

WALLS OF SILENCE

Media and Censorship in Syria

June 1998

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1 INTRODUCTION

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Syria is a country about which few people, inside or outside, ever learn very much. Its draconian State of Emergency Law, in force for the past 36 years, sees to that. Multiple intelligence services pry into every corner of people's lives under orders from the regime. The overall political, economic and social picture is either not investigated for fear of what it might show, or is kept secret for the same reason.

As a police state in which the media are monopolized by an authoritarian regime and dissent has been crushed to the point where it is virtually inaudible, Syria is an anachronism in a world commemorating the fiftieth anniversary of the UDHR. It is a relatively large country in Middle East terms, with a heterogeneous population of over 15 million and a potentially strong economy, based on diverse resources, which has enjoyed reasonable growth in the past few years. But, as this report shows, the stability it displays to the outside world is built on visible and invisible repression. On one level, the ever-present threat of imprisonment, torture and deprivation of civil rights deters open debate; most people know of someone who has been punished for speaking their mind. On another, the regime buys the silence of the majority with small concessions that enable the compliant to live what seems on the surface to be a normal life.

The Syrian human rights organization, the Committees for the Defence of Democratic Freedoms and Human Rights (CDF), describes the lack of normality as follows: "It is true that censorship cannot be total. But, by its irrationality and narrow-mindedness it creates a phobia which paralyses all chance of gaining wide knowledge and all normal intellectual life."

Amnesty International, which sent a team to Syria in 1997 without issuing a report on the visit, witnessed 'normality' in Syria after more than a quarter of a century under President Hafez al-Asad. Whereas, in a prolonged series of political trials from 1992 to 1995, hundreds of detainees, some of whom had already been held for many years, were sentenced to prison terms of 12-15 years, the trials observed by Amnesty International in 1997 were of people who had been in pre-trial detention for 12-18 months. Some had been charged because they had visited, or were suspected of having visited, Iraq. Others stood accused of sympathizing with Kurdish secessionists, which, under Article 292 of the Penal Code, would constitute the crime of attempting to "cut off part of Syrian land". The sentences handed down to those convicted were mostly under three years. These were lenient by previous standards. In a country where, as recently as 1994, prison terms of 15 years have been imposed on people for making speeches or writing articles, normality becomes hard to define.

Censorship in Syria takes many forms. Those affecting the media are analysed in this report, which compares and contrasts structural and legislative controls over media activity with safeguards for freedom of expression contained in Syria's own laws and its obligations under international agreements which it has signed.

One fundamental problem lies in the regime's selective application of laws currently in force. For example, the 1962 State of Emergency Law is cited as empowering the authorities, under threat of war with Israel, to impose blanket censorship on communication of all kinds and to try cases involving breaches of censorship rules before a special court, which is exempt from normal judicial procedures and against whose decisions there can be no appeal. Yet there are other elements of the same law, including the conditions for its promulgation and termination, which have been ignored. In addition, the 1973 Constitution requires that legislation enacted previously should be amended to accord with the Constitution, Article 38 of which guarantees freedom of expression. There is the further consideration that if a law is enforced for three and a half decades it cannot, by any reasonable definition, be an emergency law.

Contradictions are also evident in media practice in Syria, where foreign satellite television is freely available but foreign newspapers are not and where the state monopolizes all local broadcasting and advertising, but allows just as many private television production studios and advertising agencies to operate as are required to line the pockets of family members of the regime. Literary figures from the same minority Alawite sect as the President's clan may enjoy official blessing despite making veiled allusions to sensitive political issues, or they may be dismissed from their jobs and prevented from leaving the country.

Like all southern Mediterranean states facing hard decisions about integrating into the global economy, Syria is at a crossroads. Stability, which depends on repression, is not a sound basis for attracting long-term private investment or competing effectively in international markets. Yet, with oil prices weak and oil exploration proceeding slowly, it is not clear how long the state can shoulder the burden of investing in this and other sectors to build up profitable services and manufacturing and sustain economic growth. Unlike most other Mediterranean Arab states apart from Lebanon, Syria confronts the additional challenge of negotiating peace with Israel.

To date, as this report shows, Syrian journalists, writers and broadcasters have been penalized for attempting to broach any subject that might, in the words of Law No. 6 of 1965, "shake the confidence of the masses in the aims of the revolution". Critical media comment on the policies of the Asad regime is interpreted by the courts as damaging the security of the state. Writers who raised questions about foreign policy during the 1991 Gulf War, about relations with Iraq or Israel, or about the conduct of presidential elections, have all been penalized and usually put in jail.

In some Arab countries it is permissible to speak publicly about internal tensions and disagreements, but not in Syria. Speaking in Beirut in April 1998, at the second annual International Media Conference in Solidarity with Lebanon, Mohammed al-Wadi, the editor-in-chief of the Syrian newspaper, *Tishrin*, lamented the lack of a united Arab media front. He said: "We need to fix this fault and fill in the gaps through which Zionist thought creeps in." ARTICLE 19 voices its concern that, in the absence of reform, Syrians who dare to identify the gaps will still be serving prison sentences well into the next millennium.

2 KEY RECOMMENDATIONS

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The following recommendations, selected from the more comprehensive set of recommendations found in the main body of the text, highlight those restrictions on freedom of expression which particularly affect the Syrian media. They find their justification in the cardinal importance of media freedom in a democratic, rights-respecting society. It is widely recognized that freedom of expression, and media freedom in particular, lies at the heart of a democratic system of government.

ARTICLE 19 recommends that the Syrian government take the following steps to ensure respect for and protection of freedom of expression and the media in Syria:

- Release immediately all those, including journalists, who are currently being detained or imprisoned solely for exercising their right to freedom of expression.
- End intimidation of journalists and writers, including harassment by the intelligence agencies, detention without charge or trial, incommunicado detention, torture and ill-treatment in custody, and deprivation of civil rights.
- Comply immediately with its obligation to report fully to the UN Human Rights Committee on implementation of the ICCPR, and ratify the (first) Optional Protocol to the ICCPR.
- Amend the Constitution to make it clear that the guarantees of freedom of expression in both the Constitution and under international law supersede ordinary legislation; laws which are inconsistent with these guarantees should be declared of no force or effect.
- Review existing legislation and government practice in order to ensure full compliance with international and constitutional guarantees of freedom of expression, and take these guarantees into account when drafting new legislation.
- Lift the state of emergency and abolish the State Security Courts and other administrative and legal emergency measures.
- Amend the Penal Code to accord with international guarantees of freedom of expression, including by repealing the provisions relating to 'false information', 'defamation' and 'sowing discord' and amending those relating to national security and seeking to change the Constitution.

- Repeal the legislation which maintains the government monopoly over radio and television broadcasting and instead create an environment in which a free, independent and pluralistic media can flourish.
 - Abolish the licensing regime for newspapers, and mandatory membership requirements and other limitations on the practice of journalism.
 - End the use of state censorship, including by the Ministries of Information and Culture and National Guidance.
 - Establish a comprehensive system for access to information based on public interest and principles of openness and transparency.
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3 BACKGROUND

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The degree to which power is centralized in Syria is apparent from the dated vintage of President Hafez al-Asad's regime. While the world changes around it, the ruling elite that came to power in an army coup in 1970 exercises control through a plethora of notorious intelligence services and clings to a creaking centrally-planned economy in preference to the upheaval that any serious degree of political or economic liberalization would bring.

The Constitution still presents the political system as popular and democratic, even though it was amended in 1973 to give the President sweeping powers and extend his term of office to seven years. President Asad, a former air-force general, is also Commander-in-Chief of the armed forces, head of the ruling National Progressive Front (NPF) and Secretary-General of the Baath Party Regional Command. He appoints the Vice-Presidents, the Prime Minister and the Cabinet, whose members are all drawn from the NPF; the Cabinet was last reshuffled in 1992. Although Sunni Muslims make up around 70 per cent of the Syrian population, Sunni representation in the higher echelons of government is limited. The President himself, as well as one of two Vice-Presidents, the head of the Republican Guard and various military intelligence chiefs are all Alawis, a minority Shia Islamic sect. President Asad will face no official opposition when he stands for a fifth term in 1998.

3.1 Ruling parties and the opposition

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The regime has used various methods to deal with opposition movements. Former leaders who were ousted or sidelined have been assassinated or imprisoned for life.

Professional groups campaigning for democracy in 1980–1 were dissolved and their members jailed. An uprising centred on Hama in 1982 and led by the outlawed Muslim Brotherhood with support from other groups was brutally suppressed, with the loss of tens of thousands of lives. Subsequent activities by a group called the National Alliance for the Liberation of Syria were blamed on Iraq and punished with executions and large-scale arrests. Torture and long-term imprisonment were inflicted on members of the Committees for the Defence of Democratic Freedoms and Human Rights who called for political reform in 1991.

Yet the regime itself came to power promising a move away from the hardline, Soviet-backed dogma of the rival Baathist faction it overthrew, in favour of a more pragmatic and liberal approach. It reinstated a legislative body, the *Majlis ash-Shaab* (People's Assembly) and over the years has made a show of widening political participation. In 1990, as a gesture of acknowledgement that authoritarian regimes were collapsing in Eastern and Central Europe, the number of seats in the People's Assembly was enlarged from 195 to 250.

The increase in the size of the Assembly did not, however, herald a move to more power-sharing or more lively debate. There was no competition between parliamentary candidates standing as independents and those of seven parties grouped in the NPF, which retained two-thirds of the seats. In the 1994 elections the proportions remained the same, although the Front was allocated an additional seat while independents with business interests were promoted at the expense of more critical elements with other agendas. Since the current regime gained control of the political system, the only laws passed by parliament have been those introduced by the government and no government bill has been thrown out.

The Assembly plays a passive role vis-à-vis the government because the parties represented in it are governed by the charter and by-laws of the NPF, whereby the Baath Party guides policy and commands a majority on all NPF bodies. When the Front was established in 1972 its aim was to reinforce Syrian solidarity against Israel and on these grounds it was open only to parties or groups already represented at government level. These were the Communist Party (which has since split into two); the Arab Socialist Union (allied with the party of the former Egyptian President, Gamal Abdel-Nasser); and three parties which had split off at various times from the Baath Party, namely the Socialist Unionists, the Democratic Socialist Unionists and the Arab Socialists.

The original Baath Party was launched by a Greek Orthodox Arab, Michel Aflaq, in Damascus in the 1940s, at a time when independence movements throughout the Middle East were stressing national unity against class divisions, promising social equality and preparing to mobilize the people and the state to achieve a level of economic development which seemed to present too great a challenge for private capital. The word Baath means "rebirth" and party rhetoric resounds with the slogans: "A single Arab nation with an eternal message" and "Unity, Freedom, Socialism".

The party was heavily defeated in Syrian elections in 1949 but a military coup finally brought Baathist leaders to power in 1963, after which land reform and large-scale nationalization dissipated the power base of the traditional ruling class. Its place

was taken by young army officers from sectarian minorities in rural areas and remote provinces. But jostling for power continued within the new Baathist elite, ending in 1970 when Hafez al-Asad led his "corrective" coup against the unpopular Salah Jadid. Since then, Baathism has lost its appeal, even to its original adherents, but the power structures put in place in its name have remained and the discourse of Arab nationalism is still called on to legitimize them.

3.2 Foreign relations and the media

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Besides the fact that the country is run by an unrepresentative elite, the other major influence over the government's approach to information issues is the continuing state of war with Israel. The authorities cite this as justification for prolonging the 1962 State of Emergency Law which they invoke to override many provisions of the Constitution relating to individuals' rights and freedoms and to justify censorship.

Israel seized Syria's Golan Heights in the Arab-Israeli war of 1967 and has occupied them since, annexing them in 1981, in contrast to the areas which it has handed back to Egypt and Jordan. Syria appears unwilling to sign a peace treaty with Israel until the Golan Heights are returned but it is equally determined to hold out against normalization of relations with Israel within the region until Palestinian rights have been upheld and the Israeli occupation of other Arab territory, including Arab East Jerusalem and large parts of the West Bank, and the Israeli presence in a strip of southern Lebanon, is ended.

The Syrian government has a long history of attempting to control developments in Lebanon and in the Palestinian struggle against Israeli domination and expropriation. President Asad sent Syrian troops into Lebanon in 1976, a year after the Lebanese civil war broke out, to pre-empt a situation in which left-wing Lebanese Muslim groups, supported by the Palestinian Liberation Organization under Yasser Arafat, would mount an all-out challenge to pro-government, mainly Christian forces. Such an eventuality threatened to jeopardize Syrian security by causing Lebanon to disintegrate into an uncontrollable collection of confessional statelets.

Since the civil war ended in 1989, Syria has kept a tight grip on the government of Lebanon, ensuring that elections, the reconstruction process and foreign relations accord with Syrian objectives. Public criticism of this control is taboo in both Lebanon and Syria and Syria has been accused of detaining Lebanese nationals, including journalists, without trial inside Syria. At the same time, by backing Hizbullah (the Lebanese Shia group fighting Israeli occupation of southern Lebanon), the Syrian regime is able to influence the level of hostilities against Israel. Syrian political control over Lebanon's economy also enables members of Syria's military and merchant elites to profit from trade and contraband activities "next door" without disturbing the status quo at home.

Splits in the Palestinian liberation movement have, over the years, given Syria leverage over some radical Palestinian groups. It allowed these to operate from Damascus until disparate factions of the PLO came together in 1987, in response to

events in Lebanon. Thereafter, Syria's whole policy towards the Palestinian question and the Arab-Israeli dispute shifted as – first – its main military backer, the Soviet Union, ceased to exist and – second – the Iraqi invasion of Kuwait in 1990 followed by the Gulf War in 1991 brought about a realignment of Middle Eastern states.

As a long-standing beneficiary of Kuwaiti and Saudi aid and a fierce opponent of the rival Baathist regime in Baghdad, Syria joined the US-led coalition of forces that ejected Iraq from Kuwait. Later the same year it finally acquiesced to the convening of a Middle East peace conference jointly sponsored by the USA and Russia in which Israel would engage in bilateral negotiations with the Palestinians and Arab front-line states.

Since the mid-1990s, the ebb and flow of hopes for an Israeli-Syrian peace agreement have been reflected in the extent to which the Syrian government has censored writing and ideas about the implications of peace with Israel and disseminated anti-Israel propaganda. Al-Quds Radio, broadcasting on behalf of Palestinian rejection of conciliation with Israel, has been allowed to operate from Syria since the late 1980s but its airtime was cut back in early 1996, and its short-wave frequencies were dropped. In 1997, as Israeli relations with Turkey as well as Egypt and Jordan threatened to leave Syria isolated, the authorities in Damascus took the opportunity of opening contacts with the Iraqi regime of Saddam Hussein. Official Syrian support for Iraqi opposition groups in Damascus was reduced and the Syrian–Iraqi media war simmered down.

Syria's official media claim that the country's unrelenting stance towards Israel has been vindicated by the turn of events since 1996, including the settlement-building and other provocative actions of Israel's hardline Likud-led government. They point to the number of Arab states which joined Syria in boycotting the annual Middle East and North Africa economic conference, initiated to facilitate Israeli integration into the regional economy, in November 1997. Officials say that, only when Israel honours the 1993 Oslo accords with the Palestinians and withdraws from the Golan Heights, will the government review the emergency laws which currently curb individual freedoms, including freedom of expression, on the ground that national security is threatened.

3.3 Reform and freedom of information

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Matters currently requiring urgent government action, which are linked with wider human rights issues and freedom of expression, may be separated into three strands: political reform, economic reform and legal reform. Both inside and outside Syria there is deep concern that lack of political reform has left the question of President Asad's successor unsettled and subject to dangerous internal rivalries that could give rise to violence, bloodshed and more repression. Serious steps to follow up the much-trumpeted Law No. 10 of 1991, which initiated economic reform, are so long overdue that many investors have given up waiting.

Meanwhile significant legal reform is needed to legalize political activity by marginalized or outlawed groups, create the regulatory environment that will encourage private entrepreneurs to help generate economic growth and end the numerous legislative anomalies that make certain practices simultaneously legal and illegal.

A peaceful and enduring settlement of the succession issue in advance would require dismantling the intelligence apparatus, removing military personnel from politics, legalizing new political parties, conducting free and fair elections and following them through with a representative system of government in which power is no longer centralized in the hands of one man and his immediate entourage. In 1998 President Asad turns 70 years old and his health has been poor for many years. At one stage he appeared to be grooming his elder son, Basil, to take over the Presidency but Basil was killed in a car crash in 1994. More recently the younger son, Bashar, has emerged as a potential but wavering candidate – one who would be unlikely to command the support of long-serving competitors from the intelligence services and the Republican Guard.

Under Articles 84 and 88 of the Constitution, the First Vice-President assumes presidential powers if the incumbent is unable to exercise them and if the President dies his replacement is to be chosen by referendum, based on nominations presented by the People's Assembly. In the first instance the Sunni former Foreign Minister, Abdel-Halim Khaddam, is the Vice-President most likely to succeed as head of state. But a destabilizing and protracted power struggle could ensue, making any moves towards freedom of expression precarious and uncertain.

The current regime started out in the 1970s in economic liberalization mode, offering to accommodate the private sector and taking advantage of the oil money which flowed into Syria in the wake of the 1973–4 oil price explosion via the remittances of Syrian expatriates working in the Gulf. But aid from the oil exporters also went direct to the government as budget support and this, combined with the growing earnings from Syria's own oil resources, enabled the state to continue to invest and retain its dominant position in the economy. In the late 1990s, as much-needed private investment in further oil exploration has been slow in coming and funds from Gulf oil producers have dwindled, the state faces the challenge of finding alternative sources of capital.

The possibility exists of gaining access to foreign direct investment through membership in the project to create a European-Mediterranean free trade area. This project, launched by the European Union at a conference in Barcelona in 1995, is due to take shape in the period to 2010. By adhering to a timetable for structural adjustment of the economy, promoting the private sector and liberalizing trade, Syria could attract both private investment and official transfers from the EU. But the process of divesting state assets and preparing Syrian enterprise to compete with overseas suppliers is daunting. A move was made towards encouraging investment in joint state-private enterprise through Law No. 10 of 1991 and promises of more deregulation have been repeated since, but progress has been painfully slow.

The government is well aware of the political unrest that would be stirred up by job losses resulting from reforming unprofitable state companies and by the price

risks withdrawal of hidden and overt subsidies would cause. Judging from past performance, it will be loath to allow these issues to be aired in public and will be similarly averse to the accounting transparency required if state companies are to be even partially privatized.

The government's room for manoeuvre over transferring power internally and benefiting from global economic trends is shrinking, yet the legislation that should regulate its transactions is full of inconsistencies and quirks. The tangle of constraints and anomalies in the laws governing information and the media is discussed below.

4 SYRIA'S INTERNATIONAL OBLIGATIONS

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Syria has obligations to the international community, to other states and to individuals within its territory and subject to its jurisdiction, to comply with the requirements of international and regional human rights law. It has also made a commitment to respect human rights through its participation in various international fora such as the Euro-Mediterranean Partnership and the Organization of the Islamic Conference. The main instruments setting out the right to freedom of expression are described briefly below. They include the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the Arab Charter of Human Rights.

4.1 The Universal Declaration of Human Rights

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The UDHR is generally considered to be the flagship statement of international human rights, binding on all states as a matter of customary international law. It guarantees the right to freedom of expression in the following terms:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

(Article 19 of the Universal Declaration of Human Rights, 1948)

4.2 The International Covenant on Civil and Political Rights

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Syria ratified the International Covenant on Civil and Political Rights (ICCPR) in 1969 and became legally bound by it when the treaty entered into force in March 1976. The ICCPR is an international treaty which imposes legally binding obligations on states-party to respect a number of human rights set out in the UDHR. Article 19 of the ICCPR guarantees the right to freedom of opinion and expression in the following terms:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others;
 - (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

The ICCPR places a dual obligation on states to:

...

2 ... adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

and

3 (a) Ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy (*Article 2 of the ICCPR*)

Although the ICCPR has been duly ratified, it remains unclear whether Syrian courts may take these obligations directly into account when deciding cases. In a 1978 report to the UN Human Rights Committee (HRC), the Syrian government suggested

that this was the case, stating: "As soon as an international convention, treaty or agreement is duly ratified and promulgated, it becomes part of Syrian legislation." However, the Syrian Constitution is silent on this point.

States' compliance with their obligations is monitored directly by the HRC, a body established by the ICCPR and comprising 18 independent experts nominated by states-party to the Covenant. Article 40 of the ICCPR requires states parties to submit periodic reports to the HRC on the measures they have taken to give effect to the rights recognized by the Covenant and on the progress made in the enjoyment of those rights. The HRC considers these reports and advises on appropriate legal or other reforms necessary to promote and protect the rights and freedoms set out in the ICCPR.

Syria submitted an initial report in 1978 but has failed to submit any periodic reports since that time. Its second report has been due since 1984 but has still not been submitted, despite an astounding 25 requests from the HRC, the largest number outstanding for any country. This is a clear breach of its Article 40 obligation and is also an indication of the low priority the government accords human rights generally.

Syria has not yet ratified, and is therefore not bound by, the (first) Optional Protocol to the ICCPR, which allows individuals to bring complaints directly before the Human Rights Committee. To date, over 90 states have ratified the Optional Protocol and the HRC frequently urges non states-party to take this step so as to enhance respect for human rights.

4.3 Other relevant international standards

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The Arab Charter on Human Rights was approved by the League of Arab States, of which Syria is a member, in 1994. Although the Charter has not yet come into force, League members are under some obligation to work towards implementing its measures. It does not explicitly guarantee the right to freedom of expression but it does provide that the people are the source of political authority, a provision that has been held in other contexts implicitly to guarantee freedom of expression. It also protects freedom of artistic expression and creative talent.

Syria is a member of the Organization of the Islamic Conference, which in 1990 adopted the Cairo Declaration on Human Rights in Islam. While not formally binding on governments, the Declaration represents a political commitment to uphold and respect the rights it contains. Article 22 guarantees the rights to freedom of expression and information, subject to the *Shari'a* (Islamic law).

In November 1995, the Euro-Mediterranean Partnership between the 15 countries of the European Union and 12 southern Mediterranean countries, including Syria, was established by the adoption of the Barcelona Declaration. The primary purpose of this partnership is to enhance trade, political, cultural and other relations

between members but it also calls for a commitment from participants to respect fundamental human rights and freedoms. In this they are expected to:

- act in accordance with the United Nations Charter and the Universal Declaration of Human Rights, as well as other obligations under international law, in particular those arising out of regional and international instruments to which they are party;
- develop the rule of law and democracy in their political systems, while recognising in this framework the right of each of them to choose and freely develop their own political, socio-cultural, economic and judicial system;
- respect human rights and fundamental freedoms and guarantee the effective legitimate exercise of such rights and freedoms, including freedom of expression, freedom of association for peaceful purposes and freedom of thought, conscience and religion, both individual and together with other members of the same group, without any discrimination on ground of race, nationality, language, religion or sex.

The UNESCO-sponsored Sana'a Declaration on Promoting an Independent and Pluralistic Arab Media, endorsed by UNESCO's General Conference in November 1997, declares that "Arab states should provide, and reinforce where they exist, constitutional and legal guarantees of freedom of expression and of press freedom and should abolish those laws and measures that limit the freedom of the press; government tendencies to draw limits/'red lines' outside the purview of the law restrict these freedoms and are unacceptable".

