

Memorandum from Amnesty International to Major
General Bassam Abdel Magid, Minister of Interior

**Memorandum on the Supreme State Security
Court: A Summary of Amnesty International's
concerns**

Amnesty International is concerned that nearly 40 years after it was established in 1968, Syria's Supreme State Security Court (SSSC) still fails comprehensively to conform to recognized international standards for fair trial. Defendants appearing before this court routinely continue to be denied fair trials and suffer systematic violations of their basic defence rights, which are clearly spelt out in international treaties to which Syria is a state party.

In light of the latest Opinion of the United Nations' Working Group on Arbitrary Detention (WGAD)¹ that has found, once again, the detention of individuals tried by the SSSC to be arbitrary, Amnesty International is submitting this summary analysis of the deficiencies of the SSSC with a request that it be given careful consideration by the Syrian authorities and contribute to a fundamental review of the SSSC. Such a review is urgently needed. The SSSC should be brought into conformity with the Syrian Arab Republic's obligations under international law, or be abolished.

1. Legal Framework: The right to a fair trial by an independent and impartial tribunal in all circumstances, including a state of emergency

In 1968 the SSSC was created under the state of emergency by Legislative Decree No. 47 to replace the exceptional military court. The state of emergency currently in force in Syria came into being when Legislative Decree No. 51 of 22 December 1962 was brought into force on 8 March 1963. However, the validity of the state of emergency

¹ The WGAD was established by the UN Commission on Human Rights in 1991, by resolution 1991/42. It is mandated to investigate cases of deprivation of liberty imposed arbitrarily in contravention of the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) if the state concerned is party to it (Syria became a state party to the ICCPR in 1969), and other relevant international instruments accepted by the state concerned.

remains unclear on grounds of both international and domestic Syrian law.

Under article 4(3) of the International Covenant on Civil and Political Rights (ICCPR), a state is obliged to provide immediate international notification of any measures taken during a state of emergency derogating from the ICCPR. According to Amnesty International's information, however, the Syrian authorities have never formally notified the UN Secretary-General of the state of emergency, nor informed the Secretary-General of their intent to derogate from the ICCPR. Also, the entrenched and blanket character of the State of Emergency Legislation (SEL) fails to respect the established requirements that any derogation of rights must be of a temporary and exceptional nature, and must be strictly necessary by the exigencies of the situation. The Syrian SEL may also violate article 101 of the Syrian Constitution since it has never been submitted to the Syrian Council of Deputies/People's Assembly, as required by Legislative Decree No. 51.

Although the ICCPR does allow for some derogation of rights under strict conditions during a state of emergency, certain minimum guarantees cannot be derogated from, including the obligation to provide fair hearings by an independent and impartial court. The Human Rights Committee (HRC), the treaty monitoring body which interprets and defines the provisions of the ICCPR, has stated that this is "an absolute right that may suffer no exception"², including during states of emergency.

Article 14(3) of the ICCPR lists the minimum fair trial rights of an accused person which must be guaranteed. In addition to the right to be tried by an independent and impartial court in all circumstances, these include: to be informed promptly of the charge; to have adequate time and facilities for legal defence and to be able to defend oneself in person or through legal assistance; to be tried without delay; and not to be compelled to testify against oneself.

However, in hearings before the SSSC (as well as the Criminal Court and Field Military Courts) these minimum fair trial rights have repeatedly been breached.

Commenting on the use of special and military tribunals to limit fair trial rights, the HRC has stated: "Quite often the reason for the establishment of such [special and military] courts is to enable exceptional procedures to be applied which do not comply with normal standards of justice. While the Covenant does not prohibit such

² Gonzalez del Rio v. Peru (263/1987), 28 October 1992, Report of the HRC, vol. II, (A/48/40), 1993, 20.

categories of courts, nevertheless the conditions which it lays down clearly indicate that the trying of civilians by such courts should be very exceptional and take place under conditions which genuinely afford the full guarantees stipulated in article 14.”³ Regretfully, as this Memorandum shows, the SSSC’s trying of civilians and the violation of these core rights has been routine.

2. Violations of fair trial rights in hearings before the SSSC

a) The right to be tried by an independent and impartial tribunal

Procedures of the SSSC violate a number of rights enshrined in the ICCPR including Article 14(1) which requires that the accused be granted a fair and public hearing before a “competent, independent and impartial tribunal”. Yet the SSSC is under the control of the executive branch of the authorities, accountable directly to the President through the Minister of the Interior, who acts as the delegated Martial Law Governor in charge of overseeing the implementation of the SEL. The SSSC operates outside the ordinary criminal justice system and is not subject to the rules of the Code of Criminal Procedures⁴. The President is empowered to ratify the decisions of the Court (although in fact this role is usually carried out by the Minister of the Interior), rather than a higher independent tribunal.

