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**ALTERNATIVE REPORT OF THE INTERNATIONAL COMMISSION OF JURISTS  
(ICJ) IN RESPONSE TO THE REQUEST BY THE COMMITTEE AGAINST TORTURE  
FOR A SPECIAL REPORT BY THE SYRIAN ARAB REPUBLIC PURSUANT TO  
ARTICLE 19(1) OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL,  
INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT**

Submitted April 2012

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## ICJ submission to the Committee against Torture for the special report on the Syrian Arab Republic under article 19(1) of the Convention against Torture

By letter of 23 November 2011 to the Permanent Mission of the Syrian Arab Republic (Syria, or the State party) to the United Nations Office at Geneva, the Committee against Torture (the Committee) requested Syria, pursuant to article 19(1), *in fine*,<sup>1</sup> of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention, or CAT), to provide the Committee with a special report that: indicates the measures the State party is taking to insure that all its obligations under the Convention are effectively implemented; the measures that have been taken to implement the recommendations of the Committee's concluding observations adopted in May 2010; as well as information on the current events occurring in the territory of the State party referred to in the reports and statements of the High Commissioner for Human Rights and several Special procedures mandate-holders of the Human Rights Council. The request was prompted by the Committee's deep "concern at numerous, consistent and substantiated reports and information, from various reliable sources, about the widespread violations of the provisions of the [Convention] by the authorities of the Syrian Arab Republic since the adoption of the Committee's Concluding Observations on the State Party's initial report to the Committee (CAT/C/SYR/CO/1), in May 2010".<sup>2</sup>

The International Commission of Jurists (ICJ) welcomes the opportunity to submit its comments to the Committee in relation to the Committee's consideration of the special report of Syria. In this submission, the ICJ highlights the failure of the Syrian authorities to comply with the Committee's previous recommendations, including the failure to: incorporate into Syrian domestic legislation the crime of torture as defined in the Convention; reform the Syrian legal framework in accordance with international human rights standards; investigate thoroughly all cases of torture and ill-treatment committed in Syrian prisons and detention facilities; and address the pressing issue of impunity for acts of torture and other serious human rights violations in Syria.

### EXECUTIVE SUMMARY

The ICJ is concerned that well-documented cases of torture and other ill-treatment have not been investigated, and that the individuals allegedly responsible for these human rights violations have not been brought to justice. Whippings, severe beatings, electric shocks, rape and other forms of sexual violence, threats of rape, genital and other forms of bodily mutilation, choking, strangling, drowning, hanging from the wrists, burning with cigarettes and painful binding are common practices in Syria's detention facilities. Other methods of torture include, "the chair", in which a victim's back is twisted over the empty frame of a metal chair, causing intense pain, and "the tyre", where the victim is forced into a car tyre, his neck is pushed against the inner rim, his back is bent double and his knees are pushed against the other side of the inner rim, following which the victim is beaten severely, in particular on the head, the soles of the feet and the genitals. Further methods are known as the "flying carpet", which involves the victim's arms and legs being tied to a piece of wood and then beaten with cables and sticks; the "shabeh", where the victims are suspended by their manacled wrists from a hook or over a door and then beaten severely; and the "falaqa", which involves the victim being beaten or whipped on the soles of the feet.

The ICJ is concerned that these practices continue to be routine in Syrian prisons and detention facilities, perpetrated by officers from different security and intelligence services, including, in particular, the General Intelligence Service (*Idarat Al-Mokhabarat Al-Ama*), the

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<sup>1</sup> Article 19(1) of the Convention requires States parties to submit periodic reports to the Committee, "...and such other reports as the Committee may request".

<sup>2</sup> Letter from the Chairperson of the Committee against Torture to the Ambassador Extraordinary and Plenipotentiary of the Permanent Mission of the Syrian Arab Republic to the United Nations Office at Geneva, dated 23 November 2011 (reference JMN/CG7Syria7CAT/48session/Special report).

