



Cover picture by: Azza Abo Rebieh

# Special Report on Counter-Terrorism Law No. 19 and the Counter-Terrorism Court in Syria

## Counter-Terrorism Court: a Tool for War Crimes

Violations Documentation Center in Syria - VDC  
April 2015



The Violations Documentation Center in Syria (VDC) is an independent, civil, human rights, non-governmental and non-profit organization. It started monitoring human rights violations at the beginning of April 2011. The center mainly documents the victims of the Syrian armed conflict, in addition to the victims of arbitrary detention and forced disappearance. It issues periodic statistical reports in addition to special reports concerned with revealing the grave human rights violations as well as the violations of international laws, foremost of which is the international humanitarian law.

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### **Acronyms:**

CTC:	Counter-Terrorism Court
CTL:	Counter-Terrorism Law
GID:	General Intelligence Directorate
MOI:	Ministry of Interior
SSSC:	Supreme State Security Court

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## I. Introduction

The scope and size of arbitrary arrests of tens of thousands of Syrian citizens and activists have increased since the beginning of the revolution. The records of monitoring and documentation centers show horrifying figures, especially with regard to those [killed under torture](#) in detention centers. The massive numbers of arbitrary arrests documented by various Syrian human rights groups have shocked the Syrian and international public opinion. This in turn led to an increase of the number of detainees referred to the so-called Counter-Terrorism Court (CTC). According to a lawyer who requested anonymity for security reasons, more than 1,200 cases/files (800 from Damascus province and 400 from other provinces) were referred to the Counter-Terrorism Court in January 2014 alone. He maintained that an average file usually involves two detainees, which means more than 2,400 referrals to this Court in a single month, noting that this figure does not include referrals to other courts, including the Field Military Courts. This is confirmed by the [interview that the pro-government Syrian newspaper, al-Watan](#)<sup>1</sup> made with Judge Ammar Bilal, the CTC Chief Prosecutor on 17 May 2014. Bilal said the CTC receives on average 60 files a day, and in some cases up to 150 files. The same al-Watan article quoted some special judicial sources stating that in May 2014 alone, the CTC received more than 30,000 cases, 12,000 of which are murder cases. The same sources said that the Court sentenced 20 of those to death.

## II. Background

The Syrian government represented by the Baath party has, for the last four decades, oppressed and abused political opponents through a permanent nation-wide state of emergency, in place since it assumed power through the 1963 coup<sup>2</sup>. A few years later, the Baath's Regional Command issued Decree 47 of 1968 creating the Supreme State Security Court (SSSC)<sup>3</sup>. This was followed by the unpublished Decree 14 of 1969, which created the State Security Authority that was later renamed "General Intel-

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1- For the full Arabic text of this interview, see: <http://www.alwatan.sy/view.aspx?id=15472>.

2- In Military Order No. 2 dated 8 March 1963, the so-called "Revolutionary Command Council" declared a state of emergency. Legislative Decree 51 dated 22.12.1962, organizes the declaration and effect of the state of emergency. Paragraph A of Article 2 of that Decree stated that the declaration of a state of emergency shall be effective through a decree by a council of ministers meeting held with the presence of the president of the republic and with a two-thirds majority and that shall be presented to the parliament in its first following session. However, the declaration of the state of emergency contravened the procedures set forth in Decree 51. The state of emergency was declared first by virtue of a military order of the Baath Party Revolutionary Command Council. This military order was never presented before the parliament. When the emergency was declared, Syria had no constitution and when Hafez Assad came to power in a military coup, the permanent constitution that was passed in 1973 entitled the president to declare and end the state of emergency. The state of emergency in place in Syria has been one of the longest in the modern history of the Arab world. The unlimited emergency powers abused society, the State and political life in Syria. They placed constraints on the individual freedoms of association, residency, and movement. They facilitated arbitrary arrest in addition to scrutiny of mail and tele-communications, newspapers, bulletins, files, drawings, publications as well as radio stations and all kinds of expression, publicity and advertising. They also include the seizure of any movables or real estates, which deprived citizens from all fundamental rights and freedoms (see Abdul Ilah Al Khani: Emergency and Martial Law System, Damascus, Bar Association, 1974).

3- The authorities that assumed power following the coup of 8 Mars 1963 created the Supreme State Security Court (SSSC), which was first created by an order of the Baath regional command (dated 25 February 1966) and a decision by the council of ministers (dated 20 March 1963) before issuing Decree 47 dated 28 March 1968. The latter eliminated the extraordinary military courts and created the SSSC. Article 6 of this decree stated that the SSSC mandate covers all civilians and military men of all capacities and immunities. It suspended all due process guarantees stipulated in the effective legislations including all stages of the pursuit, investigation and prosecution proceedings. Lawyers who represented detainees before the SSSC maintained that more than 40,000 Syrian citizens have been referred to the SSSC during the past years. Most of the sentences have been harsh and ranged between 3 and 15 years and in many cases political prisoners faced life imprisonment and death sentences.

ligence Directorate” (GID) by virtue of Legislative Decree 10 of 26.04.1971. However, the common name of this notorious body is still “State Security Authority”. It is now headed by Gen. Deeb Zeitoun, originally from al-Jubbah in Rural Damascus and who was the head of the Political Security Division. He replaced Gen. Mohamed Mansourah and became the successor of Gen. Ali Mamlouk who is now the chairman of the National Security Office replacing Hisham Bakhtiar who was killed in the bombing of the “Crisis Cell in Syria” in July 2012. Gen. Rustom Ghazaleh replaced Gen. Deeb Zeitoun as head of the Political Security Division. In March 2015 Gen. Ghazaleh was replaced by his deputy, Nazih Hassoun<sup>4</sup>.

In addition to the created repressive bodies (courts and security departments), the Baath government completed its repressive “legislative” apparatus by establishing a principle of immunity that protects the staff of these security bodies from prosecution. This principle states that prosecuting any security officers can only take place upon prior approval by the security department in question, which is apparently impossible. Article 16 of Decree 14 of 1969, creating the General Intelligence Directorate (GID), provided for the inadmissibility of prosecuting any of its staffers for crimes committed during the performance of their duties “unless based on a referral by the GID director<sup>5</sup> .”

Bashar Assad’s government also issued Legislative Decree 64 dated 30.09.2008, amending the penal code and military trials principles issued in Decree 61 dated 27.02.1950, especially Article 47 thereof. Decree 61 stipulated that officers, ranking and private staff members of the internal security forces and staffers of the Political Security Division may only be prosecuted upon an order by the general command of the armed forces. In practice, this made it impossible to prosecute the staff of any security body (military, political etc.) for crimes related to repression and hence opened the door to more crimes without limits or accountability<sup>6</sup> .

This situation persisted until the beginning of the protest that swept the country in March 2011 and which, a few weeks later, turned into a massive popular uprising accompanied by mass popular demands for comprehensive reforms, especially the lifting of the state of emergency, abolishing exceptional courts and allowing peaceful demonstrations. These demands expanded to calls for toppling the

4- In Late March 2015, various press reports reported that a violent dispute had erupted between General Rostom Ghazale and General Rafiq Shahade (head of military intelligence). Bashar Assad issued a decree ordering the dismissal of the two officers and the appointment of General Mohammed Mahalla as head of military intelligence to succeed Shehade and General Nazih Hassoun as head of political security to succeed Ghazale.

5- The decree creating the State Security Authority has never been published but the jurists and rights activists knew about Article 16 (stating the immunity of security officers) from the opinion of the General Assembly of the Fatwa and the Legislation Advisory Section in the State Council (No. 654 of 1997, Lawyers Magazine, Issues 7 and 8 of 1998, p785). When consulted about the possibility of prosecuting the GID staff while performing their duty, the above advisory opinion of the State Council drew upon the laws regulating the GID work, especially Article 16 which states: “A disciplinary board shall be created within the General Intelligence Directorate for its staff and those seconded to work in it. GID staffers may only be prosecuted for crimes committed during the performance of their tasks upon a prosecution order issued by the GID Director”. The State Council also referred to Article 4 of Decree 4509 of 1969 which apparently regulated the GID executive work. Article 4 states: “GID staffers, contractors or those seconded to work in it may not be prosecuted before the judiciary for crimes related to or initiated because of their jobs or committed while performing these jobs until they have been referred to the GID Disciplinary Board and a relevant prosecution order has been issued by the GID Director. The procedure of issuing such a prosecution order shall remain valid even after the end of their service in the GID”. Based on these provisions, the State Council opinion was that “GID staffers, contractors or those seconded to work in it may not be prosecuted before the judiciary for crimes committed while performing these jobs or in the course of such jobs until they have been referred to the GID Disciplinary Board and until a relevant prosecution order has been issued by the GID Director.”

6- The legislative policy for Decree 64 dated 30.09.2008 stated: “Given the seriousness of the tasks of the officers, ranking and private staff members of the internal security forces and staffers of the Political Security Division and the necessity of facing the violence by smugglers, terrorists and outlaws, and to avoid malicious lawsuits that might be initiated against them, the effective law shall be modified in manner whereby the alleged crimes shall be prosecuted pursuant to a referral order by the General Command of the Army and the Armed Forces.”

regime following the latter's large scale repression as it attempted to end the popular uprising. After extensive deliberations between senior government officials and the "thuggish legal advisors" as termed by a lawyer interviewed by VDC, the state of emergency was lifted by virtue of Decree 161 dated 21.04.2011 and the SSSC was canceled by virtue of Decree 53 dated 21.04.2012. In practice however, this was replaced by the Counter-terrorism Law No. 19 dated 02.07.2012 which was followed by establishing the Counter-terrorism Court by virtue of Law 22 dated 22.07.2012, a mere reproduction of the old SSSC.

### III. Syrian Revolution Detainees

Since the very beginning of the peaceful protests in Syria in March 2011, the security bodies have kept trying to abort these demonstrations and stop them using all possible means especially arbitrary detention. Tens of thousands have since then been detained. There is no precise number of [the arbitrary detentions](#) by the government but [documentation centers](#) and [human rights organisations](#) put the number at more than 200,000, of whom tens of thousands are still considered forced [disappearances](#) in addition to hundreds of missing persons who are mostly thought to be in the detention places under the control of the security forces across the country.

The dissident brigadier [Enad Maan al-Abbas](#), former head of the General Secretariat at the Minister of the Interior's Office, told the Violations Documentation Center in Syria (VDC) that the Syrian government dismissed the Minister of Interior, Gen. Said Sammour because he had some rational positions toward the initial [demonstration that took place in the Hareeka area](#) in downtown Damascus and other protests at the beginning of the revolution. Sammour was replaced by Gen. Mohamed Ibrahim al-Shaar who satisfied the regime requirements and ordered to use violence against demonstrators.

"The Ministry of Interior (MOI) modus operandi," al-Abbas said "was as follows: the police commander in each of the 14 governorates would send a daily comprehensive report to my office describing the demonstrations (number of demonstrations and demonstrators, the slogans chanted in each district and village - including the hometowns of certain commanders). They would also mention the security organ that repressed the protests, the number of demonstrators killed and the names of those responsible for the killing". Al-Abbas added that "upon receiving these reports, I and the heads of MOI central offices at the Ministry (Brigadier Talal As'ad, head of the Public Relations Office, Major Yasser Kelzi, Minister's office manager, Major Hussein Talustan, Secretary of the Minister's Office, Major Majd Abbas of the Minister's Office) would prepare a comprehensive report based on all the inputs from the governorate police leaders' reports and the report issued by the Political Security Division. The report would be signed by the Minister of Interior and submitted to the office of president Bashar al-Assad.

