

# 'Laws' 15 and 16 of 2022 Issued by the Syrian Regime: Textually Flawed and Impossible to Implement

The Syrian Regime's Security Services Are Placed Above the Laws, While None of Those Involved in the Crime of Torture, Which Constitutes a Crime against Humanity, Have Been Held Accountable

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The Syrian Network for Human Rights (SNHR), founded in June 2011, is a non-governmental, independent group that is considered a primary source for the OHCHR on all death toll-related analyses in Syria.

**SNHR**  
SYRIAN NETWORK FOR HUMAN RIGHTS  
الشبكة السورية لحقوق الإنسان

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## I. The Syrian Regime Issued Law 16 As a Pro Forma Response to a Dutch/Canadian Move Before the International Court of Justice

On July 1, 2004, by Legislative Decree No. 39 of 2004<sup>1</sup>, Syria acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>2</sup>, which the United Nations General Assembly adopted by its Resolution No. 39/46 of December 10, 1984<sup>3</sup>. Since Syria acceded to this Convention, it has not taken any legislative, judicial, administrative, educational, media, or other measures to end the phenomenon of torture or cruel, inhuman or degrading treatment, which is very common in all branches of the regime's security services and police stations. Under Article 19 of the Convention, the Syrian regime is obligated to submit a report to the Committee against Torture (CAT) concerning the measures it has taken to implement its commitments under this Convention. On July 20, 2009, the regime submitted a report<sup>4</sup> in which it merely listed a set of legal texts contained in the constitution and laws.

On June 29, 2012, CAT stated in its concluding observations<sup>5</sup>, after the Committee considered the implementation of the Convention in Syria, that it submitted a letter to the Syrian government on November 23, 2011, inviting it to submit a report on the measures taken to ensure the full implementation of all Syria's obligations under the Convention. This letter expressed grave concern about reports of large-scale violations of the provisions of the Convention committed by the Syrian authorities following the outbreak of the popular uprising.

The Syrian regime evaded issuing any response to the committee's request, with the Syrian mission responding in the form of a note verbale on March 21, 2012, in which it put forward a number of pro forma defenses, including the assertion that Article 19 of the Convention entitles the CAT to request a supplementary report only in the event of any new measures being taken, which it said the committee had not indicated. The Syrian mission requested that the CAT withdraw its request for a special report and cancel the sessions scheduled to discuss the report.

In a [statement](#) issued on September 18, 2020, the Dutch Ministry of Foreign Affairs announced its decision to hold the Syrian regime responsible under international law for gross human rights violations, particularly torture, adding that it had informed the regime of this decision by means of a diplomatic note. On March 4, 2021, Marc Garneau, [Canada's Minister of Foreign Affairs, announced](#) that his country had requested formal negotiations, under the United Nations Convention against Torture, to hold the Syrian regime accountable for gross human rights violations, particularly torture; this means that the Syrian regime could be prosecuted before the International Court of Justice under the Convention against Torture since Syria is a party to this legislation. On March 12, a joint statement was issued by the Canadian

<sup>1</sup> Syrian People's Assembly, Decree 39 of 2004.

<http://www.parliament.gov.sy/arabic/index.php?node=201&nid=5301&RID=1&Last=10349&First=0&CurrentPage=39&Vid=1&Mode=&Service=1&Loc1=&Key1=&SDate=&EDate=&Year=&Country=&Num=&Dep=1&>

<sup>2</sup> OHCHR, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>

<sup>3</sup> UN General Assembly, 39TH Session, Resolution 39/46.

<https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NRO/460/23/img/NRO46023.pdf?OpenElement>

<sup>4</sup> UN Committee against Torture, Initial report of the Syrian Arab Republic, CAT/C/SYR/2.

<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqKb7yhspLZjNVnK92HqZgyWh%2bgEkk05aEQcbVvp85FA7QtD7Sduhuk711dgzhWow%2bEqC6DUhR2ePt4J-RuKNPP0holeYkZIqDGQ3fInvvgyMtcinCa>

<sup>5</sup> UN Committee against Torture, Consideration by the Committee against Torture of the implementation of the Convention in the Syrian Arab Republic in the absence of a special report requested pursuant to article 19, paragraph 1.

<https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=CAT/C/SYR/CO/1/Add.2&Lang=E>

and Dutch governments, in which they announced the cooperation of the two countries in holding the Syrian regime accountable for grave violations of international law, including torture under the Convention against Torture. Meanwhile, on the same day, March 12, [the Dutch government announced](#), through its Minister of Foreign Affairs, Stef Blok, that the Syrian regime is willing to engage in dialogue with the Netherlands about the latter's decision to hold Syria to account for gross human rights violations it committed in Syria. The government expressed its desire for Canada to hold talks with Syria. The statement of the Minister of Foreign Affairs affirmed that if the talks fail to lead to justice for the victims, the Netherlands and Canada will not hesitate to take the matter to an international court. The Syrian regime has established a committee to discuss the mechanisms of this action and the possible response to it.

