



Human Rights Law Clinic Papers 2017

SYRIA COUNTRY PROFILE ON THE PREVENTION AND PERPETRATION OF TORTURE AND ACCESS TO REDRESS AND ACCOUNTABILITY

To: Ann Hannah, Freedom from Torture

Submitted by: Chikondi Chimwemwe Chijozi

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Introduction

This memorandum analyzes the international and national legal and political contexts in the Syrian Arab Republic (Syria) in relation to acts of torture. The memorandum will identify legal, policy and practical barriers to the prevention of torture and the possibility of redress and accountability for acts of torture. The aim of this memorandum is to identify positive features and deficiencies for possible advocacy at international, regional, and national levels. The memorandum also takes cognisance of the current political unrest in Syria and that there is a likelihood that the situation in Syria, as presented in this paper, might change and that opportunities for advocacy are at present undermined. The analysis is based on a number of reports on the human rights situation in Syria. Due to the limitations of this memorandum, the analysis is limited to the definition of torture under the UN Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) and will therefore not go as far as to consider issues pertaining to acts of cruel, inhuman, or degrading treatment or punishment. The Memorandum will also not consider the acts of torture for non-state actors but will limit itself to acts of torture at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

Background

Geopolitical context

The Syrian Arab Republic is situated on the eastern shores of the Mediterranean and is bounded by Turkey in the north, Iraq in the east, Palestine and Jordan in the south and Lebanon and the Mediterranean Sea in the west.¹ Its surface area is 185,180 km² of which 6 million hectares consist of arable land and the rest is mountains and desert.³ In 1967, Israel occupied 1,260 km² of territory in the Syrian Golan, around 60 km² of which was partly liberated, together with the town of Quneitra, after the October 1973 liberation war.⁴ Today, 1,200 km² of the territory in the Syrian Golan remains under Israeli occupation.⁵ The country is divided into 14 regions (governorates). Each region is made up of districts which, in turn, are divided into sub-districts comprising a number of villages.⁶

Syria gained independence in April 1946 as a parliamentary republic.⁷ The post-independence period was marked by several military coups and coup attempts.⁸ A state of emergency, from 1963 to 2011, effectively suspended most constitutional protections for citizens.⁹ Hafez Al-Assad became President in 1971 following a military coup.¹⁰ Bashar Al Assad succeeded his father in 2000.¹¹ Under their rule, the Baath party came to dominate and control all aspects of political and social life.¹²

Syria has a population of 22 million, of whom 74 per cent are Sunni Muslim, 10 per cent are Alawite, three per cent are other Shia Muslim, ten per cent are Christian and three per cent

¹ National Report of the Syrian Arab Republic to the Human Rights Council Working Group on the Universal Periodic Review, UN Doc A/HRC/WG.6/12/SYR/1 (2011), para. 9.

² Ibid, para. 10.

³ Initial Report of the Syrian Arab Republic to the Committee against Torture, UN Doc CAT/C/SYR/1 (2009), para. 2.

⁴ Ibid.

⁵ Ibid.

⁶ National UPR Report, op cit, para.11.

⁷ Report of the Independent International Commission of Inquiry on the Syrian Arab Republic to the Human Rights Council, UN Doc A/HRC/S-17/2 (2011), para. 14.

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

Druze.¹³ Major ethnic minorities include Kurdish, Assyrian, Armenian, Turkmen and Circassian populations. The Al-Assad family belongs to the Alawite religious community.¹⁴ While comprising only ten per cent of the population, Alawites today make up the majority in the key positions of the State apparatus, including the officer corps of the armed forces, the Republican Guard and the Fourth Division.¹⁵

Human rights situation

During the past four decades, suspected opponents of the Government have suffered torture, arbitrary detention and long prison sentences imposed under vaguely defined crimes relating to political activity.¹⁶ Surveillance and suppression have been conducted by an extensive apparatus of intelligence, the *mukhabarat*.¹⁷ Decades of tight control of freedom of expression, as well as surveillance and persecution of opponents, have severely limited political life and the development of an autonomous civil society.¹⁸