Someone would deliver the report to Abu Salim Daaboul, Director of the Office of the President who, after reading the report, may add some remarks. The military orders were written in a definite formulation (example: ... to prevent demonstrations by all means ...). They contained clear instructions to use all types of weapons to repress demonstrators regardless of the possible human and physical loss. We would then send a copy of the report to the Office of National Security. The Minister of Interior would convey the President's instructions to the police commanders via phone calls and not in writing. I could not read so many reports because I was moved from office several weeks later and referred to investigation after my "colleagues" wrote a security report denouncing me to the General Intelligence Directorate (GID). The GID head at the time, Ali Mamlouk submitted the report to the Office of National Security.

The head of the Political Security Division, Deeb Zeitoun investigated me for allegedly speaking against President Bashar al-Assad, and I was punished by being transferred to a much lower position (Associate Director of Salamiyeh city). During my work in that office, I found out a lot about the work of the security bodies, which took part in killing demonstrators and repressing protests. These include:

1. Air Intelligence Service whose head was [Jamil Hasan](#).
2. Military Security Division – all branches of military security (215, 248, 291, 293, 235 etc.). According to my knowledge, the head of this Division at the time was Gen. Abdul Fattah Qudsiyeh who was later replaced by Ge. Ali Younes.
3. General Intelligence Directorate (in Kafar Souseh neighborhood). This was at the time headed by Gen. Ali Mamlouk who was later replaced by Gen. Deeb Zeitoun. GID has several branches: the Internal Branch, the Khatib Branch and the Arba'en [forty] Branch. The latter was at the time headed by Hafez Makhlof and was also in charge of the Sayyida Zeinab subdivision and controlled the media policy during the first stages of the uprising and took part directly in quenching the demonstrations in Dar'a province.
4. Political Security Division: this was at the time headed by Gen. Deeb Zeitoun who was later replaced by Gen. Rustom Ghazaleh until late March 2015. This division is directly affiliated to the Ministry of Interior but one of its tasks is to spy on the Interior Minister and the other MOI officers and departments.
5. There are other security bodies with proven repression records but not as publicly known, such as Company 228 (previously the Mill) located between the end of Mazzeh motorway and the People's Palace. It was originally specialized in issues related to the Republican Guard but it participated actively in suppressing the demonstrators and was headed by Brigadier General Ghassan Nassour.
6. Security Council: located in the same area and reporting directly to the President. It is headed by Brigadier General Riad Baddour.



Enad al-Abbas added:

“It should be noted that the MOI did not have heavy weapons before the revolution but Bashar al-As-sad wanted to deceive the international community by showing that the army and security bodies were not responsible for the repression of demonstrations and that the MOI, by law, was the only body mandated with this issue as is the case in other countries. He ordered certain brigades of the Republican Guard, Special Forces and Fourth Division to be affiliated to MOI and made them wear the police uniform though, in reality, they remained under their respective leaderships”.

**End of al-Abbas testimony**

The “lucky ones” among tens of thousands of detainees are those who might be released or referred to the civil courts, after being subjected to much abuse and systematic torture in the security cellars. In general, since the revolution started till now [4 years], detainees referred by the security branches<sup>7</sup> have faced one of the following scenarios:

- 1. Immediate release from the same security branch:** in the early months of the revolution especially following mass demonstrations. Detainees would be released after a few months, weeks or even days in detention.
- 2. Referring detainees to the military courts:** these were originally designed to handle the cases of military men only but the Military Penal Code offered them expanded jurisdiction in prosecuting civilians. Some members of the Syrian Center for Media and Freedom of Expression were brought before military courts after being arrested by the Air Intelligence Service on 16.02.2012.
- 3. Referring detainees to the civil courts:** here they would either be released immediately after a short hearing or receive a detention memo and moved to one of the provincial prisons (Adra for example) and such orders are often issued by the security bodies.
- 4. Referring detainees to the Counter-Terrorism Court.**
- 5. Referring detainees to “Field Courts”:** this court was established by virtue of Legislative Decree 109 dated 17.08.1968. Its initial mandate included the crimes falling within the jurisdiction of the military courts which are created only in wartime against “the enemy” or in military operations by the army or any of its units during an armed conflict with “the enemy”. In practice however, the work of this court is very confidential. It is created by a decision by the Minister of defense and consists of a chair and two members. The rank of the chair may not be lower than a “major” and that of both members no lower than a “captain”. Paragraph B of Article 2 (talking about war operations) was amended later to include “during domestic unrest<sup>8</sup>”. Even after this amendment, a jurist says, the court is not entitled to try civilians in any case. The jurist explained that: “no matter how we understand the provision that was added to Paragraph B by virtue of Decree 32 of 1980, where domestic unrest became part of the field courts’ jurisdiction, and regardless of whether this decree is constitutional or not, these courts may not prosecute civilians for two reasons:

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7- According to a lawyer who requested anonymity, all detainees have recently been referred to the Anti-Terrorism Court except very few cases that are referred to other courts.

8- See Legislative Decree 32 dated 01.07.1980.

1. Because they were originally established to try military personnel. Consequently, even if we assume that their jurisdiction to try civilian is constitutional, a decree should have been issued to define the start of military operations or the entry into force of the field court..
2. In all cases, the addition of a provision stating new jurisdiction to address domestic unrest does not necessarily mean it can try civilians; the introduction of Decree 109 is clear enough in stating that the court function is to address crimes within the jurisdiction of military courts and this does not include civilians.

We could not find any provision in the above two decrees that might allow the prosecution of civilians. Building on this, the amendment added by Decree 32 to Paragraph B of Article 2 (during domestic unrest):

- Has not changed the jurisdiction of the field courts, which is “prosecuting military men under the Military Penal Code”;
- The jurisdiction of the field courts may not take effect unless a decree has been issued declaring the country is running into domestic unrest, the same a decree would declare the war status.

However, such a decree has not been issued and the field courts started working without a constitutional mandate. The Minister of Defense also took the liberty of referring many cases to these courts to start a process of eliminating them without any scruple of conscience or law.

Strangely, these courts are still functioning and prosecuting even people who have committed ordinary crimes that do not fall in the jurisdiction of the military justice.

**Ever since it was established, the field court, has been prosecuting civilians and has proceeded with this during the revolution.**

A lawyer told the VDC that thousands of people, civilians and military personnel alike, have been referred to this court since the start of the revolution. Of the more than 12,000 detainees in the military prison of Saidnaya, over 6,000 have been referred to field courts. Given the extensive numbers of detainees and shortage of space, more than 1,000 of these detainees have been moved to [Adra prison](#) and placed in pre-trial detention. There are also many hundreds detainees who were placed in the al-[Mazze military prison](#) and [Palmyra military prison](#). According to testimonies of lawyers, it is estimated that eighty death sentences have been issued so far and many of them have already been executed.

**The 35-year-old former detainee, engineer Mohamed Qassem, born in Damascus told the VDC:**

“I was arrested by [Branch 215](#) for participating in the peaceful activities of the revolution (demonstrations, leaflets distribution etc.). Several months later, I was moved to [Branch 291](#) (also called the administrative branch), which is also affiliated to the Military Security Division. Branch 291 was at the time headed by Rafik Shihadeh. After that, I was moved “under deposit” to the Patrols Branch (also called Branch 216) headed by Brig. Manhal Sweid. In October 2012, I was referred to the field court, along with six other detainees from the military security and 21 detainees from the state security and

political security in Damascus. The policemen would call it the “First Field Court”, which is located within the premises of the military police authority in al-Qaboun, Damascus. The moment we arrived there, the policemen on duty began beating us frantically using the soles of their rifles in addition to kicking and whipping us with cables. Our bodies and faces got covered with blood and our screams reached the judges waiting in the adjacent room. We entered one by one and the court panel consisted of: Chief Judge Mohammed Kanjo Hassan, 55 years’ old from Duraykish, Tartous, military judge Brig. Samer Abbas (around 36 years’ old) and a third judge called Ali al-Khalaf from Deir Ezzor province and according to other detainees he was previously the military Attorney General in Aleppo. The court clerk was called Khaled and was from Deir Ezzor too. When I stood before him, the policemen removed the blindfold off my eyes but my hands remained chained behind my back. The judge read the security statement including the charges as if he were a security investigator. I stayed around 15 minutes before going out. Our hearing (all 28 detainees) lasted less than 3 hours. We were then deposited in the military police prison around 4:30 p.m. The following day, we were all moved to [Saidnaya Prison](#) which was headed by Tal’at Mahfoud from Latakia, who was assassinated later.

جمعية رعاية المساجين وأسرى دمشق  
تأسست عام ١٩٩١  
٣٣١٢٤٧٩-٣٣٢٥٥٦٤  
ص.ب: ٤٤٨٧ - فاكس: ٣٣٢٥٥٦٤

السعر / ٢٠ / ل.س

الرقم :  
التاريخ :

السيد العميد رئيس فرع سجن دمشق المركزي

مقدمة: [ ] و.الذاتي [ ] قيد سجن دمشق المركزي .

طلب إثبات وجود .

الموضوع : سيدي .

أرجو إعطائي بيان توقيف (( إثبات وجود )) عن الدعوى الموقوف فيها حالياً في سجن دمشق المركزي وذلك لتقديمه إلى الجهات المختصة . [ ]

النزيل

بصم بحضوري أنا السيد [ ]

بتاريخ [ ]

إلى الجمعية لبرياديت لبرياديت

نبين لكم بأن السجين [ ] هو حالياً نزيل سجن دمشق المركزي بموجب مذكرة رقم [ ] الصادرة عن [ ] بتاريخ [ ] بجرم [ ] شاملاً حجز حرثته من تاريخ [ ]

يرجى الإطلاع [ ]

VDC

A statement proving the existence of a detainee in Adra Central Prison. It shows that the detention was effected upon an arrest warrant issued by the Damascus military field court. Some details have been blocked for security and detainee safety purposes.

تاسع تموز ٢٠١١

**السيد الحميد رئيس فرع سجن دمشق المركزي**

مقدمه : [ ] والذتي [ ] قيد سجن دمشق المركزي

المسال : طلب امتهنار


الموضوع : سجن

أرجو إعطائي بيان عن وضعي في القلم العدلي يتضمن كافة المعلومات عن الدعوى الموقوف فيها حالياً ضمن السجن مع تأني الإعتراء والتقدير

النزيل

بصم بحضوري أنا [ ] بتاريخ ٢٠١١ [ ]

محكوم بموجب	موقوف بموجب
[ ] خلاصة الحكم رقم	مذكرة التوقيف رقم
[ ] تاريخ الحكم	تاريخ المذكرة
[ ] تاريخ التوقيف	تاريخ التوقيف
[ ] المحكمة مصدرة الحكم	الجهة التي أصدرتها
[ ] الجرم	الجرم
[ ] مدة الحكم	
[ ] انتهاء الحكم بربع المدة	
[ ] انتهاء الحكم المبرم	
[ ] المدة المنقذة	
[ ] الغرامة المالية	



A statement showing a verdict by the military field court against a peaceful activist of the Syrian revolution. The imprisonment term is 20 years.

جمهورية رعاية المسجونين و امرهم بحفظ  
تأسس عام 1971

السيد الحميد رئيس فرج سجن دمشق المركزي

المتدتمه : ..... والدتي ..... قيد سجن دمشق المركزي

المسال : ..... الملحق امتحان

الموضوع : ..... سيدي .

أرجو إعطائي بيان عن وضعي في القلم العدلي يتضمن كافة المعلومات عن الدعوى الموقوف فيها حالياً ضمن السجن مع مائق الإحتراء والتقدير

المنزله

بصم بحضوري أنا ..... بتاريخ ٢٠١ /

محكوم بموجب

موقوف بموجب

مؤكدة التوقيف رقم	مؤكدة التوقيف تاريخ	الجهة التي أصدرتها	الجرم

خلاصة الحكم رقم	تاريخ الحكم	تاريخ التوقيف	المحكمة مصدرة الحكم	الجرم	مدة الحكم	انتهاء الحكم بربع المدة	انتهاء الحكم المبرم	المدة المنفذة	الغرامة المالية
			ميدان عكرتة بدمشق	التصميم باعق لالهائية	١٠ سنوات				

VDC  
Syrian Democratic Center for Justice

Another verdict by the military field court against a peaceful activist of the Syrian revolution. The imprisonment term is 10 years.