The impartiality of the court is compounded by the wide discretionary power given to judges, particularly to the President of the Court. The SSSC currently consists of three judges, two civil judges and

³ HRC General Comment No13, 1984

⁴ In practice, there appears to be a lack of transparency regarding responsibility for the SSSC. When an Amnesty International delegation visited Syria in January 2006, senior officials within both the Ministries of Foreign Affairs and of Justice confirmed Amnesty International’s belief that it was the Ministry of the Interior that has responsibility for the SSSC. However, when the organisation’s delegates met with Ministry of Interior officials and attempted to raise concerns about the SSSC with them, the officials responded that “That is an independent court unconnected to the Ministry of the Interior. Instead you should speak to the Ministry of Foreign Affairs.” Later, when officials at the Ministry of Foreign Affairs had arranged for AI to attend a session of the SSSC on 22 January 2006, the delegates appeared at the SSSC building at the designated time but were refused access until after all trial procedures had been completed. (In fact, the session was postponed for procedural reasons.)

one military judge. Invariably the judges are members of the ruling Ba'ath Party and they are appointed not through an independent process but by a decree based on the recommendation of the Martial Law Governor. The President of the Court has discretion to determine important aspects of the trial, including, under Article 1 of Decree 47, "the right to hold the trial session in any place and time he deems suitable". Consequently, in recent years the President of the Court has chosen to hold most sessions in his own office rather than in the Court. He may also decide whether or not defendants may meet with their lawyers and with their family members at the SSSC⁵, as well as the form in which the defence lawyers deliver their pleas.

The SSSC President had lawyer Anwar al-Bunni physically thrown out of the SSSC in June 2002 after he requested an investigation into claims that his client, 'Aref Dalilah, had been tortured in detention ('Aref Dalilah is arbitrarily detained as stated in WGAD Opinion 11/2002; Anwar al-Bunni was himself sentenced to five years' imprisonment on 24 April 2007 after an unfair trial before the Criminal Court. He was convicted of "spreading false information" regarding his disclosure of a death in custody as a possible result of torture and ill-treatment). The SSSC President has banned lawyer Razan Zaytouneh from working in the SSSC since 20 November 2005, following an argument during which he also reportedly insulted her.

The politicised nature of the SSSC is demonstrated in how, while being designated for the trial of people charged with political and state security offences, such offences are very widely interpreted with defendants often held on, and convicted of, charges relating solely to the peaceful expression of opinions that differ to those of the authorities. This has been commented on by the WGAD in numerous Decisions (including 10/1993, 11/1993, 54/1993, 1/1994, 29/1996, 30/1996, 31/1996, 21/2000, 11/2002, 4/2005, 7/2005, 15/2006 and 16/2006). As such, defendants before the SSSC tend to be members or affiliates of unauthorized political parties, human rights organisations and civil society groups and yet they are charged with, and found guilty of, security offences such as membership of a terrorist organisation, "exposing Syria to the threat of

⁵ For example, when an Amnesty International delegation met with the President of the SSSC, Fayz al-Nouri, on 22 January 2006, he told them that defendants could meet with their lawyers before and after each session. He said that on that very day he had permitted each defendant to meet briefly with one family member. However, these defendants, of the so-called Qatana group [see below, section e)], were all held in one room in the SSSC building behind a barred doorway guarded by security officers. Lawyers and relatives of the defendants told Amnesty International that this access was better than usual.

hostile acts”, “weakening nationalist sentiments”, “opposing the objectives of the revolution” and “inciting sectarian strife”.

b) The right to be informed promptly of the charge

Under Article 14(3)(a), everyone has the right to be informed promptly and in detail of the nature and cause of the charge against him. This is closely tied to the right of everyone to challenge the lawfulness of their detention. In trials before the SSSC, as well as before other courts in Syria, detainees are routinely held for long periods – often for months and sometimes for years - without charge and consequently are unable to challenge the grounds for their detention. As noted in the latest WGAD Opinion on arbitrary detention in Syria, concerning Ayman Ardenli and Muhammad Zammar (Opinion 8/2007), the detainees were held for three years and nearly five years without charge respectively. Other detainees who were eventually tried before the SSSC have been detained for up to 12 years without charge (see under section d)).

