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Summary report on the compliance of the trial of Muhannad Al-Hasani before the Second Criminal Court in Damascus with international standards of fair trial

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General context

On 28 July 2009, Mr. **Muhannad Al-Hasani**, a Syrian lawyer, President of the Syrian Organisation for Human Rights "Sawasiya", Commissioner of the International Commission of Jurists (ICJ) and Laureate of the Martin Ennals Award for Human Rights Defenders 2010, was arrested in Damascus by officers of the Syrian General Intelligence Service (*Idarat Almoukhabarat Al-amma*). The arrest followed his interrogation by the same officers over a number of sessions on 26 and 27 July.

In Syria, many human rights defenders have been prosecuted and often convicted for peacefully exercising their rights to freedom of expression, assembly and association. Vague and overbroad legal provisions, such as Articles 285, 286 and 287 of the Criminal Code, facilitate the misuse of the justice system for political repression purposes. Violations of the right to fair trial are routine at all stages of judicial proceedings. Military courts and the Supreme State Security Court are also frequently used in this context.

The ICJ, the Euro-Mediterranean Human Rights Network (EMHRN) and the Observatory for the Protection of Human Rights Defenders - a joint programme of the International Federation for Human Rights (FIDH) and the World Organisation Against Torture (OMCT) - carried out seven high-level missions to Damascus to monitor the hearings of Mr. Al-Hasani's trial before the Second Criminal Court of Damascus, which took place on 18 February, 10 March, 6 April, 4 May, 27 May, 10 June and 23 June 2010. Over the course of these missions, the above-mentioned organisations met with the President of the Second Criminal Court, Mr. Khaled Hamoud; the General Advocate, Ms. Amina Achamat; the President of the Syrian Bar Association, Mr. Nizar Assakkef; and other representatives of the Syrian legal and judicial systems.

Findings on the trial of Mr. Muhannad Al-Hasani

In its decision, number 5310 of 30 July 2009, the Office of the Public Prosecutor in Damascus referred the case of Mr. Muhannad Al-Hasani to the First Investigation Judge after formally accusing Mr. Al-Hasani, under Articles 285, 286 and 287 of the Syrian Penal Code, of the crimes of weakening the State's "prestige" and "national sentiments"; 'transferring' false and exaggerated information that weakens "national sentiments", and disseminating false information abroad.

Article 285 stipulates: "*whoever in Syria in time of war or time of expecting war, does anything aiming at weakening national sentiments or encouraging racist or sectarian feelings, will be punished with temporary detention.*"

Article 286 provides temporary detention for: "*1. Any person who transferred news that he knew to be false and would weaken national sentiments as with article 285. 2. If the perpetrator thought that the news was correct his punishment will be three months at least.*"

Article 287 states: "*Every Syrian who spreads false or exaggerated information abroad, and which undermines the prestige of the State or its financial state, will be punished by a minimum of six months.*"

On 16 September 2009, the Office of the Public Prosecutor in Damascus added an additional charge to Mr. Al-Hasani's case file, under Article 275 of the Syrian Penal Code, of establishing illegal ties abroad.

The Office of the Public Prosecutor in Damascus recommended that the Investigating Judge refer the case of Mr. Muhannad Al-Hasani to the Referral Judge on the grounds of:

- i) Weakening national sentiments and encouraging racist or sectarian feelings, and disseminating false and exaggerated news weakening national sentiments;
- ii) Spreading false information and establishing illegal ties abroad.

The Investigating Judge endorsed the recommendations of the Office of the Public Prosecutor and referred the case of Mr. Muhannad Al-Hasani to the Referral Judge in his decision of 12 October 2009. The Investigating Judge based his decision on the following:

On the facts

Muhannad Al-Hasani spread false information, such as:

- i) Accusing the Security Services of torturing and killing one citizen;
- ii) Accusing the State of using force excessively against citizens instead of providing them with protection and health care;
- iii) Accusing the judiciary of not being independent and deciding cases on political rather legal grounds;

Muhannad Al-Hasani:

- iv) Practiced as a member and President of the Syrian Organisation for Human Rights, which was established without an official licence, and has a website;
- v) Organised meetings for an illegal party, the National Democratic Union, in his office;
- vi) Contributed to the publication of several reports on prison conditions in Syria which were harmful to the State;
- vii) Attended and documented the proceedings of the Supreme State Security Court even though he was not a lawyer involved in the proceedings;
- viii) Published the outcomes of these proceedings on the internet, and transferred information related to them to international organisations in a false and misleading way;

And also the fact that:

ix) The Al-Andalus Centre, an Egyptian human rights organisation funded by the National Fund for Democracy, which is under the control of the United States Congress, gave a financial allowance to the Syrian Organisation for Human Rights, headed by the accused Muhamnad Al-Hasani.

On the evidence:

- i) Al-Hasani's disposition before the General Intelligence Service, Section 285;
- ii) The handwritten notes that Al-Hasani took during the Proceedings before the State Security Court;
- iii) Several articles disseminated on the internet and via the website of the Syrian Organisation for Human Rights about the deterioration of the human rights situation in Syria;
- iv) The report of the General Intelligence Service, Section 285, number 622252/44 of 19 August 2009, demonstrating that Muhamnad Al-Hasani received a financial allowance from Al-Andalus Centre which is funded by the United States Congress;
- v) Muhamnad Al-Hasani's 'disposition' before the Investigation Judge on 30 July and 30 September 2009 in which he denied committing any crime, or receiving any financial allowance, and in which he confirmed the fact the reports and articles published by the Syrian Organisation for Human Rights were credible.

The Investigating Judge decided to refer Muhamnad Al-Hasani to the Referral Judge on the grounds of weakening national sentiments and encouraging racist and sectarian feelings, and 'transferring' false and exaggerated news that weaken national sentiments under Articles 285 and 286 of the penal code, and judging him for such crimes before the criminal court; and on the offence of 'transferring false news' and establishing illegal ties abroad under Articles 287 and 275 of the penal code.

In his decision of 30 October 2009, the Referral Judge, after endorsing all the arguments and accusations of the Investigating Judge, decided to refer Muhamnad Al-Hasani's case to the Second Criminal Court of Damascus.

The first hearing of the trial of Muhamnad Al-Hasani before the Second Criminal Court was held on 18 February 2010. Five other hearings were held on 10 March, 6 April, 4 May, 27 May and 6 June. The final hearing and sentencing took place on 23 June 2010.

Assessment of the Proceedings

In general, the hearings began promptly as scheduled. The prosecution was actively involved in the conduct of hearings as the judge conducted all the questioning.

During these hearings, Muhamnad Al-Hasani and his lawyers refuted all of the accusations, including: "weakening national sentiments", encouraging racist or sectarian feelings, spreading or transferring false and exaggerated news that weaken national sentiments. He stated that the Syrian Organisation for Human Rights had been established under Syrian law and that he, as President of this organisation, had submitted the required documents for its registration to the service in charge at the Ministry of Social Affairs. Although the Ministry received all of the required documents, the Syrian Organisation for Human Rights had been denied registration. In challenging the decision, the Syrian Organisation for Human Rights had filed a case against the Minister of Social Affairs which is still pending before the Administrative Court in Damascus. Muhamnad Al-Hasani also denied establishing any illegal ties abroad or receiving any financial allowance from the Al-Andalus

Centre.

The Prosecution failed to give any credible evidence to support the accusations against Muhamnad Al-Hasani. On the hearing of 6 April, it called on a Mr. Daoud Achawa to testify as a witness, the only witness called by the prosecution. This witness was to be called to testify that Muhamnad Al-Hasani had convinced him that his son, Mohamed Amin Achawa, died as a result of torture on 24 August 2008 while in the custody of the Military Intelligence Service, and that Muhamnad Al-Hasani had encouraged him, accordingly, to file a case against the Syrian Ministers of Defence and Interior. However, the defence lawyers presented an official death certificate proving that Mr. Daoud Achawa had died on 20 August 1979, and that Al-Hasani could not have, consequently, encouraged him to file such case against the Ministers.