#### IV. Counter-terrorism Law (CTL)

The issuance of the so-called Counter-Terrorism Law in Syria followed long deliberations among senior government officials helped by a committee of some jurists. The Regional Command of the Baath Party had commissioned the issuance of a law that would respond to the current situations in Syria after the start of the protests to reportedly ensure “homeland security and citizens’ dignity”. On 21 April 2012, President Assad issued Decree 161 ending the state of emergency in place in Syria since 1962. He also issued Decree 53/2012 that abolished the SSSC and Decree 54/2012 that regulated the “right of peaceful demonstration” in Syria.

A committee comprising several jurists including Dr. Abboud al-Sarraj and Dr. Ibrahim Darraji produced a number of recommendations that led to the issuance of a new Counter-Terrorism law, which replaced the state of emergency. On 28 June 2012, Bashar al-Assad issued Law 19 of 2012 which contains a number of definitions of “terrorist act, terrorist organization and terrorism financing” in addition to the penalties of committing or promoting terrorist actions.

Law 19 coincided with the issuance of Law 20 of 2012, which stated that civil servants who receive a court ruling convicting them of committing a terrorist act shall be dismissed, whether they are perpetrators, instigators, accomplices, partners or providers of any type of financial or moral support to the terrorist groups.

#### V. Counter-Terrorism Court (CTC)

##### 1. CTC Establishment

Following the issuance of the above mentioned counter-terrorism decrees, Decree 22 dated 26.07.2012 was issued creating the Counter-Terrorism Court. Article 1 of this decree stated that a court shall be created to address terrorism cases and shall be located in Damascus. The decree also stipulated that an additional chamber to this court may be created if necessary upon a decision by the Supreme Judicial Council.

Paragraph A of Article 3 of Decree 22 stated that “the Court’s jurisdiction shall cover terrorist crimes and crimes referred to it by the CTC attorney-general”.

**Paragraph A of the same Article relieves CTC from considering any rights or redress related to the damage caused by the crimes subject of the CTC lawsuits.**

Most of the lawyers and jurists interviewed by the VDC agreed that the CTL and CTC are two worse sides of the same old coins (state of emergency and SSSC) which had rendered tens of thousands of unfair judgments against arbitrarily arrested detainees and without due legal processes. The CTC came to expand the scope of those “threatening” the state security to include much wider groups in

the Syrian society especially peaceful activists (tens of thousands of protestors including hundreds of peaceful female activists and even hundreds of children) who stood before the CTC because of their activism in the Syrian revolution.

The CTC is greatly similar to the SSSC in terms of form and content. All these “legal” mechanisms were created to suppress and stifle any opposition voices and to ensure the regime’s stability where a small clan controls different government establishments as well as all the country’s resources. Moreover, the CTL covers even wider segments of the opposition and citizens in general. It is more severe and less respectful of right to the legal assistance that every detainee should have access to before any court in the world.

## 2.CTC Structure

The CTC has the following structure:

1. Public prosecution: consisting of eight judges including the Attorney-general and a military judge. It is headed by Judge Ammar Bilal, one of the newest entrants into the Syrian judiciary. He had practiced as an attorney for one year only when he was appointed Public Prosecutor.
2. Investigating magistrates<sup>9</sup> : there are seven judges and each of them, based on the type of crimes under investigation, chairs a different investigation chamber:
  - a. 1st Investigation Chamber: headed by Judge Haidar Said.
  - b. 2nd Investigation Chamber: headed by Judge Jum’a al-Hussein who had been an investigating magistrate at Darayya and Babbila courts in Damascus Countryside.
  - c. 3rd Investigation Chamber: headed by Judge Wael Deghlawi.
  - d. 4th Investigation Chamber: headed by Judge Wael Tabbaa.
  - e. 5th Investigation Chamber: headed by Military Judge Hussam Makhoulf who had been the CTC Attorney-General. It had previously been headed by Judge Mohammed al-Omar and now is headed by Judge Khuloud al-Hamwi.

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9- In early August 2014, several CTC judges were changed as follows:

-Military judge Haidar Said was named the 1st Investigating Magistrate replacing judge Radwan Barakat who became the head of Misdemeanor Court of Appeal in Damascus Countryside province and he previously was the public prosecutor of Qatana court (in Damascus Countryside ).

-Jum’a al-Hussein replacing judge Ghazwan al-Qadiri.

-Judge Wael Deghlawi was named the 3rd Investigating Magistrate replacing judge Basima al-Mahdi who in turn replaced judge Aba al-Ghothani. Before being appointed in CTC, Basima had been a justice of the peace (is this a correct term?)/first instance in Babbila court in Damascus Countryside.

-Judge Wael Tabbaa was named the 4th Investigating Magistrate replacing judge Fadia Haj Hussein who replaced Judge Wissam Ibrahim. Before being appointed in CTC, Fadia had been a public prosecutor in Babbila court in Damascus Countryside.

-Military judge Hussam Makhoulf, the former CTC Public Prosecutor, was named the 5th Investigating Magistrate replacing judge Khuloud al-Hamwi who in turn replaced Judge Mohammed al-Omar before the latter being dismissed.

-There were similar changes in the Terrorism Criminal Court. Judge Ridha Mousa became its chairman replacing Judge Maymoun Ezzeddin who had previously been an SSSC adviser. Before being appointed in CTC, Mousa had been the chairman of Damascus Criminal Court. A lawyer told VDC that these changes have positively affected the way of handling the CTC cases but he declined to give a final judgment about how positive they are because they happened only recently and no clear opinion has been developed regarding the their impact on the CTC processes.

- f. 6th Investigation Chamber: headed by Military Judge Jamil al-Harba.
  - g. 7th Investigation Chamber: headed by Military Judge Bassel Zanbili.
1. The Criminal Court: consisting of three judges (one of whom is a military judge) and headed by Judge Ridha Mousa.

### 3. CTC Jurisdiction

According to Article 4 of the decree that created it, the CTC jurisdiction covers all civilian and military persons despite the existence of the military justice system, whose sentences are less severe than the CTC's, according to a well-informed attorney the VDC spoke to. Unlike CTC, the military justice structure has not issued a single death sentence since the beginning of the revolution.

Moreover, legal texts use general, vague words and expressions which may apply to anybody opposing the regime's repression of the people's uprising whether adults or minors, male or female, civil activists or armed rebels, or any other group that might form the slightest possible threat to the government. This accounts for the huge numbers and much diversified cases of the detainees who have been referred to CTC so far.

Recurrent testimonials talk about referring children and women and even mentally disabled persons to the CTC. In spite of this, most of those referred have been accused of carrying arms during the Revolution, and are reported to have been arbitrarily arrested by different Syrian security bodies, and forced to confess to charges under pressure, torture and duress.

#### **Talking about the CTC illegitimacy and its violation of due process rights, one practicing lawyer told the VDC:**

“CTC is an extra-ordinary security court par excellence. Its judges do not hesitate a moment in imposing their judgment convicting any defendant even before questioning him/her or even before looking at his/her dossier. Instead, they deal with the detainees as their enemies, treating all the laws, evidence, lawyers and other court processes merely as a legal cover for the previously fabricated CTC verdicts that convict all the defendants. Even those released are often subject to further prosecution by the CTC or by the security branches. Consequently, we can never talk about any aspect of a fair and impartial trial in the CTC. This court is “exempted” from abiding by the fundamental rights of due process and does not have anything of a fair and impartial trial”.



#### 4. Referral to CTC

According to the above-mentioned article, the CTC jurisdiction covers crimes of terrorism and crimes referred to it by the CTC Attorney-General. All the proceedings are based on Law 19 of 2012. The investigation conducted by the VDC has failed to recognize, if any, the rules of procedure according to which detainees are being referred to different courts including to the CTC. The practicing lawyers interviewed by the VDC failed to identify any uniform practice in such referrals. The evidence shows that referrals are made at the guise of the head of the security branch. Some interviewees told the VDC that the overwhelming majority of the detainees, including women, have been recently referred to the CTC. One of them added that:

“There is no clear standard according to which we can know the reasons behind referring a detainee to the CTC. However, all those referred so far have participated in activities linked to the revolution (media, relief aid, demonstrations) including those who only stored certain pro-revolution slogans or songs or even those who by mere coincidence were in certain locations.

One of the most flagrant violation of the Syrian law is the fact that most of those referred to the CTC have stayed for months in places of detention under the authority of the security apparatus contradicting Decree 55 dated 21.04.2011, which stated that the period of pre-trial detention shall not exceed 7 days that may be extended by the Attorney-General provided it does not exceed 60 days. Lawyers told the VDC that most of those referred to the CTC have spent at least six months and sometimes up to two years in the security branches.

## VI. CTC Proceedings

1. CTC Public Prosecution
2. Forced Confessions
3. Due Process
4. Right to Counsel
5. Lengthy Court Proceedings
6. Public Trial and Open Investigation
7. CTC Sentences
8. Number of CTC Cases and Referrals
9. Bribery and Extortion by CTC Judges
10. Seizure and Expropriation of the Detainees' Money/Property

### 1. CTC Public Prosecution

The CTC Public Prosecution is headed by Judge Ammar Bilal and includes eight other judges. The process starts with the referral of the detainees with their dossiers by the security branches , mostly following forced confessions (the VDC has documented [tens of testimonies](#)<sup>10</sup> of detainees who were subjected to harsh beating and torture during interrogation). The CTC prosecutors automatically charge all the referred detainees, apply seizure to their properties and possessions and issue travel bans against them. Only very few detainees may be released without prosecution. After that, the cases are distributed by the Chief Prosecutor among the investigating magistrates who receive the cases successively.

It is worth mentioning that under the Syrian Criminal Procedure Law promulgated by Legislative Decree No. 112 of 13.03.1950, security branches not affiliated to the Internal Security Forces (such as the Military Security and Air Intelligence Service) do not have the status of “judicial police” having law enforcement power. The staff of the latter must be offered such a status under explicit law provisions that they are authorized to investigate crimes, collect evidence and organize respective statements. Article 7 and following of the Syrian Criminal Procedure Law enumerated officers with law enforcement power clearly as: public prosecution judges, investigating magistrates, mayors, district/sub-district chiefs etc. Special regulations may offer this status to certain civil servants. Syrian law has never authorized any other officials to take charge of the work of the judicial police by way of delegation.

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10- For more testimonies, see <http://www.vdc-sy.info/index.php/ar/reports/categories/witness-reports>.

However, the Syrian regime issued Decree 55 dated 21.04.2011 and amended it by Decree 109 dated 28.08.2011 to insert an amendment into the Criminal Procedure Law indirectly allowing the judicial police officers (explicitly specified by law) to delegate their missions to others without defining any of the latter. This came to maliciously cover the referral of thousands of persons detained at the security branches (especially the Military Security and Air Intelligence Service) directly to the CTC and to cover the fact that the written forced confessions organized by these branches are being endorsed by CTC.