4.4 The importance of freedom of expression

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International bodies and courts have made it very clear that freedom of expression is one of the most important human rights. In its very first session in 1946 the United Nations General Assembly adopted Resolution 59(I) which stated:

Freedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the United Nations is consecrated.

As this resolution notes, freedom of expression is both fundamentally important in its own right and also key to the fulfilment of all other rights. The protection and implementation of other rights depend on freedom of expression in two ways. It is only in societies where the free flow of information and ideas is permitted that individuals will be aware of their rights and seek to vindicate them. In addition, freedom of expression is essential if violations of human rights are to be exposed and challenged.

The right to express oneself freely is itself important in a number of ways, as a core element of human dignity, to promote the truth through a "marketplace of ideas" and as a vehicle for participation. It is this latter aspect of freedom of expression that has been particularly emphasized in the international jurisprudence. For example, the Inter-American Court of Human Rights stated:

Freedom of expression is a cornerstone upon which the very existence of a democratic society rests. It is indispensable for the formation of public opinion. ... [I]t can be said that a society that is not well informed is not a society that is truly free.

This has repeatedly been affirmed by both the UN Human Rights Committee and the European Court of Human Rights. The following quotation of the European Court now features in almost all its cases involving freedom of expression:

[F]reedom of expression constitutes one of the essential foundations of [a democratic] society, one of the basic conditions for its progress and for the development of every man.

Although the various treaty provisions regarding freedom of expression are relatively brief, they have been significantly developed by international courts, in particular the European Court of Human Rights. International jurisprudence has identified three characteristics of freedom of expression which are of particular importance. First, the protection afforded by freedom of expression extends not only to information and ideas that "are favourably received or regarded as inoffensive or as a matter of indifference, but also those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no 'democratic society'."

Second, it is now well-established that public figures must tolerate a greater degree of criticism than ordinary people. As the European Court has stated: "The limits of acceptable criticism are accordingly wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must consequently display a greater degree of tolerance".

Third, freedom of expression has a double dimension; it refers not only to imparting information and ideas but also to receiving them. This is explicit in international guarantees of freedom of expression such as that found in the UDHR, quoted above. It has also been stressed by international courts. The Inter-American Court of Human Rights, for example, has stated:

[T]hose to whom the Convention applies not only have the right and freedom to express their own thoughts but also the right and freedom to seek, receive and impart information and ideas of all kinds. Hence, when an individual's freedom of expression is unlawfully restricted, it

is not only the right of that individual that is being violated, but also the right of all others to 'receive' information and ideas.

4.5 Media freedom: A positive obligation

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The media play a particularly important role in safeguarding the right to freedom of expression and information. Without a free and vibrant media the public can neither access information nor participate in the political process. In particular, the right of everyone to receive information and ideas can only effectively be guaranteed by a free media. The international bodies which interpret and apply human rights treaties have emphasized the close relationship between media freedom and freedom of expression. For instance, the Inter-American Court of Human Rights has stated: "[J]ournalism is the primary manifestation of freedom of expression and thought". The role of the media in guaranteeing the public's right to receive information on matters of public interest has also been stressed by the European Court of Human Rights:

[I]t is ... incumbent on [the press] to impart information and ideas on matters of public interest. Not only does it have the task of imparting such information and ideas: the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of "public watchdog".

International bodies have made it clear that these principles apply to both the print and broadcast media.

These principles are of particular importance regarding political matters. The European Court has recognized the crucial role of media freedom in furthering open political debate within a society:

Freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of their political leaders. In particular, it gives politicians the opportunity to reflect and comment on the preoccupation of public opinion; it thus enables everyone to participate in the free political debate which is at the very core of the concept of a democratic society.

The guarantee of freedom of expression does not only mean that governments should not interfere with the media. It also places positive obligations on government to create an environment in which a pluralistic and independent media will flourish and to ensure that the public has access to a variety of information sources. The European Court, holding that a state monopoly over the broadcast media was contrary to freedom of expression, noted that the right to receive information "cannot be successfully accomplished unless it is grounded in the principle of pluralism, of which the State is the ultimate guarantor.

4.6 Restrictions on freedom of expression under international law

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International law does permit some restrictions on the right to freedom of expression and information in order to protect various private and public interests such as the reputations of others and national security. Paragraph 3 of Article 19 of the ICCPR notes the limited restrictions on freedom of expression which may be permissible:

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - a) For respect of the rights or reputations of others;
 - b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

However, both the language of the provisions guaranteeing freedom of expression and the international jurisprudence make it clear that any restrictions must meet a strict three-part test. This test, which has been confirmed by the Human Rights Committee, requires that any restriction must: a) be provided for by law; b) have the purpose of safeguarding one of the legitimate interests noted in Article 19(3); and c) be necessary to achieve this goal. It is clear that the proper approach to evaluating a particular restriction is not to balance the various interests involved but to ascertain whether the restriction meets the strict test elaborated above.

The first part of the test means that state action restricting freedom of expression that is not specifically provided for by law is not acceptable. Restrictions must be accessible and foreseeable and "formulated with sufficient precision to enable the citizen to regulate his conduct. As a result, official measures which interfere with media freedom but are not specifically sanctioned by law, such as discretionary acts committed by the police or security forces, offend freedom of expression guarantees. Second, only measures which seek to promote legitimate interests are acceptable. The list of legitimate interests contained in Article 19(3) is exclusive. Measures restricting freedom of expression which have been motivated by other interests, even if these measures are specifically provided for by law, are illegitimate.

Third, even measures which seek to achieve one of the legitimate goals must meet the requisite standard established by the term "necessity". Although absolute necessity is not required, a "pressing social need" must be demonstrated, the restriction must be proportionate to the legitimate aim pursued, and the reasons given to justify the restriction must be relevant and sufficient. The government, in protecting legitimate interests, must restrict freedom of expression as little as possible. Thus,

vague or broadly defined restrictions, even if they satisfy the "prescribed by law" criterion, will generally be unacceptable because they go beyond what is strictly required to achieve the legitimate aim.

Syria's obligations, under the UDHR and the ICCPR to guarantee full enjoyment of freedom of expression and information for the media impose two key duties on the government.

First, it must make sure that media freedom is respected in practice and that any legal limitations satisfy the narrow criteria for restrictions on freedom of expression. Second, the government must take steps to ensure the existence of a legal, political and economic framework which will foster a pluralistic and independent media.

Recommendations Regarding International Obligations

- The Syrian government should immediately comply with its obligation under the ICCPR to report fully on the progress it has made in implementing the Covenant;
- The Syrian government should initiate urgently a full and thorough review of all existing legislation and of the practices of government and other public authorities affecting freedom of expression, press freedom and related rights in order to assess their compliance with Syria's obligations under international law; steps should then be taken immediately to amend, repeal or modify any legislation or practices which do not come up to the requisite standard;
- The Syrian executive and legislative authorities should take international human rights obligations fully into account when drafting and approving legislation;
- The Syrian government should publish the texts of international human rights treaties binding on it and disseminate them as widely as possible within Syria;
- The Syrian Constitution should be amended to make it clear that international treaties are binding as a matter of law within Syria, that national courts must take Syria's international human rights obligations into consideration when deciding cases, and that the courts have the power to declare laws or state practices which are inconsistent with these obligations to be of no force or effect;
- The Syrian government should ensure that all judges are adequately informed about international human rights law and its relevance to the administration of justice in Syria, including through the provision of regular briefings on developments relating to freedom of expression;

- The Syrian government should also take the necessary steps to ratify the (first) Optional Protocol to the ICCPR without delay.

5 CONSTITUTIONAL AND OTHER BASIC GUARANTEES OF FREEDOM OF EXPRESSION

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Article 1 of Syria's General Law of Printed Matter encapsulates in a single sentence the deep and pervasive contradiction between rhetoric and practice in matters to do with guarantees of freedom of expression in Syria. The article, which dates from 1949 and remains in force today, declares that "presses, bookshops and publications of all kinds are free and nothing limits their freedom except this law". The law in question is a weighty document in which more than 80 articles lay down the precise procedures for all types of publishing and stipulate what may and may not appear.

As this example suggests, words such as "freedom"— and others such as "liberalization" and even "pluralism"— are used by those in power in Syria but rarely with their internationally recognized meanings. Indeed, "freedom" forms an integral and prominent part of the ruling Baath Party slogan, "Unity, Freedom and Socialism", but the freedom referred to here is collective freedom for Arabs from western colonialism and imperialism, not personal freedom and individual rights.

Moreover, several layers of legislation are in place in Syria, some inherited from the country's frequent changes of government in the 24 years between the end of colonial rule and President Asad's takeover in 1970. As a result, guarantees afforded by one law may, as will be seen, be negated by another law or even parts of the same law. The 1973 Constitution, analysed below, owes some elements to the high ideals of the Constitution drafted in 1950 by a committee inspired by examples from Europe and Asia and enshrining such principles as the freedom of the individual and freedom of opinion. Yet its nobler ideals are significantly undermined by a lack of clarity regarding the relationship between the Constitution and the State of Emergency Law.

5.1 The Constitution

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The Permanent Syrian Constitution, adopted on 13 March 1973, stresses the importance to Syria of freedom and popular democracy. Its preamble, which, under Article 150 is to be considered an integral part of the whole, sets out five major premises on which the whole Constitution is based, three of which identify freedom as

one of the objectives of the Arab revolutionary movement. Premise number 4 refers specifically to the freedom of individual citizens in the following terms:

Freedom is a sacred right and popular democracy is the model which guarantees to the citizen the enjoyment of his freedom, makes him a worthy individual capable of giving and building, capable of defending the homeland in which he lives, and capable of sacrifices in the interest of the nation to which he belongs. The freedom of the homeland can be protected only by free citizens. The freedom of the citizen can be completed only through his economic and social emancipation.

Significantly, political emancipation is not included in the final sentence of this clause.

In a report to the Committee on the Elimination of Racial Discrimination in April 1986 the government outlined one view of the principles of the 1973 Constitution:

The Syrian Constitution contains the following stipulations: freedom is a sacred right; the state shall guarantee the personal freedom of citizens and shall safeguard their dignity and security; sovereignty of the laws is a basic principle of society and the state. ... every citizen shall have the right to participate in the political, social and cultural life of the country; freedom of belief shall be safeguarded; the state shall respect all religions and shall guarantee freedom of all forms of religious observance. ... every citizen has the right to express his opinion publicly and freely either orally, in writing or through any other form of expression and to participate in the task of supervision and constructive criticism; citizens enjoy the right to peaceful assembly and demonstration.

Chapter 1, Section 1 of the Constitution, setting out political principles, caused riots when it was drafted by omitting to make Islam the state religion. The authorities conceded only that the President should be Muslim and that Islamic *fiqh* (doctrine and jurisprudence) would be the principal source of legislation. Articles 10 and 13 of the same section lay down that "people's councils are to be elected in a democratic manner" and that "the state is at the service of the people, its institutions striving to protect the fundamental rights of the citizens ...," these rights having been set out in the preamble and presumably, but not explicitly, including the "sacred right" to freedom.

Section 3 of the same chapter, dealing with education, stresses the importance to society of promoting artistic tendencies and declares that "the state protects the rights of authors and inventors serving the interests of society". This final phrase, in keeping with the Baathist discourse which informs the Constitution, is a reminder of the party's preconceptions regarding exactly what the interests of society might be.

Section 4, entitled Liberties, Rights and Duties, runs to 24 articles, the first of which repeats that freedom is a sacred right. Article 25 (1) states: "the state guarantees to citizens their personal freedom and safeguards their dignity and security."

Paragraphs (2) and (3) of the same article provide that the "supremacy of the law is a fundamental principle in society and the state and that citizens are equal before the law in terms of their rights and obligations. Article 28 guarantees that "every individual is presumed innocent until proven guilty by a final judicial decision." Articles 38 and 39 deal specifically with freedom of expression and assembly as follows:

38. Every citizen has the right to make known his opinion freely and publicly whether it be by word of mouth, written form, or other means of expression, and to help through control and constructive criticism to guarantee the security and development of the nation and homeland and to sustain the socialist system. The state guarantees the freedom of the press, the printed work and publications in accordance with the law.

39. The citizens enjoy the right of assembly and peaceful demonstration within the context of constitutional principles. The law regulates the exercise of this right.

Freedom of expression as guaranteed by these articles is already undermined by the subordination to the law. Further restrictions are contained in Article 40(1), which warns that it is the sacred duty of every citizen to defend the security of the homeland and to respect its Constitution and its unitary socialist system, and Article 42, affirming that "the defence of national unity and the protection of state secrets are a duty of every citizen."

Chapter 2, detailing the powers of the state, is also characterized by the juxtaposition of pledges of freedom of expression alongside limits and restraints. Article 66 stipulates that members of the People's Assembly are not held responsible under criminal or civil law for "the facts that they report or the opinions that they express or for the votes that they cast in the course of public or closed sessions, or in the work of the committees." Article 67 guarantees immunity to members of the People's Assembly for the duration of their mandate but, at the same time, allows criminal prosecutions where authorized by the President.

Article 111 of the Constitution allows the President to exercise legislative power whether or not the People's Assembly is in session. Far more problematical, however, is Article 113 which entitles the President of the Republic, in case of "grave danger threatening national unity or the security and independence of the national territory or impeding the government's exercise of its constitutional prerogatives" to "take emergency measures called for by the circumstances in question to face the danger." Thus, the Constitution itself contains the means of its own suppression, by legitimizing a State of Emergency Law.

5.2 The Baath Party Constitution

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The Permanent Syrian Constitution makes repeated reference to the central role in Syrian political, economic, social and cultural life of the Arab Baath Socialist Party. The preamble mentions the party on three separate occasions, referring to its leadership of the 1963 revolution, its achievement in giving "genuine revolutionary direction" to the cause of Arab unity and its development of a National Progressive Front to meet the people's needs. Article 8 describes the Baath Party as the vanguard party in the society and the state.

The Baath Party itself also has its own constitution dating from 1947, consisting of 48 articles putting forward the party's domestic, foreign, economic, social and education policies. This document declares it to be a fundamental principle of the party that "freedom of speech, of association, of belief and of science are sacred and may not be limited by any government whatsoever." Article 5, under "General Provisions", asserts the people's freedom to choose a government with the words "the value of the state derives from the will of the masses, even as its sanctity is in proportion to the extent of their freedom in choosing the government." Article 17, in a section setting out domestic policy, notes the party's pledge to strive to "enact a constitution for the state which will ... guarantee the complete freedom of the expression of their will and the choice of their representatives in honest elections." Article 19, in the same section, guarantees that the "judicial authority will be protected from and independent of every other authority and will enjoy complete immunity."

Further on, however, the party's social policy includes a revealing paragraph in which freedom of speech is promised only "within limits". Article 41 (a) states:

The state will be responsible for protecting the freedoms of speech, publishing, association, protest and of the press within the limits of the higher interest of the Arab nation; and the state will be responsible for promoting all instruments which may assure these freedoms.

Paragraph (d) of the same article reiterates these limitations on freedom:

There will be freedom — within the limits of Arab nationalist ideology — in the establishment of clubs, the formation of associations, parties, popular organisations and institutions for travel, and in utilising the benefits of the cinema, of broadcasting and television and all the means of modern civilisation for diffusing the national culture and improving the lot of the people.

5.3 Safeguards in the Penal Code

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Syria's Penal Code provides some guarantees against abuse of authority and obstruction of judicial processes. Article 391 states that a person convicted of harming

another illegally in order to extract a confession or information about a crime will receive a prison sentence of three months to three years. The minimum sentence is increased to one year if the harm done causes illness or involves wounding. Under Article 407, there can be no prosecution arising from statements given to the court as part of a legal case.

Articles 555 and 556 provide that the crime of depriving a person of their freedom outside the law, by whatever means, is punishable by imprisonment for six months to two years; if the period of confinement exceeds a month or is accompanied by physical or mental torture the punishment is hard labour. Intrusions on the privacy of post and telecommunications are to be punished by two months' to two years' imprisonment.

Article 566(a) specifies the same sentence for "anyone related to the post office or telegraph administration who abuses his position and reads a message or spoils it or steals part of it or tells anyone else what is in it, other than the addressee." The second part of this article imposes the same punishment for anyone in the telephone administration who divulges a telephone conversation overheard by virtue of his job of work.

5.4 The questionable status of the State of Emergency Law

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The text of the Permanent Syrian Constitution of 1973 gives sweeping powers to the President. Besides being entitled to take emergency measures in circumstances which are defined broadly, the President is effectively empowered to rule by decree, bypassing the People's Assembly, either by vetoing laws passed by the Assembly or sidestepping it altogether and submitting matters relating to the country's "higher interests" to popular referendums. The Supreme Constitutional Court may rule on the constitutionality of laws and decrees but the President appoints all five members by decree. In addition, Article 146 precludes the court from ruling on laws submitted by the President to popular referendums and which receive the people's approval.

Syria's State of Emergency Law and the special security courts that operate under it effectively override guarantees – in both the national Constitution, at Article 131, and the Baath Party constitution, at Article 19 – of an independent judiciary and Penal Code protections against arbitrary arrest, detention without trial and the invasion of privacy. These special courts include the Economic Security Court, which, for example, tries people accused of violating foreign exchange controls, and the Supreme State Security Court. It is the latter which tries the majority of cases involving alleged threats to national security through free speech.

A State of Emergency Law has been in force in Syria since before the Baathist coup of 1963. The State of Emergency declared in 1962 by the previous regime was reissued as Military Order 2 of 8 March 1963 and has been applied ever since as a pretext for authorizing preventive arrests, which are often carried out in secret and lead to detentions lasting for years, without charge or trial.

The State of Emergency Law allows the President to appoint a Martial Law Governor who, pursuant to Article 4 (a), may "place restrictions on freedom of individuals," including "preventive arrest of anyone suspected of endangering public security and order" and who may "censor letters and communications of all kinds." Article 4(b) authorizes the Governor to carry out:

Censorship of newspapers, periodicals, publications, drawing, printed matter, broadcasts and all means of communication, propaganda and publicity before issue; also their seizure, confiscation and suspension, the denial of their rights and the closure of the places in which they are printed.

Article 6 of the same law lists the offences to be referred to military courts. This list is short but the categories of offence included in it are extremely broad, being defined in such terms as "offences against public authority," "offences which disturb public confidence" or those which "constitute a general danger". Only the first two of these three categories correspond to specific sections of the Penal Code.

In fact, the current emergency law, passed in 1963, suffers from a procedural defect which calls into question its legitimacy. Article 2(a) of the 1962 Legislative Decree provides that a "state of emergency shall be declared by a decree from the Cabinet, presided over by the President of the Republic. It must be carried out by a majority of two-thirds and be made known to the chamber of deputies at its next meeting." The current law has neither been approved by the cabinet nor submitted to the People's Assembly and is hence of questionable legality.

This situation is somewhat clouded by provisions of the 1973 Constitution. Article 113 gives the President the right to take emergency measures in the face of grave danger, while Article 153 provides that "legislation in effect and promulgated prior to the promulgation of the present Constitution is to remain in force until it is amended in accordance with the provisions of the Constitution." The former might be interpreted as legitimating the otherwise flawed 1963 Emergency Law while the latter implies that if the 1963 law was not properly in effect prior to 1973, it could not become legally binding as a result of the promulgation of the 1973 Constitution.

Commentary

It is a well-established principle of international law that internal legal arrangements, such as those found in the Syrian Constitution, cannot be used as a reason for not fulfilling duties required by international law. Consequently, states are obliged to ensure that their internal laws do not breach their international obligations. As regards human rights treaties, the best way to do this is to make them directly applicable within the national legal system. In particular, legislation and government practices which are not in conformity with the guarantees of freedom of expression contained in the ICCPR should be repealed or stopped. This approach, by which human rights instruments are made directly applicable within the national legal system, has been adopted by a number of countries, particularly those with civil law systems.

The guarantees of freedom of expression and assembly in Articles 38 and 39 of the Constitution are commendable in theory but are seriously undermined by their

restriction to matters "in accordance with the law." The idea that freedom of expression is subject to the conditions determined by law effectively makes the constitutional guarantee inferior to ordinary legislation, a proposition that is contrary to an important theme of human rights law. It also means that a restriction on freedom of expression established by law might pass constitutional muster even though it was clearly contrary to international law. In particular, under international law restrictions on freedom of expression may be legitimate only if their goal is to further a limited number of legitimate aims, whereas there is no limitation on the goals which laws generally may serve. In addition, only restrictions which are "necessary" are permitted under the ICCPR; this high standard should also be reflected in the Syrian Constitution.

These problems are even more significant under the Baath Party constitution, Article 41 of which explicitly subjects freedom of expression to limits in the "higher interest of the Arab nation." This vague, subjective notion may serve to legitimize almost any governmental restriction on expression and is clearly subject to manipulation for political purposes. As such, it clearly goes far beyond the types of restrictions that are permitted under international law.

The independence of the judiciary is an important aspect of human rights, both in terms of everyone's right to have criminal charges assessed by "a competent, independent and impartial tribunal", guaranteed by Article 14 of the ICCPR and more generally as the only way of ensuring that laws and government practices do not impinge on individuals' human rights. Article 146 of the Constitution, which gives the President the power to appoint all the members of the Supreme Constitutional Court, clearly undermines the independence of the judiciary. Judges should be appointed by a process that ensures their independence and should have their security of tenure and salaries guaranteed so as to ensure that they remain independent.

Far more significant in practical terms, however, are the massive restrictions on freedom of expression pursuant to the Emergency Law, which explicitly allow restrictions on freedom. There is simply no justification under international law for Article 4 which allows the Martial Law Governor to censor both private and public communications.

Inherent in the very concept of an emergency law is a recognition that its application must be limited in time. This is reflected in Article 4(1) of the ICCPR which allows rights to be derogated from but only "in time of public emergency which threatens the life of the nation [and only] to the extent strictly required by the exigencies of the situation." In addition, states are under an obligation to inform the Secretary-General of the United Nations of any application of Article 4, noting the specific guarantees which are subject to derogation, something Syria has not done. The Siracusa Principles, adopted by a group of experts in 1984, elaborate on these standards. Principle 48 provides that states "shall terminate such derogation in the shortest time required to bring to an end the public emergency" Principle 53 provides that a measure is not strictly required where ordinary measures, permitted in the absence of a derogation, are sufficient to deal with the situation. Principles 55 and 56 provide that derogations shall be subject to independent legislative review and that individuals claiming that derogation measures affecting them are not strictly necessary shall have an effective remedy.

The government's stated reason for retaining the state of emergency is that the country is still at war with Israel. It is, however, patently obvious that the situation in Syria for most if not all of the 36 years of Emergency Law meets neither the conditions set by Article 4(1) of the ICCPR, nor indeed the much broader conditions set out in Article 113 of the Syrian Constitution. In any case, any restrictions on an emergency basis would still need to be justified as "strictly required" which implies a test not dissimilar to that under Article 19. It is clear that Article 113 has not been subjected to independent review and that individuals affected have not had access to an effective remedy.