The defence lawyers presented another 113 official documents and called on 11 defence witnesses to testify in order to challenge the prosecution's accusations. The President of the Second Criminal Court denied all defence witnesses from testifying and did not take into account the evidence submitted by the defence.

The compliance of the trial of Mr. Al-Hasani before the Second Criminal Court with international standards of fair trial

Under international law, including under article 14 of the International Covenant on Political Rights (ICCPR), to which Syria is a party, all persons charged with a criminal offence have the right to be tried by an independent, impartial and competent tribunal established by law. Neither the judiciary nor the judges of which it is composed can be subordinate to any branches of the State.¹ Judges must not only be independent, but must also be seen to be independent.

In Syria, Article 131 of the Constitution stipulates that the judicial authority is independent. However, Judges do not enjoy immunity according to the provisions of Legislative Decree 40, issued on May 21, 1966 and they can be transferred by order which is not subject to any form of review (Articles 2 and 11).

The conduct of the Court in these proceedings calls into question its independence and impartiality. During the hearings before the Second Criminal Court of Damascus, its President, Mr. Khaled Hamoud, denied all defence witnesses from testifying and did not request the prosecution to present any evidence to support the accusations against Al-Hasani. Mr. Hamoud based his decision to convict Al-Hasani solely on three secret reports of the General Intelligence Service, even though defence lawyers had presented credible evidence seriously undermining the veracity of these reports.

The principle of the legality of offences is another requirement of a fair trial. *Nullum crimen sine lege* is a cornerstone of contemporary criminal law, which requires, that in order for specific conduct to give rise to criminal responsibility, it must be established in law as a crime. The definition of any criminal offence must be precise and free of ambiguity.² The articles of the Penal Code under which Al-Hasani has been prosecuted are overly broad and vague, in contravention of this principle. In addition, the implementation of these articles may result in the criminalization of the freedom of expression, in contravention of Article 19 of the ICCPR. Article 19

¹ European Court of Human Rights, Judgment of 16 July 1971, *Ringeisen v. Austria*, Application No. 2614/65 para. 95; and Inter-American Commission on Human Rights, *Report on Terrorism and Human Rights*, OAS Doc. OEA/Ser.L/V/II.116, Doc. 5 rev. 1 corr., 22 October 2002, para. 229.

² Human Rights Committee, General Comment No. 29, *States of Emergency (Article 4)*, UN Doc. CCPR/C/21/Rev.1/Add.11, 31 August 2001, para. 7

provides that “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.” In addition, Articles 285, 286, and 287 are to be applied in times of war or when expecting war, a condition which does not appear to be present in Syria.

Another substantive element of fair trial concerns the conduct of the State prosecuting authority, prosecutors must perform their functions impartially and with objectivity. Article 13 of the United Nations Guidelines on the Role of Prosecutors provides, “in the performance of their duties, prosecutors shall: (a) Carry out their functions impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination; (b) Protect the public interest, act with objectivity, take proper account of the position of the suspect and the victim, and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect.”

Prosecutors should not initiate or continue prosecution, or should make every effort to stay proceedings, when an impartial investigation shows the charge to be unfounded.³

In the case of Al-Hasani, the prosecution did not present any credible evidence to support its accusations against him. These accusations were based on solely on three secret reports of the General Intelligence Service. During the hearings, in regard to the accusation related to the death of Mr. Mohamed Amin Achawa, the defence lawyers convincingly demonstrated such reports to be false and yet the Prosecution did not drop its accusations against Muhamnad Al-Hasani, who had no access to these secret reports neither was he informed of their existence. Under international law, including ICCPR article 14, anyone who is arrested shall be informed, at the time of arrest, of the reasons for his or her arrest and notified without delay of any charges against him and of any legal and factual basis for depriving him of his liberty.

Several other judicial guarantees to which Muhamnad Al-Hasani was entitled were not observed.