## 2. Forced Confessions

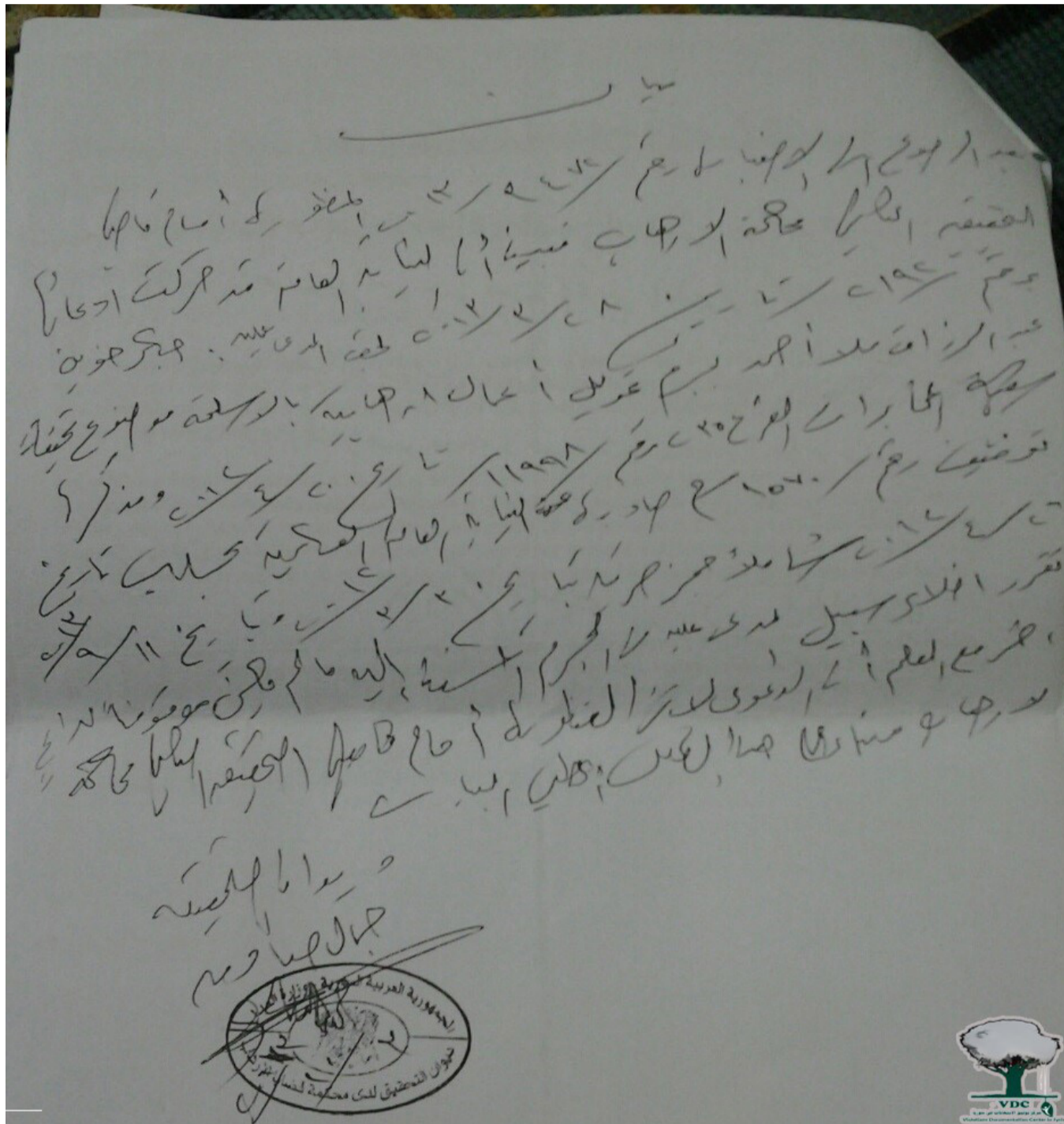
Forced confessions extracted through torture and cruel and degrading treatment constitute a major characteristic of the performance of the CTC. The defendant's statements before the court are not taken into account especially when they claim that the confessions have been extracted under torture. Forced statements organized by the security branches are endorsed by the CTC whether true or not.<sup>11</sup> . Lawyer A. E. told the VDC that in addition to brutal torture before referral, detainees are questioned by the CTC in a very cruel way similar to the security investigation processes.

All those interviewed by the VDC said that the CTC judges did not pay attention to the detainees' statements before their tribunal; instead they depended mainly on the charges filed by the security branches. For example, student H. Z. was arrested by a branch of the Military Security Division for participating in a peaceful demonstration calling for democracy in Hama city. Ironically, she was charged of "cooking food for the Syrian Free Army" in addition to membership in and collaborating with the Syrian Free Army, and the CTC prosecuted her accordingly.

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11-Syria ratified UN Convention Against Torture approved by the UN General Assembly in its resolution 39/46 dated 10.12.1984, by Decree 39 dated 01.07.2004. Article 1 of Decree 39 defined torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted (...)". Article 15 prohibited invoking forced confessions as evidence: "Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings". The various chambers of the Syrian Cassation Court have in many decisions declared that forced confessions must not be invoked as evidence. The SCC defined coercion as follows: "Coercion varies between one person and another. This is not limited to what can be proved through medical examination; abusive words, threats of unlawful action and slight beating may all force the detainee to confess facts dictated by the investigator" (The SCC decision in its General Assembly meeting No. 208 base 389 dated 28.06.1999, Cassation Case Reporter on the Criminal Code 1988-2001, Volume 1, prepared by Abdul Qadir Jarallah el-Aloussi, Damascus, Legal Library, 2002, p 591, Rule 414). The Syrian Court of Cassation also defined the effect of coerced statements of all types, as follows: "the general rule for organizing a statement of confessions requires that the information therein must be valid not only with regard to formalities but also, and more importantly, that the investigation conditions should be validly met. If there is pressure or coercion, the information set forth therein may not be invoked as evidence whether the statement has fulfilled all formalities or not. It may not be considered as ordinary information either; it must be removed and excluded completely from the evidence, including circumstantial evidence. The evidence in the case must be considered without it". (The Syrian Court of Cassation Judgment No. 510 in case No. 499 dated 08.10.1983, The Lawyers' Journal, p 783). The Syrian Court of Cassation meeting in General Assembly emphasized this principle and adopted it as follows: "If there is pressure or coercion, the information may not be invoked as evidence whether the statement has fulfilled all formalities or not. It may not be considered as ordinary information either; it must be removed and excluded completely from evidence, including circumstantial evidence. The evidence in the case must be considered without it". (The Syrian Court of Cassation decision in its General Assembly meeting No. 208 in case No. 389 dated 28.06.1999, Cassation Case Reporter on the Criminal Code 1988-2001, Volume 1, prepared by Abdul Qadir Jarallah el-Aloussi, Damascus, Legal Library, 2002, p 596, Rule 414).

Another peaceful activist from Aleppo University called Jegerxwin Abdulrazzak Mulla Ahmad was arrested and forced to confess the ownership of arms. The CTC judge did not pay any attention to his statement that the confessions had been forcibly extracted and despite the absence of any evidence on his possession of any weapons, the charge remained in his record even after he was released.



Copy of the release statement showing that Jegerxwin was still charged of arms possession and the carrying out of terrorist acts.

One of the lawyers was surprised at a very odd charge against a detainee referred to the CTC, which stated “digging graves for terrorists” in reference to the armed opposition rebels against the Syrian government.

**The lawyer said:**

Most of the charges filed against the majority of detainees are related to financing, supporting and promoting “terrorism”. The detainees in questions often confess under torture that they have committed such actions like photographing security checkpoints, providing medicines to protesters, kidnapping soldiers etc. Most of those referred to CTC are peaceful activists and ordinary citizens. Yet, the CTC judges them without any evidence, including circumstantial evidence, supporting the prosecutor’s charges. Judges typically do not pay attention to the detainees’ statements and tend to turn a blind eye to the effects of torture on their bodies.

**3. Due Process**

Article 5 of the CTC creation law explicitly exonerates the court from sticking to due process principles stipulated in the Penal Code<sup>12</sup>. Testimonies show that each CTC judge (whether an investigating magistrate or a tribunal judge) acts temperamentally and as he/she deems appropriate and no one can hold him/her accountable. Testimonies point out that security agents are present everywhere during court sessions. Lawyers as well as detainees prosecuted before the CTC frequently mention that CTC judges usually express their personal pro-regime opinions, which violates the law, especially Article 81 of the Syrian Judiciary Law promulgated in Legislative Decree 98 dated 15.11.1961<sup>13</sup>. In the Terrorism Criminal Court, however, the chairman and the other co-judges often declare their pro-regime views vocally while questioning the detainees. The court chairman openly and explicitly declares his support to the regime when he sarcastically taunts the detainees as if he were a security officer.

**4. The right to counsel**

Unlike the procedures of ordinary courts and even of military justice, the right to counsel in CTC is greatly violated. Article 7 of Law 22 of 2012 establishing the CTC formally retained the right to counsel. Its provision is similar to that of Article 7(a) of Legislative Decree 47 of 1968<sup>14</sup> creating the SSSC. Frequent testimonies of lawyers and detainees contacted by VDC said that detainees often

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12- This provision is identical of the provision of Article 7(A) of the abolished SSSC creation Decree No. 47 of 1968.

13- Article 81 of the Syrian Judiciary Law states that “Judges may never express their own political views or orientations. Judges may also not work in politics”.

14- Article 7 of the CTC Law 22 of 2012 states: “While retaining the right of defense, the court shall not comply with the procedures set out in the applicable legislations in all stages and procedures of prosecution and trial.” Article 7 (a) of the Legislative Decree No. 47 of 1968, establishing SSSC, had provided: “While retaining the right of defense provided for in the laws in force, the Supreme State Security Court shall not comply with the procedures stipulated in the applicable legislations in all the stages and procedures of prosecution, investigation and trial”. Despite the similarities between the two texts, the careful review shows deterioration in the CTC with respect to due process as compared to the law establishing the SSSC. The text of the SSSC law (which has a very bad reputation) was more specific and referred to the laws in force, which allowed the reference to the rights of defense guarantees set out in the Syrian Criminal Procedure Law issued by Legislative Decree No. 112 of 1950. However, the right of defense as set out in the CTC law is more ambiguous and general, which makes reference to specific laws that guarantee certain rights of due process in this regard more difficult. Therefore, it could be argued, that aside of the poor practices within the CTC, the due process reference in the CTC law is void and merely designed to cover up its shameful practices.

stand before the judges (investigating or tribunal judges), handcuffed and sometimes barefoot and ripped off their clothes. They are not allowed to speak with their lawyer, and lawyers are prevented from contacting them while being in the court.

### 5 .Lengthy Court Proceedings:

In 2012, when the CTC was established, detainees were still referred to other civil or military courts, as mentioned above, or even released from the security branches. However, in late 2013 and early 2014, the majority of referrals were to the CTC. Testimonies of lawyers and released detainees indicate that because of the large numbers of referrals to this court, tens of thousands of detainees wait several months before appearing before CTC judges. Civilians sometimes wait up to one year in detention, while military personnel are held in Saidnaya military prison in Damascus. In very few cases, detainees would be returned to the respective security branch after standing before CTC judges. The majority of those referred face lengthy proceedings and hearings. Most of the civilian detainees referred to the CTC are kept in the central prisons, especially Adra Central Prison.

Staff members of the [Syrian Center for Media and Freedom](#) of Expression in the Arab World were referred to the CTC more than eight months after their detention on 16/02/2012 by the Air Intelligence Branch in Mezze Military Airport. The head and founder of the center, journalist Mazen Darwish, activist and blogger Hussein Ghreer and activist Hani Zitani are still in detention, while activists Abdel-Rahman Hamada and Mansour al-Omari were released after 355 days of detention to be tried at large. Their trials were postponed for the [eight time On the 15th of April 2015.](#) They are accused of “promoting terrorist acts”, according to Article 8 of Law 19 of 2012, for documenting violations and torture against detainees at the security branches. If they are convicted, they can face prison sentences for up to fifteen years.