On March 30, 2022, the Syrian regime issued [Law No. 16 of 2022 criminalizing torture](#)<sup>6</sup>. We believe that the Syrian regime's issuing this law is an empty official attempt to show a superficial commitment to compliance with the provisions of the Convention against Torture, a pro forma law that is impossible to implement in light of the existing repressive environment, and the existence of an arsenal of laws that protect the security services from accountability. There is also a massive and fundamental flaw in the texts of the law itself, as we will show.

## II. The Syrian Regime Exercises Absolute Control Over the Legislative Process

The People's Assembly (Parliament) represents the legislative authority in Syria, which undertakes the tasks of adopting, proposing, and enacting laws. Since 1971, 'elections' for the 'People's Assembly' have taken place every four years, but these elections are simply a formality with their results already pre-decided in favor of one party, with Hafez al Assad banning any partisan activity opposing his rule and outlawing all other political parties and movements, effectively ending the previous multiparty system and political life in the country. The Assad regime legitimized this control through a provision included in Article 8<sup>7</sup> of the 1973 Constitution, which literally states that the Arab Socialist Ba'ath Party is the leader of the state and society, thus, in reality, legitimizing one-party rule, dictatorship, and tyranny. The Assad family's hereditary and absolute control of the reins of power in Syria is further cemented by the conflation of the Presidency of the Republic with the post of Secretary-General of the Ba'ath Party in Syria, which is dynastic, passing from Hafez al Assad to his son Bashar al Assad. This article, which contradicts the most basic principles of human rights and democracy, remained in force until the creation of a 'new' constitution in February 2012,<sup>8</sup> which altered the previous one in minor detail only, with no perceptible difference in its application on the ground, and according to which the Ba'ath Party retained absolute control, with its headquarters remaining in all state institutions and bodies, as well as in universities, exercising its power over and management of these institutions, including the judiciary, despite the text of the constitution itself asserting the need for the judiciary to be wholly independent. Showing the regime's flagrant disregard for this constitutional convention, Ba'ath party members occupy all the senior and other judicial positions, with the position of the party's Secretary-General remaining exclusively in the hands of the Assad family and available to no other party member.

<sup>6</sup> Syrian Arab News Agency, President al Assad issues a law criminalizing torture, March 30, 2022, <https://sana.sy/?p=1616786>

<sup>7</sup> Constitution of the Syrian Arab Republic of 1973, Article 8, <<http://parliament.gov.sy/arabic/index.php?node=5518&cat=413&>>>

<sup>8</sup> Syrian People's Assembly, Decree No. 94 of 2012, Constitution of the Syrian Arab Republic, <http://www.parliament.gov.sy/arabic/index.php?node=201&nid=15740&RID=-1&Last=103&First=0&CurrentPage=1&Vid=-1&Mode=-1&Service=-1&Loc1=0&Key1=&SDate=&EDate=&Year=2012&Country=&Num=&Dep=-1&>

The Ba'ath Party has dominated nearly two-thirds of the seats of the People's Assembly since 1973, abetted by the power and intimidation of the security services. This intimidation explains why it's unsurprising that the People's Assembly has failed to direct any criticism at or demand any accountability of the Syrian regime throughout all the years of its rule, especially since 2011, even while witnessing the governments, army, security services, and pro-Syrian regime militias, led by the President of the Republic, committing widespread violations that constitute crimes against humanity and war crimes; these crimes have extended to the use of chemical weapons and barrel bombs, the displacement of more than 14 million Syrian citizens, with the Syrian regime having killed more than a quarter of a million civilians, including nearly 14,000 Syrian citizens due to torture, and 'disappearing' nearly 87,000 others, [according to the Syrian Network for Human Rights' \(SNHR\) database](#), and to reports issued by UN committees<sup>9</sup> and international organizations.<sup>10</sup> Despite all these crimes, not even one regime minister or official has been questioned or dismissed. On the contrary, the 'People's Assembly', which also represents, theoretically at least, the voice of the Syrian people in the face of the ruling authority, has failed to oppose any of the myriad violations and crimes committed by the Syrian regime or the arbitrary decrees it applied against Syrian citizens and society. SNHR issued a [report](#) on August 14, 2020, challenging the legitimacy of the People's Assembly elections, as a third of the Assembly's elected members are implicated in violations against the Syrian people, the vast majority are appointed through the security services. There is no electoral freedom or true representation of society but rather pre-decided 'elections' since 1971.

We have talked about the executive authority's and security services' domination over the People's Assembly and their control over the laws issued by it. This is evidenced by its being used to enact and rubber-stamp whatever laws the ruling regime desires, whether or not these contradict international human rights law and the interests of the Syrian people, as is the case with the laws on burglary and control of property,<sup>11</sup> for example.