Air Force Intelligence Service (*Idarat Al-Mokhabarat Al-jawiya*), the Military Intelligence Service (*Shu'bat Al-Mukhabarat Al-Askariyya*), the General Intelligence Directorate (*Idarat Al-Amn Al-Amm*), State Security (*Amn Addawla*), and the Political Security Directorate (*Idarat Al-Amn al-Siyassi*).

Since 15 March 2011, torture and other ill-treatment have become a policy of the State, aimed at inducing intimidation and fear among the Syrian population in order to suppress the largely peaceful protests that erupted against the Syrian regime. This policy has been implemented on a large scale by security and military officers and with the support of the pro-regime *Shabiha* militia. It has been implemented against individuals held in detention as well as outside the context of detention. Furthermore, Syrian security services have carried out mass arbitrary arrests, which do not conform to any legal framework. In addition to the prisons and the military detention facilities, detainees have been held, on several occasions, in football stadiums and schools, where they too have been systematically subjected to torture and other ill-treatment.

The ICJ urges the Committee to call on the Syrian authorities to immediately and unconditionally end this policy of torture and ill-treatment and to carry out prompt, full, and impartial investigations into all cases of torture and other ill-treatment. Investigations must be carried out with a view to: establishing the truth about human rights violations; holding those responsible for these violations to account; ensuring that the victims' rights to a remedy and to reparation may be fully exercised; and bringing an end to the cycle of impunity that has prevailed over these violations.

#### **ARTICLES 1, 2, 4 AND 16: TORTURE AND ILL-TREATMENT IN THE SYRIAN LEGAL FRAMEWORK**

Although the Syrian Arab Republic acceded to the Convention on 1 July 2004, Syrian authorities have failed so far to incorporate a crime of torture in their Criminal Code in conformity with the requirements of the Convention (Articles 1, 2 and 4). In addition, Syrian law fails to provide for the prevention and prohibition of cruel, inhuman and degrading treatment that does not amount to torture, as required under Article 16 of the Convention.

According to the new Syrian Constitution: “[n]o one may be subjected to torture or to degrading treatment and the law shall define the punishment for any person who commits such acts”.<sup>3</sup> Article 391 of the Syrian Criminal Code stipulates that: “Anyone who batters a person with a degree of force that is not permitted by law in order to extract a confession to, or information about, an offence shall be subject to a penalty of from three months to three years in prison”.<sup>4</sup>

These provisions do not define the crime of torture. They also limit conduct falling within the ambit of torture to those undertaken to extract a confession or information, which is plainly inconsistent with the far more expansive terms provided for under Article 1 of the Convention. Furthermore, these provisions do not refer to acts of torture or ill-treatment inflicted by or at the instigation of or with the consent or acquiescence of state officials or persons acting in an official capacity (Article 1). They also fail to ensure appropriate penalties commensurate with, and which take into account the grave nature of, the crime of torture (Article 4). There is also no clause in these provisions, or elsewhere, for criminal sanctions against those in a position of superior authority, including public officials, where they knew that the crime of torture was likely to be or was being committed and failed to take the necessary and reasonable measures to prevent or stop the crime. In this regard, the Committee against Torture pointed out in its General Comment 2 that: “those exercising superior authority – including public officials – cannot avoid accountability or escape criminal responsibility for torture or ill-treatment committed by subordinates where they knew or should have known that such impermissible conduct was occurring, or was likely to occur, and they failed to take

<sup>3</sup> Article 53 of the new Constitution submitted to a referendum on 28 February 2012.

<sup>4</sup> Law No. 148/1949 of the Syrian Criminal Code.

*reasonable and necessary preventive measures*".<sup>5</sup>

Furthermore, under Syrian law, and in particular the Code of Criminal Procedure, the crime of torture is not excluded from provisions relating to amnesties and pardons, respectively. The Committee considers that: "*amnesties or other impediments which preclude or indicate unwillingness to provide prompt and fair prosecution and punishment of perpetrators of torture or ill-treatment violate the principle of non-derogability*".<sup>6</sup>

In addition, Article 391 of the Criminal Code is not excluded from Articles 161-165 of the Criminal Code, which impose limitation periods depending on the gravity of the crime. Article 163 provides that the limitation period for a crime is twice the sentence that is handed down in a given case, with a maximum of 10 years and a minimum of 5 years.