1. **The right to be presumed innocent** until proven guilty according to law is an absolute right, which may never be the object of a derogation, restriction or limitation.⁴ It places the burden of proof of criminal conduct on the prosecution; guarantees that guilt cannot be presumed unless the charge has been proven beyond reasonable doubt; and ensures that the accused has the benefit of doubt. During the hearings, Muhamnad Al-Hasani was presumed guilty and the burden of proof was placed on him as the judge abstained from asking the prosecution to present sufficient evidence to support the accusations against him, and posed undue obstacles to the defence in presenting its case.

2. **The right to defence** requires that the accused be granted prompt access to his or her lawyers, and to be able to meet with them in private. It includes the right to communicate and consult with them without interception or censorship and in full confidentiality.⁵ Muhamnad Al-Hasani’s lawyers were not allowed to visit and

³ Guideline 14 of the UN *Guidelines on the Role of Prosecutors*.

⁴ Human Rights Committee, *General Comment No. 29*, para. 11, and *General Comment No. 32*, para. 6; Inter-American Commission on Human Rights, *Report on Terrorism and Human Rights*, OEA/Ser.L/V/II.116, Doc. 5 rev. 1 corr., 22 October 2002, paras. 247, 253 and 261; and Inter-American Commission on Human Rights, Report No. 49/00 of 13 April 2000, Case No. 11.182, *Rodolfo Gerbert Asensios Lindo et al. (Peru)*, para. 86.

⁵ *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*,

meet with him in jail without the authorization of the non-independent Bar Association under the control of the Syrian authorities. On several occasions, the Bar Association refused to allow Muhannad Al-Hasani's lawyers to visit him in jail. Even when one lawyer was allowed to do so, he could not consult with his client confidentially as one of the prison guards was present during their meeting. Consequently, Muhannad Al-Hasani had access to his lawyers to prepare his defence only in the courtroom for very short periods of time.

3. **The right to equality of arms** in criminal proceedings requires procedural equality between the accused and the prosecution. The right requires that at no stage of the proceedings must any party be placed at a substantial disadvantage vis-à-vis the opposing party, and that the accused has the same legal powers as the prosecution to compel witnesses to appear and to examine and cross-examine them. During the hearings of Mr. Al-Hasani, the prosecution did not present any evidence or have any witness to support its accusations and the judge abstained from requesting such evidence and witnesses. The judge refused the evidence presented by the defence lawyers and the witnesses called upon by them.

4. **The right to present evidence** and to examine and cross-examine witnesses was also denied, as stated above.

5. **The right to appeal**, under international law, including ICCPR article 14, guarantees that every person convicted in a criminal proceeding the right to challenge the conviction and sentence and have it reviewed before a higher tribunal. Under Syrian law, the decisions of the Criminal Courts are final and may only be challenged before the Cassation Court that may only review the case in respect of the formal, procedural and legal aspects of the conviction. Under international standards, any review of a conviction or sentence must take place before a higher tribunal according to law. The higher court must legally have the opportunity to a full review of evidentiary as well as procedural aspects of the trial, the verdict reached and the sentence imposed.⁶ Any review confined to the procedural and legal aspects of the conviction violates the right to appeal.⁷

Principle 18 (3) and the *UN Basic Principles on the Role of Lawyers*, Principle 8.

⁶ Human Rights Committee, Views of 20 July 2000, *Cesáreo Gómez Vázquez v. Spain*, Communication No. 701/1996, para. 11.1.

⁷ Human Rights Committee, Views of 28 March 2006, *Bandajevsky v. Belarus*, Communication No. 1100/2002, para. 10.13; Views of 18 October 2005, *Aliboeva v. Tajikistan*, Communication No. 985/2001, para. 6.5; Views of 30 March 2005, *Khalilova v. Tajikistan*, Communication No. 973/2001, para. 7.5; Views of 6 April 1998, *Domukovsky and others v. Georgia*, Communications Nos. 623 to 627/1995, para. 18.11; Views of 8 July 2004, *Saidova v. Tajikistan*, Communication No. 964/2001, para. 6.5; and Views of 17 March 2003, *Gelzauskas v. Lithuania*, Communication No. 836/1998, para. 7.2.