In addition to all the preceding facts, the 2012 constitution, which was issued unilaterally by the Syrian regime, like its predecessor, confers godlike, absolute powers on the president of the republic, elevating him to the status of a sacrosanct being with total control over all aspects of the three powers - executive, judicial and legislative; amongst other things, he is the head of the Supreme Judicial Council,<sup>12</sup> has a sole entitlement to dissolve the People's Assembly,<sup>13</sup> assumes the authority of legislation,<sup>14</sup> even during sessions of the People's Assembly, and is the Commander-in-Chief of the army and armed forces, as well as wielding absolute power over the appointment of judges at the Supreme Constitutional Court who, by presidential decree,<sup>15</sup> swear an oath before the President.<sup>16</sup> He also names the leaders of the branches and sectors of the army, security, and police, along with ambassadors, university presidents and their assistants, the governor of the Central Bank, the president of the State Council, and a large number of heads of official institutions.

<sup>9</sup> OHCHR, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, February 2021.

<https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/HRC/46/54&Lang=E>

<sup>10</sup> Human Rights Watch, These are the Crimes we are Fleeing.

<https://www.hrw.org/report/2017/10/03/these-are-crimes-we-are-fleeing/justice-syria-swedish-and-german-courts>

<sup>11</sup> Legislative Decree 63 of 2012, issued by the President of the Republic. <<<http://www.parliament.gov.sy/arabic/index.php?node=201&nid=16218&ref=tree&>>>

Legislative Decree 66 of 2012, issued by the President of the Republic. <<<http://parliament.gov.sy/arabic/index.php?node=5588&cat=4300&>>>

Legislative Decree 10 of 2018, issued by the President of the Republic. <<<http://www.parliament.gov.sy/arabic/index.php?node=201&nid=19313&RID=1&Last=44&First=0&Current-Page=0&Vid=1&Mode=1&Service=1&Loc1=0&Key1=&SDate=&EDate=&Year=2018&Country=&Num=&Dep=-1&>>>

<sup>12</sup> Constitution of the Syrian Arab Republic of 2012, Article 133. <<<http://www.parliament.gov.sy/arabic/index.php?node=5518&cat=423&>>>

<sup>13</sup> Constitution of the Syrian Arab Republic of 2012, Article 111. <http://www.parliament.gov.sy/arabic/index.php?node=5518&cat=423&>

<sup>14</sup> Constitution of the Syrian Arab Republic of 2012, Article 112, 113. <http://www.parliament.gov.sy/arabic/index.php?node=5518&cat=423&>

<sup>15</sup> Constitution of the Syrian Arab Republic of 2012, Article 141. <<<http://www.parliament.gov.sy/arabic/index.php?node=5518&cat=423&>>>

<sup>16</sup> Constitution of the Syrian Arab Republic of 2012, Article 145. <<<http://www.parliament.gov.sy/arabic/index.php?node=5518&cat=423&>>>

Based on all of this, the Syrian regime can easily introduce whatever laws it wishes and amend them according to its interests, whether through the People's Assembly or directly through the President in person under the name of 'legislative decrees'. We in Syria have dozens of such 'laws' established by the Syrian regime, which contradict the simplest principles of law, being in reality security texts that aim to provide cover for liquidating dissidents and any opponents and consolidating the regime's absolute power; this is evidenced clearly by the 'laws' in question, which help ensure absolute impunity.

### III. Law 15 of 2022 Increases Restrictions on Freedom of Opinion and Expression

Since the Ba'ath Party took control of power, the Syrian regime has introduced dozens of fabricated charges to be brought against whoever the regime wishes to target among citizens, especially dissidents, opponents, and activists. It has also enacted exceptional laws and legislation that complement its repressive nature and practices through arrests/detentions carried out by its security services and the subsequent torture, enforced disappearances, and summary trials used as tools for applying collective punishment against all societal groups. Counter-Terrorism Law No. 19,<sup>17</sup> issued on July 2, 2012, is a blatant example of such legislation, which includes deliberately vague, broad definitions and provisions with general and imprecise connotations, making it easy to file charges of terrorism against all those referred to the Counter-Terrorism Court without any requirement for evidence and testimonies except for security reports which are obtained through subjecting detainees to threats, intimidation, and torture. All of these factors have enabled the regime to imprison large numbers of detainees without any legal justification. We have observed that hundreds of people tried in court are accused of terrorism simply for carrying out any activities such as distributing aid, providing aid to the wounded, publishing news, or working in humanitarian and human rights organizations, being engaged in political or media activism, or serving in administrative institutions, as well as in the local administrative bodies established following the uprising opposing the regime's authority and against the background of the conflict<sup>18</sup> and against the background of the popular uprising for democracy in Syria, which began in March 2011, then, in July 2012, the International Committee of the Red Cross announced that it had turned into an internal armed conflict.