This legal vacuum in Syria regarding the crime of torture has seriously hampered the implementation of the Convention and encouraged the practice of torture and other ill-treatment. In its Concluding Observations on the initial report of Syria, the Committee recommended that Syria:

*"...amend its legislation to adopt a definition of torture in full conformity with article 1 of the Convention that would encompass all elements of this definition. By naming and defining the offence of torture in accordance with articles 1 and 4 of the Convention and making it distinct from other crimes, the Committee considers that States parties will directly advance the Convention's overarching aim of preventing torture by, inter alia, alerting everyone, including perpetrators, victims and the public, to the special gravity of the crime of torture and by improving the deterrent effect of the prohibition itself".*<sup>7</sup>

The practice of torture and other ill-treatment remains widespread and systematic under the State of Emergency Act (SEA), which was promulgated by Legislative Decree No. 51 of 22 December 1962, and other restrictive laws and military decrees. While the Syrian authorities lifted the state of emergency on 21 April 2011, they have failed to abolish the SEA, which therefore, remains in force under Syrian domestic law.

Under international law and jurisprudence, states of emergency, when used as a basis for derogations of human rights, must be of an exceptional and temporary nature. However, while Article 4 of International Covenant on Civil and Political Rights (ICCPR) recognizes that States may take measures derogating from their obligations under the ICCPR, it also explicitly proscribes any derogation from, amongst others, Article 7 of the ICCPR, namely the prohibition of torture or cruel, inhuman or degrading treatment or punishment. Under international law, the prohibition of torture and other ill-treatment is accepted and recognised, by the international community of States as a whole, as a norm from which no derogation is permitted (*jus cogens*). Torture is absolutely prohibited, at all times and in all places. Article 2(2) of the Convention reflects these positions by providing that: "*No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture*".

Recommendations concerning the Syrian legal framework; and implementation of articles 1, 2 and 4 of the Convention

The ICJ calls on the Committee to urge the Syrian authorities to:

- i) Enact a crime of torture consistent with Article 1 of the Convention, including by (a) ensuring that conduct falling within the definition include**

<sup>5</sup> Committee against Torture, *General Comment 2: Implementation of article 2 by States parties*, UN DocCAT/C/GC/2 (2008), para. 26.

<sup>6</sup> General Comment 2 (ibid), para. 5.

<sup>7</sup> Committee against Torture, *Concluding observations of the Committee against Torture: Syrian Arab Republic*, UN Doc CAT/C/SYR/CO/1 (2010), para. 5.

**that undertaken for any purpose as provided for in Article 1 (b) providing for the accountability of public officials or other persons acting in an official capacity where they instigate, or consent or acquiesce to, the crime of torture;**

- ii) Include provision for appropriate penalties commensurate with the gravity of the crime of torture, consistent with Article 4 of the Convention;**
- iii) Ensure that the crime of torture is not subject to any statute of limitation;**
- iv) Include provision for the prevention and prohibition of cruel, inhuman and degrading treatment that does not amount to torture, consistent with Article 16 of the Convention;**
- v) Expressly exclude the crimes of torture or other ill-treatment from provisions relating to amnesties or pardons;**
- vi) Repeal in law the State of Emergency Act; and**
- vii) Repeal other military decrees that disproportionately restrict the enjoyment of fundamental human rights and freedoms and/or encourage the use of torture and other ill-treatment.**

#### **ARTICLES 2 AND 6: ARBITRARY ARRESTS AND DETENTIONS**

The use of torture and other ill-treatment is routine in Syrian prisons and detention facilities. In its concluding observations on Syria, the Committee against Torture urged authorities to take: *“urgent measures to ensure prompt, thorough, impartial and effective investigation into all allegations of torture, ill-treatment, death in custody, death during military service and incommunicado detention”*.<sup>8</sup>

The practices of torture and other ill-treatment have been exacerbated by the conditions of detention provided for by the Syrian legal framework. Article 4 of the SEA authorises the Military Governor to impose, through oral or written orders, *“restrictions on the rights of people to the freedom of assembly, residence, transport, and movement, and to arrest suspected people or those threatening public security on a temporary basis, and to authorize investigations of persons and places at any time, and to allow any person to perform any task.”* It also authorises the Military governor to, *“[m]onitor all types of letters, phone calls, newspapers, bulletins, books, drawings, publications, broadcasts, and all forms of expression, propaganda, and advertisements prior to publication; and to seize them, confiscate them, discard, repeal their concession and to close printers”*.