Even if Article 113 were amended to bring it into line with international requirements and its provisions enforced by independent courts, the President would still have significant constitutional powers to sidestep the already weak checks and balances represented by the legislature and the judiciary, and rule by decree under specified conditions. Article 111, for example, allows the President to exercise legislative power whether or not the People's Assembly is in session.

These specific problems are considerably aggravated by the fact that the Constitution is shot through with Baath Party ideology and its vague definitions of Arab freedom, revolutionary struggle and the national interest as legitimate restraints on freedom of expression. The Baath Party has no right to a privileged position under the Constitution and its political programme has no place in a constitution. It should become one ordinary political party among many.

Recommendations Concerning Guarantees of Freedom of Expression

- Articles 38 and 39 of the Constitution should be amended so as to make it clear that the constitutional guarantees of freedom of expression and assembly supersede ordinary legislation; laws which are inconsistent with these provisions should be declared to be of no force or effect;
- An article should be added to the Constitution to the effect that international human rights treaties are part of Syrian law and can be applied directly by all Syrian courts and that legislative provisions or government acts which offend against these international obligations are without force or effect;
- Provision should be made in the Constitution for the independence of the judiciary, and particularly the Supreme Constitutional Court, both in theory and as a practical matter; in addition, Article 146 should be amended so as to allow the Supreme Constitutional Court to rule on the constitutionality of all laws affecting individual rights and freedoms, whether or not they have been passed in a referendum;
- Article 113 of the Constitution, which allows the President to put in place emergency measures, should either be repealed or amended to bring it into line with the requirements of the ICCPR; in the latter case, an independent supreme court, such as the Supreme Constitutional Court, should have the power to determine whether any emergency legislation meets its conditions and, if not, to declare that legislation of no force or effect;

- Existing state of emergency laws should be repealed and the administrative and legal structures they establish abolished or replaced with civilian bodies that fully respect the human rights guaranteed by the Constitution and international law binding on Syria;
- The Constitution should make no special provisions for either the Arab Baath Socialist Party or its particular philosophy, relegating it to the rank of an ordinary political party in a multi-party system; references to Baath Party ideology should be removed, both formally and in spirit from the Constitution.

6 MEDIA STRUCTURE

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The proliferation of television and radio stations broadcasting by satellite since the late 1980s has presented a major challenge to media censorship everywhere in the Middle East and Syria is no exception. The 1991 Gulf War, in which Egyptian and Syrian soldiers fought together alongside Western powers to end Iraq's 1990 invasion of Kuwait, was a watershed both for political alliances and satellite broadcasting in the Middle East. Audiences in the region, who watched the war as covered by Cable News Network (CNN), not only recognized the potential of satellite broadcasting generally but were struck by a kind of reporting unprecedented on their terrestrial channels.

New Arabic-language satellite channels were launched soon afterwards, creating novel dilemmas for Middle East governments, both in terms of how to approach the spread of satellite dishes and whether to try to compete against programming beamed in from abroad. However, the rapid growth of channels and programmes has had a different impact on the print media in different Middle East countries. In Syria, while there have been perceptible developments in broadcasting, the press has remained largely unchanged.

6.1 The Press

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The twentieth century has seen some outbursts of lively newspaper publishing in Syria but all have been short. The country's first newspaper was the official *Suriya*, published in Damascus in 1865. The first private paper in the capital, the eponymous *Dimashq*, initially lasted only from 1878 to 1887 and its sole successor that century, named *Al-Sham* (meaning the geographical area of greater Syria), survived from 1896 to 1908. The publishers of both were state officials. The first major change occurred in the wake of the Young Turks' revolution of 1908, which opened the floodgates to

journalism in the Arab provinces of the Ottoman Empire. Damascus and Aleppo, having previously had only one unofficial and two official newspapers between them, suddenly produced as many as 62 newspapers and journals.

The phenomenon was soon brought to an end by economic realities, a tough press law and World War I, but was repeated in 1918–19. Then 42 newspapers and 13 periodicals were started in Damascus, Aleppo, Homs and Hama, although 23 of the newspapers and 11 of the periodicals were in Damascus. Under the French mandate, from 1920 until Syrian independence in 1946, the press was tightly controlled and by 1932 only half a dozen newspapers were still in circulation. But, between Syrian independence and the country's decision to enter into a union with Egypt in 1958, party political activity and frequent changes of government were reflected in the large number of titles published.

6.1.1 Daily newspapers

Of the papers founded in Damascus before the 1960s only *Al-Baath* (Renaissance), launched in 1946, remains today. It is the official organ of the Arab Baath Socialist Party and has been directed and edited for many years by Turki Saqr. *Al-Baath* is one of only three national and four provincial Arabic-language daily newspapers in the whole of Syria, serving a population of some 15 million. In 1994, for every 100 people there were only two copies of daily newspapers in Syria, compared with 5 in Jordan, 6 in Egypt, 17 in Lebanon and 28 in Israel. In 1994, Syria consumed only 2.6 tons of printing and writing paper for every 1,000 people, compared with 5 tons in Egypt, 6.9 tons in Jordan, 16.9 tons in Lebanon and 48.7 tons in Israel.

A closer look at the circulation of Syrian daily newspapers helps to explain these statistics. The combined estimated (i.e. unaudited) circulation of the three national Damascus-based dailies, *Al-Baath*, *Al-Thawra* (Revolution) and *Tishrin* (October), amounts to little over 200,000 and this includes copies distributed free of charge to government offices, trade union secretariats and so on. Of these three papers, the highest circulation – around 70,000 – is claimed by *Tishrin*, launched by President Asad himself in 1974, through the *Tishrin* Foundation for Press and Publication, named in commemoration of the Arab-Israeli war of October 1973.

The third paper, *Al-Thawra*, with circulation reported at 60,000, dates from the Baathist coup of 1963 and is published by Al-Wahda Press, Printing and Publishing Organization, a body set up by decree after the coup. The same organization also publishes provincial papers for Aleppo (*Al-Jamahir al-Arabia* – The Arab Masses), Latakia (*Al-Wahda* – Unity), Homs (*Al-Orouba* – Arabism) and Hama (*Al-Fida'a* – Sacrifice). The circulation figures of these publications are estimated at between 5,000 and 10,000 each.

Syria Times is the only English-language daily newspaper. It is produced by the publishers of *Tishrin* and its circulation is estimated at 12,000, unchanged since the mid-1980s.

As suggested by the monolithic ownership and control of Syria's daily press, its content is closely tied to the priorities and perspectives of the authoritarian Baathist regime. Editorials in all three national dailies regularly expound the official Syrian

view on Middle East peace talks and on US policy towards Israel, the Arab countries and Iran. The uniformity of coverage from paper to paper is not surprising, given their overwhelming reliance on the Syrian Arab News Agency (SANA) for national and international news copy. SANA, set up in 1965, is controlled by the Ministry of Information.

Of the three, *Tishrin* is the least shy of criticizing the shortcomings of various ministries but, given its origins and ownership, clearly has the President's backing in doing so. Government ministers in Syria are subservient not only to the President and his immediate circle but also to the heads of intelligence and senior Baath Party officials.

Yet, while Syrian opposition newspapers are not allowed in Syria, the publishing activities of dissident groups from certain other Arab countries are tolerated and even encouraged, if this accords with the policy of the regime. For example, Syrian TV itself ran an indignant report in April 1995 to the effect that the Jordanian border authorities had intercepted copies of a Jordanian opposition newspaper being sent for distribution in Syria. The report stressed the discrepancy between the confiscation and Jordan's claims of democratization.

6.1.2 Weekly newspapers

The list of weekly papers is short and they are lacking in political diversity, being heavily weighted in favour of sports, culture or the affairs of government-supported trade unions. The newest weekly is *Tishrin al-Usbou'i* (Tishrin Weekly), launched at the beginning of March 1998. The main sports weekly is *Al-Ittihad* (The Union), but Al-Wahda Press, Printing and Publishing Organization, also produces a sports weekly called *Al-Mawqif al-Riadi* (The Sporting Situation). The only high-circulation privately owned weekly consists solely of classified advertisements for jobs, used cars and other items, and is called *Al-Wasit*. It sells an estimated 200,000 copies.

6.1.3 Foreign newspapers

Because of censorship and distribution laws, analysed in Chapter 7, foreign newspapers enter Syria in small numbers, irregularly and usually late. Lebanese newspapers have a relatively short journey to make to Damascus but are expensive. The most respected Arabic-language paper published in Beirut, Al-Nahar, is priced at LL2,000 (US\$1.32) per copy and has no organized distribution channels in Syria. The same applies to the similarly priced English-language Daily Star. Papers such as Al-Diyar, Al-Safir, Al-Sharq and Al-Kifah al-Arabi, which do cross the border, generally cost LL1,000 but, in the case of the last two titles at least, have a Syrian circulation of only 4,000-5,000, assuming they are passed by the censor. Despite this, Al-Kifah al-Arabi is said to be a popular title in Syria. Al-Safir sometimes carries advertisements for Syrian real estate.

The London-based pan-Arab dailies, *Asharq al-Awsat* and *Al-Hayat*, are available in Syria but, again, not widely or unfailingly, due to the intervention of Syrian censors.

6.2 Broadcast media

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With national newspapers gaining a limited audience and foreign newspapers hard to obtain, radio and television play an important role in supplying most citizens with information.

6.2.1 Syrian radio

Ownership of radios and televisions is very high, especially in urban areas. Research carried out for the British Broadcasting Corporation (BBC) in Damascus, Homs, Hama, Latakia and Deir el-Zor in 1994 (subsequently quoted by the BBC's competitors in the region) indicated that 98 per cent of urban homes were likely to have at least one radio set and that the weekly audience for all foreign stations combined was higher than that for local state-controlled radio. UNDP figures show that, for every 1,000 people across the country as a whole, 257 had radios in 1994, higher than the 243 recorded for Jordan, although some way below Egypt's 307.

Syria's own national broadcasting organization was founded in 1946 but did not receive much in the way of government funds or attention until the early 1960s. During the short-lived union with Egypt, from 1958 to 1961, Egyptian radio employees trained Syrians in broadcasting technology and in the art of propaganda. Thereafter the Syrian government set about building radio transmitters to serve domestic audiences and those in neighbouring states.

The organization and content of broadcasts is governed by a law dating from 1951 which initially placed this area under the control of the Prime Minister, until broadcasting became part of the Ministry of Information when this was established in 1961. Today, the Baathist-run Directorate-General of Radio and Television operates two Syrian Arab Republic Radio stations in Arabic, *Sawt al-Sha'ab* and Radio Damascus, and broadcasts in ten other languages, including English, French, German, Hebrew, Turkish and Russian, to spread the official Syrian viewpoint on regional affairs to whoever wishes to listen. National radio carries no advertising.

The main Arabic-language station, Radio Damascus, broadcasts from studios in Damascus with content similar to that of Syria's state-controlled press. The second station, *Sawt al-Sha'ab* (Voice of the People), started in 1978 with just two four-hour slots in the morning and evening. Although Syria has not developed its own radio broadcasting capabilities to any great degree, it has been responsible for broadcasting daily programmes specifically targeted at Iraqis and Palestinians. Syrian Arab Republic Radio in Damascus still broadcasts its own Voice of Palestine programme and, until late 1997 at least, another called Voice of Iraq. A slight thaw in Iraqi-Syrian relations which started in June 1997 and led the two sides to open their mutual border

for the first time in 17 years, was also said to have resulted in the closure of both Syria's Voice of Iraq radio and the daily Voice of Arab Syria programme broadcast from Baghdad. The shutdown was not final or clear cut, however. Voice of Iraq programmes critical of Baghdad continued to be heard from Damascus, addressing "families which have been afflicted by the fascist Saddam regime."

6.2.2 Foreign radio

Although the government has attempted in the past to jam foreign television viewing in Syria (see below) it has done little to block foreign radio broadcasts. Almost two-thirds (65 per cent) of the weekly audience for radio, aged 15 or over, listened to foreign stations in 1994, compared with only 56 per cent for the local state-controlled radio. The most popular foreign stations are Radio Orient and Radio Monte Carlo–Moyen Orient (RMC-MO). A third (FM) station from Lebanon, called Radio Strike, started broadcasting to Syria in 1996 but was forced to close altogether in late 1997 after it was denied a licence by the Lebanese government under Lebanon's Audiovisual Media Law.

Radio Strike managed to position its transmitter on a high point near the border with Syria from where it could reach the Damascus area and beyond. Broadcasting mainly music and entertainment, it was popular with Syrians in the age range 18–35. Radio Orient, broadcasting on 88.6 FM, also has a transmitter strategically positioned to maximize its audience in Syria and is now the only FM station in the country, co-existing with Syrian state radio.

Radio Orient, started in 1982 by Raghid al-Shammah, a Sunni Muslim from Sidon in Lebanon who became a French citizen in 1980, has been owned since 1992 by a Luxembourg-based company, Techniques Audiovisuelles, belonging to the Lebanese Prime Minister, Rafiq Hariri. The station operates simultaneously from Paris and Beirut, using four satellites to reach across Europe and the Middle East, with continuous news programmes in the early morning and every half hour throughout the day. Radio Orient's licence in Lebanon is held by Future TV, which is also part-owned by Rafiq Hariri. The involvement of Lebanon's Prime Minister, who has close links with the Syrian leadership, is widely held to explain Radio Orient's privileged position in Syria, including the fact that it can take advertising directly from international clients without having to go through the Syrian state advertising monopoly, the Arab Advertising Organization (AAO).

Radio Monte Carlo–Moyen Orient also claims an important audience in Syria, although its last Arabic news programme ends at 7.00p.m. Syrian time. Since its takeover by Radio France International in 1996, RMC-MO has been overhauled and the power of its transmitter in Cyprus has been doubled. In terms of listeners in Syria, RMC-MO is behind Radio Orient and ahead of the BBC.

Foreign stations with smaller audiences include a Lebanese station which has not been licensed but continues to broadcast anyway. This is Voice of the South, operated by the Israeli-backed South Lebanon Army (SLA), based near Marjayoun in

southern Lebanon. Other stations attracting much smaller numbers in Syria include the government radio stations of Lebanon, Jordan, Egypt and Turkey.

6.2.3 Terrestrial television

Syrian television, which like the print media and radio is tightly controlled, got off to a rather shaky start in 1960. It was not until the 1970s that the Ministry of Information and the Directorate-General of Radio and Television made a serious effort to install transmitters and relay stations in various parts of the country.

This was in part a response to the penetration of Jordanian TV which had started in 1967 and aimed from the outset to use popular foreign programming to attract audiences beyond Jordan so as to maximize advertising revenue. But there were other reasons as well. Syrians working in the Gulf oil-producing states after the 1973-4 oil price explosion could suddenly afford to buy television sets and bring them home. Meanwhile the commissioning of the Euphrates Dam in 1978 gave a push to electrification of rural households. At the same time Syria, with help from Siemens of Germany, started assembling television sets and selling them at subsidized prices, and cancelling the television licence fee.

Today, some 128,000 television sets are assembled in Syria every year, using components from France and South Korea. An estimated 99 per cent of urban Syrian homes own a television and around half of these own a video cassette recorder. Over the country as a whole the number of homes with a television is put at 1,721,000, representing one set for approximately every eight to nine people. Few of these limit themselves to watching the two state-run terrestrial channels, however. STV1, broadcasting Arabic programmes for eight and a half hours a day, is watched by less than two-thirds of the daily audience, while STV2, which broadcasts six hours of mainly foreign programmes, is seen by around a quarter. Competing with these are leading Lebanese terrestrial channels, notably those of LBC, Télé-Liban, Future TV and Murr TV.

These Lebanese stations do not pose much of a threat to the Syrian status quo in terms of content as they are all ultimately under Lebanese government, and therefore Syrian, control. Future TV, as explained above, is part-owned by the Lebanese Prime Minister. Its chairman, Nadim Munla, jokes that Syrians like Future so much they leave their sets permanently tuned to it, to the point where dust gathers on the tuning knob — suggesting that remote controls are relatively rare in Syria. Télé-Liban, meanwhile, is the Lebanese state channel. LBC is privately owned by people well-connected to the Syrian government, including the Lebanese Health Minister, Suleiman Franjiyeh, and Issam Faris, an MP. Murr TV is run by the brother and nephews of the Lebanese Interior Minister and Deputy Prime Minister, Michel Murr.

Homes without access to satellite television can also tune into foreign terrestrial television spilling over from Jordan, Israel, Turkey and Iraq. Some jamming has been practised but it is neither permanent nor comprehensive. For nearly four years after the 1991 Gulf War, when Jordan refused to join the US-led Syrian-backed

coalition which ousted Iraq from Kuwait, Syria jammed Jordan TV broadcasts. In August 1994, however, it stopped this practice. In what appeared to be a step towards preparing domestic public opinion for movement on the Syrian-Israeli track of the Middle East peace talks, Syrian state-run television broadcast, without comment, footage showing Jordanian and Israeli leaders taking steps towards the signing of their peace treaty. The state-run press was meanwhile still criticizing Jordan for making peace with Israel.

In contrast to the politically-inspired measures taken against Jordan, nothing was done to satisfy conservative religious circles in Aleppo when they objected to the content of Turkish television programmes that could be seen in northern Syria.

6.2.4 Satellite television

Government policy regarding satellite television has been modified since 1994. The prime minister, Mahmoud al-Zubi, addressing the People's Assembly in November 1994, spoke of the "enormous development" taking place in communications everywhere and the Syrian government's efforts to ensure that the country's media would keep up in the modern world. It would do this, he said, by expanding transmissions both in terms of time and area covered, so that "clear radio transmissions can cover all the world and good television transmission can cover all areas in Syria as well as neighbouring countries on both channels, one and two."

He went on to announce plans to beam Syrian TV by satellite to Syrian and other Arab expatriate communities abroad, "to present a living picture of modern Syria." Syrian Satellite TV now broadcasts via Arabsat for four and a half hours daily, from 10.00p.m. to 2.30a.m., showing material that differs little from that on STV1 and STV2. Regarding incoming satellite broadcasts, the Prime Minister warned those installing satellite receiving equipment without a licence that there would be "no future" for them. Instead, he said the government itself would retransmit suitable foreign programming to citizens who subscribed to the service and would also strengthen national television.

Despite this, satellite dishes have spread rapidly, even among those on modest incomes, as viewers have come to rely heavily on television as a substitute for other forms of entertainment. For reasons widely assumed to relate to the profits earned by well-connected individuals from the sale of satellite equipment, the authorities have tolerated the spread of dishes. A proposal to raise revenue by taxing dish sales was suggested but dropped. Cable television is not yet available in Syria.

By mid-1977 an estimated 455,000 households (or 26 per cent of those with television) were able to receive satellite television and this figure is believed to have risen steeply since, to around 30 per cent of the total. Syrian families prefer to own their own dish rather than share with neighbours in the same apartment building, and they have been encouraged to purchase by low prices. It is said that some models can be obtained for as little as US\$100, although a standard 180cm dish costs around US\$300. Most people reportedly opt for motorized models.

The choice of free-to-air satellite channels for Syrian dish-owners is extensive, although the majority of Arabic-language channels carried on Arabsat are run by other Arab states. The favourites with Syrian audiences appear to be Lebanon's LBC-Sat and Future TV, the Egyptian Space Channel, the Saudi-backed Middle East Broadcasting Centre (MBC) from London, and the Dubai channel, EDTV, in roughly that order. Of these, all but LBC-Sat are either owned by, or are closely connected to, Arab governments. Since LBC-Sat and Future TV were banned by the Lebanese government in January 1998 from airing news and political programmes, the main Arabic-language news broadcasts by satellite are those from MBC and Arab News Network (ANN) from London, Al-Jazeera from Qatar and Euronews from France.

ANN is actually Syrian-owned, as it belongs to Sawmar al-Asad, the 27-year-old son of Hafez al-Asad's brother and erstwhile rival, Rifaat. Rifaat al-Asad was previously involved in publishing in Syria, producing a magazine called *Al-Forsan* (The Cavalry) which ceased in 1991 and a daily paper which closed a year later. He also tried to launch an FM radio station serving the Paris region during the 1980s but was unable to obtain a frequency. Sawmar, whose mother is Lebanese and who is himself a French national, also publishes a weekly magazine in Paris called *Al-Sha'ab al-Arabi*.

ANN is described by people working in the Arab media as "Rifaat's station" and is seen as part of the process within Syria of gearing up for the "post-Asad" era — a reference to the fact that Hafez al-Asad suffers from poor health and is himself currently engaged in safeguarding the interests of his immediate family in the event of his death. When, after sending out test transmissions over the summer of 1997, ANN programmes started in earnest, roughly 25 per cent of news coverage was devoted to international events and the remainder to the Middle East, with the Syrian government either ignored or treated unsympathetically. This approach seemed to change in early 1998, as ANN — with outgoings of approximately US\$2.5m per month — tried to achieve financial security by negotiating advertising and sponsorship deals with backers in the Arab world. Its management spoke of targeting bigger audiences in the Gulf by moving from Eutelsat's Hot Bird 2 to Hot Bird 4, ANN being unwelcome on Arabsat. In fact, being licensed by the Independent Television Commission in London, ANN is bound by the ITC's code of impartiality.

Al-Jazeera Satellite Channel, owned by the government of Qatar, is as new as ANN but has acquired a bigger following in Syria and elsewhere in the Middle East, since it became more widely accessible by moving from Ku-band to C-band on Arabsat in December 1997. Al-Jazeera staff, some of whom previously gained experience with the BBC, have so far been allowed by the Qatari authorities to do a professional job. Euronews, based in Lyon and now 49 per cent owned and managed by the UK news producer ITN, has been putting out peak time news broadcasts in Arabic since April 1997.

Finally, although there is no Kurdish-language press or broadcasting in Syria, homes with access to Eutelsat II F2 (or Hot Bird 2 from May 1998) can receive the Kurdish satellite station, Med TV, which has operated with private financing from London since 1994. Med TV broadcasts in various Kurdish dialects, as well as Turkish, Arabic and English to Kurds throughout Europe and the Middle East.

6.3 The Internet

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Access to the Internet in Syria is only for the very privileged few. Experimental connections to the Internet began in early 1997, with 150 subscribers from state institutions and ministries given access through the Public Telecommunications Corporation. It was expected at the time that "all public, mixed and private sectors would be allowed to connect to the Internet six months after the start of the experimental project." Draft regulations were subsequently worked on by the Public Telecommunications Corporation with the Syrian Scientific Society for Information Services, and priorities regarding which agencies should be connected were to be set by the prime minister. One year later, however, most private Internet users in Syria were still gaining access through service providers in Lebanon and government-run newspapers were still waiting to be connected. This was despite President Asad's decision to appoint his son Bashar to oversee the process, which was taken to indicate a recognition on his part that the Syrian government cannot hold out indefinitely against international developments in information technology. The government has, however, attempted to do so in the past, for example, by prohibiting fax machines until 1993.

7 STRUCTURAL REGULATION OF THE MEDIA

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The structure of the media in Syria was established by the Baath Party after 1963 as it sought to mobilize previously excluded sectors of society against the old entrepreneurial classes. In doing so it pursued an extreme form of state corporatism in which institutions such as those involved in publishing and broadcasting, rather than challenge the government, would actually carry out its work. The function of the mass media was conceived by the Baathist leadership to be that of "guiding public opinion" and "consolidating the gains of Arab nationalism".