The Counter-Terrorism Law,<sup>19</sup> the General Penal Code,<sup>20</sup> and the Military Penal Code<sup>21</sup> are among the most prominent laws under which detainees are tried. In most cases, the exceptional courts at which the detainees are tried use a range of main charges which are particularized according to the detainees' cases. For example, one of the charges contained in the Penal Code, such as weakening national sentiment, will be brought against a detainee along with another charge from the Counter-Terrorism Law, such as financing terrorism; this means the detainee is not charged with a single charge, but rather a set of charges, none of which are based on evidence or facts.

On March 28, 2022, the regime issued Law No. 15, amending the General Penal Code.<sup>22</sup> We list the following main amendments concerning detainees based on their expressions of opinion or the basis of the conflict:

<sup>17</sup> Syrian People's Assembly, Law No. 19 of 2012, <http://www.parliament.gov.sy/arabic/index.php?node=201&nid=4306&RID=1&Last=112&First=0&CurrentPage=0&Vid=1&Mode=1&Service=1&Loc1=0&Key1=&SDate=&EDate=&Year=1&Country=&Num=19&Dep=1&>

<sup>18</sup> ICRC, Syria: ICRC and Syrian Arab Red Crescent maintain aid effort amid increased fighting, 17 July 2012, <https://www.icrc.org/en/doc/resources/documents/update/2012/syria-update-2012-07-17.htm#:~:text=The%20ICRC%20concludes%20that%20there,Homs%2C%20Idlib%20and%20Hama>

<sup>19</sup> Syrian People's Assembly, Law No. 19 of 2012, <http://www.parliament.gov.sy/arabic/index.php?node=201&nid=4306&RID=1&Last=112&First=0&CurrentPage=0&Vid=1&Mode=1&Service=1&Loc1=0&Key1=&SDate=&EDate=&Year=1&Country=&Num=19&Dep=1&>

<sup>20</sup> Syrian People's Assembly, Law No. 148 of 1949, <http://www.parliament.gov.sy/arabic/index.php?node=201&nid=12278&RID=1&Last=20&First=0&CurrentPage=0&Vid=1&Mode=1&Service=1&Loc1=0&Key1=&SDate=&EDate=&Year=1&Country=&Num=61&Dep=1&>

<sup>21</sup> Syrian People's Assembly, Law No. 61 of 1950, <http://www.parliament.gov.sy/arabic/index.php?node=201&nid=11811&RID=1&Last=56&First=0&CurrentPage=0&Vid=1&Mode=1&Service=1&Loc1=0&Key1=&SDate=&EDate=&Year=1&Country=&Num=61&Dep=1&>

<sup>22</sup> Syrian People's Assembly, Law No. 15 of 2022, <http://www.parliament.gov.sy/arabic/index.php?node=201&nid=22937&RID=1&Last=120&First=0&CurrentPage=0&Vid=1&Mode=1&Service=1&Loc1=0&Key1=&SDate=&EDate=&Year=1&Country=&Num=15&Dep=1&>

**A. Terminological amendment to distinguish between a felony and a misdemeanor:**

The term 'hard labor' was replaced by the word 'imprisonment', so that the distinction between a felony and a misdemeanor became easier to define. In those cases where the penalty is imprisonment, the crime is a felony, and in those where it's detention, the crime is a misdemeanor, with special rules introduced for prosecuting misdemeanors, which differ from the rules stipulated for the prosecution of felonies, according to the Code of Criminal Procedure.

**B. Terminological amendment of the crime of 'weakening national sentiment' in Article 285:**

The term used to define this crime has been changed from 'weakening national sentiment' to 'compromising national and homeland identity', bearing in mind that the word 'compromise', according to the amendment, is more comprehensive and broader than the previously used verb 'weaken', which means that the recent amendment will be used in prosecuting a far wider range of actions opinions and ideas.

**C. Terminological amendment of the crime of 'weakening the psyche of the nation' in Article 286:**

The term used to define this crime has been changed from 'weakening the psyche of the nation' to 'spreading despair or weakness among members of society', meaning the phrase remains open-ended, extremely broad, and dangerous to freedom of opinion and expression; based on such vague terminology, it's possible to arrest anyone the authority wants to detain.

**D. Expanding the crime of 'undermining the state's financial position' in Article 287:**

The law used to punish those who spread false or exaggerated news abroad that would undermine the prestige of the state or its financial position. According to this amendment, the law became punishable by anyone who undermines any status for the state, whether financial, social, cultural, historical or others. The penalty is now a period of imprisonment ranging from six months to three years (for a 'misdemeanor' crime).

**E. Adding a new crime of 'improving the image of an enemy state', now punishable by law:**

A new crime was added to Article 287 of the Penal Code, punishing every Syrian who broadcasts news that could be seen as improving the image of an enemy state to compromise the status of the Syrian state; the penalty is imprisonment from six months to three years (misdemeanor).

