

## **Report Submitted to the Universal Periodic Review Arbitrary Detention and Unfair Trials**

### **I. Introduction**

1. This report is submitted by the Enough Silence Campaign (<http://www.kafasamtan.org/>) to the Office of the High Commissioner for Human Rights (OHCHR) to be considered for inclusion in the summary of stakeholder submissions for the Universal Periodic Review of the Arab Republic of **Syria**, scheduled to take place in October 2011.

### **II. The Emergency Law and Arbitrary Detention**

1. Syria is a state party to the International Covenant on Civil and Political Rights (ICCPR), which Article 9 guarantees that “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”.

2. A state of emergency was declared in Syria on the 8 March 1963 by the Revolutionary Command Council following a military coup, based on Legislative Decree No. 51 of 22/12/1962, which included a law regarding a state of emergency. The state of emergency continues to be in effect until today, after almost five decades since it was declared<sup>1</sup>.

3. The state of emergency in Syria continues to be in effect and is used to justify the widespread practice of arbitrarily detaining citizens, in violation of Article 25, paragraph 2 of the Syrian Constitution: "the rule of law is a fundamental principle in society and the State"; and Article 28, P-2: "No person can be investigated or detained except in accordance with the law."

4. Under the emergency law, multiple security agencies (military security, state security, political security, aviation security) are given the authority to place any person under military arrest and detain them for an indefinite period. Article IV of the Emergency Law stipulates that when a state of emergency is declared, the Military Governor or his deputy has the authority to issue written orders that impose a wide range of constraints, including restrictions on the freedoms of assembly, residence, travel and movement, and permit the precautionary arrest of suspects or those deemed dangerous to security and public order, as well as the search of persons and places at any time.

### **III. Targets of Arbitrary Detention**

5. Arbitrary detention in Syria affects political and human rights activists and those who express their opinions freely, including bloggers, journalists and ordinary citizens, as well as those who are suspected of adhering to Salafist beliefs. Arbitrary arrests also affect members of the Kurdish community who call for cultural and political rights in the country.

---

<sup>1</sup> Decree 51 stipulates that a state of emergency can be decreed by the Council of Ministers convened under the chairmanship of the President of the Republic by a two-thirds majority of its members, provided that it is presented to the House of Representatives at its first meeting. The state of emergency in Syria was, however, declared by military order and was never presented to the House of Representatives. Furthermore, the state of emergency was declared in contravention of the Syrian Constitution of 1973, which stipulates in Article 101 that it is the responsibility of the President to declare or suspend a state of emergency. Because the Constitution is the supreme law in the country, this makes the declaration of the state of emergency invalid.

6. Over the past several decades, tens of thousands have been arbitrarily detained in Syria. Some of these detentions have lasted as long as 30 years. Large numbers of those detainees were never brought to trial or were else transferred to exceptional courts many years after being arrested. One example of this is the case of the writer and thinker Yassin Haj Saleh, was detained between 1980-1996 without trial, based on his affiliation to the Syrian Communist Party. Another example is the writer and journalist Akram al-Bunni, who was arrested in 1987 but was not tried until 1992, at which time he was sentenced retroactively. He was released in 2001. Most detainees were released before 2000, in the final years of the era of President Hafez al-Assad and the beginning of President Bashar al-Assad's rule. Over the past ten years, arbitrary arrests, without a warrant or trial, have continued.

7. It is difficult for human rights organizations to document these violations because they lack official recognition by the authorities and they are not allowed to visit prisons or detention centers run by the security branches. Activists document violations mainly using information is based on the testimony of former detainees and their families.

8. The security branches – military, political, state and air force intelligence security forces– are primarily responsible for the detentions. The detainees are subjected to investigation in these branches' bunkers in various provinces across the country for periods ranging from weeks to years. The prisoners are then either released without charge or transferred to the courts and subsequently moved to one of the official prisons: Sednaya military prison (about 30 km north of Damascus), the political section of Adra prison (about 20 km northeast of Damascus), or one of the civilian prisons in the provinces.