In March 2011, protests erupted in Dar'a in response to the detention and torture of a group of children accused of painting anti-Government graffiti on public buildings.¹⁹ Following the suppression by State forces of peaceful protests, including firing at a funeral procession, civilian marches in support of Dar'a spread to a number of cities, including some suburbs of Al Ladhqiyyah, Baniyas, Damascus, Dayr Az Zawr, Homs, Hama and Idlib.²⁰ On 25 April 2011, Syrian armed forces undertook the first wide-scale military operation in Dar'a. Since then, protests have continued across the country, with an increasingly violent response by State forces and armed opposition groups.²¹ Other major military operations were carried out in different locations. On 8 November 2011, Office of the High Commissioner for Human Rights (OHCHR) estimated that at least 3,500 civilians had been killed by State forces since March 2011.²² The number of civilians killed by State forces keeps rising. In the month of April 2017 alone, the Syrian Network of Human Rights reported 486 civilians having been killed by State Forces, including 98 children (three children are killed every day) and 82 women (adult females).²³ Thousands are also reported to have been detained, tortured and ill-treated. Homs, Hama and Dar'a reportedly suffered the highest number of casualties.²⁴

At its 17th Special Session, the Human Rights Council considered the report of the fact-finding mission submitted by the OHCHR pursuant to Council resolution S-16/1 (2011).²⁵ In the light of the mission's findings, including that patterns of human rights violations may amount to crimes against humanity, and a deteriorating human rights situation in the country, the Council decided to establish an independent international commission of inquiry. Under its resolution S-17/1 (2011), it mandated the commission to investigate all alleged violations of international human rights law since March 2011, to establish the facts and circumstances that may amount to such violations and of the crimes perpetrated and, where possible, to identify those responsible with a view of ensuring that perpetrators of violations, including those that may constitute crimes against humanity, are held accountable.²⁶ The Independent

¹³ Ibid, para. 15

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid, para. 16.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid, para. 27.

²⁰ Ibid, para 28.

²¹ Ibid.

²² Ibid.

²³ Syrian Network for Human Rights, '1014 Civilians Killed in April 2017', at URL <http://sn4hr.org/blog/2017/05/01/39466/> (accessed 3 May 2017),

²⁴ Ibid.

²⁵ Ibid, para. 1.

²⁶ Ibid.

Commission indicated in its August 2016 report²⁷ that the use of torture by Government forces, particularly its intelligence and security agencies, has been documented by the Commission since its inception. The Commission further indicated that it is extremely rare to find an individual who has been detained by the Government who has not suffered severe torture. Torture is employed as a means of extracting information and to punish and inflict terror on the civilian population.²⁸ The majority of victims are men between the ages of 18 and 60. However, Government officials also torture women and children in their custody.²⁹ The accounts collected by the Commission relate to torture in Government detention centres as well as torture by terrorist groups like ISIL.³⁰ Some former prisoners only felt able to speak about what they had endured once they had become refugees and lived in places that granted them greater assurances of their physical safety.³¹ Others were so traumatized that it took them months, sometimes years, before they were willing to speak about being tortured.³²

Syria has ratified a number of international human rights treaties³³ including UNCAT, which was ratified on 1 July 2004.³⁴ Syrian domestic law gives precedence to international law in the event of a conflict between any national law and an international treaty to which the Syrian Arab Republic is a party.³⁵ It can arguably be said that international law, is the supreme law in Syria, but the memorandum will examine how that has been translated into practice.

The 1973 Constitution of the Syrian Arab Republic enshrined a number of fundamental human rights including the right not to be subjected to torture or humiliating treatment.³⁶ Amid the growing armed violence in many parts of the country, a new Constitution came into force on 27 February 2012 after a popular referendum was held.³⁷ The 2012 Constitution also guarantees fundamental human rights³⁸ and prohibits torture.³⁹ The next parts of this memorandum will consider how the provisions of the Constitution have been translated into practice.

²⁷ Report of the Independent International Commission of Inquiry on the Syrian Arab Republic to the Human Rights Council, UN Doc A/HRC/S-17/2 (2016), para. 93.

²⁸ Ibid, para. 92.

²⁹ Ibid, para. 94.

³⁰ Ibid, para. 102.

³¹ Ibid.

³² Ibid.