Over the years, as a small degree of economic liberalization has been permitted, the highly centralized structure of the state-run media has provided opportunities for well-entrenched regime insiders to use their privileged positions to gain access to a field where entry is denied to others.

7.1 State Monopolies

7.1.1 Publishing

Unlike some countries in the region which have a single Ministry of Information and Culture, Syria has two separate ministries — a Ministry of Information and a Ministry of Culture and National Guidance — both of which combine the role of publisher and censor. The Ministry of Information, established in 1961, emulated its Egyptian counterpart by establishing tight control over news-gathering, printing and distribution. This was maintained after President Asad took power in 1970.

Legislative decrees in 1963 transferred the existing Al-Wahda Press, with all its assets, rights and obligations, to the Ministry of Information with the purpose of publishing newspapers, magazines, books and other items that would "promote national socialist awareness among the masses in all Arab countries." It was reconstituted as the Al-Wahda Organization for Printing, Publishing and Distribution. This umbrella organization was intended to "absorb most writers and workers in the fields of journalism, literature, authorship and translation".

Al-Wahda was joined in the 1970s by the Tishrin Organization for Press and Publishing, set up by presidential decree on the grounds that the urgent need to "struggle against imperialism and Zionism" required "legislative flexibility". Besides issuing newspapers, magazines, periodicals and books, Tishrin was given permission to have its own buildings and other assets, to establish branches at home and abroad and to send its employees abroad for training. But the new entity, like Al-Wahda, was directly linked to the Ministry of Information. The Minister himself was installed as chair of the board and his Under-Secretary as Vice-Chair. Other board members include the director-general of the Syrian Arab News Agency, representatives of the Arab Writers' Union, the Journalists' Syndicate, the Political Administration of the Armed Forces and two other media representatives chosen by the Minister of Information. Tishrin was subject to the same legal regime as Al-Wahda, excepting Legislative Decree No. 68 of 1975 which created Tishrin.

The Syrian Arab News Agency (SANA), which supplies news copy to Al-Wahda and Tishrin publications, as well as to Syrian Arab Radio and Television, is also linked to the Ministry of Information. The agency was established in 1965 with the purpose of writing and distributing news, reports, photographs "and commentary". Its board of directors is chaired by the Minister of Information or his deputy and the other board members are the director of SANA, the under-secretary of the Ministry of Information, the director-general of Al-Wahda Organization for Printing, Publishing and Distribution, the director of the Armed Forces' Public Affairs Directorate for Moral Guidance and an "expert in the media".

Commentary

State ownership of the press is incompatible with editorial independence and the development of a free press. It is well-established as a matter of international law that the press have the dual role of informing the public and acting as watchdog of government. This cannot possibly be achieved if the press is actually owned by the government and this contradiction is reflected in the fact that, in established democracies, government ownership of newspapers is all but unknown.

Recommendation Regarding Government Ownership of Newspapers

The Syrian government should privatize the print media sector and all news-gathering operations; the government should not exercise any direct editorial or content control over newspapers.

7.1.2 Broadcasting

Broadcasting is governed by a law of 1951 under which private broadcasting is forbidden and all decisions about broadcasting are taken by the Prime Minister. Article 9 of this law sets out the objectives of the broadcasting organization as contributing to public guidance, raising cultural, social and moral standards, strengthening national emotions and social cohesion, among other things. Article 16 lists the functions of the board of the broadcasting organization, giving it the task of regulating broadcasting activity but stipulates that all such regulation must be ratified by the Cabinet.

The board is to be chaired by the Prime Minister himself, or his deputy, and includes among its members high-ranking representatives of the ministries of foreign affairs, defence and education and the director-generals of the PTT (post and telecommunications organization) and General Administration for News and Publicity. Party political broadcasts are banned by the same law, as is propaganda of a personal nature or any material that "would divide the nation".

A similar state monopoly is exercised over film production by the National Film Organization. Established in 1966, this was subjected to a change of management under President Asad in 1974, after which its new director decided against making documentary films. Although privately owned production facilities have grown up in Syria in the past three to four years and have become attractive to Lebanese and other external producers because they are low-cost and relatively well-equipped, the National Film Organization retains a monopoly on releases inside Syria, ensuring that only films which are passed by the censors are shown. The activities of the private studios do not worry the authorities as they are mostly run by members of the ruling elite. For example, the younger son of the Vice-President, Abdel-Halim Khaddam, owns Sham International, a private company which sold the rights to a successful television series it produced to MBC and channels in Kuwait and Dubai.

Commentary

There are a number of problems with the regulation of broadcasting and films in Syria. First, it is clear that government monopolies over the broadcast media cannot be justified and breach international guarantees of freedom of expression. Although public service broadcasters play an important role in ensuring the public's right to know and in providing quality broadcasting, this is clearly insufficient to justify a state broadcasting monopoly. In particular, the desire to maintain high programme standards is not a legitimate ground for restricting freedom of expression under international law and cannot possibly warrant the wholesale prohibition of private broadcasters. Although government broadcast monopolies do still exist in some

countries, there is a clear trend away from such monopolies in a world where information is increasingly accessible through a variety of electronic means. The availability in Syria of television channels from other countries, both terrestrially and by satellite, underlines the inappropriateness of a government broadcasting monopoly. These arguments apply with equal force to the film sector.

Second, it is inappropriate for the government to exert control over state-funded broadcasters; these should instead be transformed into genuine public service broadcasters. This implies that such bodies should be governed by a board that is independent of government and that decisions on editorial matters should be taken at the management level. The UNESCO Declaration on Promoting an Independent and Pluralistic Arab Media, noted above, specifically provides for the independence of state-funded broadcasters and this is supported by a significant body of other standard-setting instruments.

Third, it is obvious that prior censorship is one of the most insidious means by which governments can restrict freedom of expression, particularly when it is used to suppress speech critical of government. ARTICLE 19 is opposed to all forms of prior censorship, whether applied to films or other forms of communication. Prior censorship represents a serious restriction on freedom of expression. Indeed, the Inter-American Convention on Human Rights prohibits it altogether. Even where international instruments have not gone so far as to forbid prior censorship outright, it is clear that it may be legitimate only in extremely limited circumstances, where an overwhelming public interest is at stake. The European Court of Human Rights, for example, has held that prior restraints "call for the most careful scrutiny on the part of the Court." These standards make it clear that general censorship, such as that applied in Syria to films and other media, can never be justified. The threat of subsequent punishment, for example in the form of fines, is sufficient to implement laws that legitimately restrict freedom of expression.

Recommendations Regarding the Government Monopoly Over Broadcasting and Film

- The government monopoly over radio, television and film should be abolished and replaced with legislation that not only permits private broadcasters and film production and release but provides for non-discriminatory access to broadcast frequencies and establishes an environment in which private media and film enterprises can flourish. In particular, Law No. 68 of 1951 should be repealed.
- Government control over state-funded broadcasters should be abolished. Instead, these broadcasters should be regulated by authorities which are fully independent of government and which have a clear mandate to ensure that they operate as proper public service broadcasters.
- All prior censorship of films and other means of public communication should cease immediately.

7.1.3 Distribution

State control over the distribution of printed material gives the government leverage over work produced outside the confines of the officially-sanctioned publishing houses. Under Article 12 of the General Law on Printed Matter, any news-stand or bookshop owner or operator must be registered with the General Administration for News and Publicity. The same applies to reading rooms.

Thus there are entrenched mechanisms whereby censorship and distribution are combined. For example, Article 13 of the General Law on Printed Matter obliges any trader importing regular foreign publications to deposit two copies of each issue with the General Administration. Article 14 entitles the Prime Minister, at the suggestion of either the Minister of the Interior or of Information, to prevent the circulation of foreign publications if they are deemed to be detrimental to national autonomy or security or to contravene public morals.

Books may only be imported from abroad if five copies are presented to the Organization for the Distribution of Publications in Damascus. This body keeps one copy and passes two to the Al-Asad Library and another two to the Ministry of Information. Each book is assigned a number. Article 50 of the General Law of Printed Matter prohibits distribution or retailing of printed material by anyone who has not informed the authorities of his name and address or provided them with a certificate of good conduct from the municipality. Article 52 provides that the sale and distribution of printed matter may only take place in public places, and in any case not in places of worship. The title and price, but no additional information, for example about the content, of publications on sale may be displayed.

Commentary

The problem with prior censorship has already been noted. It may be legitimate to require commercial importers and local publishers to deposit copies of books with libraries or documentation centres for archival purposes and indeed this may even increase public access to information. Any requirement to deposit copies with other government bodies, however, particularly for reasons of prior censorship, is unacceptable. It is clear from Article 14 of the General Law on Printed Matter that censorship is the main purpose of the deposit function in Syria. In addition, the legal test for such censorship, whether the matter is detrimental to various interests, clearly does not meet the international standard which requires any restriction to be necessary to protect the legitimate interest.

ARTICLE 19 is also concerned that only individuals who have obtained a certificate of good conduct from the municipality may distribute printed material. This is clearly open to government manipulation and is in any case an unacceptable restriction on freedom of expression. There is simply no justification for requiring such a certificate; no legitimate interest is protected by it. Similarly, restrictions on the place and manner of distribution cannot be justified and seem to be tailored to inhibiting reading generally rather than any legitimate aim. Distribution of printed matter from private places is common in most countries and mail order sales of books and other such material is actually increasing rapidly. Similarly, advertising books and other written

work is an important mechanism by which potential readers can assess such work and therefore assists in the free flow of information

Recommendations Regarding Distribution

- The Syrian government should immediately abolish the requirement of compulsory deposit as it relates to all state institutions other than those responsible for maintaining archives or providing library services. ARTICLE 19 recommends that deposits with these institutions should be made after the publication has been distributed.
- Restrictions on distribution, such as conditions on who may engage in distribution and on the place and manner of distribution, should be abolished.

7.2 Professional bodies

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7.2.1 The Journalists' Syndicate

Because all news and current affairs publishing and broadcasting is carried out by the state, the journalists employed in these activities are state employees who are accountable to their employer, the government, for what they write. Pay, promotion and pensions are thus based on political criteria rather than skill, ability or dedication. Additional checks on the practice of journalism are instituted by the law governing membership of the Journalists' Syndicate. This body was established in 1974 with 16 aims, ranging from watchfulness over the state apparatus and struggling for the Baathist ideals of unity, freedom and socialism to traditional trade union activities such as pressing for satisfactory pay and conditions, settling professional disputes and so on.

The most crucial stipulation of this law is probably Article 11, which requires the syndicate's secretariat to prepare a list of all members of the syndicate and to classify them as working journalists, trainee journalists or associate journalists. The article also provides: "The journalist does not have the right to work as a journalist until his name is on the list and the list has been ratified by the minister (of information). Nobody can practise journalism unless he is registered in the general list of syndicate members."

In order to apply for membership of the syndicate, a journalist must fulfil numerous criteria. Article 9 defines the practice of journalism as processing "journalistic raw material by means of comment in its various forms and reporting it in printed, broadcast or photographic form, or by way of studying, translating or comparing it." Crucially, the same article describes a journalist as "one whose main income is from journalistic work."

Article 13 requires those wishing to register as working journalists to have undergone the necessary training and not to "practise any other profession". The

specified period of training for candidates with a certificate of secondary education is four years, two years for those with a higher degree and six years for people with neither. Article 13(b) likewise prohibits trainee journalists from practising another profession.

The law does provide for professional journalists not on a fixed salary who also have another job, classifying them as "associate journalists". However, Article 14 allows them to be struck off the syndicate's list if they stop working for a period in excess of one year.

The syndicate itself consists of the General Assembly, the Syndicate Council and the Executive Bureau, all of which are ultimately overseen by the Minister of Information. The General Assembly comprises all paid-up working member journalists and is the syndicate's highest authority, charged with electing the Syndicate Council every four years, approving the budget and overseeing the syndicate's internal organization, except that the latter is not final until ratified by the Minister. Articles 30-35 provide for the election of the seven members of the Executive Bureau by the 21 members of the Syndicate Council; the former settles questions of misconduct liable to lead to a journalist's removal from the syndicate's list, among other duties.

Commentary

A fundamental aspect of freedom of expression is the right of everyone to impart information and ideas, regardless of their formal qualifications or any other considerations. This right clearly applies to the media as well as to other forms of communication and this is made explicit in Article 19(2) of the ICCPR which guarantees the right to express oneself "orally, in writing or in print, in the form of art, or through any other media of his choice." In addition, there can be no legitimate reason for wishing to restrict the practice of journalism to those who have certain qualifications or to those who belong to certain organizations or in any other way. As a result, mandatory membership in a journalists' association, particularly where membership is subject to stringent requirements as is the case in Syria, is clearly contrary to international human rights guarantees of freedom of expression. The requirement that membership be ratified by a government minister, as in Syria, only exacerbates the problem as does the fact that the mandate of the professional body in question, which was established by law, includes promoting the ideology of the governing party and that the government plays a direct role in the governance of this body.

Recommendations Regarding Mandatory Membership of the Journalists' Syndicate

- All restrictions on the practice of journalism, such as a minimum number of years of training at a government-approved institution or the preclusion of journalists from working at other jobs, should be removed. No one, including government representatives and ministers, should be able to bar someone from working as a journalist.

- Journalists should be free to organize themselves into genuine, independent, voluntary professional bodies. In particular, there should be no government interference in the management of the Journalists' Syndicate and its goals should be set by the members and not by statute. In addition, the requirement that all journalists must belong to it should be repealed.

7.2.2 Foreign journalists

All journalists, Syrian and foreign, are required by the General Law of Printed Matter to carry identification. Article 37 states that a journalist will not be considered as such unless he carries his journalist's ID. This also applies to correspondents, illustrators and photographers who work in Syria in any periodical published there or any magazine licensed in the country or in any agency, Syrian or foreign. The ID is issued by the General Administration for News and Publicity. It must bear the name of the publication or agency for which the journalist works and is only valid for the year in which it is issued.

In practice, many obstacles are placed in the way of foreign journalists wishing to report from Syria. Officially, 70 news agencies, newspapers and broadcasting stations are said to have correspondents in Syria. In fact, the vast majority of these correspondents are Syrian or Lebanese and the overall number is reduced by the fact that most cover Syria for several news outlets at the same time. The late Louis Fares is said to have filed reports from Damascus for about 11 different services; most other correspondents manage three or four.

The personal risks incurred by any reporter filing a story of which the authorities might disapprove are evident in the foreign agency practice of changing the initials and dateline on sensitive stories coming out of Syria. Favoured decoy locations are Paris or Nicosia. It can happen that news of an event spreads by word of mouth from Syria to neighbouring states days before it is reported by news agencies. The visa requirements are extremely onerous for non-Arab foreign journalists hoping to visit the country; these include detailed advance information from an employer about the purpose of the visit and provision of the name and address of a personal reference inside Syria. Visas take a minimum of four days.

Commentary

The unacceptability of restricting the practice of journalism has already been noted. This applies to restrictions applied through ID requirements and to foreign as well as local journalists. International guarantees of freedom of expression such as Article 19 of the ICCPR specifically note that it applies "regardless of frontiers." Requiring journalists to have and to carry an ID issued by a government department clearly qualifies as a form of restriction. This is particularly so given that the ID must carry the name of the agency for which the journalist works, thereby precluding independent freelancers, and the fact that it is only valid for one year. Similarly, the use of visa requirements simply to prevent foreign journalists from entering the country is illegitimate.

Recommendations Regarding Foreign Journalists and IDs

- The requirement that journalists must carry IDs should be abolished and such IDs should not be issued by the government. Voluntary professional journalists' associations may choose to issue IDs to their members.
- Visa requirements should not operate so as to specifically restrict access by foreign journalists to the country. Where general visa requirements are onerous, they should be relaxed for journalists.

7.2.3 The Syrian Arab Writers' Union

The Arab Writers' Union, set up in 1969, is a semi-official body which operates to keep all writing within the purview of the government and the ruling Baath Party. The union is state-subsidized. Its 25-member Executive Committee is headed by Baath Party members and it carries out censorship functions. Its role as enforcer of Syrian government wishes was demonstrated in January 1995 when the union passed a resolution by 90 votes to 15 to expel two members on the grounds that they had "openly advocated normalization with the Zionist entity". Eventually three people were expelled from the Union, prompting three other members to resign.

This provoked an outcry in the pan-Arab press outside Syria, not least because one of the expelled members was the renowned Paris-based Syrian-born poet known as Adonis. Adonis, whose real name is Ali Ahmad Said, was being penalized for attending a conference in Granada, Spain, in 1993, which had also been attended by Israeli intellectuals and then Israeli Foreign Minister, Shimon Peres.

Hisham Dajani, a Palestinian researcher working in the translation department of the Syrian Ministry of Culture in Damascus, was also expelled. Dajani had written about the implications of making peace with Israel in terms of diplomatic, trade, economic and cultural relations and had argued that advocates of peace should not be condemned as traitors to the Arab cause. The expulsion of both men from the union was debated and carried out at a single union meeting on 27 January. According to Ali Akla Arsan, president of the Union at the time, Adonis and Dajani had been given a year to change their minds about recognizing Israel but had refused.

Although some dissent was voiced within the Arab Writers' Union over this issue and some writers may choose to surrender their membership, the institution has no rivals in Syria. As a publisher of books and magazines in its own right the Union forms an integral link in the state-controlled censorship chain. If the Ministry of Information censors seize a manuscript, they hand it to the Arab Writers' Union, which decides what to do with it.

7.2.4 Training

Much is made in the General Law of Printed Matter of the obligation to undergo training as the passport to a career in journalism. The training institutions are all state-run. The Ministry of Information set up the Media Preparation Institute in 1970 and in 1985 the Education Ministry started a Media Department at the University of Damascus. These bodies are required to present a report on trainees to the Journalists' Syndicate which may, subject to the Minister's approval, extend the training period. This gives the regime another opportunity to prevent those with critical voices from becoming journalists.

7.3 Regulations governing publishing

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With the exception of state authorities and municipalities, anyone who prints anything in Syria in whatever capacity is subject to the provisions of the General Law on Printed Matter. This law has been subject to frequent amendments since it was first promulgated in 1949. But, as it stands, Article 7 of the law states that its regulations apply to anyone who prints anything, whether or not he is the owner of the printing press used and even if he is not in the printing trade. This constraint is reinforced by the bureaucratic obstacles to acquisition of personal computers, printers and photocopiers.

7.3.1 Licensing and registration

The first step for an aspiring publisher or printer is to apply for a permit to the General Administration for News and Publicity within the Ministry of Information, or to the provincial governor if there is no branch of the directorate in the governorate where the activity is to take place. Once a permit for a regular publication has been issued for a specific place it cannot be transferred anywhere else without the permission of the Prime Minister.

The application for a licence must include the name of a responsible director "who will be liable for any breach of the law". Permits for periodicals are granted by the Council of Ministers, which is under no obligation to give any reason if it decides to reject the application. There is no right of appeal against rejection and an application may not be resubmitted until a year has elapsed after the rejection.

Article 17 of the General Law sets out the financial conditions for publishing. For a daily newspaper or political periodical a deposit of S£2,000 is required, while for other types of publication the sum is S£250. Article 18 lists the numerous conditions to be fulfilled by the publication's owner and/or responsible director. He or she must be resident in Syria, have had Syrian nationality for at least five years, be at least 25 years old and not be in the service of a foreign country in any way. He or she should not be the holder of a publishing permit which has been cancelled and must have no other job. A director, in addition to meeting all these criteria, must have been

a practising journalist for more than six years, must not have any other public job or be a member of parliament or be the responsible director for more than one periodical.

For daily papers covering politics and news, Article 16 of the law lays down minimum print runs, page sizes, frequency and controls on staffing, but the requirements vary depending on whether publishing takes place in the capital or not. In Damascus a newspaper must be issued six times a week in at least six pages with a minimum print run of 1,500. The minimum number of pages outside Damascus is four, while the minimum print run in Aleppo is 1,000 copies and 800 in other governorates. Weeklies are required to be equal in number of pages to twice the size of a daily and a monthly should be equal to four dailies.

The same article requires the editor-in-chief to be supported by at least three editors and one reporter in Damascus as well as editors and reporters in other governorates, all of whom must be identified by name in the application for a publishing permit. In order to obtain this permit a newspaper must subscribe to at least two international news agencies. Permission is required for any change of owner, editor or director and no editor may edit more than one regular publication.

Commentary

Technical registration requirements do not per se offend guarantees of freedom of expression as long as they meet a number of conditions, noted below. However, ARTICLE 19 considers registration to be unnecessary and it is not, in fact, required in many countries. The Human Rights Committee, which oversees the ICCPR, has noted, "effective measures are necessary to prevent such control of the media as would interfere with the right of everyone to freedom of expression." In particular, the following conditions should be respected: the authorities should have no discretion to refuse registration once the requisite information has been provided; registration should not act as a barrier to publishing in any way, for example by imposing excessive demands on the press; registration documents should not impose content restrictions on publications, for example requiring them to publish only certain types of information; and the registration system should be administered by bodies which are independent of government. Registration requirements which do not respect these conditions offend freedom of expression principles because they cannot be justified on the grounds listed in the ICCPR, such as protection of the rights or reputations of others, national security, or public order, health or morals.

Minimum capital requirements, like other registration requirements, can only be justified if they serve to protect one of the legitimate interests noted in the ICCPR as grounds for restricting freedom of expression. To the best of ARTICLE 19's knowledge, minimum capital requirements for the press are unknown in the established democracies.

Restrictions on who may be a director are similar to those relating to who may practise journalism, noted above – they cannot be justified by reference to the legitimate grounds listed in the ICCPR and are hence unacceptable. The same is true of the other conditions placed on publishers noted above, such as those regarding print run sizes, staffing and subscriptions to news agencies. It is clear that the primary goal of the Syrian registration regime is to enhance state control over the content of

publications. Cumulatively, the registration requirements in Syria are very onerous and represent a serious breach of the international guarantee of freedom of expression.

Recommendations Regarding Licensing of Publications

- No publication, including newspapers should be subject to a licensing regime.
- Ideally, newspapers should not be subject to a registration regime. If such a regime is retained, it should require only that newspapers provide a limited amount of technical information to an administrative body that is independent of government and which has no discretion to refuse registration once the requisite information has been provided. In particular, any registration scheme should not include minimum capital requirements or impose content restrictions on publications.
- No conditions should be imposed on who may be a director.

7.3.2 Operating

If and when a licence is granted, the recipient is obliged to follow still more rules, most of which seem designed to help the authorities track down copies should they want to do so. For example, Article 8 provides that the typeface used must be put on record and the authorities notified of any changes within 15 days. A record must also be kept of all items printed, with the current date and the number of copies printed. This record should be available for inspection by the authorities. Fines and prison sentences are imposed on any owner, director or editor of a publishing house infringing the licensing regulations. For example, the people responsible for a non-political publication which publishes a political article become liable for a fine of S£500.

In the case of one-off publications, two copies are to be deposited with the authorities on the day of publication – one with the General Administration for News and Publicity and the second in the national Al-Asad library. For periodicals, one copy of every issue must be deposited on the day of publication with the public attorney and three with the General Administration for News and Publicity. By law, every publication must name authors, give the name of the printing press and address of the publisher, specify the date of printing and display the serial number. The same applies to photographs, artwork and music.