### 6.Public Trial and Open Investigation:

The abuse of detainees is not limited to security branches. Many are abused while appearing before the CTC. According to an activist speaking from Adra Prison where he was detained after appearing before the CTC, detainees referred to the court receive a very humiliating treatment in the bus driving them and in the CTC hallways. Beating, whipping and degrading insults stop only when detainees appear before a judge.

“After several months of detention in security branches,” a former female prisoner told the VDC “I was referred, with my friend, to Adra Central Prison to appear later before CTC. Before we were presented to the judge, we were put in an “individual cell” and threatened with abusive words if we

made any movement. They dealt badly with younger people waiting to appear before the judge. While taken to the judge, we were both tied to chains. The lawyer of my friend tried to approach her, but they prevented him. When we were presented to the investigating judge, we were surprised by his hostile tone. He acted as if he were a security investigator in any intelligence branch”.

The families of those referred to the CTC are not allowed to attend the trial during the investigation sessions or to see their family members’ files. Family members of seven detainees referred to the CTC told the VDC that they were not allowed to attend the trial. The family of an activist maintained that they were able to see their daughter’s file, but only before she was referred from the Military Justice to the CTC.

“Families and even lawyers are denied access to the detainees’ files before the interrogation session” said a lawyer, adding that “lawyers can see the files after the interrogation, but very often, judges deny them access to the security minutes and allow them only to have access to the CTC interrogation file. Lawyers may not photocopy any court decision; they can only see the decision and take a handwritten copy. In a few cases, families can attend the hearings of those referred to the Criminal Terrorism Court, if ever they manage to enter the courthouse.”

## 7 .CTC Sentences:

The VDC has documented dozens of harsh CTC sentences against the detainees, especially in late 2014. By late December 2014, the court had issued more than 120 sentences ranging from three years in prison up to death penalty. However, the pace has dramatically increased in the beginning of 2015. Following are some of the dozens of sentences that the VDC managed to collect. We removed the personal details for security reasons to protect the convicted:

Y. D. was convicted for providing information to terrorists and received a 10-year sentence with hard labor and a fine of 100,000 Syrian pounds. He was also deprived of his civil rights.

In late 2014, P. M. was convicted for possession of arms with the intention to engage in terrorist acts and was sentenced to 7 years with hard labor and was deprived of civil rights.

In the beginning of 2015, a death sentence was issued against a detainee for allegedly committing terrorist acts and his movable and immovable properties were confiscated.

A lawyer told the VDC that “all the issued CTC sentences are harsh, although the number of cases adjudicated so far is still low. The sentences ranged between 15 years and life imprisonment. Yet, thousands of cases are still under consideration. In general, the court has not so far acquitted any person.”

When asked about the percentage of absentia to presence judgments, another lawyer said that the

percentage is around 10%.

For example, [Randa Awad Haj Abed](#) was sentenced to 12 years in prison for allegedly “communicating with the armed groups,” and she is now in Adra women’s prison.

#### 8) Number of CTC Cases and Referrals:

VDC research work shows that the number of cases referred to the CTC has exceeded 32,000. The number of detainees in each case/file varies between 1 and 12, but not every case has detainees. In some cases, security forces were not able to arrest any of the suspects, and in other cases, there were one person arrested and many people not arrested.

**According to the VDC research, the percentage of children aged 15-18 years referred to the CTC until the end of January 2015 was one per cent of the total numbers of referred detainees and the number of women/girls exceeded 400, i.e.5%, including more than 350 detainees in Adra women’s prison. On February 28, 2015, after being released from Adra prison, a woman said that most detainees had been accused of financing terrorism and other charges related to kidnapping and luring members of the Syrian security forces and army. She believes that most female detainees are kept in the security branches or central prisons as hostages or to pressure certain [rebel dominated] areas to conclude reconciliation agreements [with the regime].**

The VDC confirms that there are at least 1,500 females under arrest, whether in security branches or in central prisons. The estimated total number of women detained from the beginning of the revolution until late December 2013 was at least 4,000, many of whom were arrested [with their children](#). The VDC was able to document [1,726 names](#) until the end of February 2015.

After a rough survey, it was found that the largest part of the people referred to the CTC were male adults aged 18-50 years but that there were also thousands of people<sup>15</sup> over the age of fifty and up to 86 years. Frequent charges include financing, promoting and supporting terrorism, participating in demonstrations, writing statements on Facebook, contacting opponents abroad, smuggling weapons to insurgents, photographing or bombing checkpoints, kidnapping, or delivering food, aid or medicines to opposition-held areas.

**Building his estimates on the lists of referred detainees, a lawyer told the VDC that the largest percentage of these detainees is from Aleppo, followed by Homs, Damascus, Dar’a and Latakia.**

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15- For more details, please visit the VDC website and see the detainees’ names.



**The rest are from different governorates. The bulk of those referred from other governorates are held in Damascus jails, especially Adra Central Prison<sup>16</sup>.**

The CTC was founded in July 2012 and it started receiving referrals in October/November 2012. The VDC has assisted a number of lawyers to conduct a survey to estimate the number of those referred, until the end of December 2014, based on the number of detention files. It was found that the number of those referred to CTC was around 80,000, with the daily average exceeding 50 detainees from various Syrian governorates. About 100 detainees are interrogated every day.

#### 9) Bribery and extortion by CTC judges:

The testimonies of the lawyers interviewed by VDC indicate that because of the great numbers of referrals and the deliberate chaos in the CTC proceedings, bribery and extortion of detainees and their families have become common practice, especially by certain lawyers called “the judges keys”, with families forced to pay millions of Syrian pounds or thousands of dollars to those lawyers in return for the judge accelerating the proceedings or signing a release memo.

The detainee N. K said that her mother was forced to borrow a large sum of money, given their precarious financial situation, and met a “key” lawyer who mediated with a judge and paid him part of the amount, estimated at thousands of US dollars. The investigating magistrate then summoned her from Adra prison, where she was detained, formally interrogated her and signed her release memo. The same detainee reported that during that time, there were dozens of female detainees who had been in Adra for months without appearing before the court.

The family of an activist confirmed that they had been blackmailed by an investigating judge who requested 1.5 million Syrian pounds to release their daughter threatening to otherwise issue a harsh sentence of up to seven years in prison in case they failed to pay the money.

A lawyer told the VDC that the CTC chaos and corruption are unrivaled, while other courts including military courts have accurate proceeding especially in archiving and automation. The lawyer added: **“there are hundreds of detainees who are forced to wait many months in the Military Police station in Qaboun because their file was lost as a result of court negligence”.**

#### 10) Seizure and Expropriation of the Detainees’ Money/Property:

Article 11 of Law 19 states: “the competent attorney general or his authorized representative may order the freezing of movable and immovable property of any person who commits an offense relating to the financing of terrorist acts or any of the crimes stipulated in this law.”

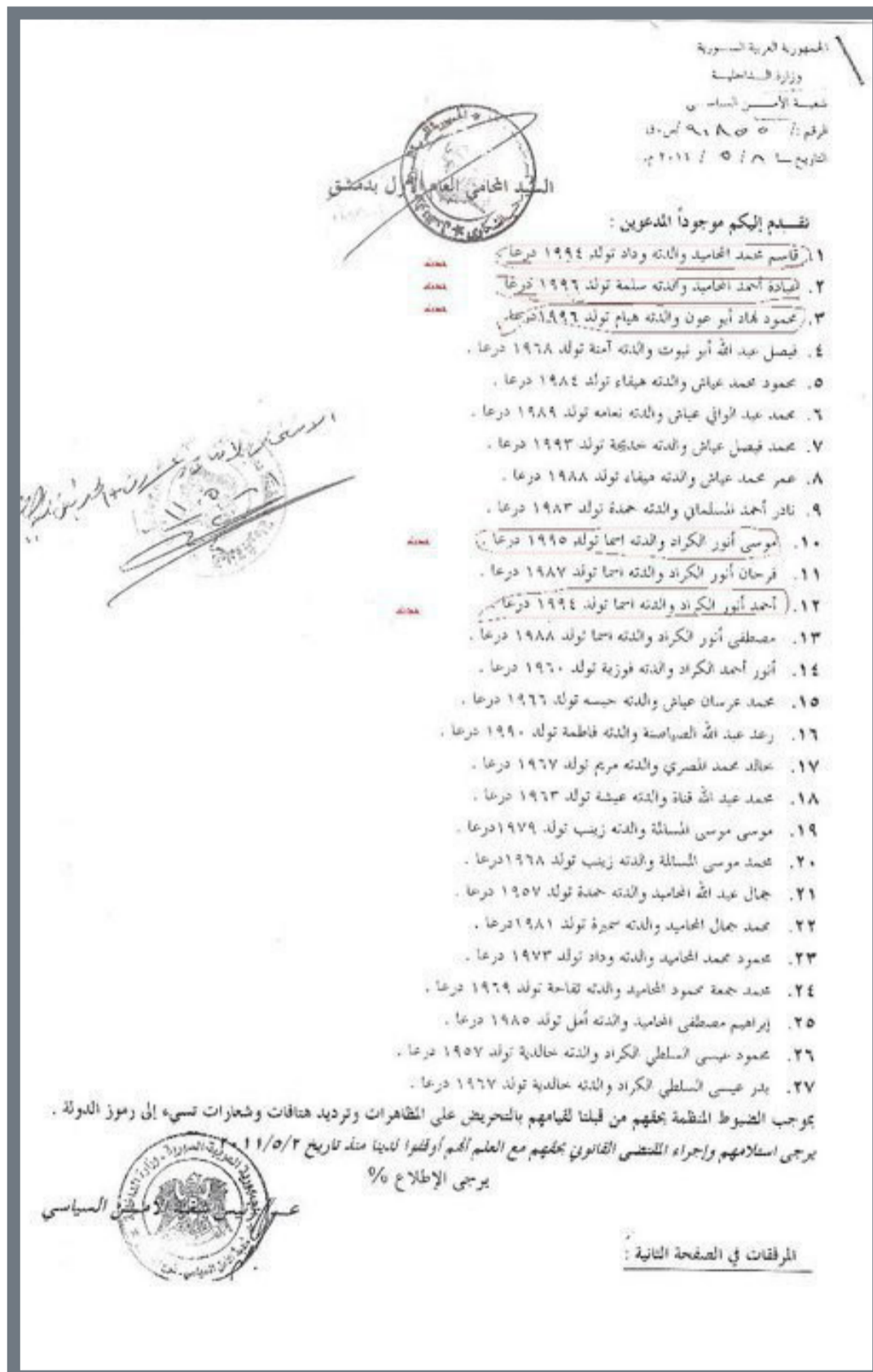
16- With the beginning of 2015, the Syrian authorities began transferring hundreds of detainees referred to the CTC to other central prisons (such as Swieda and Hama central prisons). According to some sources interviewed by VDC, one reason behind this is the inability of the Adra prison to accommodate more detainees, whose number in each dormitory reached more than 150, while in normal days, the number was nearly fifty detainees. This led to a considerable discontent among the detainees themselves and their relatives. All those who were transferred are still under trial, which causes them big problems when summoned to attend interrogation sessions in Damascus, especially since transportation between the governorates has become almost impossible under the ongoing war. A detainee parent said they now face real difficulties in accessing their children and supporting them financially or morally in light of the current high prices and lack of commodities. Among those who were transferred are two members of the Syrian Center for Media and Freedom of Expression, Mazen Darwish, head of the center, who was transferred to the Hama prison, and the activist Hani Zitani, who was transferred to Swieda prison.