³³ Committee against Torture, Concluding Observations of the Committee against Torture on the initial report of the Syrian Arab Republic, UN Doc CAT/C/SYR/CO/1 (2010), para. 4.

³⁴ Damascus Center for Human Rights Studies, Alternative Report to the Syrian Government's Initial Report on Measures taken to Fulfil its Commitments under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, available at URL: <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fNGO%2fSYR%2f48%2f10106&Lang=en> (accessed 26 March 2017).

³⁵ National UPR Report, op cit, para. 25.

³⁶ 2011 Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, op cit. para. 2.

³⁷ Alkarama, Crimes against Humanity in Syria Systematic Torture to Quell Public Dissent, Report submitted to the Committee against Torture in the context of the special review of the Syrian Arab Republic, available at URL: <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fNGO%2fSYR%2f48%2f10109&Lang=en> (accessed 26 March 2017).

³⁸ See Articles 33-54 of the 2012 Constitution. The text of the new Syrian Constitution is available at URL: <https://www.constituteproject.org/constitution/Syria_2012.pdf> (accessed 30 March 2017).

³⁹ Article 53 of the 2012 Constitution.

Prevention and perpetration of torture and access to redress and accountability

State structures

This section will consider the state structures existing in Syria that facilitate or present obstacles to the prevention and combatting of torture. The legislative, executive and judicial structures in Syria will be dealt with to identify their impact on the prevention, perpetration, and access to redress and accountability for acts of torture. This will include the Government and State security systems, justice systems and the rule of law. The subsection will also examine the legal context in the country regarding allegations, investigations and prosecutions of torture.

Legislative framework

As earlier alluded to, the new Syrian Constitution of 2012, like its predecessor of 1973, contains many provisions safeguarding fundamental liberties and human rights. The Damascus Center for Human Rights Studies, in its Alternative Report to the Committee against Torture,⁴⁰ raised concern that although the Syrian Constitution safeguards fundamental liberties and human rights, most of the pertinent articles end with formulations such as 'in accordance with the law,', 'according to the provisions outlined in the law,' or 'and the law shall regulate this,', but whereas the relevant law has either not been issued, or a law has been issued and contravenes the spirit of the Constitution.⁴¹

Torture has always been prohibited under the Syrian Constitution. Article 28(3) of the 1973 Constitution provided that "no one may be physically or psychologically tortured or treated in a degrading fashion; the punishment for such acts shall be set by law". The Committee against Torture, in its Concluding Observations on the initial report of Syria,⁴² expressed deep concern over the provisions of Article 28(3) of the Constitution. The Committee was concerned that the definition of torture under the Constitution of 1973 did not comply with the definition under Article 1 of the Convention, even though Article 28 prohibited torture.⁴³ The Committee therefore recommended that Syria amend its legislation to conform to Article 1 of the Convention. Article 53 of the 2012 Constitution now provides that "no one may be subjected to torture or to degrading treatment and the law shall define the punishment for any person who commits such acts". It is clear from the provisions of Article 53 that it does not address the concerns raised by the Committee against Torture, nor does it reflect the provisions of Article 1 of the Convention. If anything, Article 53 departs even further from Article 1 of the Convention as it leaves out 'psychological torture' which had been provided for under the 1973 Constitution.

The punishment for a criminal act of torture is provided under Article 391 of the Criminal Code, which states that anyone who subjects a person to illegal hardship in order to obtain a confession to a crime or information about that crime shall be liable to a penalty of imprisonment of three months to three years. If the acts of violence lead to sickness or injury, the minimum penalty shall be a term of one-year imprisonment.⁴⁴ The Damascus Center for Human Rights Studies Report indicates that the term 'hardship' in Article 391 has

⁴⁰ Damascus Center for Human Rights Studies, Alternative Report to the Syrian Government's Initial Report on Measures taken to Fulfil its Commitments under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, available at URL: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fNGO%2fSYR%2f48%2f10106&Lang=en (accessed 26 March 2017).

⁴¹ Ibid, p.4.

⁴² Committee against Torture Concluding Observations, op cit, para 5.

⁴³ Ibid. Article 28(3) of the 1973 Syrian Constitution stated that: "no one may be physically or psychologically tortured or treated in a degrading fashion; the punishment for such acts shall be set by law".

