

“The duty to investigate crimes of torture in national law and practice”



Inputs for the attention of the Special Rapporteur on Torture

Submitted by: Syrians for Truth and Justice

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This submission is a response to the Special Rapporteur's Questionnaire on "the duty to investigate crimes of torture in national law and practice". In this submission, [Syrians for Truth and Justice](#) (STJ) addresses through its analysis of the new Syrian anti-torture law ([Law No. 16 of 2022](#)) and the interlinked national regulations and laws some of the Questionnaire's questions.

Regulatory Frameworks

1. Successive Syrian constitutions have collectively prohibited torture. Article 28 of the [1973 Syrian Constitution](#) bans physical or mental torture, as well as degrading treatment, rendering these acts punishable by the law.
2. In a similar vein, Article 52 of the operative [2012 Constitution](#) states that: "No one may be tortured or treated in a humiliating manner, and the law shall define the punishment for those who do so."
3. Additionally, Article 391 of the [Syrian Penal Code](#) stipulates that: "Anyone who subjects a person to illegal acts of hardship with a view to obtaining from him a confession to an offense or information pertaining thereto shall be liable to a penalty of detention for a term of three months to three years. If such acts of hardship cause sickness or wounds, the minimum penalty shall be one year's detention."
4. Even though the Arabic legal text does not reference the word *ta'athib* (torture) and uses the word *al-shiddah* (hardship) instead, the Syrian judiciary treats *al-Shiddah* as implying *ta'athib*. This article has been criticized for its limited scope because it applies exclusively to crimes of torture committed during interrogation, which are perpetrated against a defendant to coerce him/her to confess or provide information. With this, the article does not cover acts committed with the aim of humiliating, inflicting suffering on, or retaliating against a person, acts that are legally defined as cruel, degrading, or inhumane.
5. The article is also widely criticized for classifying the act of torture as a misdemeanor, not a felony, and therefore not considered a serious crime as required by Article 4 of the Convention against Torture.
6. On 30 March 2022, Syrian President Bashar al-Assad issued [Law No. 16 of 2022](#), criminalizing torture. According to the Syrian Presidency's [Facebook account](#), the Anti-Torture law has been issued in compliance with the "constitutional obligations of the Syrian State, which prohibit torture" and with the [Convention](#) against Torture of 1984, to which the government of the Syrian Arab Republic acceded on August 19, 2004. Nevertheless, the enacted Law cannot be read as a standalone legislation that satisfies the Syrian State's obligations under the Convention due to several shortcomings on one hand, and the limitation effect of other in force legislations as detailed below.

Challenges, Impediments and Obstacles

7. With the exception of Article 391, torture is not addressed as a criminal act *per se*. It is often treated as an aggravating circumstance when accompanying another crime. For instance, Article 545 of the Penal Code imposes a harsher penalty against murders, when accompanied by acts of torture or cruelty. Similarly, Article 556 of the code pushes for a severer penalty for the crime of deprivation of liberty, when the victim is correspondingly subjected to physical or mental torture.
8. Law No. 16 is commendable for theoretically widening the scope of acts aggregated under torture, and classes deemed punishable for the act. Criminalization is not limited to the act of torture carried out or supervised by a public official or any person acting in an official capacity, as is the case with Article 1 of [the Convention against Torture](#). In Law No. 16, a perpetrator of torture is any person or a group to whom the definition of torture applies.
9. However, the Law tightened the penalty for the perpetrator of torture against a public official in a context related to the employee's official capacity compared to the penalty for the public official perpetrator pursuant to Article 2 of the Law.
10. In the same context, and although Article 391 criminalizes acts of torture committed over the course of an investigation into a crime, in addition to the new criminalization by Article 1 of Law No. 16 of 2022, several existing and in force laws and decrees have rendered this meaningless and ineffective. [Decree No. 14 of 1969](#), which provides for establishing the State Security Department, officially called the General Intelligence Directorate, allows the directorate's employees to use torture with impunity. Security members can commit violations while carrying out their duties without being persecuted. Article 16 of the decree states that: employees of the State Security Administration "shall not be judicially pursued for offenses they commit while carrying out their duties or specific tasks assigned to them without a warrant issued by the director authorizing legal action against them".
11. A second decree that warrants similar impunity measures is Legislative [Decree 549 of 1969](#), on the internal organization of the General Intelligence Department and the rules of service. Article 74 of the decree states that: "No legal action may be taken against any State Security Department employee, those assigned or detailed to the department, or those contracted with it, for crimes incurred on the job... before referral to a department disciplinary board and before an order is obtained from the director."
12. There is also [Decree No. 64 of 2008](#), which expanded the range of SG employees warranted impunity, who are exclusively persecuted under an order issued by the General Command of the Army and Armed Forces, in accordance

with Legislative [Decree No. 61 of 1950](#), of the Military Penal and Procedural Code. The decree widened the scope of impunity, also covering members of the police, the Political Security Directorate and Customs. Additionally, according to law, only the same agencies for which the officials belong to can carry out preliminary criminal investigations.