Any interruption in publication can cause the licence to be revoked. Article 26 provides that if operations stop temporarily or permanently, the authorities must be notified immediately, must be satisfied that the reason for the stoppage is sound and must be informed in advance of how long the stoppage will last. Intermittent or irregular publishing may result in a licence being withdrawn, at the discretion of the Prime Minister or Minister of Information. Failure to appear for the equivalent of one month during a period of three consecutive months, or being penalized five times in one year, would count as grounds for the loss of a licence.

Commentary and Recommendations on Operating Conditions

As was noted in section 7.1.3 above, requiring publications to deposit copies other than for archival or library reasons is unacceptable. The deposit requirements should be limited to accord with this principle. In addition, if the registration regime conforms to the requirements noted above, there could be no question of revoking licences or of suspending publications for registration reasons. No special conditions on the operation of publishing should be imposed through the registration regime.

7.3.3 Partisan newspapers

Possibly because it has evolved over time, the General Law on Printed Matter contains some contradictions regarding party political newspapers. Such publications do appear to be permitted, provided they keep within the law. However, Article 29 of a subsequent law modifies this by allowing the Prime Minister, with cabinet backing, to withhold a licence from such a venture if the people involved in it support – either together or individually – any "unconstitutional situations".

Newspaper directors are not allowed to hold public office or be Members of Parliament. Any periodical calling for constitutional change by unconstitutional means, supporting an unconstitutional government or calling for disobedience against the constitutional authorities will have its licence cancelled and fines or prison sentences, or both, will be imposed on the persons responsible. These acts are crimes under the Syrian Penal Code, which is discussed further in Chapters 8-10.

7.4 Advertising

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With the development of private business activity in Syria since 1991, the potential for advertising has also grown. Four international advertising agencies now have offices in Damascus; Intermarkets was the first to open there in 1995, followed by Publigraphics, TMI and Saatchi and Saatchi. The trend started when it looked as if the government might remove Coca Cola from the blacklist maintained by the Arab Boycott of Israel Office, which is based in Damascus. Billboards began to be made available to private advertisers in 1995 but they were restricted to suburbs initially, only being extended to cities in 1997. Although state radio carries no advertising, state television has done so since the start of the 1990s.

However, legislation governing advertising remains fraught with pitfalls. The state-owned Arab Advertising Organization (AAO) based in Damascus has a monopoly over advertising and the law requires very clear lines to be drawn between advertising and other published material. Article 68 of the General Law of Printed Matter reads: "Anyone contacting a foreign country or being paid by it or by any of its representatives or agents with the aim of publicising it or its projects by way of publications will be penalised in accordance with Article 275 of the Penal Code."

In fact there may be about a dozen or more Syrian nationals who operate privately under licence from the AAO as booking agents. They act as intermediaries between foreign agencies and the AAO, receiving a share of the foreign agency's commission. This allows the AAO to expand its operations while keeping its monopoly intact, enabling it to censor the content of advertisements and enforce the regulation that requires commercial advertisers seeking slots on television to set aside 20 per cent of their television budget to be spent on the press.

Commentary and Recommendation Regarding Advertising

It is quite clear that commercial expression, such as advertising, is also protected by international guarantees of freedom of expression. This means that, as in other areas such as broadcasting, a state monopoly cannot be justified. Indeed, it is hard to imagine legitimate arguments in favour of such a monopoly, particularly given that advertising revenue is necessary for the survival of privately owned media. The unacceptability of a government monopoly is particularly highlighted where, as in Syria, such a monopoly is basically a means of enabling the government to control advertising content and the flow of advertising revenues to the media.

Recommendations on Advertising

- The AAO monopoly on advertising should be dismantled.
- The total ban on advertising in publications by foreign countries should be repealed. As has already been noted, the guarantee of freedom of expression applies regardless of frontiers.

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8 CRIMINALIZATION OF EXPRESSION

8.1 Introduction

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Restrictions on the content of what may be published are laid down in four separate pieces of legislation, each of which reinforces the other. Offences that can be committed through the acts of speaking or publishing are listed in both the Penal Code and the General Law on Printed Matter. Some articles in these laws are worded in such a way that references to "conspiracy" and "incomplete acts" could even be construed to cover thinking out loud or reading banned materials.

Over and above these laws are the comprehensive limits on freedom of expression contained in both the State of Emergency Law of 1962 and Legislative Decree No. 6 of 7 January 1965. The latter buttresses the State of Emergency Law by criminalizing any expression of "opposition to the aims of the revolution", the revolution in question being the Baathist takeover of 8 March 1963. In addition to the provisions of these laws, any media activity that might harm the special relationship between Syria and Lebanon is banned by Clause 2(a) of the Syrian-Lebanese Defence and Security Agreement signed in September 1991.

The blanket ban on opposing the aims of the revolution does not mean that no one in a position of authority in Syria is ever criticized in the national media. The control exercised over the press and broadcasting by the President and his immediate advisers enables them to go public with criticisms of those further down the political hierarchy. *Tishrin*, in particular, occasionally prints items that take local officials to task on relatively low-key matters such as power cuts or smoking bans and 1997 saw some articles criticizing official corruption. Such barbs are sometimes cited by members of the regime as evidence of a free press and by foreign commentators as a sign that censorship is being relaxed. But this is an over-optimistic interpretation. Government appointees berated in newspaper columns for waste or neglect can only be scapegoats, as they have no scope for personal initiative and simply follow orders issued by heads of the security forces and the Baath Party. Where media coverage of corruption is concerned, it should be noted that the head of the anti-corruption campaign is none other than the President's son, Bashar al-Asad. He was entrusted, with considerable publicity, to conduct the campaign as part of manoeuvres by one branch of the Asad family against the business dealings of the President's brothers, Jamil and Rifaat, and their sons. Efforts to undermine Rifaat al-Asad culminated on 8 February 1998, in the official announcement that he had been stripped of the title of Vice-President.

For those outside the President's immediate circle, the risk of transgressing by word or deed is high and the penalties severe. Prison terms of five to ten years have been handed down to writers and broadcasters who had already been detained without charge for long periods and tortured to extract confessions. Operating in tandem with the structural controls identified in Chapter 7 and other forms of repression, including extrajudicial measures (covered in Chapters 9 and 10), the stifling prohibitions on what may or may not be written prevent all but a trickle of new literary work appearing and ensure that any political comment that passes the censor only does so because it is heavily disguised. Thus, screenplays or works for the theatre are routinely set in other decades, or even other centuries. Meanwhile censors, wary of taking any risks themselves and swamped with a backlog of unread manuscripts, avoid issuing certificates for even the most apolitical academic textbooks, which remain unpublished for months and even years.

This state of affairs contributes to creating the added barrier of self-censorship. Even state-employed journalists weigh every word carefully before submitting their pieces and, even then, take the further precaution of consulting close friends or family members as well. This chapter shows why they have every reason to be fearful. It outlines the main legal restrictions on the content of published material and refers to a few of the hundreds of cases in which people have been imprisoned for expressing political opinions or beliefs.

8.2 Offences under the State of Emergency Law

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The State of Emergency Law permits the Martial Law Governor or his appointee to authorize censorship of letters and communications of all kinds, pursuant to Article 4(b), as explained in Chapter 5. Article 6 also lists five categories of offence that should be referred to special military courts (later replaced by the Supreme State Security Court) "whatever the rank of those who committed them, urged them to be committed or participated in them."

These categories are: (a) contravention of orders issued by the Martial Law Governor; (b) offences against the security of the state and public order; (c) offences against public authority; (d) offences which disturb public confidence; and (e) offences which constitute a general danger. While the second, third and fourth of these categories correspond to groups of articles within the Penal Code, no definition is offered of offences which constitute a general danger.

Article 4(a) also gives the Martial Law Governor power to order the preventive arrest of anyone "suspected of endangering public security and order" and to authorize others to undertake investigations of "persons and places". Article 8 provides that in case of a dispute regarding jurisdiction between civil and military courts, the Martial Law Governor shall act as final arbiter.

The full force of the State of Emergency Law needs to be understood in the context of the evolution of the Asad regime's struggle for survival. The last collective protests against the state of emergency took place in the period between 1978, when the Damascus Bar Association and the Syrian Bar Association made a series of calls for democracy, backed with a one-day strike, and early 1980, when further calls by lawyers, engineers, doctors and teachers finally elicited a violent response from the state security forces, who killed or summarily executed over 200 people and arrested hundreds of others. This in turn precipitated a nationwide strike organized by professional associations but supported by workers generally.

A sequence of repressive acts then took place in which the government dissolved the professional associations, had their leaders killed or imprisoned, and created new bodies staffed by government appointees. The city of Aleppo was occupied by government troops in a year-long operation in which up to 2,000 people were killed and 8,000 were arrested. It was at this time that Rifaat al-Asad ordered the massacre in Tadmor prison of Muslim Brothers whom he blamed for an assassination attempt against the President. Over 1,000 prisoners were killed. In July 1980 the National Assembly passed Law 49, making membership of the Muslim Brotherhood punishable by death.

After this came a concentrated crackdown not only on the Muslim Brothers but on all dissident political groups as well as intellectuals, writers, artists and teachers. This campaign culminated in the Hama uprising and its brutal repression by Rifaat al-Asad's Defence Brigades and other military units. No one knows with any certainty how many thousands of people were killed in Hama, whether it was 5,000, 10,000 or more. The devastation of entire residential areas would have made any systematic counting impossible. But the measurable outcome was that the city was wrecked and that active resistance to the government was brought to an end. The state of emergency remains in place and the State of Emergency Law continues to furnish the government with its point of reference in trials of those imprisoned for their part in speaking out against the government during the events of the early 1980s. Virtually no perceptible signs of domestic political life have since emerged, while the state-controlled media strives to give legitimacy to the state of emergency by focusing on "conspiracies" and external threats to security. Walid Shehadeh, editor of the *Syria Times*, speaking to the British journalist, Robert Fisk, in 1997 said:

We have to remember that we have a cause, the cause of our occupied territories – Israel's greed and expansionism in occupying [the] Golan, and southern Lebanon and the other Arab lands We have to talk about [these facts] every day and every night We have to know we are in danger. Perhaps people are bored because we say the same

things, but we are in danger. We can be invaded at any time ... [F]or almost the whole of this century, we have fought against colonialism and aggressive conspiracies from the outside...

Commentary

As explained above in Chapter 5, the emergency law as currently applied is invalid in one, and possibly two, respects. The law itself requires that it should be approved by the Cabinet and passed by a two-thirds majority of the People's Assembly, neither of which have happened. Moreover, the 1973 Constitution superseded the emergency law, which predated it by a decade, and required the earlier law to be amended to conform with the later one. By definition, and in accordance with Article 4: Section 1 of the ICCPR, an emergency law is a temporary measure. The Syrian government, however, has kept it in place for 36 years.

Bound up with questions about the law's legitimacy is the issue of whether Syria is under the threat of war with Israel. The fact that these two countries have remained in a state of war is cited by the government as justification for the state of emergency. The problem is that such justification confuses the objective of protecting the current regime and ensuring its survival with that of protecting the security of the Syrian state. These are two different objectives, the first of which has no place in modern democratic law.

Recommendations Regarding the State of Emergency Law

- The State of Emergency Law should be repealed
- Syria should abide by its obligations as a signatory to the ICCPR.

8.3 Opposing the aims of the revolution

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Legislative Decree No. 6 of 1965 prohibits opinions which are deemed contrary to the aims of the revolution. Article 3(a) refers to:

[A]cts which are considered contrary to the implementation of the socialist system in the state, whether they take place by action, speaking or writing or by any other means of expression or publication.

Article 3(e) prohibits:

[O]pposition to the realisation of unity among Arab countries, or opposition to or obstruction of any of the aims of the revolution by taking part in or inciting demonstrations, assemblies or riots, or by publication of false information with the intention of creating a state of chaos and shaking the confidence of the masses in the aims of the revolution.

Under this law, opposition to the aims of the revolution is punishable by a prison term of three to 15 years, while acts against the socialist system may incur a life sentence or the death penalty. It was this decree which established special military courts to try political cases; these courts were replaced by the Supreme State Security Court (SSSC) under Legislative Decree No. 47 of March 1968. The SSSC is

exempt from the usual rules of procedure required under non-emergency laws and there can be no appeal against its rulings.

Despite the attempts of Syrian lawyers over the years to have the special courts abolished and an announcement by President Asad himself in 1980 that the SSSC had been instructed to hear only cases involving questions of security, the early 1990s saw an upsurge in trials before the court of non-violent political activists, including some defendants who had been held without trial since the 1980s.

To take just one example among many, which specifically concerns the underground media, Bahey Yacoub, an accountant from Hassakeh, was detained for three years without trial, between 1992 and 1995, after his sister, who was arrested for being found in possession of the newspaper of an unauthorized political group, revealed that she had received the paper from her brother.

In another case before the SSSC in 1993, the only evidence against a defendant was a leaflet found in his home criticizing Syria's participation in the US-led military alliance against Iraq in 1991.

Commentary

The illegitimacy of Syria's ongoing state of emergency has already been noted in section 5.4. It may be noted again, however, that even where an emergency is legitimate, Article 4 of the ICCPR provides that any derogation from rights must still qualify as "strictly required by the exigencies of the situation." It is beyond the scope of this study to note in any detail the procedural problems associated with the special courts. Suffice it to note that they breach a number of the due process guarantees provided for in Article 14 of the ICCPR. For example, the failure to provide for an appeal breaches 14(5), which states: "Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law."

The ambiguous and vague drafting of the restrictions contained in Law No. 6 means they are susceptible to a wide range of different interpretations and can be used to punish legitimate criticism of government or other expressions, according to its own political agenda. People have been charged with opposing the goals of the revolution for mere possession of leaflets questioning government decisions on matters such as foreign policy. In other words, individuals are penalized simply because they have been found in possession of material objecting to policies adopted by the government of the day. Expressing opposition to the aims of a political party, including those of the Arab Baath Socialist Party, is a basic democratic and free expression right. Indeed, political expression of this sort is at the heart of the whole system for the protection of human rights.

Recommendation Regarding the Aims of the Revolution

Legislative Decree No. 6 of 1965 should be repealed immediately and the special courts, including the SSSC, should be abolished. In particular, the provisions of Decree No. 6 criminalizing opposition to the aims of the revolution, such as Article 3, should be repealed.

8.4 Disseminating false information

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The crime of spreading "false information" is established by Legislative Decree No. 6 of 1965, noted above, and requires an intention of causing disorder or shaking the confidence of the masses in the aims of the revolution. A variation on this is found at Article 286 of the Penal Code, which states:

Whoever [in time of war or imminent war] conveys into Syria news that he knows to be false or exaggerated and which will weaken the national morale, will be punished. If the person doing so believes the

news to be correct, the punishment will be a minimum of three months in prison.

Article 38 of the Penal Code imposes penalties of life imprisonment or imprisonment followed by deprivation of civil rights for certain political crimes. Deprivation of civil rights includes loss of the right to any public or state employment or state pension, together with loss of rights to union membership or benefits and of the right to own, publish or edit any newspaper or periodical.

Article 287 imposes a minimum six-month prison sentence on any Syrian who knowingly broadcasts abroad false or exaggerated news or news that will damage the state's prestige or financial status. Under Article 65 of the General Law on Printed Matter, the penalty for conveying or publishing false news is one year in prison. The penalty applies provided the action has been performed "with malice and has caused disturbance to public peace or affected international relations or inflicted damage to the state or its dignity or damage to the economy, political system or morale of the army or armed forces."

Scant attention has been paid to the conditions provided for by these provisions in securing a conviction in trials based on charges of disseminating false information. Law No. 6 of 1965 enables the authorities to bring charges exclusively on the basis of intent (for example, shaking the confidence of the masses) rather than the outcome of an act. Charges of disseminating false information were brought against 17 people under Law No. 6 between December 1991 and January 1992. The charges were based on a leaflet published by the Committees for the Defence of Democratic Freedoms and Human Rights (CDF) detailing human rights abuses during the presidential election of December 1991. Of the 17 people charged, 10 were sentenced to prison terms ranging from 5–10 years. Of these, the following five, at least two of whom are known to have been tortured, are still in prison:

- Nizar Nayyuf, a sociologist and writer for the weekly *Al-Hurriya* (Freedom) serving a 10-year sentence, was transferred from Sednaya to Tadmor military prison in February 1992 after going on hunger strike.
- Mohammed Ali Habib, serving a nine year sentence.
- Afif Muzhir, serving a nine year sentence.
- Bassam Al-Shaikh, serving an eight year sentence.

Another member of the group, Nawfal Jadi, who wrote on the theme of democracy in the Arab world for a journal called "Socialist Studies", was sentenced to five years in prison with forced labour, followed by a 10-year deprivation of civil rights. He was held in Mezze prison and is reported to have been tortured. Aktham Nu'aysa, a lawyer who served many years in detention, was released at the end of May 1998 with 30 other long-term political prisoners.

Commentary

Criminalization of false news is the sort of broad provision that has historically been used to repress expression critical of government. As the Canadian Supreme Court noted, criminalizing false news "makes possible conviction for virtually any statement which does not accord with currently accepted 'truths', and ... could be used (or abused) in a circular fashion essentially to permit the prosecution of unpopular ideas." Even if the conditions for its use set out in the various laws were respected, they include provisions which are excessively broad and vague, such as damage to the state's prestige or political system. Basic principles of penal law require that crimes be defined in terms that are sufficiently clear and specific to allow citizens to regulate their behaviour accordingly. Definition should not be left to the subjective interpretations of the authorities. This principle is set out in Article 15 of the ICCPR, which provides that no one shall be convicted of a criminal offence which did not constitute a crime when it was committed. This principle is even more profound in relation to restrictions on expression as Article 19 of the ICCPR requires such restrictions to be provided for by law. As noted above, under Restrictions on Freedom of Expression, this requires that restrictions be formulated precisely and clearly.

Perhaps even more significant is the fact that prohibitions on false news, particularly those contained in the various Syrian laws, do not serve one of the legitimate aims established under Article 19 of the ICCPR. Such unfounded aims include shaking the confidence of the masses in the aims of the

revolution, damaging the State's prestige or dignity, affecting international relations, harming the economy or weakening the political system.

Finally, these provisions breach the third part of the test for restrictions on freedom of expression since they are clearly over-broad and hence cannot qualify as necessary. A final problem with these laws is that they are very repetitive. False news is prohibited by the State of Emergency Law, the Penal Code, Decree No. 6 of 1965 and the General Law on Printed Matter. This means that people may be charged with offences related to freedom of expression under more than one law at the same time, thereby clearly going beyond what is necessary to protect any legitimate interests and further clouding the already quite vague ambit of these laws. In any case, inasmuch as these provisions do serve a legitimate aim, for example the protection of public order, they are unnecessary since general public order legislation, unrelated to false expression, is sufficient for this purpose.

Recommendation Regarding False Information

The abolition of Legislative Decree No. 6 of 1965 has already been recommended. All other provisions regarding false information should be abolished.

8.5 Defamation and disparagement

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The acts of defamation (*dham*) or disparagement (*tahqir*) of people or emblems is criminalized by both the Penal Code and those sections of the General Law on Printed Matter which refer to the Penal Code. Article 282 of the Penal Code imposes a prison term of at least one year on "anyone who openly disparages a foreign country or its army or its flag or its national emblem or defames its president or ministers or its political representative in Syria." Article 284 removes the penalties for this offence "if the foreign country does not have similar articles in its own law."

Article 374 makes defaming the Syrian head of state or publicly disparaging the national flag or symbol punishable by imprisonment for up to two years. Sentences of up to one year are imposed for defamation of lesser officials or employees pursuant to Article 378. These articles are classified as offences against public authority which are subject to the jurisdiction of the SSSC pursuant to Article 6(c) of the State of Emergency Law.

Article 78 of the General Law on Printed Matter imposes a maximum two-month suspension on any publication "insulting the head of state or publishing something that touches on his dignity or negates his constitutional status" or any publication insulting "heads of foreign countries or their representatives or anything that would affect foreign relations." The suspension time is doubled if the crime is repeated.

As it happens, controls on the press and broadcasting in Syria are so stringent that it has not been necessary to invoke this law, at least in trials of writers and journalists that have come to international attention. Even journalists working outside Syria are acutely conscious of the "red line" they may not cross if they wish to continue covering Syrian affairs. One editor working in Beirut maintained that, in his personal experience, "the only real no-no is the personality of Hafez al-Asad. Other Syrians can be named and it's no big deal." A foreign journalist was more cautious, saying: "There are limits; you can't mention names."

Where derogatory remarks about heads of state and officials of other countries are concerned, application of the law is inconsistent. When Egypt was expelled from the Arab League for signing the Camp David accords with Israel, negative comment on the Egyptian leadership was actively encouraged in the Syrian media; this changed after the 1991 Gulf War when Egypt and Syria both joined the US-led alliance against Iraq. The official Syrian media's long-standing campaign against the

rival Baathist regime of the Iraqi dictator, Saddam Hussein, softened in mid-1997 in line with moves towards a rapprochement between the governments in Damascus and Baghdad.

Commentary

Defamation of those in positions of authority is a matter of criminal law in Syria, independently of the State of Emergency laws. Under the State of Emergency, defamation is seen as a threat to state security. It is ARTICLE 19's view that criminal defamation laws generally offend international guarantees of freedom of expression. In addition, imprisonment as a sanction for defamation is completely unacceptable, as is the threat of suspension. Both sanctions exercise an impermissible chilling effect of freedom of expression and are in any case unnecessary. Civil law provisions are a sufficient remedy against defamation as is shown by the experience of many countries which rely entirely on civil law to redress harm to reputations.

Another problem with the Syrian defamation laws is that they provide special protection for public figures. As noted in Chapter 4, Syria's International Obligations, public figures must tolerate a higher degree of criticism than private individuals, both because of the key role they play in the democratic process and because they have specifically chosen to put themselves into the public eye. Given the importance of information on matters of public interest, in order to prove defamation, public figures should be required to establish not only that a given statement was false, but also that it was made maliciously or recklessly. Syrian law clearly fails to respect these standards.

Finally, the only legitimate aim of defamation law is the protection of individual reputations. Syrian defamation law, however, seeks to protect a much wider range of entities, including foreign states and emblems, the Syrian flag and even foreign relations. These restrictions on freedom of expression cannot be justified by reference to any of the legitimate aims listed in Article 19 of the ICCPR. It is legitimate to criticize foreign states and to engage in political analysis that might affect foreign relations. Causing harm to national or foreign state emblems, particularly flags, is generally a political statement of some import and where it has been challenged has been considered to be protected by the guarantee of freedom of expression.

Recommendation Regarding Criminal Defamation

The Penal Code provisions on defamation and disparagement should be repealed and replaced by civil law provisions which reflect the following principles:

- Liability can only be imposed for factually false information that has been made public; the onus of proving that the information is false should be on the plaintiff;
- Damage awards should not be disproportionate to the harm caused and in any case should not be so large as to have a chilling effect on freedom of expression; publications should never be suspended for defamation.
- Public figures bringing charges of defamation should be required to prove not only that information is false but also that it was published maliciously or with recklessness.