⁴⁴ Damascus Center for Human Rights Studies Alternative Report, op cit, p.5.

been construed to mean 'acts of violence' or physical violence, which rules out psychological violence such as the threats and ill-treatment included in the definition of torture in Article 1 of the Convention.⁴⁵ The Committee against Torture raised concerns about the punishment of the offence of torture under Article 391 and expressed the view that it fails to ensure penalties commensurate to such acts since they set the maximum penalty at three years of imprisonment.⁴⁶ Furthermore, the penalty does not take into account the grave nature of torture which should be made punishable by appropriate penalties as set out in Article 4(2) of the Convention.

As indicated earlier, that there are some legislative decrees that have the effect of undermining the human rights safeguards in the Constitution. One worth mention is Legislative Decree No. 14 of 1969⁴⁷ which established the General Intelligence Administration. Article 16 of the Decree states that: "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".⁴⁸ It has been argued that no party can hold the employees of the General Intelligence accountable without a prosecution order from the director, and the director, in turn, uses this prerogative to compel his subordinates to continue to torture and engage in other crimes that make the lives of Syrian detainees intolerable.⁴⁹

Added this is the Legislative Decree No. 69 which was issued by the President on 30 September 2008.⁵⁰ The Decree amended the Military Penal Code in Syria. The law delegated the right to issue an arrest order for members of the police, political security and customs to the General Command of the Army and Armed Forces, although administratively these personnel are subordinate to the Ministry of Interior, not the armed forces.⁵¹ Article 2 of the Decree gives jurisdiction to the military judiciary for all suits against members of the police, customs police or Political Security and no lawsuit may be filed against them before regular courts.⁵² Under the new law, no lawsuit may be filed before regular courts against members of the police, customs police or political security, including, of course, ones related to the torture and assault of citizens, as such lawsuits would require the prior permission of the army commander.⁵³ In turn, all lawsuits filed against such personnel that were pending before the regular judiciary were transferred to the military judiciary.⁵⁴ It has been argued that decrees like this instil a free reign for the security apparatuses in the treatment of detainees. Intelligence agents feel immune from legal prosecution even if they commit a human rights violation as grave as torture.⁵⁵

Executive powers

Article 101 of the 2012 Constitution gives power to the President to make decrees, decisions and orders in accordance with the laws. The 1973 Constitution also gave similar powers to the President.⁵⁶ It is in the exercise of this power that the president is able to make decrees that, as discussed above, have the effect of hindering the prevention of torture and access to redress.⁵⁷ At the same time, the power of the President can in theory also be a tool for legal reform to ensure the protection of fundamental human rights. In 2011, using his powers, the

⁴⁵ Ibid.

⁴⁶ Committee against Torture Concluding Observations, para 6.

⁴⁷ Damascus Center for Human Rights Studies Alternative Report, op cit, p.5.

⁴⁸ Ibid, p.6. See also Article 4 of Legislative Decree 549/1969 regarding of the Regulations of the Internal Structure of the General Intelligence Administration issued on 25 May 1969.

⁴⁹ Ibid, p.6.

⁵⁰ Ibid. p.7.

⁵¹ Ibid.

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Alkarama report, op cit, p.7

⁵⁷ See Decree No. 69 of 2008 discussed above.

President adopted Decree No. 161 of 21 April 2011, which lifted the state of emergency which had been in place in Syria since 1963.⁵⁸ The state of emergency allowed detention of any person acting in contravention of the law, in places other than those designated by law, and for an unspecified period which erased the guarantees of freedom from torture enshrined in the Constitution.⁵⁹ The President also adopted Decree No. 53 of 2011 which abolished the Supreme State Security Courts.⁶⁰ These Courts were a cause of concern for the Committee against Torture⁶¹ as the courts did not function in accordance with international standards for courts of law.⁶² The courts were not bound by the same procedures as courts of regular jurisdiction and the verdicts of the courts had to be approved by the President.⁶³ The regime also allowed the President to cancel a verdict or order a retrial.⁶⁴ The abolition of these courts was expected to bring positive change as many people were detained and tried without any legal safeguards.⁶⁵ Although this was a positive step, Presidential Legislative Decrees Nos. 14 of 1969 and 69 of 2008 (discussed above) have the effect of undermining the international legal safeguards for access to justice and in effect perpetuate the same problems that the Supreme State Security Courts had created.