9. During the last ten years, thousands have been subject to arbitrary detention by the security services for periods ranging from months to years and then released without trial or charge. (Attachment 1: list of some of those names)

10. The non-released detainees were transferred to the judicial system after being held arbitrarily by the security services for periods ranging from weeks to months. For example, seven activists were arrested by air force intelligence in early 2006 for holding dialogues regarding democracy. Twelve democratic activists were also arrested in December 2007 for holding the meeting of the National Council that prepared the Damascus Declaration for Democratic and Peaceful Change. The participants were arrested by the state security apparatus in Damascus.

11. In October 2009, human rights activist Haitham Maleh (79 years), former president of the Human Rights Association in Syria, was arrested by the state security apparatus because he gave an interview to a television channel in which he talked about human rights violations in Syria and rampant corruption. He was abducted from the street, only to appear a week later Adra prison. He was brought to a military court, which sentenced him to three years in prison for publishing false news. Mr. Maleh was then released by a Presidential amnesty on the 8 of March 2011. The human rights activist and the head of the Syrian Organization for Human Rights in Syria, Muhannad al-Hasani, was also arrested in July 2009 by the state security apparatus, and was referred to the ordinary courts, which also tried him for the same charge. He was sentenced to three years in prison due to his human rights activism and because of his activities in monitoring trials in the Exceptional Court trials and the State Security Court. He was arbitrarily disbarred following a trial for poor conduct that lacked the minimum standards for fair trials. Furthermore, the novelist Raghda Hasan was arrested by the political security forces because of her participation in a civil society organization in February 2010. Also, the journalist Ali al-Abdullah was re-detained in June 2010 by the Political Security Apparatus due to his press statements regarding the Green Revolution in Iran.

#### **IV. Conditions of Detention in the Security Branches:**

12. Throughout the period of detention by security branches, conditions are generally dreadful for men

and women alike. The detainees are held in solitary confinement in tiny cells that do not meet the minimum health standards. The detainees are completely prevented from contacting the outside world, including lawyers or family members. They are subjected to systematic torture and intimidation in order to extract confessions. Detainees may be transferred from solitary confinement into group cells, but they continue to live with poor sanitary conditions and inadequate food while visitors and communication with outside world are absolutely forbidden.

13. Conditions differ slightly if the detainees are transferred to prisons, and also vary according to the prison. In civilian prisons, political detainees are placed alongside criminal prisoners, though the law decrees that prisoners must be separated based on the charges against them. As it is, detainees are subjected to all forms of harassment and intimidation on the orders of the prison warden, as happened to a number of political prisoners in Adra civilian prison in Damascus. For example, last year the lawyer Muhannad Al-Hasani was beaten and threatened by a criminal prisoner who accused him of being “unpatriotic and opposed to the regime.” The political prisoner Kamal Alibwani experienced a similar attack in November 2006. Prisoners in civilian prisons do receive weekly visits from their lawyer and families, but these visits are subject to strict control and in the presence of a prison guard. Prisoners in the political section of Adra prison are prevented from receiving visits without advance permission from security. Many of the detainees there have not received visits since they were arrested; for example, Yusra Al-Hassan, who has been detained for being an Islamist since January 2010, and until this moment her relatives have not been allowed to visit her. Furthermore, in Sednaya military prison, lawyers are not allowed to visit their clients at all, and family visits are subject to the approval of security in advance, at an average of once per month.

#### **V. Torture in the Security Branches:**

14. Torture against detainees in the security branches is common and is systematically practiced to extract confessions. This mistreatment has led to the deaths of many of the detainees. For example, Abdullah Al Thamer, born in Deir Al-Zour, 1982, was arrested the day after his return from exile in Iraq in 2003 and died in prison. Ziad al-Dakhil was arrested in March 2003 following his return from exile in Iraq and died in prison in April 2004. Ahmed Hussein Hussein was arrested in July 2004 under the pretext of being sympathizer with the PKK and died several months after his arrest, allegedly due to torture. Yasser Sakka was arrested in 2005 and died in prison; his family was not notified. Ahmed Ali Al-Masaleme was arrested in February 2005 after his return from exile in Saudi Arabia and died in prison after a month<sup>2</sup>.