c) The rights to have legal counsel and defence

These connected rights are guaranteed under Article 14 (3)(b) of the ICCPR as “to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing”, and under Article 14 (3)(d) as “to defend himself in person or through legal assistance”. They are also recognised in Paragraph 1 of the Basic Principles on the Role of Lawyers, which states that “everyone has the right to request the assistance of a lawyer of their choice to protect and establish their rights, to defend them in all stages of criminal proceedings” including during interrogations. However, these overlapping rights are systematically violated in trials before the SSSC where defendants are not able to meet with a lawyer shortly after arrest nor otherwise during pre-trial detention. Rather, such defendants usually meet with legal counsel for the first time at the SSSC itself at the time of the first trial session, often for just a few minutes. Thereafter, when they do meet, at the Court or in detention, communication between them is not confidential as there are security officials in attendance, which is in violation of Articles 8 and 22 of the Basic Principles of the Role of Lawyers as well as Article 14 (3)(d)⁶.

Legal counsel and defence are further restricted through a variety of other measures. In Opinion 21/2000 concerning Communist Labour Party (CLP)⁷ members Fateh Jamus and Issam Dimashqi, for example, the

⁶ As emphasised in Human Rights Committee, General Comment 13, paragraph 9, 1984.

⁷ Sometimes referred to as the Party for Communist Action (PCA)

WGAD voiced serious concern at the SSSC's "non-compliance with international standards on the right to a fair trial", specifically raising the issue of access to counsel:

"...lawyers are not granted access to their clients prior to the trial, proceedings are initiated before legal representatives have an opportunity to study the case file, and lawyers are frequently denied their right to speak on behalf of their clients. Lawyers require written permission from the Court's President before they can see their clients in prison, permission that is often withheld..."

In Opinion 11/2002, concerning participants in peaceful pro-democracy activities Fawaz Tello, Habib 'Issa, Walid al-Bunni, Hassan Sa'doun, Habib Saleh, 'Aref Dalilah, Kamal al-Labwani, Riad al-Turk (and two others tried before the Criminal Court), the WGAD observed that "the circumstances under which legal proceedings were taken against these persons, with lawyers being denied access to their files, hearings held in closed session and the court not allowing the defence counsel to properly represent the defendants...are of such gravity as to confer on their deprivation of liberty an arbitrary character." (The WGAD also declared the detention of Riad Seif and Ma'mun al-Homsi, who were tried before the Criminal Court, to be arbitrary).

In Opinion 4/2005 concerning Internet user 'Abd al-Rahman al-Shaghouri, the Syrian authorities did not contest the complaint that "his lawyers were not allowed to see all the court documents relating to the file". In Opinion 15/2006, the WGAD noted that it was not contested that the lawyers of human rights activist Riad al-Darrar "were not given the pertaining documents of the case".

The case of Muhammad Haydar Zammar also highlights the lack of clarity and prosecutable evidence in trials before the SSSC that further undermine a defendant's ability to have a legal defence. The Syrian authorities' response to WGAD indicates that he was accused under Articles 288, 304 and 306 of the Penal Code and yet he was convicted of membership of the Muslim Brotherhood organisation (under Law 49 of 1980), despite no evidence to this effect being presented to the Court. His lawyer also told Amnesty International that he was charged and found guilty of Articles 278, 285 (not 288 and 304 as indicated by the Syrian authorities) and 306. As stated by the WGAD, "despite the severity of the charges Mr Zammar has not been able to challenge the accusations against him, which undermines their credibility".

A number of WGAD Decisions and Opinions have commented on the difficulties of defendants to have a proper legal defence, further undermining the credibility of convictions before the SSSC. In Decision

10/1993 concerning Afif Jamil Mazhar and nine named other members of the Committee for the Defence of Democratic Freedoms and Human Rights (CDF), the WGAD noted "the use of offences that are vague or encompass a number of indeterminate situations." In Decision 1/1994 concerning Mustafa Khalifa, a member of the Communist Labour Party (CLP), the WGAD highlighted how the Syrian authorities' response to its request for evidence supporting his conviction for terrorism "does not indicate: the group to which Mr. Khalifa supposedly belonged; the reason why it was considered to be a terrorist group; what persons had allegedly been abducted by the organization accused of inciting violence; what role Mr. Khalifa had allegedly played in that organization; on what dates the alleged abductions occurred; what physical and psychological pressure were allegedly inflicted by Mr. Khalifa; what the secret locations were in which the abducted persons were allegedly detained..."

Similarly, in Opinion 21/2000 concerning CLP members Fateh Jamus and Issam Dimashqi, the WGAD noted that the Syrian authorities did not contest in their correspondence how "They were convicted of terrorism although they were reportedly not charged with committing or planning any act of violence or terrorism and, according to the source, no evidence was ever presented in court to suggest that they had ever used or advocated violence".