8.6 Incitement of sectarian, racial or religious chauvinism

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Articles 307 and 308 of the Penal Code deal with acts classified as "Crimes which reduce national unity or sow discord among the elements of the population." These offences are covered by Article 6(b) of the State of Emergency Law – which categorizes offences identified in Articles 260-339 of the

Penal Code as "crimes against the security of the state and public order" – so that they are tried by the Supreme State Security Court, and hence suffer from procedural defects.

Article 307 states: "Any work, writing or speech intended to result, or resulting, in incitement of sectarian or racial chauvinism (*na'arah*) or encouraging disputes between the sects or races of the nation is punishable by imprisonment from six months to two years and a fine of S£100-200, together with deprivation of civil rights." Article 308 applies similar sanctions to members of any society established for sectarian or racial ends, with a minimum of one year in prison, together with dissolution of the society and confiscation of its property.

Under Article 285 of the Penal Code, temporary imprisonment is to be imposed on anyone calling for "anything to weaken the national feeling (*shu'ur*), or [trying] to create sectarian or religious chauvinism in time of war or when war is expected".

It is not clear from the cases documented by human rights organizations which have managed to gain extensive access to Syrian courts how often these particular charges are laid against defendants. It appears to be more common for members of Syria's minorities, notably the Kurds, to be accused of membership in illegal organizations, such as the Kurdish Workers' Party (PKK). Article 306(1) of the Penal Code makes it a crime to create "any society with the aim of changing the economic or social structure of the state or the status quo or its fundamental fabric with any of the means mentioned in Article 304." Any such society must be dissolved and its members punished with temporary hard labour. Its founders and directors should serve no less than seven years.

Both Human Rights Watch and Amnesty International have documented a very large number of cases in which the SSSC has pronounced sentence against what the state authorities describe as "terrorist organizations" on the basis of unfair trials conducted after confessions have been extracted by torture, with evidence of nothing more than the exchange of leaflets or underground newspapers. This is despite the fact that Article 304 specifies terrorist acts to be those aimed at "creating a state of terror" and committed "by means of explosive material, military weapons, inflammable material, burning substances, poisons, microbes or germ agents which can cause a public danger."

Official censors, however, are assiduous in ensuring that the law on allusions to race, sect or religion is adhered to. No article or book dealing critically with the question of sectarianism or the Kurds passes the censor. Works released for publication or broadcast which do acknowledge the existence of different ethnic and religious communities invariably do so in the context of solidarity among Syrian nationals vis-à-vis external oppressors such as the Ottomans or the French. Written reference to a person's Alawite connections is considered contentious. An obituary of the Syrian playwright, Saadullah Wannous, written by an admirer who had translated his works into English, was published in Syria with the adjective "Alawite" removed.

Commentary

A number of international instruments, including the UDHR, the ICCPR and the Convention on the Elimination of All Forms of Racial Discrimination, call on states to prohibit 'hate speech'. Article 20(2) of the ICCPR, for example, states: "Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law." It is, however, only advocacy of national hatred that constitutes "incitement to discrimination, hostility or violence" that is to be proscribed. This serves as an important limitation on what constitutes hate speech, which does not include, for example, expressions which simply evince a positive national sentiment, such as racial or religious "pride". In particular, expressions of Kurdish or ethnic nationalism, or a desire for ethnic autonomy, do not qualify as hate speech. In addition, debate about relations among different communities in the country and about relations with other countries should not be suppressed in the name of national unity.

In addition, the provisions of the Syrian Penal Code which criminalize speech which weakens "national feeling" go further than international law allows. It may be noted that nationalism is in many instances a cause of racial hatred and so these provisions are inconsistent with the hate speech

prohibitions. In any case, they are not only unacceptably broad but also do not correspond to any legitimate aim for restrictions on freedom of expression.

Recommendations Regarding National Unity and Sowing Discord

- The provisions on hate speech should be amended so as to limit them to restrictions permitted under international law, such as those found at Article 20 of the ICCPR; in particular, the protection of national unity should be removed from these provisions.
- The hate speech provisions should be interpreted narrowly and not applied to positive instances of nationalism or ethnic pride.

8.7 "Aggression" aimed at changing the Constitution

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Non-violent efforts to change the constitution are criminalized under Article 291 of the Penal Code. The first clause of this article states: "Aggression which aims at changing the constitution of the state by illegitimate means is punishable by temporary detention of at least five years." The second continues: "The punishment will be permanent detention if the person committing the crime resorts to violence."

These controls make it illegal to argue in public for such changes to the constitution as removal of the president's powers to declare a state of emergency or to alter the elevated status which the constitution accords to Syria's Baath Party. They simply reinforce the array of other prohibitions on membership of an illegal political party, including those contained in Law No. 6 of 1965, which makes it a crime to "oppose the aims of the revolution."

Commentary

Article 291 of the Penal Code reflects the basic philosophical approach of the Syrian authorities towards the Baathist regime. As is clear from this article and the host of other similar provisions noted in this report, the government is simply unwilling to accept any opposition to its ideology and position of power. These provisions contravene the basic right to freedom of expression as guaranteed by the 1973 Constitution which, at Article 26, accords every citizen the right "to participate in political, economic, social and cultural life" and, at Article 38, guarantees the right to "make known his opinion freely and publicly." The only channels for political expression permitted under the law as it stands are the political parties allied with the Baath Party within the National Progressive Front, which are apparently committed to both the existing Constitution and the state of emergency, despite the incompatibilities between them.

Recommendation Regarding Aggression Against the Constitution

Article 291 of the Penal Code, which, along with other provisions effectively outlaws any political opposition or even the articulation of opposing viewpoints, should be repealed.

8.8 Syrian controls on the Lebanese media

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It is beyond the scope of this report to discuss in any detail the extent of Syrian influence over the media in Lebanon but it should be noted that certain restrictions regarding what may be said or written about Syria and the Syrian-Lebanese relationship constrain the media in both countries.

Syria's continued political control over Lebanon is manifest in many areas of Lebanese life; Syria's Military Intelligence has a special Lebanese branch with bases inside Lebanon and the so-called troika at the head of the Lebanese government, consisting of the president, prime minister and parliamentary speaker, travel to Damascus regularly for consultations before taking any policy decisions. There are some sectors in which deregulation in Lebanon works to the advantage of Syrians unable to engage in profitable business at home; indeed the Syria-Lebanon relationship is sometimes compared to that between China and Hong Kong. Syrians with close connections to the Asad regime are said to have profited financially from business dealings in Lebanon in everything from mobile phones to hashish and opium cultivation in the Beqaa valley. The Syrian authorities are prepared to tolerate only a limited degree of media freedom in Lebanon.

Clause 2(a) of the Defence and Security Agreement signed between Syria and Lebanon in September 1991 requires the Syrian and Lebanese military and security authorities to "ban all military, security, political and media activity that might harm the other country." Clause 2(b) requires them to "refuse to give refuge to, facilitate the passage of, or provide protection to persons and organisations that work against the other state's security. If such persons or organisations take refuge in either of the two states, that state must arrest them and hand them over to the other state at its request."

The Defence and Security Agreement was provided for under the Treaty of Fraternity, Cooperation and Coordination signed by the two countries in May 1991. This declared that Syria and Lebanon had "distinctive brotherly relations" based on their "geographic propinquity, similar history, common belonging, shared destiny and common interests." Opponents of the treaty claimed that it amounted to Syrian annexation of Lebanon, especially as there was no formal Syrian recognition of Lebanese independence through the establishment of diplomatic relations. Given the specific reference to banning "harmful" media activity, there was fear that the content as well as the structure of the Lebanese media would come under Syrian control.

As it happens, the subject of the drug trade, which was once taboo in the Lebanese media because of Syrian involvement, can now be discussed. When Syrian troops remained in Lebanon after the end of the civil war, it appears that one concession Syria made to the US government was to launch a campaign to eradicate the traffic in illegal drugs. But Lebanese reporters remain acutely conscious of what many of them refer to as "the red line" on other matters to do with Syria and many freely admit to censoring themselves. Memories are still alive of the actions of Syrian troops in forcibly closing prominent Lebanese newspapers and arresting journalists when they entered Beirut in 1976. The penalties for stepping out of line have since included abduction, torture and assassination (see Chapter 10).

For the Syrian media covering Lebanese affairs, the same rules apply as if Lebanon were part of Syria. Mohammed al-Wadi, the editor-in-chief of *Tishrin*, asked about the ban imposed in Beirut in January 1998, preventing Lebanese satellite television channels from airing news about Lebanon or programmes about Lebanese politics, expressed satisfaction that the Lebanese could "no longer wash their dirty linen in public". Accusations of Syrian government involvement in the ban were widespread among people working in the Lebanese media.

Commentary

As with other restrictions on freedom of expression, the limitations relating to criticism of a neighbouring country are acceptable only to the extent that they comply with the test laid down in Article 19 of the ICCPR. Although some restrictions based on relations with neighbouring countries may be legitimate, the restrictions on media activity contained in the 1991 Defence and Security Agreement between Syria and Lebanon are excessive and go far beyond what is required to protect the legitimate interests of two separate sovereign states. They impinge on open discussion regarding matters of great public interest to both Syrians and Lebanese.

Recommendation Regarding Coverage of Lebanon

The legal restrictions in both Syria and Lebanon affecting expression in each country about the other should be amended to reflect the following principles:

- Restrictions should be limited to cases where this is necessary to protect legitimate national security interests.
- Critical and other analytical reporting and the dissemination of information should not be proscribed.

9 ACCESS TO INFORMATION

9.1 A one-way flow

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Access to information is a prerogative of the most powerful echelons of the political leadership in Syria. The effects of controls on the structure and content of the media are reinforced by a series of additional laws and practices which ensure that information is available only to the privileged few.

The authorities' assumption that they are under no obligation to share information with the Syrian public was tellingly demonstrated in the aftermath of the bus bombing which took place in Damascus on New Year's Eve, 1996. This was a serious explosion in which 20 people were reported killed and 44 injured. While victims were being rushed to hospital, a news blackout was imposed and officials were ordered to refer all enquiries to the security apparatus. It was only after a foreign news agency revealed what had happened that the Syrian media followed suit.

The ubiquitous intelligence agencies which police and enforce the secrecy and security laws are themselves highly secretive. Their staffing and structure gives them a closer relationship with the President than is enjoyed by the Council of Ministers, so that most Cabinet ministers are actually subordinate to the heads of the intelligence units. At the same time the prisons used to hold people detained under the state security laws, notably Tadmor, Sednaya and Mezze, are directly controlled by the intelligence services and do not come under the supervision of the Ministry of Justice.

Information on the number and status of the different intelligence organizations, known collectively as the *mukhabarat*, is not available to the public. However, foreigners who have lived in Syria for long periods and have regular contact with the intelligence personnel responsible for monitoring their activities in the country estimate that 100,000 people are directly employed as *mukhabarat*. They suggest that, even though this represents one intelligence employee for every 166 people, it is probably a conservative figure. The resources of the intelligence and security forces are swelled by the presence of an army of unpaid informers in every street, school, factory, office and other place where people gather. These people may inform on acquaintances and colleagues willingly, in exchange for favours obtainable only through the intervention of the *mukhabarat*, or unwillingly, because they have fallen foul of the security apparatus and are obliged to comply with orders in order to avoid detention. Certain jobs, notably driving taxis and working in hotels, restaurants and travel agencies are reserved for informers.

Members of the public are required by law to supply information to the authorities even when they have not been formally requested to do so. Article 388 of the Penal Code states:

Every Syrian who knows about a crime against the security of the state and does not immediately inform the public authority about it will be punished by imprisonment from one to three years and deprivation of civil rights.

Prison terms of up to three years for precisely this charge have been imposed on many of the hundreds of defendants whose cases have been heard by the Supreme State Security Court since 1992.

Although there is a measure of coordination among the various branches of the intelligence services, it is the President's practice to communicate directly with individual security heads, to avoid a situation in which any single potential rival accumulates excessive power. In these circumstances, conflicting reports circulate about which security heads are within the President's inner circle while reliable information about the different branches, or the detainees in their charge, is denied to outsiders. There are at least a dozen intelligence and security agencies, several of which have numerous branches. Those most frequently dealing with "offences" related to freedom of expression are Military Intelligence and Political Security.

Military Intelligence, headed for many years by Ali Duba, has several sub-branches which are largely autonomous, including the Palestine Branch, Commando Police, Regional Branch, Military Interrogation Branch and Syrian Military Intelligence in Lebanon — the latter headed by Ghazi Kenaan. Air Force Intelligence, under Mohammed al-Kholi, has offices and interrogation facilities in Aleppo, Homs and Latakia as well as Damascus. Mohammed al-Kholi was temporarily moved from his post in 1987 after being accused of involvement with the former Syrian ambassador to London, Shukrallah Haidar, in the 1986 Nizar Hindawi affair, in which the British government claimed official Syrian complicity in an attempt to place a bomb on an Israeli airliner at London's Heathrow Airport.

Political Security, General Intelligence and the Baath Party National Security Bureau are civilian agencies. Political Security, under Adnan Badr Hasan, comprises various branches specializing in political parties, student activities, surveillance and pursuit, government institutions and the city of Damascus. General Intelligence, second in importance after Military Intelligence, was taken over by Majid Said in 1988. Although formally under the jurisdiction of the Ministry of the Interior, it operates autonomously and is answerable only to President Asad. This agency has eight or nine branches, the most important of which is the Internal Branch headed by Mohammed Nassif, a relative of the President. The Internal Branch has responsibility for Damascus and is particularly active on university campuses, while other branches specialize in external security, prisons and counter-espionage.

The National Security Bureau is supposed, in theory, to control the other agencies but has ceded this role in practice to the Presidential Security Council set up in the mid-1970s. It is headed by a former Prime Minister, Abdel-Rauf al-Qassem, the only civilian security chief who is not Alawi.

9.2 The Law on Secrecy and State Security

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Under Article 6 of Syria's State of Emergency Law, crimes against public and state security, at Articles 260-339 of the Penal Code, fall within the jurisdiction of the SSSC. Under Article 261, aggression against the security of the state is considered a crime whether or not the act which constitutes the crime is complete or just started. Article 271 imposes a minimum one-year prison sentence for anyone who "enters or tries to enter a forbidden place with the intention of getting any document or information which has to be kept secret for state security." If the act is carried out "with the intention of spying", the sentence becomes imprisonment with forced labour. Article 273 imposes a prison sentence of up to two years on anyone convicted of divulging secrets without a legitimate reason. The sentences handed down by the Supreme State Security Court are generally much longer than those specified in the Penal Code.

The dearth of information about political prisoners and extrajudicial killings carried out by the security forces is part of the culture of secrecy propped up by these articles and provides the authorities with a further means of repression. It is said, for example, that the President's brother Rifaat, who supervised the massacre of tens of thousands of people and the destruction of large parts of the city of Hama in 1982, never cared to deny any estimate of the death toll as the higher the figure, the greater its deterrent effect. In the same way, the inability of detainees' relatives to ascertain even the whereabouts of their missing family member creates maximum fear, while ensuring that energy is exhausted in the search for information rather than in any more productive pursuit of justice. According to an Amnesty International source, some families are still trying to discover the fate of prisoners held at Tadmor Military Prison during the massacre there in June 1980, when about 1,000 people were killed. Information about this atrocity, as about many others, is still leaking out piecemeal, many years after the event. It comes to light only if eyewitnesses are eventually released and even then only if they leave the country or smuggle the information out.

Commentary

State security is defined so broadly in the Penal Code and State of Emergency legislation that, in practice, state security means the security of the regime. The law is grossly over-inclusive and does not clearly define the nature of the information that must be kept secret or specify what constitutes a forbidden place.

Freedom of information is an essential component of the right to freedom of expression. In its very first session, the UN General Assembly passed a resolution stating: "Freedom of information is a fundamental right and is the touchstone of all freedoms to which the United Nations is consecrated." Freedom of information is also implicit in Article 19 of the ICCPR which guarantees the right "to seek, receive and impart information ... regardless of frontiers" Thus, access to governmental information is a key component of the right to freedom of expression and such information may only be withheld from the public where justified according to the limited grounds allowed under international law for restrictions on freedom of expression.

One of the most common justifications for denying access to government-held information is national security. ARTICLE 19 stresses that although national security may be a legitimate ground for refusing access to information, it is not sufficient for governments simply to allege a threat to national security. Denial of access to information must be justified in the same way as other restrictions on freedom of expression; it must be prescribed by law and be necessary in a democratic society.

In 1995 an international group of experts meeting in South Africa adopted the Johannesburg Principles on National Security, Freedom of Expression and Access to Information. These principles establish general standards regarding acceptable limits on freedom of expression, including access to information, on the basis of national security interests. Principle 12 provides that a "state may not categorically deny access to all information related to national security, but must designate in law only those specific and narrow categories of information that it is necessary to withhold in order to protect a legitimate national security interest."

Principle 13 establishes that "the public interest in knowing the information shall be a primary consideration" in all decisions concerning the right to obtain information. Principle 14 goes on to affirm states' duty to adopt appropriate measures to give effect to the right of access to information. Principle 15 prohibits punishment "on national security grounds for disclosure of information if (1) the disclosure does not actually harm and is not likely to harm a legitimate national security interest, or (2) the public interest in knowing the information outweighs the harm from disclosure."

Recommendations Regarding Access to Information

- The State of Emergency Law should be abolished immediately; this should result in the termination of all intelligence activities other than those which correspond to legitimate national security and public order interests;

- The legal regime in Syria which enshrines the practice of secrecy and of denying access to government-held information should be replaced by a system founded on freedom of information and the principle of maximum disclosure. This system should reflect the following principles:
 - i) The government should only be permitted to classify specific and narrow categories of information which need to be withheld for the protection of legitimate, overriding interests including those relating to national security. Broad and ambiguous expressions should be avoided.
 - ii) Not all information "relating to national security" may be withheld from the public. Classification should be restricted to information whose disclosure poses a genuine risk of endangering national security.
 - iii) An administrative structure should be established for receiving and deciding upon requests for access to information. This body should be independent of government and have the power to order any government body to release information; all procedures should be accessible, simple and quick. The "public interest" in the information should be a primary consideration in all decisions on requests for information.
 - iv) The authorities should be required to specify in writing, within fixed time limits, their reasons for denying any request for information.
 - vi) Judicial review should be available for all decisions regarding access to information.
 - vii) The disclosure of information should be punished only where there is actual or likely harm to legitimate state interests.

9.3 The Law on Meetings and Societies

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Members of the public are denied access to political, economic and security information held by public authorities but they are forbidden to apply the same rules in reverse. The conduct of meetings and the formation of societies are tightly regulated under the section of the Penal Code covered by the State of Emergency Law.

Article 325 of the Penal Code states:

Any person who attends a meeting not classified as private and causes a disturbance by shouting or chanting or brandishing inflammatory signs or who instigates a demonstration disturbing public order shall be punishable by a fine and a term of imprisonment. A gathering shall be classified as non-private either by virtue of its aims and intent or the number of persons invited to participate, or by virtue of the place where it is held if the place in question is a public place, or if the public has access to it or if it is in the public view.

According to Article 327 of the Penal Code there can be no legal group in Syria that does not "inform the authorities of its basic regulations, the names of its members and their work, the subjects of its meetings, its financial resources and the sources of its funds." Any association or group which fails to give complete or accurate information on all these points will be considered secret. It will also be considered secret if its objectives are "not in accordance with the law". Under Article 328, any secret society will be dissolved, its assets confiscated and its administrative and executive personnel punished with up to two years' imprisonment. Ordinary members are also liable to be fined and even imprisoned. Article 329 warns that, if a member of a secret society has committed a crime in order to carry out the objective of this society, any member who attended the meeting that decided on the crime will be considered to have incited it and will be punished accordingly.

These restrictions on freedom of association are an important mechanism by which the regime stifles criticism and opposition. Many of the political prisoners whose cases have come to light during the 1990s stand accused of membership of secret societies. This has enabled the authorities to respond to pressure from foreign human rights organizations by denying that they have penalized journalists or other writers on account of their writings, claiming instead that they have been involved in "criminal activity". They can then claim that "there are no journalists in jail, only criminals". The law criminalizes the formation of any political opposition and forces all such activity underground, where it becomes illegal by definition.

During a series of political trials in 1993–4, at least six writers are known to have been among those receiving prison sentences of 12–15 years on charges connected with membership of illegal organizations. In four of these cases the organization in question was the Party for Communist Action (PCA), in another it was the Communist Party Political Bureau, and in the sixth case it was the Arab Socialist Democratic Baath Party, which is distinct from the ruling Baath Party. In all, approximately 300 people were tried for belonging to the PCA. Long sentences were handed down to people who had already been in prison for many years before their trial. For example:

- Rida Haddad, an editorial writer for *Tishrin*, was arrested in October 1980 and sentenced on 28 June 1994 to 15 years in prison for belonging to the Communist Party Political Bureau. He was held at Adra prison in Damascus until his release on November 10, 1995. He died of cancer seven months later, on 17 June 1996.
- Ismail al-Hajji, a reporter, was arrested in January 1982. He was sentenced to 15 years in June 1994 for belonging to the Arab Socialist Democratic Baath Party.
- Faisal Allush, an author and journalist, was arrested in 1985 and sentenced eight years later, on 28 June 1993, to 15 years in prison for membership of the PCA.
- Samir al-Hassan, a Palestinian who published a magazine called *Fatah al-Intifada* (Victory of the Uprising) and wrote for another called *al-Asifa* (The Storm) was arrested in April 1986 and sentenced eight years later, on 6 June 1994, to 15 years in prison for membership of the PCA.
- Anwar Bader, a reporter with Syrian radio and television, was arrested in December 1986 by Military Intelligence and held in Sednaya prison. He was sentenced over seven years later, on 3 March 1994, to 12 years in prison for PCA membership.
- Faraj Ahmad Birqdar, author of collections of poetry entitled *And You Are Not Alone* and *A New Dance of the Heart*, was arrested by Military Intelligence in March 1987 on suspicion of PCA membership. He was held without charge or trial and reportedly kept in solitary confinement. He was sentenced to 15 years in prison on 17 October 1993.

Commentary

The laws and sentences noted in this section breach the guarantees of both freedom of expression and freedom of assembly, found at Article 21 of the ICCPR. Restrictions on freedom of assembly are

subjected to a test similar to that relating to restrictions on freedom of expression. They cannot be justified unless they are necessary in a democratic society and serve one of a limited number of legitimate aims. It is clear that the purpose of the Syrian laws is to prevent the emergence of any organized opposition rather than any legitimate aim. These restrictions are, therefore, excessive.

As the examples above make clear, however, restrictions on meetings and societies are used not only to prevent people in Syria from organizing, but also aim to intimidate the media. As a result, they offend not only the guarantee of freedom of assembly but also freedom of expression.

Recommendations Regarding Meetings and Societies

- The provisions of the Penal Code relating to meetings and societies should be amended so as to bring them into line with international standards; in particular, meetings should not be restricted unless this can be shown to be necessary to protect a legitimate interest.
- Restrictions on assembly should never be used to inhibit the legitimate exercise of freedom of expression, including freedom of the media.