Legislative Decree 63 dated 16.09.2012 allowed the Judicial Police to ask the Minister of Finance to take precautionary measures, such as provisional seizure of the movable and immovable property and imposing travel bans in the context of investigations carried out under the Law 19. At the end of 2012, a circular directed by the Minister of Justice to the CTC approved a travel ban and property seizure against all detainees brought to the CTC, once a public lawsuit against them had been initiated by the attorney-general. Seizure decisions are sent immediately to the Ministry of Finance, while travel bans are sent to the Immigration Office to be circulated to the border crossing points. This means that this procedure has already been taken against tens of thousands of CTC referrals. Decisions remain valid until the sentence is implemented, unless the judge decides to stop the trial or the court decides innocence. In this case, the property seizure and/or travel ban is removed. It is an administrative matter for all CTC proceeding regardless of the charge, whether it is the formation of an underground association or simply writing a statement on Facebook.

One such [decision which was recently published](#) was against a [number of Syrian](#) political opposition figures, particularly members of the National Coalition for the Revolution and Opposition Forces, thus coinciding with the Geneva 2 negotiations



Copy of a decision referring opposition detainees to Damascus Attorney-General for prosecution



Copy of a decision referring opposition detainees to Damascus Attorney-General for prosecution

## VII.CTC and Presidential Amnesty Decree 22 of 2014

### 1) The Presidential amnesty and corresponding CTL provisions:

On 09.06.2014, Bashar al-Assad issued the [Legislative Decree](#)<sup>17</sup> 22 of 2014. The decree granted general “amnesty” for crimes committed before 09.06.2014. The amnesty included many crimes committed by civilians or military persons even if they are still under trial. It also covered, in respective articles, detainees tried by military courts and the Field Military Court in addition to a number of penalties. For the first time, the amnesty included a special clause on the theft of army funds and property stipulated in the Military Penal Code. This charge was covered partially by the amnesty for detainees arrested due to their participation in activities linked to the Revolution. It also covered many CTL articles. Article 5 of the amnesty decree reads:

**A general amnesty shall be granted for crimes committed before 09.06.2014 as follows:**

#### **Article / 5 /**

A) For full punishment of the crime stipulated in Article 2 of Law 19 of 2012 if the offense has been committed by a Syrian national.

**“Checking against Law 19, we find that the amnesty includes all those charged with conspiracy”.**

B) For full punishment of the crimes stipulated in Article 3(2) of Law 19 by those who joined a terrorist organization if the offense has been committed by a Syrian national.

**“It means all those charged with joining a terrorist organization or forcing people through violence or threat to join a terrorist organization.”**

C) For a quarter of the punishment provided for in Article 5(1) of Law 19.

**“This article covers all those accused of smuggling, manufacture, possession, theft or embezzlement of weapons, ammunition or explosives of any kind to use them in an act of terrorism.”**

D) For the full punishment of the crimes stipulated in Article 7(2) of Law 19.

**“This includes those accused of committing a terrorist act by means sound bombs .”**

E) For the full punishment of the crimes stipulated in Article 8 of Law 19 if the offense has been committed by a Syrian national.

**“This is related to the charge of promoting terrorist acts and means.”**

F) For the full punishment of the crimes stipulated in Article 10 of Law 19.

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17-See: <http://www.sana.sy/%D8%A7%D9%84%D8%B1%D8%A6%D9%8A%D8%B3-%D8%A7%D9%84%D8%A3%D8%B3%D8%AF-%D9%8A%D8%B5%D8%AF%D8%B1-%D9%85%D8%B1%D8%B3%D9%88%D9%85%D8%A7%D9%8B-%D8%A8%D9%85%D9%86%D8%AD-%D8%B9%D9%81%D9%88-%D8%B9%D8%A7%D9%85.html>

**“This is related to hiding any terrorist crime and failing to inform the authorities thereof.”**

G) Non-Syrians who entered Syria to join a terrorist organization or commit terrorist acts shall be exempted from punishment if they hand themselves over to the competent authorities within one month from the decree issuance date.

The amnesty decree excluded the crimes stipulated in Articles 5(2) and 6(3) of Law 19 of 2012, and these are **“related to the death penalty for smuggling, manufacturing, possession, theft or embezzlement of weapons, ammunition or explosives of any kind to use them in a terrorist act when such acts kill or disable someone and for threatening and kidnapping, specifically when the threat is followed by murder”**.

The amnesty decree did not mention the most important article in Law 19 (Article 4) related to terrorism financing and according to which thousands of people are being prosecuted. A lawyer confirmed to VDC that the majority of CTC detainees have been charged with financing terrorism, including relief workers - even if they helped deliver a food basket or any amount of money to internally displaced families, or any other activity where money is involved.

## 2) Enforcement of amnesty provisions:

Given the huge number of referrals to CTC and detainees still in the security branches and field courts (estimated at tens of thousands), the detainees’ families and lawyers expected that tens of thousands of those covered by the amnesty would be released, especially in the days following its issuance. Usually, any amnesty is enforced immediately and the overwhelming percentage is released in the five days following the decree issuance. However, the first release took place on June 11, 2014. Only a few dozens of prisoners convicted on criminal charges were released, especially from Adra prison, as well as some CTC detainees including activist [Ranim Khalil Matouk](#) who was arrested on February 17, 2014. On June 13, 2014, a few dozens CTC detainees were released, including more than thirty females from Adra prison. More than one month after the issuance of the decree, the VDC found that the total number of those released by the CTC did not exceed 1,000, while the total number of those released from security branches and the Field Military Court was about 500, from several governorates, including about 150 detainees from Latakia, who successively arrived from Saidnaya military

**prison. In this regard, a lawyer told VDC that:**

“Not all CTC investigative judges affixed on the CTC billboard lists of the released persons. The lists affixed on the CTC billboard by the Sixth and Seventh investigative judges contained about 300 detainees. The Fifth Judge affixed on the CTC billboard a number of lists of names, which totaled 200 detainees. The rest of the judges did not publish any lists, especially the Terrorism Criminal Court judges, who reserved the detainees’ files in a strange way. They even did not allow lawyers to access the files of their own clients.”

**3) The amnesty decree omissions:****A) The issue of Syrian Palestinians:**

In certain articles, especially Article 5 related to Law 19, the amnesty decree required that the perpetrator should be a Syrian national, deprived thousands from benefiting from the amnesty<sup>18</sup>. A lawyer said that the amnesty provisions were in general not clear enough and have not been considered in full. The implementation of many articles was subject mainly to the mood of the security forces and CTC judges.

**B) Changing the charges of certain detainees and exclusion of others:**

In addition to excluding the Palestinian detainees and denying release to tens of thousands of those covered by the amnesty, there were many other serious violations, including keeping dozens of detainees referred to the CTC, after changing their “criminal charges”, which clearly contradict the amnesty provisions. By doing so, the decree provisions could be “legally” defrauded, as some CTC judges thought, especially the Fifth Judge Kholoud Hamwi from Foua, Idlib. According to a lawyer, this decision came in response to instructions by the security agencies, specifically the Air Intelligence Service, headed by Gen. Jamil Hassan. Some judges have actually begun to return the files of many prisoners to the Attorney-General to amend or change the charges.

This is exactly what happened with the members of the Syrian Center for Media and Freedom of Expression (head of the center Mazen Darwish and activists Hussein Ghreer and Hani Zitani). The judges refused to release them and there were almost certain news about the intention to change their charges to exclude them from the amnesty provisions. They were tried in accordance with Article 8 of Law 19, related to the promotion of terrorist acts. A well-informed lawyer told the VDC that there were

18- Many laws and decrees refer to “Syrians or equivalents”, but this decree only mentioned the word “Syrians”, thus the amnesty did not cover the Palestinians, according to a lawyer. A judge argued that the amnesty decree was clear and he could not provide other interpretations and that they were waiting for a clear explanation from the competent authorities, which never happened, confusing the CTC judges. As a result, the release lists did not include Palestinian prisoners, who had previously been considered equivalent to the Syrians by the law (260) since 1965 dated 10/07/1956.

dozens of similar exclusions especially among civil activists including Hazem Wakid, Shyar Khalil and Maryam Hayed who had been tried according to an article covered by the amnesty.

“The decree was supposedly issued by the country’s highest authority and it had to be strictly enforced and should have included all those covered by its provisions. However, the prevailing security mentality undermined the decree and implemented its provisions in line with the judges’ temperament. In legal terms, changing the charges this way assumes bad faith of the decree enforcement authorities, i.e. personal attitudes against those excluded. This does weaken the authority that issued the amnesty and challenges the integrity of the judiciary. The amnesty is not limited to a certain period and should be applied immediately, but it seems that the numbers released so far are final”.

## VIII – Legal Assessment

### 1- Applicable Law

The International Committee of the Red Cross (“ICRC”) has been describing the situation in Syria as an armed conflict of non-international character at least since July 2012<sup>19</sup>. This qualification has not been contested by the Syrian government or by any other international organization concerned with the situation in Syria.

Accordingly, all parties to the conflict are bound by customary rules of international humanitarian law applicable to armed conflict of non-international character. In addition some treaty law provisions are binding, particularly those ratified by the government of the Syrian Arab Republic. In particular, article 3 common to the four Geneva Conventions (1949) is applicable in all Syrian territories and to all actors of the conflict. Article 3 states in its relevant parts:

**“In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:**

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed ‘ hors de combat ’ by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: [...]

**(d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.[...]”<sup>20</sup>**

This report assesses the legality, under the applicable international laws, of the Syrian government’s practices in holding trials and passing criminal sentences through field tribunals or through the so-called anti-terrorism tribunal with jurisdiction to prosecute detainees under what is referred to as anti-terrorism legislation.

19- Syria: ICRC and Syrian Arab Red Crescent maintain aid effort amid increased fighting, Operational Update (July 17, 2012). Retrieved January 3, 2014, from.

20- Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, entered into force Oct. 21, 1950, United Nations Treaties Series, 75, p. 287, ratified by the Syrian Arab Republic on 2/11/1953.



It is important to emphasize at this point that the legal characterization of these practices by the Syrian regime has little bearing when assessing their legality under international humanitarian law. More specifically the fact that, from the perspective of the regime, the formal characterization of certain enactments by Bashar Assad as “legislative decree,” or “law” does not determine, from the perspective of this report, the legality under international humanitarian law of the regime’s subsequent practices. Similarly, the fact that these enactments and subsequent trials could be formally justified in the Syrian legal and constitutional framework as it is currently administered by the Assad regime has a priori no value in determining their legality under applicable international humanitarian law. These enactments and subsequent practices are measures taken by one of the parties to a non-international armed conflict, and should be evaluated accordingly under international humanitarian law in particular article 3 common to the four Geneva conventions. They are taking place starting in 2012, at a time when the ICRC and other relevant state and institutional actors characterized the situation in Syria as an armed conflict not of an international character.

The continuity with other regime’s past practices under the state of emergency, such as arbitrary detentions, torture or summary executions, or the resort to special tribunals is irrelevant for the analysis within this report. These practices have been assessed on the basis of the standards of international human rights law. They have been regularly denounced by relevant intergovernmental and non-governmental international bodies<sup>21</sup>.

It must also be noted that, from the perspective of international humanitarian law, the practices of passing criminal sentences and executions by different bodies associated with armed brigades of the rebels or local government councils in territories outside the effective control of regime forces, such as shari’a courts or commissions (mahkamah shari’iyah or hay’a shari’iyah) are similar to the regime’s terrorism or so-called field’s courts. Those courts should also be evaluated by the relevant rules of international humanitarian law, in particular common article 3 to the four Geneva conventions. The current report however is focused on the regime’s practices. Practices attributable to the rebels will be examined in future reports.

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21- The following are examples from reports by Amnesty International in chronological order since 1979. Amnesty International, 1979, Amnesty International Briefing on Syria, Amnesty International Publications, London, UK. Amnesty International, 1995, Syria Repression and Impunity: The Forgotten Victims, Amnesty International (MDE 24/002/1995), London, UK. Amnesty International, 2001, Syria, Torture Despair and Dehumanization in Tadmur Military Prison, Amnesty International (MDE 24/014/2001), London, UK.

