intent of committing an attack aiming either to provoke civil war or sectarian fighting by arming the Syrians or by making them arm each other against each other, or by inciting murder and looting in a locality or shops or with the intention of invading a city, a locality or some state property or the property of a group of citizens, or attacking or resisting the public force duty against the perpetrators of these crimes. Whether they carry a visible or hidden weapon, or wear a uniform or carry another civilian or military emblem, or commit acts of sabotage or destruction in buildings designated for the public interest or owned by the intelligence or related to transportation means. | (Article 300) | Execution as a form of aggravating the penalty according to Articles 301 and 247 of the General Penal Code |
| Any member of a group of three or more people committed murder, attempted it or inflicted torture and barbaric acts on victims to pave the way for roaming public roads and countryside in the form of armed groups with the intent of robbing passers-by, attacking people or properties, or committing any other act of thievery. | (Article 326) | Execution |
| Every terroristic act that results in sabotage, even partially, in a public building, industrial establishment, ship, or other facilities, or disrupts the means of intelligence and transportation, or if the act leads to the death of a person.<br>[Note: This article is repealed by the Counter-Terrorism Law No. 19 of 2012, but it was noted that it is always excluded from the issued amnesty decrees] | (Article 305) | Execution |

| Table 3: Capital crimes stipulated in Military Penal Code and not included in amnesty laws | |
|---|---|
| **Crime** | **Article** |
| Any military person who carries weapon against Syria.<br>[This crime was covered by the amnesty laws of 2012 and 2013 only and was not covered by any other amnesty] | (Article 154 / 1) |
| The prisoner of war who has been retaken after breaking the deal and taking up arms.<br>[This crime was covered by the amnesty laws of 2012 and 2013 only and was not covered by any other amnesty] | (Article 154 / 2) |
| The military persons who surrender to the enemy or in the interest of the enemy the soldiers under their command or the position assigned to them or the army's weapon, ammunition, supplies, maps of military sites, factories, harbors, docks, passwords, or secrets of military actions, campaigns and negotiations. | (Article 155 / 1) |
| Any military person who communicates with the enemy to facilitate their work. | (Article 155 / 2) |
| Any military person who participates in the conspiracies that are intended to pressure the decisions of the responsible military chief. | (Article 155 / 3) |
| Whoever discloses the password, special signal, alerts, or secret media related to the guards and stations, or distorts the news, or orders related to the service when confronting the enemy, or directs the enemy to the locations of the army or allies forces, or directs the mentioned forces to follow an incorrect path, or causes panic in one of the Syrian forces or making them taking wrong moves or actions, or obstructs the gathering of dispersed soldiers, if the offence was committed during the war or in an area where martial law was declared with the intent of aiding the enemy or harming the army or the forces of allied governments. | (Article 156) |
| Any military person who enters a war site, a military center, a military institution, a military workshop, a camp, or any of the army's premises in order to obtain documents or information that benefit the enemy, or the military person believes so. | (Article 158 / A) |
| Any military person who gives the enemy documents or information that might harm military actions or affect the safety of sites, centers and other military institutions, or the military person believes so. | (Article 158/B) |
| Every military person who intentionally hides spies or enemies by himself or through others. | (Article 158/C) |
| Every enemy enters in disguise a war site, a military post, a military institution, a military workshop, a camp, an encampment, or any of the army's premises. | (Article 159) |
| Persons who intentionally incite the military persons to join the enemy or the rebels or facilitate the means for them to do so or recruit themselves or others for the benefit of a country that is in war with Syria. | (Article 160) |

| Table 4: Capital crimes stipulated in General Penal Code and not included in amnesty laws | |
|---|---|
| **Crime** | **Article** |
| Every Syrian carries a weapon with the enemy against Syria. | (Article 263) |
| Every Syrian incites a foreign country or contacts it to push it to initiate aggression against Syria or to provide it with the means to do so if the action leads to a result.<br>[This crime was covered by the amnesty laws of 61/2011 only and was not covered by any other amnesty] | (Article 264) |
| Every Syrian conspires with the enemy or communicates with them in order to help them in any way to achieve victory. | (Article 265) |
| Every Syrian makes any action with the intention of paralyzing the national defense, damages installations, factories, ships, aerial vehicles, tools, ammunition, livelihoods, means of transportation, and in general all things of a military nature or intended for the use of the army and its affiliated forces (or was a cause for that), if the act occurred during wartime or if war is expected to happen or this action led to the death of someone. | (Article 266) |
| Any person who steals, for the benefit of an enemy state, things, documents or confidential information that must be kept hidden in order to ensure the safety of the country.<br>(Execution as a form of aggravating the penalty according to articles 274 and 247 of the General Penal Code) | (Article 272) |
| Whoever possesses in the capacity as an official, worker or employee for the state, some documents or information that must remain concealed in order to ensure the safety of the state and informs or discloses them without a legitimate reason for the benefit of an enemy state.<br>(Execution as a form of aggravating the penalty according to articles 274 and 247 of the General Penal Code) | (Article 273) |
| Any member of a group of three or more people committed murder, attempted it or inflicted torture and barbaric acts on victims to pave the way for roaming public roads and countryside in the form of armed groups with the intent of robbing passers-by, attacking people or properties, or committing any other act of thievery.<br>[This crime was covered by the amnesty laws of Number 61/2011 only and was not covered by any other amnesty] | (Article 326) |

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