9.4 Impediments to research

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Not all the obstacles facing Syrian citizens who seek access to information can be traced directly to legal provisions. Book-banning is common, with written guidelines for banning supplemented by unwritten rules based on a whole range of factors, from current trends in official foreign and domestic policy to the political leanings of authors (whether or not these are evident in the book itself) and the individual censor's constant fear of being caught out – the fear that others of higher rank will spot an offending text that has been allowed to slip through.

At the same time, unwritten rules about what may or may not be communicated in the commercial field can be imposed by state organizations. Certain types of academic research may simply be inhibited by the presence of intelligence agents on campus or by the knowledge that analysis of Syrian politics and society will inevitably touch on taboo areas such as sectarian or ethnic divisions.

9.4.1 Market research

Market research is a new field in Syria and the state monopoly, the Arab Advertising Organization (AAO), remains extremely cautious about it. In reviewing a questionnaire being prepared for distribution under its auspices in early 1998, the AAO objected to questions about whether respondents had engaged in international travel in the past 12 months and whether they possessed consumer durables such as telephones and dishwashers. These questions were removed before the questionnaire was circulated. The AAO likewise insisted that the data from completed questionnaires be collated in Damascus rather than abroad.

The same organization is also empowered to remove information from advertisements. Advertising agencies working with the AAO know that nothing with any hint of politics, religion or sex will be allowed. But they can never be completely sure in advance whether the content of an advertisement will be accepted or not, nor of the reasons for any rejection. The AAO may, for example, object to the inclusion of shots of a western capital or information about the price of brands being advertised.

9.4.2 Book banning

Academic research in history, sociology, anthropology, economics and other areas concerned with people is subject first and foremost to barriers created by book banning. Works of non-fiction that deal with subjects relating to Syria in some way are subject to censorship, which usually prevents them from being published locally or, if published abroad, from being imported into the country. It is possible for determined researchers to acquire copies of prohibited books from Lebanon or further afield, but this roundabout route is clearly not open to everyone.

The fact that the list of banned titles includes all books on the Kurds, all books dealing with the Alawis or anything else to do with sectarianism or minorities, and all books on the Baath Party in Iraq, gives only a limited indication of the areas where access to information for research purposes is officially prohibited in Syria. Among specific titles on other subjects which are off-limits are Abu Ali al-Yasin's *The Divorce Crisis in Syria, Labour Power and the Control of the Means of Production* and *The Story of the Land and the Farmer in Syria*; Ahmad Swaidan's *The Predicament of Trade Union Activity in Syria*; and Patrick Seale's biography, *Assad*. Sadiq al-Azm's book *The Tabooing Mentality*, is banned even though the author is currently a philosophy professor at Damascus University.

A number of books simply never become available because of censorship, even though they do not deal with obviously sensitive subjects and the list of banned books is immeasurably long. A Syrian doctor of medicine now living in exile has written 16 books, of which only two have ever been published in Syria. One of these was a medical textbook dealing with sleeping disorders. It took nine months for the Latakia publishing house to get the manuscript approved by the censor, even though the text was completely devoid of politics. When the first edition went out of print, a second was proposed but this time permission was denied. The author assumes the refusal was intended to penalize him for having communicated with the United Nations in Geneva on behalf of colleagues in prison in Syria. The main losers are Syrian medical students seeking information in Arabic on sleeping disorders. Given the unfavourable exchange rate and the impossibility of transferring money abroad, the financial loss to the author was negligible.

As a result of the regular banning and non-publication of books over a period of two decades or more, and the creation over that time of a teaching force able to tolerate informers, political controls and a dearth of teaching texts, Syrian students are today routinely denied access to the sources required for serious study.

Commentary

The problems with prior censorship, such as book banning, have already been noted. These problems are clearly exacerbated when the motivation for such censorship comes from the government which also exercises control over the process. The examples noted above clearly establish that many books are banned simply because they deal with politically sensitive subjects. There is no need for any special regime governing the publication of books since they are subject in the normal way to any laws which legitimately restrict freedom of expression. Similarly, restrictions on market research serve none of the legitimate aims for restrictions on freedom of expression and are simply another control mechanism for the authorities.

Recommendation Regarding Impediments to Research

All prior censorship of both market research and books should cease. Books should not be subject to any special regulatory regime.

10 EXTRA-LEGAL REPRESSION OF THE MEDIA

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The Syrian authorities employ various extra-legal means by which to intimidate and repress groups and individuals so as to prevent them from expressing themselves or imparting information to others. These means include detention without charge or trial (in some cases for periods of 13 years or more), torture in detention, physical attacks on people in public, abductions, "disappearances" and assassinations. Members of minority groups have been detained for nothing more than writing letters to family members overseas about water shortages. Where Kurdish self-expression is concerned, the regime has engineered a situation in which Syrian Kurds are effectively silenced by Kurdish militants from neighbouring countries, freeing Syrian security forces to focus their attention on other groups. The silencing in this case is not only of political speech but also of cultural expressions such as annual festivities.

10.1 Detention without trial or beyond the duration of sentences

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The practice of keeping large numbers of political prisoners provides the Syrian leadership with a permanent set of bargaining cards in its dealings with internal dissident groups, such as the Muslim Brothers, and with neighbouring states and external powers.

When the Israeli government went public with its proposal for a conditional withdrawal from southern Lebanon in March 1998, Syria acted to make the Lebanese public more favourably disposed towards Damascus by releasing 121 Lebanese prisoners who had been held in Syria for many years, some since the early years of the 1975-90 Lebanese civil war. When 1,500 political prisoners were released from Syrian jails in November 1995, in an amnesty to mark the twenty-fifth anniversary of Hafez al-Asad's presidency, most of those released were alleged members and supporters of the Muslim Brotherhood who had been held since the early 1980s. The amnesty coincided with attempts by President Asad to negotiate an accommodation with Syrian leaders of the Muslim Brotherhood living in exile in Germany and elsewhere. Even after 1,500 people were given their freedom, Amnesty International estimated that at least 200 Syrian prisoners of conscience remained in detention.

Many journalists and writers are, or have been, detained without trial or beyond the expiry of their sentences. The case of Khalil Brayez has been followed by human rights organizations for nearly 20 years. He was abducted from Lebanon by Syrian security forces in October or early November 1970, and sentenced in March 1972 to 15 years' imprisonment. In a summary secret trial he was charged with incitement to commit murder, incitement to carry out "terrorist activities" and misusing information available to him in his capacity as an army officer. His crime was to have written two books, *The Fall of the Golan* and *The Golan Files*, in which he criticized the performance of the Syrian army in the 1967 war with Israel and blamed the country's political leadership for Israel's occupation of Syria's Golan Heights. Although his sentence expired in 1985, Khalil Brayez still remains in jail, bringing his total time in prison to 28 years.

At the start of 1992 there were at least 500 political detainees in Syria who had been imprisoned without trial. The government apparently recognized this situation to be a potential embarrassment as it faced the prospect of a new set of relationships in the Middle East and beyond. Its traditional superpower backer, the Soviet Union, had ceased to exist; Syria had joined the US-led coalition which ousted Iraq from Kuwait; and the Middle East peace talks had started in Madrid in October 1991, with the then Israeli Prime Minister, Yitzhak Shamir, using his speech at the talks to

draw attention to Syria's human rights record in the presence of the Syrian delegation. Approximately 3,500 detainees were conditionally released in late 1991, to coincide with Hafez al-Asad's "election" to a fourth term as President. Then, in an apparent effort to regularize the situation of those remaining in jail, the regime initiated a series of trials that were to continue for most of the next three to four years, to the end of 1995.

The cases of some of the writers and journalists among the defendants in these trials have been described above in Chapters 8 and 9. People who had been imprisoned since the early 1980s were given prison sentences long enough to cover the periods they had already spent in jail with some time left to serve. Charges against two journalists, Tadrus Trad and Abdullah Muqdad, who had been arrested in 1980, were apparently dropped in 1994, after they had spent 14 years in prison. Not everyone was brought to trial, however. Riad al-Turk, arrested in October 1980 for alleged membership of the Communist Party Political Bureau, was held incommunicado by the Military Interrogation Branch of Military Intelligence until 1993, but was not tried even then. He was released at the end of May 1998. Moreover, while detainees were being released in December 1991, other people were being arrested in a round-up that continued through the early months of 1992, demonstrating that there was to be no fundamental shift in Syrian policies on human rights to bring them in line with the country's international obligations.

The longest prison term known to have been handed down by the Supreme State Security Court between 1992 and 1995 was imposed on Abdel-Aziz al-Khayyer, who was accused of offences connected with membership of the Party for Communist Action. He was arrested in February 1992 and held for three years before being sentenced in August 1995 to 22 years in prison. He is not due for release until 2012.

Salama George Kaila, a journalist with the provincial newspaper *al-Wahda* (Unity) and contributor to the journal *Dirasat Arabia* (Arab Studies), was arrested in March 1992 and held in Adra prison in Damascus. The reason for his arrest appeared to be a report he wrote on censorship in Syria which appeared in a Jordanian newspaper. It is not clear from the sparse information available about Kaila whether he was tried in 1993 or 1995. Nor is there any news as to when he might be released.

The 1991–2 pattern of amnesties followed by further arrests was repeated in 1995–6. The release of 1,500 political prisoners in November 1995 is believed to have been followed in March 1996 by the arrest of up to 100 alleged political activists in Deir al-Zor, and in April the same year by the detention without charge of up to 800 members of the country's Turcoman minority. Most of the latter had supposedly been released by July 1996 but, as with the majority of similar instances in Syria, information trickling out of the country remains extremely sparse.

More arrests took place in the first half of 1997 in connection with letters written by Assyrians living in the governorate of Hassakeh to family members abroad, especially in the US, asking them for financial help to overcome a shortage of water in the Khabur river. Intelligence agents, accusing those who had masterminded the financial appeal of exploiting the crisis, briefly detained at least four representatives of the Assyrian community, which is concentrated in about 34 villages on the two banks of the Khabur. Those arrested included Bashir Saadi, a former member of the People's Assembly, and Bunan Talba, head of the Khabur drinking water committee.

Zubayda Muqabel, a member of the staff of the President's brother and rival, Rifaat al-Asad, was detained on 7 July 1997. She was taken from her car in the middle of the road by security forces while driving in Damascus. Her father, Mohammed, and two brothers, Ayman and Khaled, arrested at the same time in Aleppo, were released some days later. But Zubayda Muqabel, who was denied access to her family or a lawyer, was held at an unknown location for eight months. Her crime appears to have been to film a meeting in Syria between Rifaat and Saudi Arabia's Crown Prince Abdullah and send it to the Arab News Network (ANN), the London-based satellite news channel run by Rifaat's son, Sawmar. ANN showed the film several times on and after 4 July 1997. Sawmar al-Asad used the back cover of his weekly magazine, *al-Shaab al-Arabi* (The Arab People), published in Paris, to protest Muqabel's detention. In a caption under her photograph in the magazine he described her as a member of the "Hizb al-Shaab al-Arabi al-Dimocrati" (The Democratic Arab People's Party).

Commentary

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Syrians imprisoned for exercising their internationally recognized right to freedom of expression have no human rights organization inside the country to defend their interests, nor have they any means of obtaining compensation or redress against their mistreatment by the state authorities. Because of the large numbers of political arrests carried out by the Asad regime, and its policy of detaining people for years without trial or long after their sentences have expired, the cases mentioned here give no more than a glimpse of the unlawful detentions for which the security forces, under the command of the President and his closest associates, have been responsible.

Recommendation Regarding Detention of Media Workers

- The government should cease arrests and detentions of individuals simply for exercising their right to freedom of expression.
- Everyone who has been detained should have the right to have their case reviewed by a judge within 24 hours of their arrest, regardless of the reasons.

10.2 Torture and ill-treatment in custody

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Syria's Penal Code expressly prohibits torture. Article 391 states:

Whoever exerts any harsh action not permitted by the law in order to extract admission of a crime or information about it will be punished with imprisonment of three months to three years. The minimum penalty will be one year in prison if the violence caused illness or wounding.

Various human rights organizations, notably Amnesty International and Human Rights Watch, have documented the use of torture in Syrian detention centres as part of the process of extracting confessions so as to give a veneer of legitimacy to the trials of political prisoners. According to Amnesty International, most of the 500 or more defendants tried by the SSSC in the period 1992–5 said in court that they had been tortured. Those people mentioned by name in the present report who are reported to have been tortured include: Ahmad Nu'aysa; Nizar Nayyoub; Nawfal Jadi, held responsible for a leaflet issued by the Committee for the Defence of Democratic Freedoms and Human Rights (CDF); and Anwar Bader and Faraj Ahmad Birqdar, writers accused of belonging to the Party for Communist Action (PCA). Birqdar and Nayyoub are among those who have also been held in solitary confinement. The list of victims includes others who have died in custody after being tortured and denied medical treatment. One victim was Munir Francis, who died in April 1990 at the age of 30 after suffering from internal bleeding. He had been among a group arrested by Political Security in March 1990 after anti-government slogans were written on the walls of the town where he lived.

Reports of beatings in detention have continued. The US State Department received unconfirmed reports that some members of a student group who staged a protest against a new educational policy in Damascus in June 1997 were detained for several days and beaten before being released. Difficulties confront any organization seeking to confirm reports of this nature because of the fear of reprisals by the security forces against anyone giving any hint of the authorities' human rights abuses. Human Rights Watch, in its 1998 report, cites the example of a family in Aleppo who feared so

much for the safety of other family members that they kept quiet for almost 20 years about their son who had been detained in late 1979.

Commentary

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Victims of torture wishing to press charges against their torturers under the existing provisions of the Penal Code are currently required to file a legal action with the ordinary criminal courts. In practice, however, this course of action is not available to those held by the special intelligence forces, which are not under the jurisdiction of the Ministry of Justice, and who are tried before the Supreme State Security Court, which does not observe basic standards required for fair trials.

Recommendations to Prevent the Use of Torture and Ill-treatment

ARTICLE 19 demands:

- Immediate and rigorous application of the Penal Code safeguards against torture, including public prosecution of those accused of torture.
- Unfettered judicial supervision of all arrests, with legal access for detainees.
- Immediate and public renunciation of reprisal measures against those who publicize illegal acts by the state authorities.
- Access by international bodies and NGOs to those claiming to have been tortured.

10.3 Attacks, abductions and assassinations

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The security and intelligence forces have created a situation in which victims of torture, incommunicado detention and other forms of abuse are so isolated that news of their plight rarely reaches the outside world. At the same time, however, these forces are quite capable of inflicting physical harm on individuals in public, apparently as a calculated reminder of their strength and brutality and a demonstration of their freedom to flout the law. ARTICLE 19 was told of an instance in which a Turcoman doctor in Latakia was physically assaulted by members of the *mukhabarat* while he was actually attending to patients in his clinic. The doctor had a friend who belonged to the Baath Party and who was sufficiently embarrassed about the public nature of the attack to complain about it. However ARTICLE 19's source was convinced that the attack was deliberately carried out in public, for the purpose of intimidation.

The deterrent effect of attacks on Lebanese journalists, carried out by Syrian agents in the early 1980s, is considered by some observers in Lebanon to have been so powerful that, 17-18 years later, it still plays a large part in explaining the Lebanese media's reluctance to criticize the Syrian presence in Lebanon. Two of the most prominent Lebanese journalists to be murdered after criticizing the Asad regime were Riyadh Taha (23 July 1980) and Salim al-Lawzi (4 March 1981). After moving his weekly, *Al-Hawadeth* (Events), to London to escape censorship in Lebanon under Syrian control, Lawzi returned to Lebanon to attend his mother's funeral. He was abducted and killed. His body, dumped in a Beirut suburb, showed unmistakable signs of torture with sickening damage to his right

hand. This was taken as a clear warning to writers and one which has not been forgotten. ARTICLE 19 was told:

The Syrians created the equivalent of the Hiroshima bomb among journalists in Lebanon by what they did to Salim al-Lawzi and others. You only need to use the atomic bomb once and it has a deterrent effect for a long time.

The campaign to instil fear into writers has not been confined to Syrians and Lebanese. Two assassinations in 1985 killed Hanna Muqbil, the Palestinian Secretary-General of the Arab Journalists Association, and Michel al-Namri, a Jordanian journalist, who edited a magazine in Athens. Both had criticized the Syrian regime. In Namri's case, an entry in his diary the previous day recorded a threat received from Asad's office.

Lebanese nationals, including several members of the same family, have remained subject to abduction and torture by Syrian authorities since the end of the Lebanese civil war. In one of numerous cases documented by Human Rights Watch, Gabi Aql Karam was twice abducted from Lebanon and transferred to incommunicado detention at the Palestine Branch of Military Intelligence in Syria. He was first apprehended on 25 December 1993, transferred to Syria 10 days later and held there for nearly six weeks before being returned to Lebanon, where he was later tried, together with 16 other defendants, and sentenced to imprisonment with hard labour for having contacts with "enemy agents" (meaning Israelis). Karam was again taken from his home in Beirut by members of Syrian Military Intelligence in January 1997 and "disappeared" to Damascus. He was not released until April 1997 and neither the Syrian nor the Lebanese authorities officially acknowledged his detention.

Karam's wife, Hala Haj, was abducted from Beirut in January 1990 and released from detention in Syria a full seven years later, having sustained permanent injuries from repeated torture while in custody. Gabi Karam's sister, Magi, was detained twice, the second time by Syrian security forces in Chtoura in Lebanon's Beqaa Valley, who held her prisoner in Damascus for most of the month of March 1997.

Amnesty International reported in October 1997 that at least three Lebanese sympathizers of the pro-Iraqi wing of the Baath Party remained in detention in Syria. One, Hassan Gharib, had been in a group of 13 apprehended in Lebanon in 1994 and held in Syria without trial. Two others, Zafer al-Muqadam and Hani Shuaib, were taken in February 1996 and likewise held in Syria without trial.

10.4 Repression of Kurdish self-expression

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Syrian Kurds, who account for an estimated 10 per cent of the country's population, have been subjected to systematic denial of citizenship and other rights since the 1960s, when the exceptional census of 1962 deprived 150,000 Kurds living in villages near the Turkish border of their Syrian nationality. Without identity cards, Kurds could not claim their land, which was handed over to Arabs under a land reform programme. As the children born to stateless Kurds are also considered foreign by the Syrian authorities, the number of Kurds to whom his status applies is believed to have increased to between 200,000 and 300,000. These people are not eligible to receive passports or other travel documents. They do not have the right to vote or stand for public office, nor can they be employed by the state or practise as doctors or engineers.

In addition to these severe handicaps, the Kurds are denied the right to use their own language in schools, publications, businesses or place names. The Western Kurdistan Association, which operates outside Syria, is not a campaigning organization but a social and educational one, working on

behalf of Syrian Kurds living in exile. Even so, its newsletter, *BinXetê* (Under the Line), is not permitted to circulate in Syria.

Those suspected of campaigning for Kurdish civil rights inside Syria are regularly intimidated, victimized and harassed. Even those who have retained their Syrian nationality have been dismissed from jobs and educational institutions and prevented from travelling abroad. At other times they been virtually sent into exile, even though this is disallowed by Article 33 of the Syrian Constitution which states: "Citizens may not be expelled from the territory of their homeland." ARTICLE 19 was told of the case of Hamid Sina, a member of the Kurdish Democratic Party in Syria, who was informed in 1985 that he would be released from prison provided he went immediately to Saudi Arabia. He died in mysterious circumstances before arriving at his destination. At the same time another member of the KDP-Syria Political Bureau, who in his youth had been the first Kurd to go on to higher study in Hassakeh but who lost his mind in prison, was released to work in the streets.

In addition to repressive and intimidatory measures like these, the Syrian government has engineered a situation in which Kurdish dissidents from Iraq and Turkey are accommodated in Damascus on the understanding that they refrain from publicizing the cause of Syrian Kurds. These groups occasionally pay lip service to need for Syrian Kurdish rights to be respected, but this happens only rarely and not in a manner designed to attract international attention. ARTICLE 19 has seen a copy of a document allegedly signed in the Syrian town of Afrin, on March 1995, by representatives of Iraqi and Turkish Kurdish groups pledging to ensure that the Kurdish annual festival of Nowruz would not be celebrated in Syria's Kurdish areas and no music played. The ostensible reason for this promise is believed to have been a prolonged period of national mourning for the accidental death on 21 January 1994, of President Asad's elder son, Basil. If the signed agreement is authentic, it means the Syrian authorities are making use of Kurds from other countries to assist them in policing Syrian Kurdish areas.

In fact the strictures on celebration of Nowruz and distribution of Kurdish songs on audio cassette tapes have applied before and since the death of Basil al-Asad. In 1987 the army reportedly opened fire on Kurds demonstrating in Damascus against a ban on Nowruz festivities with the result that a Kurdish youth was killed and many others were injured. In 1995 there appear to have been 60 arrests of Kurds who defied the ban and in 1997 there were 18 arrests. This was despite the fact that the celebrations reportedly consisted of nothing more than lighting a bonfire on the hilltops and playing tapes of Kurdish songs. On 22 December 1996 three Kurds, Khaled Dawoud Shikhu, Oman Ayyoub Hamou and Mahdi Mohammed Amin al-Ali, were imprisoned in Adra for distributing a cassette tape of a Kurdish folk song. In November and December 1995, 17 people were reportedly arrested for distributing leaflets expressing solidarity with the Kurds stripped of Syrian nationality in 1962.

Commentary

The enforced statelessness of a large proportion of Syria's Kurdish population is in direct contravention of international law. Article 15 of the UDHR guarantees the right of every person to a nationality and provides that no one shall be deprived of their nationality arbitrarily. The government has been called upon by human rights organizations to take immediate steps to restore Syrian nationality to those and their descendants who lost it in 1962 and to ensure that Kurds who were born in Syria or who have strong ties to the country enjoy the rights of nationality and citizenship.

Article 27 of the UDHR guarantees to everyone the right to participate in the cultural life of his or her community, a right which is clearly denied the Syrian Kurds. There is a degree of overlap between this guarantee and the right to freedom of expression since culture is often a matter of expression. Thus the suppression of Kurdish festivals and music is clearly a denial of both rights.

Recommendation Regarding Kurdish Rights to Free Expression

ARTICLE 19 calls on the Syrian government to restore full citizenship to all members of the Kurdish minority, and to ensure that the country's Kurds enjoy both the right to participate in the cultural life of their community and the right to freedom of expression in the Kurdish language.

10.5 Deprivation of civil rights

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Deprivation of civil rights is a punishment cited in Syria's Penal Code but one which is in flagrant contravention of Syria's obligations as a signatory of the International Covenant on Civil and Political Rights. Moreover, the way in which the Syrian authorities inflict the punishment often exceeds even the provisions of the Penal Code.

Article 38 of the Penal Code includes deprivation of civil rights as one of the penalties for political crimes, while Article 49 defines what is meant by this penalty. It involves loss of state employment and expulsion from any syndicate or other organization, denial of a pension or any other state commitment and ineligibility for any type of public office, including ownership or editorship of a publication or any teaching post in either public or private education. Article 63[b] states:

Every temporary sentence with hard labour or temporary detention entails deprivation of civil rights from the day the sentence becomes effective until the end of the tenth year after the implementation of the original sentence.