The judiciary

Article 133(1) of the 2012 Syrian Constitution makes the President the head of the Supreme Judicial Council and, under Article 133(2), the Council is required to ensure the independence of the judiciary. However, it is almost impossible to appreciate how the Council can ensure the independence of the judiciary when the head of the Executive arm of Government also heads the Council. The provisions of Article 133 clearly undermine the independence of the judiciary.

The Committee against Torture had also raised concern about the lack of independence of the judiciary in Syria.⁶⁶ The Committee was particularly concerned with Legislative Decree No. 14 of 1966 which gives discretion to the Cabinet to dismiss or transfer a judge within 24 hours after a judge's alleged misconduct without the need for reasons to be given for a dismissal or transfer.⁶⁷ This decree is also not subject to any form of judicial or administrative review.⁶⁸ This entails that judges do not have any security of tenure but are in effect subordinate to the executive authority and are thereby subject to political interference, especially concerning cases where the executive is responsible for acts of torture.⁶⁹

Implementation of human rights obligations concerning the prevention and combating of torture and recommendations of human rights monitoring mechanisms

This section will limit itself to examining how the Syrian Arab Republic has engaged with the Committee against Torture, the Independent International Commission of Inquiry on the Syrian Arab Republic set up by the Human Rights Council and also the Head of the League of Arab States Observer Mission to Syria for the period from 24 December 2011 to 18 January 2012. The focus on these mechanisms is to give a fair contrast of how the Syrian Arab Republic engages with the international and regional mechanisms where implementation of human rights obligations in relation to torture is concerned.

⁵⁸ Damascus Center for Human Rights Studies Alternative Report, op cit, p.5.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Committee against Torture Concluding Observations, op cit, para 11.

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Damascus Center for Human Rights Studies Alternative Report, op cit, p.3.

⁶⁵ Alkarama report, op cit, p.7

⁶⁶ Committee against Torture (n 32)5

⁶⁷ Damascus Center for Human Rights Studies (n 40) 9

⁶⁸ Ibid.

⁶⁹ Ibid.

Committee against Torture

Following its ratification of the Convention against Torture in 2004, Syrian Arab Republic's initial report to the Committee against Torture was due in 2005 but was not submitted to the Committee until July 2009.⁷⁰ The Committee in its Concluding Observations of the initial report in 2010 lamented how the delay of 5 years in the submission of the report prevented the Committee from conducting an analysis of the implementation of the Convention in the State party following its ratification in 2004.⁷¹

When Syria ratified the Convention against Torture, it lodged a reservation on Article 20 of the Convention, which allows the Committee to investigate allegations of systematic torture being practiced in a State party of concern.⁷² This in itself limits the competence of the Committee with the Syrian Arab Republic where investigations of torture are concerned. In response to Syria's initial report, the Committee also regretted that the report lacked statistical and practical information on the implementation of the provisions of the Convention and relevant domestic legislation.⁷³ The Committee, however, commended Syria for ratifying or acceding to key international human rights instruments.⁷⁴

That said, the Committee was deeply concerned about numerous, on-going and consistent allegations concerning the routine use of torture by law enforcement and investigative officials, at their instigation or with their consent, in particular in detention facilities.⁷⁵ The Committee reiterated its concerns in 2011, when in a letter of 23 November 2011, addressed to the Permanent Mission of the Syrian Arab Republic the Committee invited Syria to submit a special report, pursuant to Article 19(1) of the Convention on measures taken to ensure that all its obligations under the Convention were fully implemented.⁷⁶ By note verbale of 20 February 2012, the Permanent Mission of the Syrian Arab Republic stated that its Government would inform the Committee about the measures it had taken to implement its undertakings under the Convention in its next periodic report, which was due in 2014, and that Syria considered that Article 19 of the Convention did not provide for the possibility for the Committee to request a special report.⁷⁷ The Committee reiterated its request by letter of 12 March 2012, inviting Syria to identify the representatives who would attend meetings scheduled for May 2012 for a review of compliance and an interactive dialogue with the Committee.⁷⁸ However, Syria requested that the Committee withdraw its request for a special report and cancel the meetings.⁷⁹ On 16 May 2012, in a public meeting, the Committee considered the situation of the implementation of the Convention in the Syrian Arab Republic on the basis of the information available.⁸⁰ The Committee regretted that Syria did not submit the requested report and did not send a delegation to attend the meeting. It reiterated its previous recommendations addressed to Syria following its first periodic report to inter alia, unambiguously reaffirm the absolute nature of the prohibition against torture and immediately cease and publicly condemn widespread and systematic practices of torture, especially by security forces, accompanied by a clear warning that anyone committing such acts, or otherwise complicit or participating in torture will be held