Elements of Human Rights-Compliant Investigations and Prosecutions

13. The new Law stresses that authorities in charge of receiving complaints, including public prosecutors or police departments, must take the necessary measures to guarantee the right to filing complaints or reporting cases of torture, provide protection to the complainant and maintain the confidentiality of information related to him/her, and information related to the torture incident. Also related to protection, the law emphasizes the need to protect witnesses and experts involved in a reported case, along with their families. Experts include forensics who examine torture victims and issue medical reports that function as legal documents presented to courts and official departments.
14. However, the law does not support these measures with practical steps. It does not expressly list the measures to be taken to guarantee protection for victims, witnesses, experts, or any other party who might be at risk due to the consideration of the complaint. The Law does not oblige the Public Prosecution to immediately open an investigation, helped by the officials in charge of a torture report or complaint as to bring the report's subject, who displays signs of torture, before the court in person.
15. The Public Prosecution (the Judicial Authority) is generally concerned with filing and initiating a Public Interest Litigation (PIL) against the perpetrators of crimes. Therefore, the Criminal Procedure Code issued in Legislative [Decree No. 112 of 1950](#) stipulates that the Public Prosecution is forced to file a lawsuit if the aggrieved party files a personal claim, and that is applicable regardless of the official capacity of the defendant.
16. Accordingly, Legislative Decrees No. 14 of 1969 and No. 549 of 1969 are used to prevent the Public Prosecution from bringing a case against members of the security forces, even if the aggrieved party, the person subjected to torture, establishes himself as a personal claimant. With this, the two decrees privilege security members, violating the principle of equality before the law.
17. Therefore, the applicable legal framework(s) when read in conjunction with each other warrant a pattern of discrimination against victims because it provides harsher punishment when the victim subjected to torture is a state official. This discrimination violates several international legal texts, including Article 7 of The Universal Declaration of Human Rights ([UDHR](#)) and Article 2 of

the [International Covenant on Civil and Political Rights](#), which prohibit discrimination on any grounds, including race, color, sex, language, religion, political or other opinions, national or social origin, wealth, or lineage.

18. Moreover, the law places the burden of obtaining effective redress on the victim, because the law's articles are not only ambiguous regarding protection measures, but also do not expressly make authorities the party responsible for conducting necessary investigations and prosecutions as soon as they receive any information or have reasons to believe that torture has been committed. This clearly contradicts the State obligation under Article 12 of the Convention against Torture.
19. Law No. 16 of 2022 ignored other related acts, which are essential to the Convention against Torture and are labeled as other forms of "cruel, inhuman or degrading treatment or punishment." Several widespread activities in Syria fall under these labels, including humiliation, insults, "light beating", and conditions of detention. Many such acts will remain unpunishable because the new law does not legally criminalize them, nor provide specific definitions to address them.
20. Therefore, even though Article 16 of the Convention explicitly states that all its provisions apply to practices that do not meet the definition of the crime of torture, but amount to cruel, inhuman, or degrading treatment or punishment, Law No. 16 does not ground these violations. This offers room for perpetrating these practices with impunity, justifying these acts by their exclusion from the definition of torture.
21. The Law entry into force in March 2022 raises a pivotal question about retroactivity and the rights of victims of torture prior to the enactment of this Law. As detailed above, the existing laws before this Law are never adequate to criminalize torture and ill-treatment, as well as to redress the victims. The established legal principle of non-retroactivity will prevent all those torture victims before March 2022 from benefiting from the new Law, regardless of its shortcomings and deficiencies.

Involved Mechanisms

22. In Syria, there are two types of "official" internal monitoring on the work of SG-affiliated security institutions:
 - a. Administrative/internal oversight within security services: The extent of oversight, its independence, transparency, and credibility cannot be trusted, because the security services are blocked against independent bodies.