This provision has been used as a basis for arresting peaceful demonstrators and criminalizing the legitimate exercise of various human rights, which are guaranteed by both the Syrian Constitution and several international and regional treaties to which Syria is party, including in respect of the rights to the freedom of expression, association and assembly. Moreover, the SEA provides for the detention of suspects for crimes that are not defined, either in the SEA or in other laws, including: *“crimes committed against State security and public order”* and *“crimes committed against public authorities”*.<sup>9</sup> The SEA also permits the security forces to hold suspects in preventive detention without judicial oversight for indefinite periods.

In addition, while the Code of Criminal Procedure previously required suspects to be brought before a judicial authority within 24 hours of arrest or else be released,<sup>10</sup> an amendment of 21 April 2011 allows suspects to be held for up to seven days, pending investigation and the interrogation of suspects for certain crimes. This period is renewable

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<sup>8</sup> Concluding Observations on Syria (ibid), para. 8.

<sup>9</sup> State of Emergency Act, art. 6

<sup>10</sup> Code of Criminal Procedure, Law No. 112 of 1950 as amended, arts. 104 (1) and (2). A detaining authority which violates this provision may be prosecuted for the crime of deprivation of personal liberty (Code of Criminal Procedure, art. 105), punishable by imprisonment of one to three years (Penal Code, art. 358).

up to a maximum of 60 days.<sup>11</sup>

These legal provisions violate Syria's obligations under international law, including under the ICCPR, to which Syria is party, and which specifically provides in Article 9 that:

*"1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law..."*

*"3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release."*

Syria has a long history of arbitrary arrests and subsequent unlawful detentions, including *incommunicado* detentions, which themselves amount to proscribed ill-treatment under the Convention. Such acts have usually been carried out by officers from different security and intelligence services against political activists, human rights defenders, and all those suspected of representing a "threat" to the security of the State. Since 15 March 2011, Syrian security forces and *Shabbiha* members have conducted mass arrests to quell the largely peaceful protests that erupted against the Syrian regime in the cities of *Homs, Hama, Jisr Al-Shughour, Rastan, Dar'a, Ladhhiqiyaha, Duma* and *Idlib*, amongst others.

Inhabitants of these cities and individuals suspected of being government opponents or having provided information to international media and human rights organizations have been subjected to such mass arrests. On 16 July 2011, military and other security forces surrounded the town of *Qatana*, following a protest, and detained more than 500 people. On 27 September 2011, security and military forces carried out a similar raid in the city of *Duma*, breaking into houses and reportedly arresting more than 100 people. Similar raids were carried out in *Banyas, Ma'rat An-no'man, Ladhhiqiyaha, Rif Dimashq*, and other cities.

Those arrested are generally blindfolded, handcuffed and transported in buses and trucks to unknown detention centres, public stadiums and schools. The ICJ has received reliable and consistent reports that during the raids, detainees and their family members were beaten and subjected to verbal and physical abuses. In several cases, according to reliable sources, women were subjected to various forms of sexual abuse, including rape.

Syrian authorities have also targeted political activists and human rights defenders, with a view to "*neutralising*" individuals who are suspected of organizing or encouraging the protests. Frequently, when the security forces are unable to locate the person they are seeking, they detain family members instead. On 30 April 2011, security forces surrounded the house in Damascus of political activist, Wael Hamadeh, and his wife, Razan Zeitouneh, a prominent human rights defender and advocate. Since the couple were not at home, the security forces instead detained Wael's brother, Abdel Rahman Hamadeh. On 11 May 2011, Wael Hamadeh was arrested and, after spending two months in *incommunicado* detention, he was brought before a judge and charged with undermining state authority and harming national unity. The two brothers remain in jail. Razan Zeitouneh is in hiding to avoid arrest.