#### **VI. Detention of Women:**

15. During the 1980s and 1990s, hundreds of women from leftist and Islamic parties were arrested and many continue to be imprisoned. In 2010, 14 women were arrested, including the novelist Raghda

---

<sup>2</sup> Other cases: Mohammed Shaher Haisp, 26 years old, was arrested in 2006 for Islamism and died several months later, allegedly due to torture. Ahmad Abdul-Ghafoor Abdul Baqi, 24, was arrested in July 2007 for Islamism and died a few months after his arrest, allegedly due to torture. Mohammed Amin al-Shawa, born in 1966, was an enlightened Islamist who was arrested in August 2008; his body was handed over to his family early in 2009 after he allegedly died of torture. Ahmed Moussa Shukaifi was arrested in 2008, and his body was handed over to his family after a week with signs of torture still present. Mohammed Misto Rashid was arrested in 2009 and health deteriorated as a result of alleged torture until he died in 2010. Hanan Abdel-Kader Mahmoud, a 27 years old Kurd, was arrested in May 2010 and his body was handed to his family after one month; they were not allowed to perform an autopsy or examine his body. Riad Ahmed Khalil, born 1968, was arrested in July 2010 and his body was handed over to his family after one month; they were not allowed to examine his body. Hammam Walid Raqayah, 20 years old, was arrested in July 2010 and two months later his body was handed over to his family

Hassan, who was arrested for helping a civil society organization organize a questionnaire on Syrian internal affairs. She is currently being tried before a military court. The dentist and former detainee Tehama Maarouf was arrested under the pretext of enforcing a ruling made more than 15 years ago by the exceptional state security court, on the charge of belonging to the opposition Communist Labor Party. This is in spite of fact that the statute of limitations for this charge has expired and the fact that she was not politically active during that period. The young blogger Tal Almlouhi was recently sentenced to five years by the exceptional State Security Court. Yusra Al-Hassan, a mother of four, was arrested for Islamism after printing and distributing a poem on the Internet. She is still detained, isolated from the outside world and permitted no visits for more than a year. Ayat Essam Ahmed, 19 years old, was detained for Islamism for more than nine months in complete isolation from the outside world and later released without charge. This is in addition to many Kurdish detainees. Also, Dr. Fida Hourani was arrested in December 2007 for belonging to the National Council of the Damascus Declaration. She was sentenced to two and a half years in prison, the same as her co-defendants.

16. Typically, women are detained in the security branches for weeks or months in appalling conditions. They are subjected to solitary confinement, forbidden visits and not allowed to consult with a lawyer and this in addition to physical torture and ill-treatment<sup>3</sup>. After the investigation has ended, female detainees are generally transferred to a civilian prison or to the political section of Adra prison. The conditions for detainees are very bad there. Female prisoners are all held in a small room, and visits are subject to the approval of the security apparatus. In the cases of Tal Almlouhi and Yusra Hassan, as yet no visits have been permitted. Those who are permitted generally receive visitors once a month after security approval. Detainees are prohibited from accessing books, newspapers, radio or any other means of communication with the outside world.

## **VII. Fair Trials:**

17. A Special Court system is used in Syria under a state of emergency declared in 1963. Based on the decision of the Regional Command No. 2 dated 25/02/1966 and the decision of the Council of Ministers No. 47 dated 20/03/1968, the Legislative Decree No. 47 dated 28/03/1968 was issued to cancel the special military tribunals and create the Supreme State Security Court. The Decree has also granted the State Security Court wide powers and exempted it from complying with the laws of due process. Its verdicts are not subject to any form of appeal or review.