In Opinion 4/2005 concerning Internet user 'Abd al-Rahman al-Shaghouri the WGAD noted how the "fairly terse" information provided by the Syrian authorities "fails to reveal how and to what extent the information disseminated by Mr al-Shaghouri through the Internet was detrimental to the security and reputation of the country," concluding that its references to the "interests of national security" were "unsubstantiated".

Regarding Muhannad Qutaysh and Haytham Qutaysh in Opinion 7/2005, the WGAD stated that "the information received from the Government does not indicate that they carried out the spying and incitement to racism of which they are accused".

Article 14(3)(d) includes every person's right "to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it". However, often in trials before the SSSC the assigned lawyer fails to appear at trial sessions. Consequently the session is postponed, sometimes more than once, and the detainee has to remain in pre-trial detention and at risk of suffering abuse. In the case of the al-'Otaybe group [see below under section d)] most of the defendants' lawyers were assigned by the court but on three separate occasions they

failed to appear for the hearings. In addition, family members of the detainee will have been put to the cost and inconvenience of travelling to the court in Damascus unnecessarily. Such procedural delays may be intended both to prolong trials unduly [see below, d) The right to be tried without undue delay] and to cause further difficulties for the defendants and their relatives. Defendants' families also report being given incorrect dates for trial sessions, apparently deliberately, by court officials.

d) The right to be tried without undue delay

Under Article 14 (3)(c) of the ICCPR, accused persons must be tried within a reasonable time, with the length of time deemed reasonable to hold a person in pre-trial detention has been assessed on a case-by-case basis by the HRC. Among its Opinions of arbitrary detention based on the unfairness of the trial before the SSSC, alleged Muslim Brotherhood member Muhammad Zammar (8/2007) was held nearly five years before being brought to trial; lawyer and member of the Communist Party Political Bureau (CPPB) Muhammad Munir Missouti (11/1993) was held for more than five years before he was brought to trial; CLP members Fateh Jamus and Issam Dimashqi (21/2000) were held for more than 10 years without trial, as was CLP member Mustafa Khalifa (1/1994); CLP members Mazim Shamsin and Firas Yunis (30/1996) were detained 11 years without trial; Osama Ashur al-Askari and 10 named other members of the CLP (29/1996) as well as Mustafa al-Hussain and seven named other CLP members (31/1996) were not brought to trial for up to 12 years. In some cases, detainees have never being charged or brought to trial: Ayman Ardenli (8/2007) for three years; and lawyer and First Secretary of the CPPB Riad al-Turk (6/1992) was released in 1998 after nearly 18 years' detention without charge, trial or access to legal counsel.

In addition to delays occurring when assigned lawyers do not appear the court, other possible undue delays occur when the court has set a hearing to be on a national holiday, when the court will not sit, despite lawyers even having indicated this to the court officials.

e) The obligation on the state to investigate allegations of torture and not to use coerced "confessions" as "evidence"

The infliction of torture and ill-treatment on detainees in Syria has been a widespread problem for many years. In 1987 Amnesty International documented 38 methods of torture and ill-treatment employed over the years by Syrian security forces against detainees, the majority of which continue to be used today.⁸ The research of Amnesty International

⁸ Amnesty International, Syria: Torture by the Security Forces, MDE 24/09/87, October 1987.

indicates that torture is routinely inflicted on detainees to be tried before the SSSC and yet the SSSC has systematically failed to investigate numerous allegations of such torture and of the extraction of "confessions" under duress brought to its attention by defendants. The failure to investigate the allegations and the apparent use of the "confessions" as "evidence" breaches the state's obligations under Article 14 (3)(g) of the ICCPR, the right not to be compelled to testify against oneself, as well as Articles 2 and 12 of the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT), to which Syria acceded in 2004. While the WGAD does not have the competence, or mandate, to investigate allegations of torture itself, the HRC has observed that the SSSC has rejected complaints of torture, even in flagrant cases⁹.

Among the cases cited in this Memorandum, Aktham Nu'aysa and Nizar Nayyuf (two of the CDF members in Decision 10/93) were apparently unable to walk into the court room unaided as a result of the severe torture to which they had allegedly been subjected.¹⁰ As mentioned above, the lawyer representing economics professor 'Aref Dalilah (11/2002) was physically removed from the court for requesting an investigation into the alleged torture of his client. Nabil al-Marabh (16/2006) was reportedly subjected to torture and ill-treatment following his forcible return from the USA.