⁷⁰ Ibid

⁷¹ Committee against Torture Concluding Observations, op cit, para 2.

⁷² Damascus Center for Human Rights Studies Alternative Report, op cit, p.4.

⁷³ Committee against Torture Concluding Observations, op cit, para.2.

⁷⁴ Ibid, para. 4

⁷⁵ Ibid, para.7.

⁷⁶ Concluding Observations of Committee against Torture, 48th session, Consideration by the Committee against Torture of the implementation of the Convention in the Syrian Arab Republic in the absence of a special report requested pursuant to article 19, paragraph 1, UN Doc CAT/C/SYR/CO/1/Add.2 (2012), para.2.

⁷⁷ Ibid, para.7

⁷⁸ Ibid, para.6.

⁷⁹ Ibid, para7.

⁸⁰ Ibid, paras.14-15

personally responsible before the law for such acts and will be subject to criminal prosecution and appropriate penalties.⁸¹

With the current political unrest in the Syrian Arab Republic and from the reports of the Independent Special Commission of Inquiry on the Syrian Arab Republic, from 2011 to 2016, it seems clear that the wide spread use of torture at the hands of the State persists.

The Independent International Commission of Inquiry on the Syrian Arab Republic

Due to the deteriorating human rights situation in Syria, the Human Rights Council established and mandated the Commission to investigate all alleged violations of international human rights law since March 2011.⁸² The Human Rights Council requested the Syrian Government to cooperate fully with the Commission but the Government failed to cooperate with the Commission's repeated requests and the Commission was not able to visit the country.⁸³ The Commission in its report stated that "the Commission deeply regrets not having had access to the Syrian Arab Republic".⁸⁴

Notwithstanding, the Commission was able to discharge its mandate by conducting interviews with different key stakeholders, victims and witnesses of human rights violations in Syria and the interviews were mostly conducted in Geneva.⁸⁵ The Commission received reports of numerous victims of torture.⁸⁶ Many were subjected to severe beatings with batons and cables. Some had endured prolonged stress positions for hours or even days in a row, electroshocks and deprivation of food, water and sleep.⁸⁷ Children were among the tortured and some were tortured to death.⁸⁸ The Commission also received reports of sexual violence. Men were routinely made to undress and remain naked.⁸⁹ Several former detainees reported of beatings of genitals, forced oral sex, electroshocks and cigarette burns to the anus in detention facilities.⁹⁰ All the Commission's reports indicate that torture practiced by the State's security system is still widespread.

League of Arab States Observer Mission to Syria

On 16 November 2011, the Council of the League of Arab States adopted resolution 7439 establishing the mandate of the League of Arab States Observer Mission to Syria to verify the implementation of the provisions of the Arab plan of action to resolve the Syrian crisis and protect Syrian civilians.⁹¹ The Syrian Government agreed to the establishment and deployment to the Syrian Arab Republic of the Mission comprising civilian and military experts from Arab countries and Arab non-governmental human rights organizations.⁹² The Mission visited Syria from 24 December 2011 to 8 January 2012 and was able to meet with both Government officials and leaders of opposition groups and the civilian population.⁹³ When the Head of the Mission visited Homs in Syria, he requested the Syrian Government to withdraw military vehicles from the city, put an end to acts of violence, protect civilians,

⁸¹ Ibid, para.22.

⁸² Human Rights Council resolution S-17/1 (2011).