**F. Adding a new crime punishable by law: The call for the deduction of part of the Syrian territory**

A new crime has been added to Article 292 of Penalties, which provides for the punishment of every Syrian who has written any material or sent a letter calling for the deduction of part of the Syrian territory or its relinquishment (the penalty is imprisonment from one to three years (misdemeanor)). By this provision, the regime can prosecute anyone calling for or supporting federalism in Syria.

#### G. Abolishing the broad and vague crime of 'Inciting contempt for national conditions':<sup>23</sup>

Article 362 punishes workers, clergymen, and members of the public or private education authority, accused of inciting contempt for national conditions, a reference to the laws of the state, so the crime - 'inciting contempt for national conditions' - has been abolished, while the crime of 'inciting contempt for state laws' remains punishable if it was committed by anyone in any of the aforementioned categories; the abolished crime was broad and vague, with no clear specific criteria defining what "national conditions" are.

We at the SNHR note that the amendments issued by the Syrian regime regarding the General Penal Code in accordance with Law 15/2022 have been expanded with the introduction of new crimes even more vaguely defined than previously, capable of subjecting an even wider range of civilians to prosecution for exercising the slightest form of expression of opinion or the mildest criticism of the state's authority. We also believe that these amendments were issued by the regime in an effort to quell the increasing incidence of popular tension prevailing in the areas under regime control, even by regime loyalists, due to the deterioration in economic and living conditions suffered by civilians. Consequently, anyone who criticizes almost anything is arrested, which further strengthens the authority's iron grip and legitimizes arrests.

### IV. Five Fundamental Faults in the Text of Law 16 of 2022 Emptying It of Any Effectiveness

According to the SNHR's analysis of the texts of Law 16 of March 30, 2022, there are five fundamental faults in the text of the law itself (in addition to the dictatorial environment clarified in this report), which renders it useless in practice:

- The law considers torture to be a felony that requires severe punishment for the perpetrator, for those who participated in it, and for those who incite it, and states that the characterization of torture as a felony means this crime is subject to the criminal statute of limitations, with the upper limit estimated to have lapsed after a ten year period if public prosecution has not been initiated against the perpetrator of the act; despite this, the legislation did not consider prosecution for these crimes not to be covered by the passage of time and does not fall under the statute of limitations, so it must be excluded from the amnesty laws.
- Through its definition of 'torture' in its first article, which it derived from the definition of the Convention against Torture,<sup>24</sup> the legislation is applied only if torture results in 'severe' physical or mental pain, meaning that psychological torture such as insults and humiliations, as well as less physically severe torture, is not covered by the law.
- Whilst it should be essential under law to take measures to guarantee any complainant's right to file complaints or report torture, and to provide protection to the complainant or other person reporting this crime, to maintain confidentiality, and to protect witnesses, experts, and members of their families, the legislation did not address any of these measures, such as obligating the Public Prosecution to immediately investigate the report regulators by which a person presents himself to the

<sup>23</sup> The crime of inciting contempt of the laws includes the perpetrator only if he is an employee, a clergyman, or a teacher in the public or private sector.

<sup>24</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the United Nations General Assembly by its resolution No. 39/46 of December 10, 1984.

judiciary bearing signs of torture. Therefore, the body responsible for implementing such measures, which should, of course, be the 'Public Prosecution', should instruct the Minister of Justice or the Attorney General to issue a regulation advising on how to implement these measures.

- The law does not include crimes of torture committed before the date of its issuance, rather, pre-existing provisions are applied, such as the provision of Article 391 of the Penal Code, which considers torture to be a misdemeanor, which shall be subject to a statute of limitations after three years. If torture results in a disability or death, however, then it becomes a felony, with the crime being subject to a statute of limitations which expires after ten years, meaning that all crimes of torture committed since March 2011 were not covered by Law No. 16/2022, though they are, of course, subject to a statute of limitations. The statute of limitations is related to the initiation of the public prosecution, which is a decision issued by the representative of the Public Prosecution Service to charge the perpetrator with the crime of torture. As for the investigations by the police, security authorities, or any public body, the initiation of a public lawsuit is not considered to and does not interrupt the statute of limitations.
- The law omits to mention the inhuman and cruel conditions of detention in which detainees are held, as well as omitting any mention of the prison authorities' deliberate negligence towards detainees and deprivation of health care for them, which are classified as being among the torture methods practiced by the Syrian regime and among the causes leading to the high rates of prisoners' deaths in detention centers.