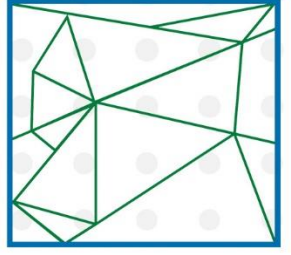
- b. **Judicial oversight:** This type of control is not practiced, disrupted by the structure and composition of the Supreme Judicial Council (SJC) in Syria, whereby judges are subordinates to the executive authorities administratively and functionally.
23. The operative 2012 Syrian Constitution provided for the independence of the judiciary. However, independence is obstructed by Article 133 of the constitution itself. The article states that the President of the Republic is the head of the SJC, represented by the Minister of Justice. Notably, both the president and the minister are pillars of executive authority.
24. Additionally, half of the SJC's members are employees of the Ministry of Justice, including the deputy justice minister, the head of the Judicial Inspection Department, and the justice minister, who heads the Public Prosecution as stipulated by Article 137 of the constitution, thus becoming in charge of the attorney general who obeys his orders.
25. The SJC appoints, promotes, disciplines, and dismisses judges based on the proposal of the justice minister, the SJC's president, or three of the SJC's members. Additionally, the SJC refers judges to retirement or deposition, accepts their resignation, and tackles everything related to their duties, and other competencies related to their work in accordance with Article 67 of the Judicial Authority Law No. 98 of 1961. Consequently, this structure and dynamics of operation deny the SCJ its independence because they establish the executive authorities' dominance over the judicial system.
26. Additionally, while it remains theoretically easy to exercise control over the agencies affiliated with the Ministry of Interior, including police departments, police stations, criminal security branches, etc., other security branches are out of the oversight mechanisms' reach. This can be attributed to the branches' ambivalent legal status. These branches are legally and theoretically considered administrative police whose responsibility is to combat crime, while jurisprudence considers them as judicial police whose responsibility is to investigate crimes after they occur.
27. In practice, however, these security services perpetrate torture against SG critics. Despite the deliberate legal ambiguity with regard to the tasks and functions of the security services and their legal status, they must abide by the law and their personnel and employees must observe their law enforcement duties. Therefore, new mechanisms must be put in place to exercise additional control over these services, make them abide by Law No. 16 of 2022, and press them to adhere to their designated jurisdiction.

28. At the external/international level, the SG's reservation on Article 20 of the Convention rendered a key segment of the Convention ineffective and meaningless, which includes conducting relevant investigations with regard to information received by the CAT, cooperating with the concerned State to conduct field visits, and then filing confidential reports to the State with proposals to improve or change the existing situation.
29. The new Law does not specify any mechanisms or measures to ensure independent and transparent monitoring of the implementation of its provisions in practice, especially in light of the involvement of other legislations and procedural regulations that fall out of the scope of this Law.

Conclusion:

30. It has been established that Syrian security services use torture as a policy, underlaid with patterns aiming at silencing SG critics and opponents, as well as a means to intimidate those who are considered as SG opponents. Therefore, if the SG does act to change its mentality and the way it manages issues of human rights and fundamental freedoms, all the steps it takes will remain incomplete. Establishing these rights and freedoms in legal and constitutional texts will continue to be insufficient unless measures are made to guarantee they are observed in practice.
 31. It is inconsistent to criminalize torture and simultaneously provide a climate that fosters impunity for those accused of committing the crime of torture, including the two decrees cited above, which protect several SG agents, among them security and police personnel.
 32. It is also inconsistent that Syria ratified the Convention against Torture while maintaining reservations about the CAT duties, especially since the CAT activities revolve around receiving complaints related to cases of torture and monitoring the extent to which States Parties comply with their obligations under the Convention.
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About Us:

Syrians for Truth and Justice (STJ) is a nonprofit, nongovernmental organization monitoring human rights violations in Syria. Founded in 2015, STJ has been based in France since 2019.

STJ is an impartial and independent Syrian human rights organization operating across Syria. Our network of field researchers monitor and report human rights violations occurring on the ground in Syria, while our international team of human rights experts, lawyers, and journalists gather evidence, examine emerging patterns of violations, and analyze how violations break domestic Syrian and international law.

We are committed to documenting violations of human rights committed by all parties in the Syrian conflict and elevating the voices of all Syrians victimized by human rights violations, regardless of their ethnicity, religion, political affiliation, class, and/or gender. Our commitment to human rights monitoring is founded on the idea that professional human rights documentation meeting international standards is the first step to uncovering the truth and achieving justice in Syria.



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EDITOR@STJ-SY.ORG