On 30 August 2011, officers from the Air Force Intelligence service arrested Yassin Ziadeh, for no apparent reason other than being the brother of Radwan Ziadeh, an exiled prominent Syrian human rights defender and President of the Damascus Centre for Human Rights Studies. Yassin Ziadeh was released from detention, on 5 November 2011, without charge.

On 16 February 2012, officers from the Air Force Intelligence, assisted by a group of plain-clothed armed men, carried out a raid on the Damascus offices of the Syrian Centre for Media and Freedom of Expression arresting its Director, Mazen Darwish, and seven of his co-workers. It is believed that the detainees are being held at the Air Force Intelligence

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<sup>11</sup> Legislative Decree No. 55/2011, amending article 17 of the Code of Criminal Procedure.

detention facility in *El Mezzeh*, Damascus. They remain in *incommunicado* detention and their rights of access, to lawyers, family members and independent medical personnel, continue to be denied. The ICJ has received consistent reports that they have been subjected to torture and ill treatment. Prolonged *incommunicado* detention in itself may constitute ill-treatment or even torture.<sup>12</sup>

Recommendations concerning arrest and detention; and implementation of articles 2 and 6 of the Convention

The ICJ calls on the Committee to urge the Syrian authorities to:

- viii) **Provide detainees with adequate guarantees against torture and other ill-treatment, including the right to legal counsel from the time of arrest, access to medical treatment during detention, the right to challenge the lawfulness of their detention before independent and impartial courts and, to that end, to ensure that no information extracted through torture or ill-treatment is used as evidence in any judicial or administrative proceedings;**
- ix) **Review the legal period of pre-trial detention, which was extended through the adoption of Legislative Decree No. 55/2011, amending article 17 of the Code of Criminal Procedure;**
- x) **End immediately the policy and practice of secret detention and ensure that the apprehension of suspects complies with international law and standards, in particular with the absolute nature of the prohibition of torture;**
- xi) **End the practice of prolonged incommunicado detention, which can in itself constitute a form of cruel, inhuman or degrading treatment or even torture;**
- xii) **End the policy of mass arrests, which breaches Syria's international legal obligations;**
- xiii) **Investigate and disclose the existence of all secret detention facilities, the authority under which they have been established and have operated, and the manner in which detainees are treated;**
- xiv) **Register all detainees, including by disclosing: their identity; the date, time and place of their detention; the identity of the authority that detained and interrogated them; the grounds for their detention; and the date and time of their admission to the detention facility;**
- xv) **Ensure that all detainees are without exception brought promptly before civilian and independent courts, that the judiciary acts with due deference to human rights and that the courts are not manipulated for political reasons;**
- xvi) **Ensure that the process leading to criminal prosecutions complies with international law and fair trial standards, including by trial before a competent, independent and impartial tribunal established by law and the exclusion from such proceedings of any information obtained through torture or ill-treatment;**
- xvii) **Repeal the sweeping powers of arrest and detention granted to the Air Force Intelligence Service, the General Intelligence Service, the Military Intelligence Service, the General Intelligence Directorate, State Security and the Political Security Directorate, and provide for independent judicial oversight over the grounds for detention;**
- xviii) **Abstain from any act of intimidation or reprisal against human rights defenders and political activists and/or their family members;**
- xix) **Accept independent monitoring of detention facilities by granting independent observers immediate and unrestricted access to detainees and prisoners; and**

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<sup>12</sup> Human Rights Committee, *General Comment 7: Article 7*, UN Doc HRI\GEN\1\Rev.1 at 7 (1994), para 2.

xx) **Become party to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.**

**ARTICLES 2, 12 AND 14:  
TORTURE AS A STATE POLICY TO QUELL PROTESTS**

Since 15 March 2011, Syrian security forces have used torture and other ill-treatment as part of a widespread and systematic attack against the civilian population, aimed at ending the largely peaceful protests that erupted against the regime. Acts of torture and other ill-treatment were carried out in an organized manner and as part of a state policy, thereby amounting to crimes against humanity.