## V. Laws Established by the Syrian Regime Legitimize Impunity for the Security Services, Enabling Them to Violate the Constitution and All Local and International Laws

The Syrian regime also legalized the crime of torture, despite the fact that the current Syrian constitution, issued in 2012 by Decree No. 94, prohibits arbitrary arrest and torture according to Article 53, and the General Penal Code in accordance with Article 391 which imposes a penalty of from three months to three years in prison for anyone who beats a person with a degree of severity during the investigation of crimes, and prohibits torture during investigation in accordance with Article 391; however, there are legal texts that explicitly oppose previous constitutional articles and Article 391, giving almost complete immunity and legalizing impunity, as officers, individuals, and employees of the security services enjoy a kind of impunity from prosecution before the judiciary, except with the approval of their superiors, as follows:

### 1- For members of the General Intelligence Department (State Security Department):

Article 16 of Legislative Decree No. 14 of 1969, which contains the law establishing the General Intelligence Department,<sup>25</sup> stipulates that intelligence members may not be prosecuted for crimes they commit while carrying out the tasks assigned to them, except with the approval of their superiors. This was decided by the Syrian Court of Cassation<sup>26</sup> in Resolution No. 25, Basis 28 of 1979. Legislative Decree No. 14 of January 25, 1969, states that: "It is impermissible to pursue any workers in the State Security Administrations for crimes they have committed during the execution of the specified duties they

<sup>25</sup> (It is a confidential law that is not published in the Official Gazette).

<sup>26</sup> Published in "The Lawyers" magazine in 1979, Rule 392.

were authorized to carry out, except by an order to pursue issued by the director." Article 74 of the Internal Security Law of the State Security Department and the rules of service for its employees, issued by Legislative Decree No. 549 of May 25, 1969, states that: "No legal action may be taken against any General Intelligence Department employees, those assigned or detailed to the department, or those contracted with it for crimes incurred on the job or in the course of performing the job before referral to a department disciplinary board and before an order is obtained from the director."

It should further be noted that these texts are considered confidential and are not published in the official gazette for the public to read, which is inconsistent with the principle of the supremacy of constitutional law.

## 2- As for the members of the Intelligence Division (Military Security Department) and the Air Force Intelligence Department:

These regime personnel enjoy similar, effectively total immunity as they are military personnel, with any prosecution being carried out before the military court, which does not prosecute military personnel except by a prosecution order issued by the Commander-in-Chief of the Army and the Armed Forces or the Chief of Staff according to the rank of the person to be prosecuted in accordance with the provisions of Article 53 of the Penal Code and Procedures of Procedure Military No. 61 of 1950.

## 3- As for the members of the Political Security Division:

The Political Security Division is administratively affiliated with the Ministry of the Interior. In September 2008, Legislative Decree No. 64 of 2008 was issued, which considered these personnel, along with members of the Internal Security Forces and members of the customs police, to fall under the jurisdiction of the military judiciary, and explicitly stated that their prosecution may not take place without the prior issuance of an order for prosecution by the General Command of the Army and Armed Forces.

Legislative Decree No. 64 of 2008, by which an amendment to the Military Penal Code and Military Trial Procedure<sup>27</sup> gave immunity to police and political security personnel, who were previously amongst those who could be tried before the ordinary judiciary, limited the ability to take action against them or against the army and the armed forces. Paragraph (a) of Article 1 of this decree stipulates: "Crimes committed by each of the officers, warrant officers and members of the Internal Security forces, members of the Political Security Division, and members of Customs Brigade, due to performing the tasks entrusted to them." Paragraph (b) of the same article states, "Prosecution orders for officers, warrant officers, members of the Internal Security forces, members of the Political Security Division, and members of Customs Brigade are issued in a decision by the General Command of the Army and the armed forces, in accordance with the provisions of Article 53 of Penal Code and the Military Trial Procedure and its amendments." This prosecution is issued in wartime, according to the Penal Code and the Military Trial Procedure by the Commander-in-Chief of the Army and the Armed Forces, who is at the same time the President of the Republic. Consequently, such prosecution has been banned - if it had ever taken place - for regime officials at any level of leadership and particularly for the senior leadership.

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<sup>27</sup> Issued by Legislative Decree No. 61 dated February 27, 1950.

At the beginning of 2012, Legislative Decree No. 1 of 2012 was issued containing (the Law of Service for the Military of the Internal Security Forces), including members of the Political Security Division, which is considered an amendment to [the aforementioned Legislative Decree 64/2008](#), which stipulated in Article 23 a requirement to establish a police disciplinary court that specializes in investigating disciplinary matters concerning police soldiers. This court shall be competent to decide on their referral to the judiciary, except in the case of their being detained in flagrante delicto or during the commission of an economic crime, in which cases these two types of offenses can be prosecuted before the ordinary judiciary directly. It should be borne in mind that the police disciplinary court is made up of police officers named by the Chief of the Republic and therefore is not a judicial court and does not belong to the judicial authority but is completely subordinate to the executive authority.

Consequently, all members of the four security services enjoy immunity from prosecution unless their superiors allow it; prosecution conditional on obtaining the approval above is considered unconstitutional and intrudes on the judicial authority, undermining its independence by placing a limitation that does not allow it to exercise its constitutional mandate without the approval of an official of the executive authority as stated in the texts above.