⁸³ Ibid, paras.11-13.

⁸⁴ Report of the Independent International Commission of Inquiry on the Syrian Arab Republic to the Human Rights Council (n 7) 1

⁸⁵ Ibid.

⁸⁶ Ibid, paras.61-63.

⁸⁷ Ibid.

⁸⁸ Ibid.

⁸⁹ Ibid, paras.66-68.

⁹⁰ Ibid.

⁹¹ Report of the Head of the League of Arab States Observer Mission to Syria for the period from 24 December 2011 to 18 January 2012, available at URL:

http://www.columbia.edu/~hauben/Report_of_Arab_League_Observer_Mission.pdf (accessed 24 March 2016).

⁹² Ibid.

⁹³ Ibid.

lifts the blockade and provide food. He further called for the two sides to exchange the bodies of those killed, and the Syrian Government complied with the requests of the Mission.⁹⁴ The Mission also requested the Syrian Government to release political prisoners and a total of 5,152 prisoners were released.⁹⁵

Although the Syrian Government adopted a relatively open approach to the Mission in Syria, and implemented some of the recommendations of the Mission as observed above, the work of the Mission was suspended on 29 January 2012 following escalated attacks on civilians by Government forces.⁹⁶ The suspension came after the Syrian Government had agreed to extend the work of the Mission in Syria for another month.⁹⁷

It will be noted from the discussion above that the Syrian Arab Republic does not have an open arm to the international human rights mechanisms as it does with the regional mechanism. Although the work of the Mission in Syria had some challenges, the level of influence that the Arab League had in Syria is something worth noting and can be seen as an opportunity for engagement. The Mission itself realised the impact that its work had in Syria when it stated that “ending the Mission’s work after such a short period will reverse any progress, even if partial, that has thus far been made. This could perhaps lead to chaos on the ground because all the parties involved in the crisis thus remain unprepared for the political process required to resolve the Syrian crisis.”⁹⁸ These sentiments are supported by reports of increased violence in Syria soon after suspension of the work of the Mission. Reports indicate that 78 people were killed across the country on the day the work of the Mission was suspended.⁹⁹

Measures taken for the prevention of torture

Presidential Decree No. 161 of 21 April 2011, which lifted the 1963 state of emergency, and Legislative Decree No. 53 of 2011, which abolished the Supreme State Security Courts, have been pointed to by the Syrian Government as evidence of some of its achievements or measures taken to prevent torture and ill-treatment.¹⁰⁰ However, some NGOs have raised concern that these Decrees have not achieved any of their intended purposes.¹⁰¹ The Damascus Centre for Human Rights Studies instead argues that Syria has taken precisely the opposite measures.¹⁰² Legislative Decree 69/2008, issued after Syria had ratified the Convention, bestows further protection from prosecution on security personnel.¹⁰³ With the issuance of Legislative Decree 69/2008 all members of the security apparatus, from intelligence agencies to judicial and customs police, are secure from legal prosecution, a situation which greatly facilitates the commission of torture with impunity while violating the right of citizens to seek redress.

Measures taken for the provision of access to redress for victims of torture

On 31 March 2011, President Assad, in his function as chairperson of the Supreme Judicial Council, established the National Independent Legal Commission, composed of four judges, to carry out comprehensive investigations into crimes committed in the context of the

⁹⁴ Ibid, para 15-16.

⁹⁵ Ibid, para 38.

⁹⁶ CNN, ‘Amid violence, Arab League suspends observer mission in Syria’, 29 January 2012, at URL <<http://edition.cnn.com/2012/01/28/world/meast/syria-unrest/index.html>> (accessed 3 May 2017).

⁹⁷ Aljazeera, ‘Syria agrees to extend Arab observer mission’, 25 January 2012, at URL <<http://www.aljazeera.com/news/middleeast/2012/01/20121250615138592.html>> (accessed 3 May 2017).

⁹⁸ Ibid para 81.

⁹⁹ The New York Times, ‘Sharp Rise in Violence Halts Monitoring by League in Syria’, 28 January 2012, at URL <<http://www.nytimes.com/2012/01/29/world/middleeast/arab-league-suspends-its-monitoring-in-syria.html>> (accessed 3 May 2017).