The use of torture and other ill-treatment has been part of a general policy of widespread violations of human rights and breaches of international law, including summary, arbitrary or extrajudicial executions; arbitrary detention and disproportionate and indiscriminate attacks against the civilian population and civilian objects.

The ICJ has received information, from a wide range of sources, indicating that detainees released by the authorities have been encouraged or ordered to report to their relatives and acquaintances the methods of torture to which they were subjected. Syrian authorities have returned to their families the mutilated corpses of those who died as a result of torture in custody, with a view to spreading a climate of fear and terror amongst them. Families have also been forced to sign papers that their relatives were killed by “terrorist groups”. Hamza Ali al-Khateeb, a 13-year-old boy, was arrested by security forces on 29 April 2011 in a small village near *Dar’a* on the suspicion that he participated in a protest against the regime. His mutilated corpse was returned to his family one month after his arrest. His skin was covered with cuts, gashes and bullet wounds. His feet, elbows, face and knees were badly burned. His jaw and kneecaps were shattered. His neck was broken and his penis had been cut off.

The ICJ has received consistent and credible reports, from detainees who have been released from the Military Intelligence offices in *Kafr Sousseh* and in *Jisr Al Shughour*, the Air Force Intelligence offices in *El-Mezzeh* and in *Dera’a*, and the Political Security offices in *Idlib* and *Al Ladhiqiyah*, amongst other detention facilities. These reports highlight both the systematic and widespread nature of the use of torture and other ill-treatment. They also highlight the use of consistent methods of torture and other ill-treatment. One source told the ICJ that he and other detainees were: *“beaten on the way to the detention centre. Upon our arrival, we were subjected to Hfalat El-Istikbal. We were severely beaten, including slapping, punching, kicking to the stomach, face and genitals. Officers used their fists, wood batons, metal sticks, and rifle butts.”* Another source confirmed this practice and told the ICJ that during a night session of torture: *“I was put in a tyre several times and severely beaten with a cable. I was meant to stand after the session, but my legs were almost dead. The pain was so severe I’d fall to my knees.”*

The ICJ has also received other consistent and reliable reports of the widespread use of sexual violence against detainees, including rape, forced oral sex, and beatings, electroshocks and cigarette burns to the genitals. These reports were echoed in the report of the independent international Commission of Inquiry on the Syrian Arab Republic. One man stated that he witnessed a 15-year-old boy being raped in front of his father. A 40-year-old man saw the rape of an 11-year-old boy by three security services officers. He stated: *“I have never been so afraid in my whole life. And then they turned to me and said; you are next.”* The interviewee was unable to continue his testimony. One 20-year-old university student told the Commission of Inquiry that he was subjected to sexual violence in detention, adding that *“if my father had been present and seen me, I would have had to commit suicide”*.<sup>13</sup>

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<sup>13</sup> Report of the independent international commission of inquiry on the Syrian Arab Republic, UN Doc A/HRC/S-17/2/Add.1 (2011), para. 67.

Recommendations concerning the use of torture as a State policy to quell protests; and the implementation of articles 2, 12 and 14 of the Convention

The ICJ calls on the Committee to urge the Syrian authorities to:

- xxi) **Put an immediate and unconditional end to gross human rights violations committed by Syrian security services, including the excessive use of force against demonstrators, the killing of protestors and the torture and ill-treatment of detainees;**
- xxii) **Promptly, thoroughly and impartially investigate, in accordance with Article 12 of the Convention, all cases of torture and ill-treatment of detainees, with a view to holding those responsible to account, including state officials and law enforcement officers who carried out, ordered or otherwise instigated, or acquiesced in such practices, and ensuring the victims' rights to a remedy and to reparation are upheld; and**
- xxiii) **Ensure, in accordance with Article 14 of the Convention, that mechanisms to obtain full reparation are accessible to all victims of torture or ill-treatment.**

**ARTICLES 2 AND 4:  
IMMUNITY AND IMPUNITY**

On 15 January 1969, Legislative Decree 14 was issued, establishing the General Intelligence Service in Syria. Article 16 of the Decree states: *"No legal action may be taken against any employee of the department for crimes committed while carrying out their designated duties or in the course of performing such duties except by an order issued by the director"*. On 30 September 2008, the Syrian President issued Legislative Decree 69, amending the Military Penal Code in Syria and giving the General Command of the Army and Armed Forces the authority to: *"initiate proceedings against members of the police, political security in cases of crimes committed by them because of the performance of their duties"*.