These articles of legislation, which are supposed to be legal texts but in reality constitute a violation of the law, are decrees and texts that legitimize crimes, violate even the 2012 constitution, and violate fundamental tenets of human rights. For this reason, Syria under the current Syrian regime suffers from two problems; the first in terms of the legal texts themselves, and the second in terms of applying the law, which is far graver; without a doubt, these legal texts, which express a commitment to ensuring impunity, along with the Syrian regime's failure to carry out any investigation or accountability for any member of the regime's security forces, no matter how low-ranking, against the background of acts of torture, have all contributed to increasing the rate of torture. Indeed, the regime's security services, in coordination with some doctors in military hospitals, are so sure of their impunity that they have invented new and horrific methods of torture that are even more brutal and savage than their usual methods and which have caused deaths due to torture to continue up to this day.

Therefore, no matter how much the Syrian regime issues pro forma legislation through which it promotes its criminalization of violations and punishing their perpetrators, it will never contribute to ending or reducing the frequency of torture, arbitrary detention, and enforced disappearance as long as its policy is wholly based on fighting and punishing everyone who opposes it by maintaining exceptional criminal courts (military field court, counter-terrorism court) in Damascus, and authorizing the security services to investigate citizens for a period exceeding two months in many cases and to keep them detained for many years despite issuing Decree No. 55 on April 21, 2011, related to counter-terrorism, of which Article 1 states: "The period of detention should not exceed the reservation for them for seven days subject to renewal from the Attorney-General and in accordance with the data of each file on the unit should not exceed this period of sixty days." We have repeatedly stressed that the Syrian regime is by far the most prolific violator of the Syrian constitution and laws, despite their flaws, and that these 'laws' are a violation of international human rights law and blatantly contradict the spirit of the law, as they legitimize crime.

## VI. At Least 132,000 Detainees or Forcibly Disappeared Persons and 14,000 Deaths Due to Torture in the Syrian Regime's Detention Centers, As a Minimum, According to the SNHR Database

The SNHR database proves that the law criminalizing torture and any legislation enacted by the Syrian regime are useless as long as the regime remains in power since it has been the main perpetrator of violations of torture, arbitrary arrest/detention, and enforced disappearance since March 2011 to date. Our data showed that at least 132,667 individuals are still under arrest or forcibly disappeared in the Syrian regime's detention centers, including 3,658 children and 8,096 women (adult female), from March 2011 to March 2022.

Since the beginning of 2018 up until April 2022, we have been able to document at least 1,056 cases of forcibly disappeared persons whose deaths the Syrian regime revealed through the Civil Registry departments, all of whom we registered by name and other details. We believe that all of these people died as a result of torture, despite the Syrian regime's denials of having detained them, as is the case with tens of thousands of other people still forcibly disappeared by the regime up to this day.

We also documented the deaths of at least 14,449 individuals who died due to torture and neglect of healthcare in the Syrian regime's detention centers, including 174 children and 74 women, from March 2011 to March 2022.

We at the SNHR confirm that we continue to record almost daily arrest cases and incidents and deaths among detainees or forcibly disappeared persons due to torture and neglect of healthcare in the Syrian regime's detention centers. There is no doubt that the latest law criminalizing torture will remain meaningless ink on paper and will not contribute in any way to deterring the security services from practicing torture as long as the regime's other repressive laws are in force, which are the ones on which the regime is based.

We must never forget the [conviction](#) issued on January 13, 2022, by the Higher Regional Court in Koblenz, Germany, of Anwar. R., who, from January 2011 to September 2012, headed the Investigation Department in Security Branch 251 (Al Khatib Branch), affiliated with the Syrian regime's General Intelligence Service, convicting him of torture, 27 murders, and cases of sexual assault, sentencing him to life imprisonment. We must never forget that Anwar R.'s conviction is for crimes against humanity, which, according to the Rome Statute of the International Criminal Court, means that they are crimes of a systematic or widespread nature and therefore cannot be carried out by individuals in the Syrian regime without being a central policy of the Syrian regime, involving leadership officials at the highest levels. The International Court of Justice has affirmed that "According to a well-established rule of international law, which is of customary character, the conduct of any organ of a State must be regarded as an act of that State."