## 2- Legal Criteria

The passing of criminal sentences is regulated in international humanitarian law primarily in paragraph 1 (d) of article 3, common to the four Geneva Conventions. Common article 3 prohibits in its relevant parts:

[T]he passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

The guarantees enumerated in common article 3 apply to anyone affected by the armed conflict including persons who did take part in the hostilities from all sides to the conflict and applies a fortiori to civilians and persons hors de combat<sup>22</sup>.

Common article 3.1 (d) requires us to evaluate the Syrian regime's field tribunals and terrorism tribunal on the basis of two different criteria<sup>23</sup>. First, these tribunals must be "regularly constituted;" and, second; they must afford "all the judicial guarantees which are recognized as indispensable by civilized peoples." The criterion of a "regularly constituted court" was elaborated in other treaty instruments and gradually expanded the purview of the standard from referring only to the legal basis of the court, to the manner in which the court operates, in particular whether it offers procedural guarantees of independence and impartiality.

The ICRC commentaries on common article 3 did not elaborate on when a tribunal is "regularly constituted." They merely assert that common article 3.1 (d) prohibits "summary justice<sup>24</sup>." This still leaves any party to a non-international armed conflict wide margins to conduct criminal prosecutions and to pass criminal sentences.

In clarifying further the standard of "regularly constituted," article 3 common to the four Geneva conventions should be read in the context of other provisions in these treaties. Article 66 of the Geneva Convention IV, is the only other provision in which the same expression was used<sup>25</sup>. The ICRC

22-Pictet, J., 1958, IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War, International Committee of the Red Cross, Geneva, at p. 40. ICRC, 1987, Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949, Pilloud, C., Sandoz, Y., Swinarski, C., & Zimmermann, B. eds. International Committee of the Red Cross: Geneva, at p. 1398 (§§4600-4601).

23- Somer, J., 2007, Jungle Justice: Passing Sentence on the Equality of Belligerents in Non-International Armed Conflict, International Review of the Red Cross (2005), 89(867), p. 655. Sivakumaran, S., 2009, Courts of Armed Opposition Groups: Fair Trials or Summary Justice? Journal of International Criminal Justice, 7(3), pp. 489-513. See also Hamdan vs. Rumsfeld, Secretary of Defense et al. 548 U.S. 557, at 622.

24- Pictet, IV Geneva Convention, at p. 40.

25- The English text of Article 66 uses the expression « properly constituted. » But the French text uses identical language to Article 3 (régulièrement constitué).

commentaries specified that what the requirement of a “regularly constituted<sup>26</sup>” tribunal was meant to exclude “all special tribunals.” Article 66 adds another specification; namely that the regularly constituted court should be “non-political.” The ICRC commentaries explain that this provision meant to forbid the use of judicial machinery as an instrument for political persecution<sup>27</sup>.

The additional protocols<sup>28</sup> to the four Geneva conventions provide further guidelines to interpret the requirement of “regularly constituted” court mentioned in common article 3. Article 75.4. of Additional Protocol I, reproduces the fundamental structure of common article 3, and prohibits passing criminal sentences except “pursuant to a conviction pronounced by an impartial and regularly constituted court.” The 1987 ICRC commentaries make it clear that the requirement of impartiality is a constitutive aspect of what makes a court “regularly constituted.” The same conclusion comes from reading article 6 of Additional Protocol II, which was drafted to complete and clarify the text of common article 3. Article 6.2 states:

**“No sentence shall be passed and no penalty shall be executed on a person found guilty of an offence except pursuant to a conviction pronounced by a court offering the essential guarantees of independence and impartiality<sup>29</sup>.”**

The ICRC commentaries indicate that the requirement of “a court offering the essential guarantees of independence and impartiality” explains the requirement of a “regularly constituted” court in common article 3. It is meant to articulate the same standard in a way that could provide guidelines when evaluating the legality of sanctions passed by courts formed by non-state actors, parties to an armed conflict not of an international character<sup>30</sup>.

In short, a plausible reading of article 3.1 (d) common to the four Geneva Conventions, in the context of other relevant treaty provisions and subsequent practice does offer a number of elements and indicators that should be taken into consideration to determine whether these courts are “regularly constituted.” In particular it is important to determine whether the courts are “special courts, ” or “political” and whether their procedures are “summary.”

Furthermore, the expression “judicial guarantees that are recognized by the civilized nations,” or “essential guarantees of independence and impartiality,” should be read in the context of other relevant

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26- Pictet, IV Geneva Convention, at p. 340.

27- Id.

28- The Syrian Arab Republic ratified additional protocol I, by Law No. 44 dated 17 December 1981. It did not however sign addition protocol II. The reference to the protocols in this report is meant to provide a textual context to interpret common Article 3, which is a binding treaty provision.

29- Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), entered into force Dec. 7, 1978, United Nations Treaties Series, 1125, p. 609.

30- ICRC, Commentary on the Additional Protocols, at p. 1398 (§4601).

treaty provisions that detailed these guarantees in particular articles 72 and 73 of Geneva Convention IV<sup>31</sup>, article 75 of Additional Protocol I, and article 6 of Additional Protocol II. In addition, and when appropriate, the ICRC commentaries to the Protocols<sup>32</sup> as well as the great majority of international humanitarian law experts, and consistent and widespread state practice referred to the standards for fair trials as outlined in article 14 of the International Covenant for Civil and Political Rights<sup>33</sup> as interpreted by the relevant UN bodies<sup>34</sup>, case law, and the practice of non-governmental human rights organizations<sup>35</sup>, and other human rights treaties.

### **3- Assessing the Legality of the Syrian Government Practices under International Humanitarian Law**

#### **3.1 Systematic Violations of Common Article 3.1.(d)**

The Syrian regime's practice of prosecuting detainees and passing criminal sentences in military field's courts and the terrorism courts, and irrespective of its illegality under international human rights law, is inconsistent with article 3.1.(d) common to the four Geneva conventions. In particular, the report, on the basis of testimonies and review of the legal framework, provides compelling evidence that these tribunals are "special" and "political," their procedures are "summary" and they do not offer the accused the essential guarantees of impartiality and independence.

##### **3.1.1. Special**

The second edition of the Amnesty International manual of fair trial defines special courts as ones created to apply exceptional procedures to try certain offenses<sup>36</sup>. The Committee on Torture considered, in the Syrian case, as "special or extra-ordinary" the tribunal that is established outside the regular criminal justice system<sup>37</sup>.

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31- Article 72: Accused persons shall have the right to present evidence necessary to their defence and may, in particular, call witnesses. They shall have the right to be assisted by a qualified advocate or counsel of their own choice, who shall be able to visit them freely and shall enjoy the necessary facilities for preparing the defence. Failing a choice by the accused, the Protecting Power may provide him with an advocate or counsel. When an accused person has to meet a serious charge and the Protecting Power is Not functioning, the Occupying Power, subject to the consent of the accused, shall provide an advocate or counsel. Accused persons shall, unless they freely waive such assistance, be aided by an interpreter, both during preliminary investigation and during the hearing in court. They shall have the right at any time to object to the interpreter and to ask for his replacement. Article 73: A convicted person shall have the right of appeal provided for by the laws applied by the court. He shall be fully informed of his right to appeal or petition and of the time limit within which he may do so. The penal procedure provided in the present Section shall apply, as far as it is applicable, to appeals. Where the laws applied by the Court make No provision for appeals, the convicted person shall have the right to petition against the finding and sentence to the competent authority of the Occupying Power.

32- Id., at p. 879 (§3092), and p. 1396 (§ 4597).

33- UN, General Assembly, International Covenant on Civil and Political Rights (16 December 1966), United Nations Treaty Series, 999(I-14668), p. 171. Ratified by Syria under the Legislative Decree No. 4 of 12 January 1969.

34- UN Human Rights Committee, General Comment No. 32: Article 14 Right to Equality Before Courts and Tribunals and to a fair trial, UN Document No. CCPR/C/GC/32, 90th session (23 August 2007).

35- Amnesty International, 2014, Fair Trials Manual (Second Edition), Amnesty International Publications, London, U.K.

36- Id., at p. 218, 220.

37- See with respect to the Now repealed Supreme State Security Court in Syria: UN, Committee against Torture, Syrian Arab Republic: Concluding Observation of the Committee against Torture, UN Doc. No. CAT/C/SYR/CO/1, 44th Session (26 April-14 May 2010), at p. 4

Although from the perspective of the current Syrian legal system field tribunals are military, they are nevertheless “special” for the purposes of interpreting article 3.1.(d). Articles 3 of the Legislative Decree 109/1968 specifically states that field tribunals could be created by the commander in chief of the army and armed forces and are accountable only to him. Article 5 of the same decree explicitly gives field tribunals the authority to disregard normal criminal procedures outlined in relevant criminal procedures (including the military penal code).

Similarly, the terrorism court was established in a special legislation to prosecute certain types of crimes also defined in a special legislation (article 3, law 22/2012). Furthermore, article 7 of the same law explicitly gives the tribunal the authority to disregard normal criminal procedures during pursuit, investigation and trial.

### **3.1.2. Political**

The report has documented many cases in which civilians were referred to field courts. The trials of civilians before military courts are allowed under certain circumstances in Syrian law (articles 47, 50 of the Syrian Military Penal Code (LD 61 of 27 February 1950), and have been practiced by the Syrian regime even before 2012. At the same time there is a consistent and growing practice that considers the trial of civilians before military courts per se inconsistent with the right to fair trial<sup>38</sup>. This report has clearly demonstrated that the practice of bringing civilians before military field tribunals is systematic. One lawyer estimated that the number of detainees brought to the field tribunals could be in the range of tens of thousands, of which thousands are civilians. VDC researchers found documentary evidence that at least one civilian who participated in peaceful demonstrations was prosecuted in these tribunals. The high likelihood that many hundreds of civilians who expressed their dissent through peaceful demonstrations were transferred to these courts means a high likelihood that the regime is systematically using these tribunals for political reasons to persecute political dissidents.

Similarly, this report demonstrates that the Syrian regime is systematically using the terrorism courts to persecute and silence political opponents. Article 3 of law 22/2012 instituting the terrorism court gives the judge Attorney discretionary power to refer to the terrorism tribunal any case under examination. In practice, and as the testimonies of lawyers and families of the detainees in this report demonstrate, this discretionary power created a space for the regime to systematically use the tribunal for the primary purpose of persecuting political opponents. Lawyers for the detainees, many

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38- Amnesty International, Fair Trials Manual, at p. 224 (and accompanying references)

of whom are civilian dissidents, have specifically pointed to the arbitrariness and lack of consistent legal criteria to determine which case has been referred to the terrorism tribunal. At the same time all known cases referred to this tribunal concern detainees who have participated or were charged with participation in acts of peaceful dissent (participating in demonstrations, documenting protests, and/or providing medical care to the wounded or delivering relief).

### 3.1.3. Summary Justice

According to article 6 of the Legislative Decree 109/1967 the decisions of the field tribunals are final and are not subject to any form of judicial appeal. Procedures before these courts are secret. Lawyers representing detainees do not have access to their clients, prior knowledge of the specific charges, and have no opportunity to present evidence.

### 3.1.4. Essential Guarantees of Impartiality and Independence

The trial practices documented in this report reveal widespread and systematic disregard for the basic elements of a fair trial including the lack of essential guarantees for impartiality and independence. The report clearly demonstrates that the judges in both types of tribunals are subservient to the security services. It is a standard practice in these tribunals to admit evidence obtained under torture. These tribunals are secret. Lawyers do not have access to their clients, nor are they given any indication about the charges or the evidence. In short, it is clear that these trials and the procedures followed are artificial, and serve the function of validating and covering up the inhumane practices of the security services.