¹⁰⁰ National UPR Report of the Syrian Arab Republic, op cit, paras.87-88.

¹⁰¹ Alkarama report, op cit, p.8.

¹⁰² Damascus Center for Human Rights Studies Alternative Report, op cit, p.8.

¹⁰³ Ibid.

crisis.¹⁰⁴ Sub-commissions of prosecutors as well as investigative judges in all governorates were constituted. A hotline and a website were supposedly set up to receive information and complaints¹⁰⁵ and the Commission was formally granted access to all sources necessary to carry out its work. In its note verbale of 23 January 2012 to the International Independent Commission of Inquiry, the Syrian Government stated that within the ten months of its existence the Commission had investigated over 4,070 cases.¹⁰⁶ Alkarama's report,¹⁰⁷ however, indicates that the opposition movement had counted 10,000 to 12,000 deaths, 20,000 'disappearances' and 120,000 arbitrary detentions as of mid-March 2012.¹⁰⁸ The report argues that taking into consideration these numbers already indicates that the work of the National Independent Legal Commission cannot be considered exhaustive, leaving many crimes un-investigated.¹⁰⁹ The general lack of independence of the judiciary also makes it difficult to believe that the investigations carried out by the Commission and its branches were truly independent. Alkarama has argued that it is not aware of any investigations having led to the incrimination and prosecution, let alone the punishment, of alleged perpetrators.¹¹⁰ It has also been argued that the National Independent Legal Commission cannot be considered as an effective complaint mechanism as many citizens either do not know about the Commission or are afraid of filing a complaint with it.¹¹¹

Implementation gap

From the discussion above, it is very clear that although the Syrian Constitution guarantees fundamental human rights and prohibits torture, there is a huge gap in the implementation and protection of the freedom from torture. The lack of the independence of the judiciary and the immunity from prosecution of State security personnel makes it impossible for victims of torture to access redress for violation of their rights. The creation of special courts like the Military Courts which have sole jurisdiction over law suits against security personnel and the requirement of prior permission of the army commander before a security personnel is prosecuted undermines the right to effective remedy under Article 13 of the Convention.¹¹²

Conclusions and recommendations

This memorandum considered the legal and political situation in Syria that impact on the prevention, perpetration and access to redress for acts of torture. It has been noted that torture at the instigation of the State is widespread in Syria especially in places of detention. Although the Syrian Constitution guarantees fundamental human rights and gives precedence to international law where there is a conflict between domestic legislation and international law, the Constitution also gives the President too much power to make decrees that have the effect of undermining the spirit of the Constitution. This is reflected in the Presidential Decrees No. 69 of 2008 and 14 of 1969 that give immunity from prosecution to security officers and take away the jurisdiction of ordinary courts to preside over any lawsuit against security officers. These deprive victims of torture of the right to seek redress. It has also been noted that the judiciary lacks independence as the President is the head of the Supreme Judicial Council. Judicial officers also lack security of tenure because Cabinet has the power to dismiss or transfer them without giving reasons. The memorandum also considered how Syria has engaged with international and regional mechanisms. It was

¹⁰⁴ Report of the Independent International Commission of Inquiry on the Syrian Arab Republic to the Human Rights Council at its nineteenth session, UN Doc A/HRC/19/69 (2012), para.84.

¹⁰⁵ 2011 Report of the Independent International Commission of Inquiry, op cit, Annex II.

¹⁰⁶ 2012 Report of the Independent International Commission of Inquiry, UN Doc A/HRC/19/69 (2012), op cit, annex XI.

¹⁰⁷ Alkarama report, op cit, p.9.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

¹¹¹ Ibid, 10.

¹¹² Damascus Center for Human Rights Studies Alternative Report, op cit, p.7.

argued that Syria is reasonably cooperative with the Arab League but hostile with international mechanisms.

All this gives a clear indication of the challenges that exists in Syria in combatting torture. Although the picture in Syria is gloomy, the Arab League creates an opportunity for engagement which might be explored to lobby for the independence of the judiciary and repeal of laws that give immunity from prosecution in regular courts to security personnel which is crucial to combatting torture and providing redress to acts of torture.