## VII. Conclusions and Recommendations

### Legal conclusions

- The Syrian state centrally controls its detention centers, and these security centers are not subject to any judicial oversight by the Public Prosecution at all, contrary to the provisions of the Code of Criminal Procedure, so it is highly unlikely that deaths due to torture could take place without the knowledge of the state's ruling regime. In recent years, hundreds of reports of deaths due to torture in the Syrian regime's detention centers have spread widely within Syrian society, and in local, Arab, and international media, in addition to the fact that the Syrian regime itself has informed dozens of families about the deaths of their family members in detention centers, often implausibly citing the cause of death as a "heart attack", without handing over the bodies to the victims' families.
- Although the Syrian regime is responsible for proving that the deaths that occurred were not due to torture and handing over the victims' bodies to their families, it has not conducted a single investigation for eleven years. This alone constitutes clear evidence of conviction against it. In addition to these points, not only one of the Syrian regime's organs involved in torture and in deaths due to torture, this requires the participation of several institutions in the state, most notably: the Ministry of the Interior, the Ministry of Defense, the security services, the Public Prosecution, forensic medicine, civil prisons, military hospitals, the judicial institution, the Ministry of Awqaf, the burial office, and this It refers to a process of exceptional harmony and coordination between these institutions, and this can only be done by the management of higher levels in the Syrian regime that control all these institutions.
- The Syrian regime bears responsibility for proving its claims that the deaths that occurred were not due to torture, handing over the bodies of the victims to their families, while it hasn't conducted a single investigation into any of these deaths for 11 years, with this alone constituting clear damning evidence of the regime's culpability. In addition to this, it should be emphasized that this systematic torture and the many associate deaths involve not just one of the Syrian regime's organs, but require the participation of several state institutions, the most prominent of which are: the Ministry of Interior, the Ministry of Defense, the security services, the Public Prosecution, forensic medicine, civil prisons, military hospitals, the judiciary, the Ministry of Awqaf, and the Office of Burial Services; this too indicates a high level of coordination and harmony between these institutions, which can only be achieved by senior-level management officials in the Syrian regime controlling all of these institutions.
- The Syrian regime has not only brought charges against and tried detainees under the General Penal Code in the articles related to crimes against state security and the Military Field Court established in 1968 but also issued the Counter-Terrorism Law, in which it provided vague articles and ambiguous, non-specific definitions of terrorist acts and conspiracy, in tandem with another established exceptional criminal court for terrorism cases, according to which the largest possible number of detainees could be tried before the Counter-Terrorism Court, with the legislation leaving room for the judges to define and analyze the accusations made according to their own opinions, opening the door to the material exploitation and extortion of any detainee in exchange for their release or inclusion in the amnesty decrees issued.

- Originally, there was no legal basis for the mechanism for criminalizing and charging political detainees, with charges brought either under the Counter-Terrorism Law or the General Penal Code based on confessions extracted from detainees under torture and coercion, which are not courts in any legal or judicial sense.

### **Recommendations:**

#### **UN Security Council and the United Nations**

- Find ways and mechanisms to implement Security Council Resolutions 2041, 2042, 2139, and Article 12 of Resolution 2254 regarding detainees and forcibly disappeared persons in Syria.
- The Security Council should take steps to end arbitrary arrests, enforced disappearances, torture, and death due to torture in the Syrian regime's detention centers and to rescue the remaining detainees as soon as possible.
- Resort to Chapter VII of the United Nations Charter to protect detainees from death in detention centers.
- Demand the Syrian regime to reveal the names of male and female detainees, publish lists of issued sentences, and disclose how the sentences were issued in light of the dominance of the executive and security authority over the judiciary and the Counter-Terrorism Court, and the Military Field Court in particular.

#### **The Syrian regime**

- Abolish the Counter-Terrorism courts, military courts, and military field courts in relation to detainees held in connection with the popular uprising since these courts lack the foundations of justice, abolish their sentences, return the property confiscated by these two courts, and compensate their victims.
- Abolish Legislative Decree No. 55 of 2012, which allows the security services to arrest citizens and interrogate them for more than two months.
- Abolish Counter-Terrorism Law No. 19 of 2012, retaining the crimes stipulated in the General Penal Code.
- Lift the reservations the regime has placed on the Convention against Torture.
- Abolish Legislative Decree No. 63 of 2012 that allows security services to seize people's property.
- Abolish Law No. 20 of 2012, under which the regime arbitrarily dismissed workers and employees who are not pro-regime, depriving them of their rights and pension compensation and compensating those laid off.
- Abolish all texts that require the approval of the executive authority to prosecute officers and members of the security and police services before the judiciary.
- Publishing confidential legislation in the Official Gazette, and if it affects the security of the state, publish materials that affect citizens and pose a threat to their lives, as stipulated in the Publication Law in the Official Gazette No. 5 of 2004.
- Release prisoners of conscience unconditionally, reveal the fate of the disappeared among them, compensate those affected, and stop tampering with their fate and extorting their families.
- Stop using the Syrian state as if it were private family property.

- Stop terrorizing Syrian society through enforced disappearances, torture, and death due to torture.
- Stop tampering with the constitution and laws, using them to serve the goals of the ruling family, and enacting deceptive legislation.
- Take responsibility for all legal and material consequences, and compensate the victims and their families from the resources of the Syrian state.

### **Solidarity**

We offer our sincere condolences to and solidarity with the families and friends of detainees, forcibly disappeared persons and victims of torture in the pursuit of gaining justice.



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