18. Thus under the state of emergency, the military courts have a special authority to try civilians. Therefore the military courts and the Special State Security Court are the primary courts sentencing citizens arbitrary detained.

19. It is only during the past ten years that regular courts have begun to hear some of the cases of political detainees, along with military courts. Indeed, some prisoners of conscience, political and human rights activists are referred to regular courts, while most Kurdish detainees are referred to military courts, and all Islamists are referred to the Special State Security Court. The State Security Court also hears cases involving prisoners of conscience, activists and Kurdish detainees.

20. The ordinary courts are subject to the control of the executive branch, as the Supreme Judicial Council is headed by the President represented by the Minister of Justice. These courts lack any independence

---

<sup>3</sup> This is what happened to the blogger Tal Almlouhi, who remained in solitary confinement in the State Security Branch from her arrest in December 2009 until late 2010. Similarly, Yusra Hassan was also in solitary confinement in the same branch from January 2010 until she was transferred to the political section of Adra prison in late 2010.

from security forces and are subject to widespread corruption. These courts have consistently ignored basic principles of due process.

21. The courts typically base their rulings on vague and ill-defined articles of the Syrian Penal Code, such as "publishing false news that weakens the morale of the nation," and "weakening national sentiment." Also, the evidence for civil lawsuits is limited to security records. The authorities prepare this evidence while detainees are in solitary confinement and after using coercion and applying various kinds of pressure on them. These techniques involve verbal abuse and intimidation in addition to physical torture. It is common to force the detainee to sign an affidavit without letting him or her read it or examine its contents. This occurs with the majority of those detained arbitrarily.

22. The emergency law attributed military courts the authority to try civilians. Lawyer Haitham Maleh was sentenced by the Military Criminal Court to three years in prison despite Maleh's defense that constitutionally the court had no jurisdiction and that he had exercised his right of free expression according to the Syrian constitution. In April 2008, political activist Kamal Labwani who is already serving a 12 years sentence was sentenced to three years in prison by the Military Criminal Court for spreading false news in the prison.

23. The Special State Security Court (SSSC) operates under the emergency law and is headed by a retired judge who has continued to preside over the court for more than three decades. The hearings continue to be secret and lawyers are not allowed to meet their clients in private. In fact the power of attorney has to be approved beforehand by the court. The court relies entirely on affidavits signed under coercion. The court still refuses to hear detainees' claims about being subjected to torture in the extraction of confessions. It is also exempt from complying with due process according to the law that established it. This court lacks the minimum standards for fair trial and hundreds of prisoners are tried before it each year.

24. In February 2011, the SSSC sentenced the twenty-year-old blogger Tal Almlouhi to five years in prison after a secret trial. In January 2011, four leftist detainees were also sentenced to five to seven years in prison after they held a meeting in a home, based on charges of affiliation to a secret society. This occurred despite the absence of any evidence other than security records of their affiliation to a party.

### **VIII. Recommendations:**

25. Regarding arbitrary detention and lack of rule of law:

- Immediate release of all of those detained arbitrarily without warrants or a referral to trial.
- Investigate all cases of arbitrary detention and hold those responsible accountable, in addition to compensating victims.
- Allow the United Nations Working Group on Arbitrary Detention to visit Syria and examine detention centers, including the various security apparatuses.

26. Regarding cases of disappearances:

- The whereabouts and fate of all disappeared prisoners must be disclosed immediately and their families and relatives properly informed.
- Allegations of disappearances must be investigated and those responsible must be held accountable and victims compensated.

27. Regarding fair trials and the State Security Court:

- Revoke the military courts' power to try civilians, as it violates the provisions of the Syrian constitution.
- Abolish the Special State Security Court, which lacks the minimum standards of fair trial.
- Ensure the judiciary's independence from the executive branch and the state security apparatus, and ensure fair trials for detainees.
- Allow all detainees to meet their lawyers in private and with no surveillance.

**Attachment:**

List of arbitrary detained released without trial or charge