On 19 June 2005, the SSSC sentenced 17-year-old Mus'ab al-Hariri to six years' imprisonment after convicting him of membership of the Muslim Brotherhood organisation. While in incommunicado pre-trial detention he was reportedly tortured, including by the *dulab* ("the tyre", whereby the victim is forced into a tyre, which is suspended, and beaten with sticks and cables) and *al-kursi al-almani* ("the German chair", whereby the victim is put into a chair with moving parts which bend the spine backwards). The Court is not known to have investigated the allegations of torture, nor to have received evidence that Mus'ab al-Hariri was either a member of or affiliated to the Muslim Brotherhood. He was arrested on 24 July 2002, aged 14, shortly after he returned home to Syria from Saudi Arabia, to where his parents had lived in exile since 1981.

In the trial of 24 alleged Islamist activists from Qatana who were convicted on 11 March 2007 of being part of a "group established with the aim of changing the economic or social status of the state" and

⁹ HRC, Concluding Observations, Syrian Arab Republic, UN Doc. CCPR/CO/71/SYR, 24 April 2001, paragraph 16.

¹⁰ Amnesty International, Syria: Long-term detention and torture of political prisoners, MDE 24/12/92, July 1992.

“weakening nationalist sentiments”, the SSSC reportedly ignored and failed to investigate claims that all of them had been beaten and tortured into signing false “confessions”. The men were arrested in 2004, detained for more than one year in incommunicado detention and then sentenced to between four and 12 years’ imprisonment. In a similar case, the SSSC reportedly ignored and failed to investigate claims that some of 11 alleged Islamist activists men from al-‘Otaybe were tortured during incommunicado detention. They had been arrested in April 2004 and were sentenced in November 2006 to up to nine years’ imprisonment for being part of a “group established with the aim of changing the economic or social status of the state”.

In a recent trial before the SSSC, seven peaceful advocates of political reform (Maher Isber Ibrahim, Tareq al-Ghorani, Hussam ‘Ali Mulhim, Diab Siriyeh, ‘Omar ‘Ali al-‘Abdullah, ‘Allam Fakhour and Ayham Saqr) appeared before the Court on 26 November 2006, for the first time since they were arrested between January and March 2006. All denied the charges against them, each saying that he had been tortured into “confessing” while held in incommunicado detention. However, the court failed to investigate these allegations and accepted the contested “confessions” as evidence against the defendants. The seven men were all convicted of “taking action or making a written statement or speech which could endanger the State or harm its relationship with a foreign country, or expose it to the risk of hostile action”, with two of them also convicted of “broadcasting false news”. Five of the men were sentenced on 17 June 2007 to five years’ imprisonment and two of them to seven years’ imprisonment.

f) The right of appeal

Article 14(5) of the ICCPR states that, “Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.” The right must be respected even during a state of emergency.¹¹ However, there is no such right of appeal with regard to decisions of the SSSC. In 2005 the HRC repeated its 2001 call on the Syrian authorities to grant individuals the right to appeal against decisions of the SSSC.¹²

The absence of a right of defendants to appeal their sentences to a higher judicial tribunal has been commented on repeatedly by the WGAD, including in the cases of Fateh Jamus and Issam Dimashqi (21/2000), ‘Abd

¹¹ HRC, General Comment No. 29, paragraph 16, CCPR/C/21/Rev.1/Add.11 31 August 2001

¹² HRC, Concluding Observations: Syrian Arab Republic, U.N. Doc. CCPR/CO/84/SYR, 28 July 2005; and CCPR/CO/71/SYR, 24 April 2001

al-Rahman al-Shaghouri (4/2005), Muhannad Qutaysh, Haytham Qutaysh and Mas'ud Hamid (7/2005), Riad al-Darrar (15/2006), Muhammad Osama Sayes and four named others (16/2006) and Muhammad Zammar and Ayman Ardenli (8/2007)

3. Conclusion

As this brief assessment and findings of the WGAD show, the SSSC has failed consistently over many years to act as an impartial and independent tribunal and is overdue for reform. Amnesty International was encouraged to learn of the 2005 announcement of the Syrian authorities that a review of the SSSC and its procedures was to be undertaken. Since then, however, there has been a lack of further information about this review, including by whom it is being conducted, its terms of reference and its progress and outcome. We urge the Syrian authorities to provide such information without delay and also submit this assessment, based upon Amnesty International's research and monitoring of human rights developments in Syria, as a contribution to such a review, if it has been or will soon be commenced. Amnesty International recommends that such a review, given the magnitude of the court's non-compliance with international standards for fair trials, should lead to the court's fundamental reform, or its abolition.