## 3.2. The Criminal Sentencing Practices of the Regime are War Crimes

Article 8.2(c)(iv) of the statute of the International Criminal Court (ICC)<sup>39</sup> considers serious violations of article 3 common to the four Geneva Conventions as war crimes, in particular:

**“The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable<sup>40</sup>.”**

According to customary international humanitarian law, the passing of sentences without previous judgment from a regularly constituted court, affording all judicial guarantees, is a serious violation of international humanitarian law. It constitutes accordingly a war crime<sup>41</sup>, and engages individual criminal responsibility of the judges, and Attorneys involved in this practice.

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39- Syria signed the Rome Statute, but did not ratify it.

40- Rome Statute of the International Criminal Court, entered into force July 2, 2002, United Nations Treaties Series, 2187, pp. 91-158.

41- ICRC, 2005, Customary international humanitarian law, Henckaerts, J.-M., Doswald-Beck, L., & Alvermann, C. eds. Cambridge University Press, Cambridge, at p. 590.

### 3.3. The Criminal Sentencing Practices in the Terrorism Court Could Amount to a Crime against Humanity

The commission of a crime against humanity necessarily takes place in a specific context: a widespread or systematic attack directed against any civilian population (see e.g. art. 7 of the Statute of the International Criminal Court).

The attack is not necessarily military in kind. Rather, according to the case law of international criminal courts, it must reflect a state or an organization's policy of facilitating the commission of individual acts of crimes against humanity, including but not limited to murder, torture, rape, enforced disappearances or deportation. Such individual acts of crime against humanity must be connected to the overall attack against a civilian population.

The widespread or systematic character of the attack requires, on one hand, a significant number of victims and, on the other, a degree of organization on the part of the perpetrators.

There is no doubt that the massive repression carried out by the Syrian state against its own civilian population further to the protest movement since the early months of 2011 bears all the marks of a widespread and systematic attack against the civilian population.

Among the individual acts constitutive of crime against humanity under international criminal law, features the "imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law" (see art. 7 (1)(e) of the Statute of the International Criminal Court, art. 5 (e) of the Statute of the International Criminal Tribunal for the former Yugoslavia, art. 3 (e) of the Statute of the International Criminal Tribunal for Rwanda).

According to the case law of the International Criminal Tribunal for the former Yugoslavia (ICTY), this offence covers arbitrary imprisonment, i.e. the deprivation of liberty without the due process of law<sup>42</sup>. The arbitrariness of the deprivation of liberty covers both the grounds for imprisonment (or lack thereof) and the fundamental procedural rights of the person deprived of his/her liberty. In other words, even in cases where the deprivation of liberty can be justified (e.g. the purpose must face criminal charges), a "serious disregard of fundamental procedural rights" will still render the deprivation of liberty arbitrary and therefore criminal<sup>43</sup>.

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42- ICTY, Kordić & Čerkez, Trial Chamber (2001), § 302 ; ICTY, KrNojelac, Trial Chamber (2002), § 112.

43- ICTY, KrNojelac, Trial Chamber (2002), § 115, footNote 347.

In a case where the ICTY found the commission of the crime against humanity of imprisonment, the persons deprived of liberty were not shown an arrest warrant or informed orally of the reason for their arrest, were not subsequently informed of the reason for their detention, and were detained for periods ranging from four months to two and a half years; during their interrogation, they were mistreated and forced to sign written statements<sup>44</sup>.

The arbitrary character of detention can be determined not only on the basis of the rules of international humanitarian law, but also on the basic standards set by international human rights law and instruments. In this context, mention should be made of the Universal Declaration of Human Rights (art. 9 to 11) and of the International Covenant on Civil and Political Rights (art. 9), both applicable to Syria and containing provisions against arbitrary arrest, fundamental procedural rights and habeas corpus.

**In sum, the deprivation of liberty of civilians in the context of pending proceedings before the terrorism tribunal as well as the field tribunals – and their subsequent condemnation to prison sentences, or the death penalty, by the terrorism tribunal and the field tribunal– could constitute acts of crimes against humanity. Such acts are carried out as part of the regime’s policy to use both courts to facilitate and justify individual acts of murder and arbitrary imprisonment, in the context of widespread attacks against many civilian populations in many cities in Syria. Accordingly, they are susceptible of giving rise to the individual criminal liability of their authors for crime against humanity.**

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44- Ibidem, § 119-120.



## IX - Annexes

### 1. The Counter-Terrorism Law

#### Article 1:

In this Law, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively:

**The Law:** the Counter-Terrorism Law;

**The State:** the Syrian Arab Republic;

**A Terrorist Act:** any action aimed to cause panic among people, disturb public security or harm the State's infrastructure, that is committed by means of arms, munitions, explosives, flammable materials, poisonous or burning products, epidemic or bacteriological agents, regardless of the form of these means, or by means of any tool that serves the same purpose.

**A Terrorist Organization:** a group of three or more persons that aims to perpetrate one or more terrorist acts.

**Financing Terrorism:** Any direct or indirect raising or supplying of money, arms, munitions, explosives, telecommunication means, information or any other object to be used in a terrorist act perpetrated by a terrorist individual or terrorist organization.

**Money Freezing:** banning, for a certain period or during the investigation and prosecution stages, the disposition, exchange, transfer or form change of any movable and immovable property.

**Confiscation:** permanent appropriation of movables and immovable property by the State by virtue of a court ruling.

#### Article 2: Conspiracy

A conspiracy aiming to perpetrate any of the crimes stated in the Law shall be punishable by temporary hard labor.

#### Article 3: Terrorist Organization

1. Whoever founds, organizes or runs a terrorist organization shall be punished by ten to twenty years of hard labor.
2. The penalty shall be no less than seven years of hard labor for anyone who joins a terrorist organization or obliges someone else, by force or threat, to join a terrorist organization.
3. The penalty stipulated in this Article shall be increased according to the general provisions stated in the Penal Code if the aim of the terrorist organization is to change the government system or the State's identity.

**Article 4: Financing and Training Terrorist Acts**

1. Without prejudice to the property confiscation and freezing provisions as stated in the Anti Money Laundering and Counter Terrorism Financing Law, as amended and relevant directives and decisions, whoever funds one or more terrorist acts shall be punished by hard labor for 15-20 years and a fine equal to two times the value of movable and immovable property or the objects subject of the financing.
2. Whoever follows training or trains one or more persons to use explosives or arms of any kind, munitions or telecommunication means, or on warfare arts with a view to using them in terrorist attacks, shall be punished by hard labor for 10-20 years.
3. The provisions of this Article shall not exonerate the application of rules of criminal participation stated in the Penal Code, if applicable.

**Article 5: Means of Terrorism**

1. Whoever smuggles, manufactures, possesses or steals arms, munitions or explosives of any kind with a view to using them in terrorist attacks shall be punished by hard labor for 15-20 years and a fine equal to two times the value of the detected materials.
2. If the aforementioned actions are accompanied with the killing of a person or causing him disability, the penalty shall be a death sentence.

**Article 6: Threatening with a Terrorist Act**

1. Whoever threatens the Government of a terrorist attack with the aim to force it to take a certain action or omission, shall be punished by temporary hard labor.
2. If such a threat is accompanied with the hijacking of public or private air, marine or land transportation means, capturing a real estate of any kind, capturing military stuff, or abduction of a person, the penalty shall be 15-20 years hard labor.
3. If such action caused the death of a person, the penalty shall be a death sentence.

**Article 7: Penalties for Terrorist Acts**

1. Whoever perpetrates a terrorist act that causes disability to a human being, total or partial destruction of a building or harm to the State's infrastructure shall be punished by hard labor for life and a fine equal to two times the value of the harm caused.
2. If the means used in the terrorist act makes sound explosion only, the penalty shall be five years hard labor at least.

**Article 8: Promoting Terrorist Acts**

Whoever distributes publications or stores information of any form with a view to promote terrorist actions shall be punished by temporary hard labor; the same penalty shall apply to those who administer or use a website for that purpose.

**Article 9: Applicability of the Law**

The crimes stated in this Law shall fall under the mandate stated in the Penal Code. The protection stated in this Law shall include the Syrian diplomatic and consular missions, as well as the bodies representing the Syrian government as well as the foreign diplomatic and consular missions, international agencies and organizations operating on the Syrian territory.

**Article 10: Reporting Obligation**

Any Syrian or foreign resident in Syria, who knows about any of the crimes stated in this Law and fails to inform the authorities, shall be punished by 1-3 years in prison.

**Article 11: Money Freezing**

The prosecutor, or whoever he authorizes, may decide to freeze the movable and immovable property of anyone who perpetrates a crime in connection with the financing of terrorist acts or any of the crimes stated in this Law, if there is enough evidence to secure the rights of the State and the people affected.

**Article 12: Confiscation and Related Measures**

In all the crimes stated in this Law, the court shall decide the confiscation of the movable and immovable property [of perpetrators] and the proceeds thereof, as well as the objects used or prepared to be used in committing the crime. The court shall also decide the dissolution of the terrorist organization, if any.

**Article 13:**

1. Whoever participates in any of the crimes stated in this Law, but informs the authorities about it before any action is taken, shall be exempted from punishment.
2. The perpetrator who enables the authorities to arrest the hiding criminals even after starting the prosecution, shall benefit from a mitigating excuse.

**Article 14:**

Articles 304 through 306 of the Penal Code, the penalty for financing terrorism stated in Article 14 of the Anti Money Laundering and Counter Terrorism Financing Law, issued by Legislative Decree 33 of 2005 as amended, and Law 26 of 2011 on the smuggling and distribution of arms, shall be abolished once this Law has taken effect.

**Article 15:**

**This Law shall be published in the Official Gazette and shall take effect as of its issuance.**

**Damascus 02/07/2012**

**2. CTC Creation Decree**

After the enactment of the aforementioned laws, Decree 22 dated 26.07.2012 was issued by Bashar al Assad, creating the so-called Counter-Terrorism Court, to which the accused of violating the Law 19 would be referred.

Decree 22 articles are the follows:

**Article 1:**

A court shall be created to address to terrorism cases and shall be located in Damascus and additional chambers to this court may be created upon a decision by the Supreme Judiciary Council.

**Article 2:**

- The Court shall consist of three judges, ranked as advisers: a chairperson and two members, one of whom is a military person. They shall be appointed by a decree upon a proposal from the Supreme Judiciary Council.
- The Investigating Magistrate shall be appointed by a decree upon a proposal from the Supreme Judiciary Council. In addition to his competences, the Investigating Magistrate shall be entitled to carry out the referring magistrate powers as stated in the effective laws.
- The public right at the Court shall be represented by a prosecution department appointed specifically for it. The chairman and members shall be appointed by a decree upon a proposal from the Supreme Judiciary Council.

**Article 3:**

- The Court shall address terrorism crimes and the crimes referred to it from the Court's prosecution department.
- The Court shall not consider the rights and compensations resulting from the crimes in the cases under its consideration.

**Article 4:**

All individuals, whether civil or military, shall be under the Court's jurisdiction.

**Article 5:**

The sentences issued by the Court may be challenged before a special tribunal, created by a decree at the Cassation Court.

**Article 6:**

Judgments in absentia issued by the Court shall not be re-considered if the sentenced person is arrested, unless he/she has surrendered to the authorities voluntarily.

**Article 7:**

Apart from the right of the defendant, the Court shall not abide by any of the rules stated in the effective legislation, in all phases and procedures of prosecution and litigation.

**Article 8:**

All terrorism cases, considered by all courts, shall be transferred to the newly established Court.

**Article 9:**

This Law shall be published in the Official Gazette and shall take effect as of its issuance.

Damascus 26/07/2012

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**Violations Documentation  
Center in Syria**

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