In addition to these legal mechanisms that establish immunity and/or encourage impunity, army and other security service members also continue to enjoy impunity in practice. Since 15 March 2011, the army and security services were ordered to quell the protests by all means necessary, resulting in gross human rights violations, including extrajudicial killings, summary executions and the widespread and systematic use of torture and other ill-treatment. Army defectors who fled to Turkey reported they were ordered at *Rastan*: *"to fire indiscriminately at civilians. We were told that people were armed there. But when we arrived, we saw that they were ordinary civilians. When we entered the houses, we opened fire on everyone, the young, and the old. Women were raped in front of their husbands and children"*.<sup>14</sup> Others reported: *"They gave us orders: You are free to do what you like"*.

Indeed, since the beginning of the protests, and in spite of the scale, magnitude and gravity of the human rights violations that have been committed by the military and other security forces, assisted by *Shabiha* members, Syrian authorities have failed to conduct prompt, thorough and impartial investigations of these violations and to hold to account those responsible for them. Instead, the authorities continue to argue that these violations are committed by "terrorist groups".

In cases where immunities provided for by Syrian law prove to be ineffective or inapplicable, Syrian authorities ensure that members of the security services alleged to be responsible for gross human rights are tried by military and exceptional courts, which largely fail to hold these individuals accountable. Indeed, Syrian authorities have distorted the justice system

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<sup>14</sup> Al Arabiya News, <[http://www.alarabiya.net/save\\_print.php?print=1&cont\\_id=152818](http://www.alarabiya.net/save_print.php?print=1&cont_id=152818)> (accessed 19 April 2012).

through the creation of special, exceptional and military courts, which violate international guarantees of fair trial.

For example, Article 6 of the SEA extends the jurisdiction of military courts to any violation of the Martial Governor Directives as well as any crime related to the security of the State, whether it is committed by a civilian or by a military officer. Syrian Military Judges cannot be considered independent and impartial because they are subject to the command structure of the armed forces. They are, under Article 39 of the Military Criminal Code, subordinate to the Ministry of Defence.<sup>15</sup> Trials before military courts are held in the Military Justice Headquarters, which are considered to be a military zone. Trials before these courts violate the most basic principles of fair trial, in particular, the right to be tried before an independent and impartial court, the right to a defence, the right to equality of arms and the right to a public hearing. As affirmed by the Human Rights Committee in its concluding observations on the compliance of Syria with its obligations under the ICCPR; *“the procedures of the military courts do not respect the guarantees laid down in article 14 of the covenant”*.<sup>16</sup>

Recommendations concerning immunity and impunity; and the implementation of articles 2  
4 of the Convention

The ICJ calls on the Committee to urge the Syrian authorities to:

- xxiv) **Provide for commensurate sanctions against senior officials in any way authorizing, acquiescing or consenting to acts of torture committed by their subordinates;**
- xxv) **Break the cycle of impunity that prevails over the involvement of military and security services in human rights violations, and to that end, ensure that perpetrators, including state officials and other persons acting in an official capacity, are brought to justice;**
- xxvi) **Repeal military and legislative decrees, including Legislative Decree 69, providing for immunity from legal proceedings in cases of crimes committed by law enforcement officers and state officials on duty, resulting, in law and in practice, in systematic impunity for perpetrators of human rights violations; and**
- xxvii) **Ensure that cases of gross human rights violations are prosecuted before ordinary civilian courts, in accordance with international law and standards.**

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<sup>15</sup> Legislative Decree Number 61 of 27 February 1950.

<sup>16</sup> Human Rights Committee, *Concluding Observations of the Human Rights Committee: Syrian Arab Republic*, UN Doc CCPR/CO/71/SYR (2001), para. 17.