In practice, when the 10-year period is up, an application must be submitted to the court for civil rights to be restored, which puts the onus on applicants to persuade the authorities to do so. Applicants in this situation are already vulnerable because of the financial pressures of having no job and often because of the medical ailments they continue to suffer from after long terms of imprisonment in poor conditions, especially those who have been tortured or mistreated in custody. The regime is prepared to exploit these weaknesses, requiring former political prisoners to sign a pledge of loyalty to the regime, to renounce all political activity and to report regularly to the security forces with information about their colleagues and contacts.

It is also common for former political prisoners to be refused a passport, no matter how short their time in detention. Hani Rahib, a distinguished Alawite novelist and professor of English at Damascus University, lost his job and was imprisoned briefly in 1985 after giving a speech at an Arab Writers' Union meeting in which he criticized certain union officials as government informers and called for freedom of the press. After he was released his passport was withheld and he was prevented from leaving the country for more than two years. It appears that Professor Rahib's novels were also to blame for his treatment. His second wife, who came from President Asad's home town of Qardaha and was sufficiently close to the Asad family to call on them to offer condolences when the President's mother died in 1992, was asked by Hafez al-Asad on that occasion: "Is your husband still writing novels against me?"

Commentary

The practice of making release from prison conditional upon the signing of various pledges is an insidious way of taking advantage of the weak position of those who have just been released from jail. The withholding of a passport violates Article 12(2) of the ICCPR, which states: "Everyone shall be free to leave any country, including his own" and 12(3), which states that the right to leave any country "shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant." In addition, the denial of the right to publish, particularly after release from jail, cannot be justified as a restriction on freedom of expression.

Recommendations Regarding Civil Rights

The government should:

- Rescind the penalty of deprivation of civil rights for those who have served prison terms.
- Outlaw the practice of making release from prison conditional upon signing pledges of political loyalty to the regime, and
- Stop withholding passports from those who have exercised their fundamental right to freedom of expression.

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APPENDICES

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APPENDIX 1

RELEVANT FREEDOM OF EXPRESSION PROVISIONS OF INTERNATIONAL INSTRUMENTS

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UNITED NATIONS

UNIVERSAL DECLARATION OF HUMAN RIGHTS

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Adopted and proclaimed by General Assembly Resolution 217 A(III) of 10 December 1948.

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20

1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

Article 29

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.
2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

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Adopted and opened for signature, ratification and accession by General Assembly Resolution 2200 A(XXI) of 16 December 1966. Entered into force 23 March 1976.

Article 2

...

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The Press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the Parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

...

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all

kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

Article 20

1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

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Adopted and opened for signature, ratification and accession by General Assembly Resolution 2106 A(XX) of 21 December 1965. Entered into force 4 January 1969.

Article 4

States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, *inter alia*:

(a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;

(b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;

(c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

ORGANIZATION OF AFRICAN UNITY

AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS

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Adopted by the OAU on 27 June 1981. Entered into force in October 1986.

Article 1

The Member States of the Organization of African Unity parties to the present Charter shall recognize the rights, duties and freedoms enshrined in this Charter and shall undertake to adopt legislative or other measures to give effect to them.

Article 2

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

Article 9

1. Every individual shall have the right to receive information.
2. Every individual shall have the right to express and disseminate his opinions within the law.

Article 10

1. Every individual shall have the right to free association provided that he abides by the law.
2. Subject to the obligation of solidarity provided for in Article 29 no one may be compelled to join an association.

Article 11

Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.

Article 25

States parties to the present Charter shall have the duty to promote and ensure through teaching, education and publication, the respect of the rights and freedoms contained in the present Charter and to see to it that these freedoms and rights as well as corresponding obligations and duties are understood.

Article 27

1. Every individual shall have duties towards his family and society, the State and other legally recognized communities and the international community.
2. The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest.

Article 28

Every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance.

APPENDIX 2

BARCELONA DECLARATION

Extract from the Barcelona Declaration Adopted at the Euro-Mediterranean Conference: 27 and 28 November 1995.

...

- stressing the strategic importance of the Mediterranean and moved by the will to give their future relations a new dimension, based on comprehensive cooperation and solidarity, in keeping with the privileged nature of the links forged by neighbourhood and history;
- aware that the new political, economic and social issues on both sides of the Mediterranean constitute common challenges calling for a coordinated overall response;
- resolved to establish to that end a multilateral and lasting framework of relations based on a spirit of partnership, with due regard for the characteristics, values and distinguishing features peculiar to each of the participants;
- regarding this multilateral framework as the counterpart to a strengthening of bilateral relations which it is important to safeguard, while laying stress on their specific nature;
- stressing that this Euro-Mediterranean initiative is not intended to replace the other activities and initiatives undertaken in the interests of the peace, stability and development of the region, but that it will contribute to their success. The participants support the realization of a just, comprehensive and lasting peace settlement in the Middle East based on the relevant United Nations Security Council resolutions and principles mentioned in the letter of invitation to the Madrid Middle East Peace Conference, including the principle land for peace, with all that this implies;
- convinced that the general objective of turning the Mediterranean basin into an area of dialogue, exchange and cooperation guaranteeing peace, stability and prosperity requires a strengthening of democracy and respect for human rights, sustainable and balanced economic and social development, measures to combat poverty and promotion of greater understanding between cultures, which are all essential aspects of partnership,
- hereby agree to establish a comprehensive partnership among the participants in the Euro-Mediterranean partnership through strengthened political dialogue on a regular basis, the development of economic and financial cooperation and greater emphasis on the social, cultural and human dimension, these being the three aspects of the Euro-Mediterranean partnership.

POLITICAL AND SECURITY PARTNERSHIP: ESTABLISHING A COMMON AREA OF PEACE AND STABILITY

The participants express their conviction that the peace, stability and security of the Mediterranean region are a common asset which they pledge to promote and strengthen by all means at their disposal. To this end they agree to conduct a strengthened political dialogue at regular intervals, based on observance of essential principles of international law, and reaffirm a number of common objectives in matters of internal and external stability.

In this spirit they undertake in the following declaration of principles to:

- act in accordance with the United Nations Charter and the Universal Declaration of Human Rights, as well as other obligations under international law, in particular those arising out of regional and international instruments to which they are party;
- develop the rule of law and democracy in their political systems, while recognizing in this framework the right of each of them to choose and freely develop its own political, socio-cultural, economic and judicial system;

- respect human rights and fundamental freedoms and guarantee the effective legitimate exercise of such rights and freedoms, including freedom of expression, freedom of association for peaceful purposes and freedom of thought, conscience and religion, both individually and together with other members of the same group, without any discrimination on grounds of race, nationality, language, religion or sex;
- give favourable consideration, through dialogue between the parties, to exchanges of information on matters relating to human rights, fundamental freedoms, racism and xenophobia;
- respect and ensure respect for diversity and pluralism in their societies, promote tolerance between different groups in society and combat manifestations of intolerance, racism and xenophobia. The participants stress the importance of proper education in the matter of human rights and fundamental freedoms;
- respect their sovereign equality and all rights inherent in their sovereignty, and fulfil in good faith the obligations they have assumed under international law;
- respect the equal rights of peoples and their right to self-determination, acting at all times in conformity with the purposes and principles of the Charter of the United Nations and with the relevant norms of international law, including those relating to territorial integrity of States, as reflected in agreements between relevant parties;
- refrain, in accordance with the rules of international law, from any direct or indirect intervention in the internal affairs of another partner;
- respect the territorial integrity and unity of each of the other partners;
- settle their disputes by peaceful means, call upon all participants to renounce recourse to the threat or use of force against the territorial integrity of another participant, including the acquisition of territory by force, and reaffirm the right to fully exercise sovereignty by legitimate means in accordance with the UN Charter and international law;
- strengthen their cooperation in preventing and combating terrorism, in particular by ratifying and applying the international instruments they have signed, by acceding to such instruments and by taking any other appropriate measure;
- fight together against the expansion and diversification of organized crime and combat the drugs problem in all its aspects;
- promote regional security by acting, *inter alia*, in favour of nuclear, chemical and biological non-proliferation through adherence to and compliance with a combination of international and regional non-proliferation regimes, and arms control and disarmament agreements such as NPT, CWC, BWC, CTBT and/or regional arrangements such as weapons free zones including their verification regimes, as well as by fulfilling in good faith their commitments under arms control, disarmament and non-proliferation conventions.

The parties shall pursue a mutually and effectively verifiable Middle East Zone free of weapons of mass destruction, nuclear, chemical and biological, and their delivery systems.

Furthermore the parties will:

- Consider practical steps to prevent the proliferation of nuclear, chemical and biological weapons as well as excessive accumulation of conventional arms.

- Refrain from developing military capacity beyond their legitimate defence requirements, at the same time reaffirming their resolve to achieve the same degree of security and mutual confidence with the lowest possible levels of troops and weaponry and adherence to CCW.
- Promote conditions likely to develop good-neighbourly relations among themselves and support processes aimed at stability, security, prosperity and regional and subregional cooperation.
- Consider any confidence and security-building measures that could be taken between the parties with a view to the creation of an "area of peace and stability in the Mediterranean", including the long term possibility of establishing a Euro-Mediterranean pact to that end.

APPENDIX 3

SANA'A DECLARATION

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Extracts from: UNESCO — Declarations on Promoting Independent and Pluralistic Media

Declaration of Sana'a

11 January 1996

...

We, the participants in the United Nations/United Nations Educational, Scientific and Cultural Organization Seminar on Promoting Independent and Pluralistic Arab Media, held in Sana'a, Yemen, from 7 to 11 January 1996;

...

Declare that:

Arab States should provide, and reinforce where they exist, constitutional and legal guarantees of freedom of expression and of press freedom and should abolish those laws and measures that limit the freedom of the press; government tendencies to draw limits/'red lines' outside the purview of the law restrict these freedoms and are unacceptable;

The establishment of truly independent, representative associations, syndicates or trade unions of journalists, and associations of editors and publishers, is a matter of priority in those Arab countries where such bodies do not now exist. Any legal and administrative obstacles to the establishment of independent journalists' organizations should be removed. Where necessary, labour relations laws should be elaborated in accordance with international standards;

Sound journalistic practices are the most effective safeguard against governmental restrictions and pressures by special interest groups. Guidelines for journalistic standards are the concern of the news media professionals. Any attempt to set down standards and guidelines should come from the journalists themselves. Disputes involving the media and/or

the media professionals in the exercise of their profession are a matter for the courts to decide, and such cases should be tried under civil and not criminal codes and procedures;

Journalists should be encouraged to create independent media enterprises owned, run and funded by the journalists themselves and supported, if necessary, by transparent endowments with guarantees that funders do not intervene in editorial policies;

International assistance in Arab countries should aim to develop print and electronic media, independent of governments in order to encourage pluralism as well as editorial independence. Public media should be supported and funded only when they are editorially independent and where constitutional, effective freedom of information and expression and the independence of the press are guaranteed;

State-owned broadcasting and news agencies should be granted statutes of journalistic and editorial independence as open public service institutions. Creation of independent news agencies and private and/or community ownership of broadcasting media including in rural areas should also be encouraged;

Arab governments should cooperate with the United Nations and UNESCO, other governmental and non-governmental development agencies, organizations and professional associations, in order to:

- (i) enact and/or revise laws with a view to: enforcing the rights to freedom of expression and press freedom and legally enforceable free access to information; eliminating monopoly controls over news and advertising; putting an end to all forms of social, economic or political discrimination in broadcasting, in the allocation of frequencies, in printing, in newspaper and magazine distribution and in newsprint production and allocation; abolishing all barriers to launching new publications and any form of discriminatory taxation;
- (ii) initiate action to remove economic barriers to the establishment and operation of news media outlets, including restrictive import duties, tariffs and quotas for such things as newsprint, printing equipment, typesetting and word processing machinery and telecommunication equipment, and taxes on the sale of newspapers or other restrictions on the public's access to news media;
- (iii) improve and expand training of journalists and managers, and other media practitioners, without discrimination, with a view to upgrading their professional standards, also by the establishment of new training centers in the countries where there are none, including Yemen.

Seek the assistance of national, regional and international press freedom and media professional organizations and other relevant NGOs to establish national and regional networks aimed at monitoring and acting against violations of free expression, to create data banks and to provide advice and technical assistance in computerisation as well as in new information and communication technologies with the understanding that UNDP, IPDC and other development partners would consider these needs to be a major priority;

Request UNESCO National Commissions of the Arab States to help in organizing national and regional meetings to enhance press freedom and to encourage creation of independent media institutions.

The international community should contribute to the achievement and implementation of this Declaration.

...

APPENDIX 4

THE JOHANNESBURG PRINCIPLES ON NATIONAL SECURITY, FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION

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INTRODUCTION

These Principles were adopted on 1 October 1995 by a group of experts in international law, national security, and human rights convened by ARTICLE 19, the International Centre Against Censorship, in collaboration with the Centre for Applied Legal Studies of the University of the Witwatersrand, in Johannesburg.

The Principles are based on international and regional law and standards relating to the protection of human rights, evolving state practice (as reflected, *inter alia*, in judgments of national courts), and the general principles of law recognized by the community of nations.

These Principles acknowledge the enduring applicability of the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights and the Paris Minimum Standards of Human Rights Norms In a State of Emergency.

PREAMBLE

The participants involved in drafting the present Principles:

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world;

Convinced that it is essential, if people are not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law;

Reaffirming their belief that freedom of expression and freedom of information are vital to a democratic society and are essential for its progress and welfare and for the enjoyment of other human rights and fundamental freedoms;

Taking into account relevant provisions of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the UN Convention on the Rights of the Child, the UN Basic Principles on the Independence of the Judiciary, the African Charter on Human and Peoples' Rights, the American Convention on Human Rights and the European Convention on Human Rights;

Keenly aware that some of the most serious violations of human rights and fundamental freedoms are justified by governments as necessary to protect national security;

Bearing in mind that it is imperative, if people are to be able to monitor the conduct of their government and to participate fully in a democratic society, that they have access to government-held information;

Desiring to promote a clear recognition of the limited scope of restrictions on freedom of expression and freedom of information that may be imposed in the interest of national security, so as to discourage governments from using the pretext of national security to place unjustified restrictions on the exercise of these freedoms;

Recognizing the necessity for legal protection of these freedoms by the enactment of laws drawn narrowly and with precision, and which ensure the essential requirements of the rule of law; and

Reiterating the need for judicial protection of these freedoms by independent courts;

Agree upon the following Principles, and recommend that appropriate bodies at the national, regional and international levels undertake steps to promote their widespread dissemination, acceptance and implementation:

I. GENERAL PRINCIPLES

Principle 1: Freedom of Opinion, Expression and Information

- (a) Everyone has the right to hold opinions without interference.
- (b) Everyone has the right to freedom of expression, which includes the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his or her choice.
- (c) The exercise of the rights provided for in paragraph (b) may be subject to restrictions on specific grounds, as established in international law, including for the protection of national security.
- (d) No restriction on freedom of expression or information on the ground of national security may be imposed unless the government can demonstrate that the restriction is prescribed by law and is necessary in a democratic society to protect a legitimate national security interest. The burden of demonstrating the validity of the restriction rests with the government.

Principle 1.1: Prescribed by Law

- (a) Any restriction on expression or information must be prescribed by law. The law must be accessible, unambiguous, drawn narrowly and with precision so as to enable individuals to foresee whether a particular action is unlawful.
- (b) The law should provide for adequate safeguards against abuse, including prompt, full and effective judicial scrutiny of the validity of the restriction by an independent court or tribunal.

Principle 1.2: Protection of a Legitimate National Security Interest

Any restriction on expression or information that a government seeks to justify on grounds of national security must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest.

Principle 1.3: Necessary in a Democratic Society

To establish that a restriction on freedom of expression or information is necessary to protect a legitimate national security interest, a government must demonstrate that:

- (a) the expression or information at issue poses a serious threat to a legitimate national security interest;
- (b) the restriction imposed is the least restrictive means possible for protecting that interest; and
- (c) the restriction is compatible with democratic principles.

Principle 2: Legitimate National Security Interest

(a) A restriction sought to be justified on the ground of national security is not legitimate unless its genuine purpose and demonstrable effect is to protect a country's existence or its territorial integrity against the use or threat of force, or its capacity to respond to the use or threat of force, whether from an external source, such as a military threat, or an internal source, such as incitement to violent overthrow of the government.

(b) In particular, a restriction sought to be justified on the ground of national security is not legitimate if its genuine purpose or demonstrable effect is to protect interests unrelated to national security, including, for example, to protect a government from embarrassment or exposure of wrongdoing, or to conceal information about the functioning of its public institutions, or to entrench a particular ideology, or to suppress industrial unrest.

Principle 3: States of Emergency

In time of public emergency which threatens the life of the country and the existence of which is officially and lawfully proclaimed in accordance with both national and international law, a state may impose restrictions on freedom of expression and information but only to the extent strictly required by the exigencies of the situation and only when and for so long as they are not inconsistent with the government's other obligations under international law.

Principle 4: Prohibition of Discrimination

In no case may a restriction on freedom of expression or information, including on the ground of national security, involve discrimination based on race, colour, sex, language, religion, political or other opinion, national or social origin, nationality, property, birth or other status.

II. RESTRICTIONS ON FREEDOM OF EXPRESSION

Principle 5: Protection of Opinion

No one may be subjected to any sort of restraint, disadvantage or sanction because of his or her opinions or beliefs.

Principle 6: Expression That May Threaten National Security

Subject to Principles 15 and 16, expression may be punished as a threat to national security only if a government can demonstrate that:

- (a) the expression is intended to incite imminent violence;
- (b) it is likely to incite such violence; and
- (c) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence.

Principle 7: Protected Expression

(a) Subject to Principles 15 and 16, the peaceful exercise of the right to freedom of expression shall not be considered a threat to national security or subjected to any restrictions or penalties. Expression which shall not constitute a threat to national security includes, but is not limited to, expression that:

- (i) advocates non-violent change of government policy or the government itself;
- (ii) constitutes criticism of, or insult to, the nation, the state or its symbols, the government, its agencies, or public officials, or a foreign nation, state or its symbols, government, agencies or public officials;
- (iii) constitutes objection, or advocacy of objection, on grounds of religion, conscience or belief, to military conscription or service, a particular conflict, or the threat or use of force to settle international disputes;
- (iv) is directed at communicating information about alleged violations of international human rights standards or international humanitarian law.

(b) No one may be punished for criticizing or insulting the nation, the state or its symbols, the government, its agencies, or public officials, or a foreign nation, state or its symbols, government, agency or public official unless the criticism or insult was intended and likely to incite imminent violence.

Principle 8: Mere Publicity of Activities That May Threaten National Security

Expression may not be prevented or punished merely because it transmits information issued by or about an organization that a government has declared threatens national security or a related interest.

Principle 9: Use of a Minority or Other Language

Expression, whether written or oral, can never be prohibited on the ground that it is in a particular language, especially the language of a national minority.

Principle 10: Unlawful Interference With Expression by Third Parties

Governments are obliged to take reasonable measures to prevent private groups or individuals from interfering unlawfully with the peaceful exercise of freedom of expression, even where the expression is critical of the government or its policies. In particular, governments are obliged to condemn unlawful actions aimed at silencing freedom of expression, and to investigate and bring to justice those responsible.

III. RESTRICTIONS ON FREEDOM OF INFORMATION

Principle 11: General Rule on Access to Information

Everyone has the right to obtain information from public authorities, including information relating to national security. No restriction on this right may be imposed on the ground of national security unless the government can demonstrate that the restriction is prescribed by law and is necessary in a democratic society to protect a legitimate national security interest.

Principle 12: Narrow Designation of Security Exemption

A state may not categorically deny access to all information related to national security, but must designate in law only those specific and narrow categories of information that it is necessary to withhold in order to protect a legitimate national security interest.

Principle 13: Public Interest in Disclosure

In all laws and decisions concerning the right to obtain information, the public interest in knowing the information shall be a primary consideration.

Principle 14: Right to Independent Review of Denial of Information

The state is obliged to adopt appropriate measures to give effect to the right to obtain information. These measures shall require the authorities, if they deny a request for information, to specify their reasons for doing so in writing and as soon as reasonably possible; and shall provide for a right of review of the merits and the validity of the denial by an independent authority, including some form of judicial review of the legality of the denial. The reviewing authority must have the right to examine the information withheld.

Principle 15: General Rule on Disclosure of Secret Information

No person may be punished on national security grounds for disclosure of information if (1) the disclosure does not actually harm and is not likely to harm a legitimate national security interest, or (2) the public interest in knowing the information outweighs the harm from disclosure.

Principle 16: Information Obtained Through Public Service

No person may be subjected to any detriment on national security grounds for disclosing information that he or she learned by virtue of government service if the public interest in knowing the information outweighs the harm from disclosure.

Principle 17: Information in the Public Domain

Once information has been made generally available, by whatever means, whether or not lawful, any justification for trying to stop further publication will be overridden by the public's right to know.

Principle 18: Protection of Journalists' Sources

Protection of national security may not be used as a reason to compel a journalist to reveal a confidential source.

Principle 19: Access to Restricted Areas

Any restriction on the free flow of information may not be of such a nature as to thwart the purposes of human rights and humanitarian law. In particular, governments may not prevent journalists or representatives of intergovernmental or non-governmental organizations with a mandate to monitor adherence to human rights or humanitarian standards from entering areas where there are reasonable grounds to believe that violations of human rights or humanitarian law are being, or have been, committed. Governments may not exclude journalists or representatives of such organizations from areas that are experiencing violence or armed conflict except where their presence would pose a clear risk to the safety of others.

IV. RULE OF LAW AND OTHER MATTERS

Principle 20: General Rule of Law Protections

Any person accused of a security-related crime involving expression or information is entitled to all of the rule of law protections that are part of international law. These include, but are not limited to, the following rights:

- (a) the right to be presumed innocent;
- (b) the right not to be arbitrarily detained;
- (c) the right to be informed promptly in a language the person can understand of the charges and the supporting evidence against him or her;
- (d) the right to prompt access to counsel of choice;
- (e) the right to a trial within a reasonable time;
- (f) the right to have adequate time to prepare his or her defence;
- (g) the right to a fair and public trial by an independent and impartial court or tribunal;
- (h) the right to examine prosecution witnesses;
 - (i) the right not to have evidence introduced at trial unless it has been disclosed to the accused and he or she has had an opportunity to rebut it; and
 - (j) the right to appeal to an independent court or tribunal with power to review the decision on law and facts and set it aside.

Principle 21: Remedies

All remedies, including special ones, such as habeas corpus or amparo, shall be available to persons charged with security-related crimes, including during public emergencies which threaten the life of the country, as defined in Principle 3.

Principle 22: Right to Trial by an Independent Tribunal

(a) At the option of the accused, a criminal prosecution of a security-related crime should be tried by a jury where that institution exists or else by judges who are genuinely independent. The trial of persons accused of security-related crimes by judges without security of tenure constitutes a prima facie violation of the right to be tried by an independent tribunal.

(b) In no case may a civilian be tried for a security-related crime by a military court or tribunal.

(c) In no case may a civilian or member of the military be tried by an *ad hoc* or specially constituted national court or tribunal.

Principle 23: Prior Censorship

Expression shall not be subject to prior censorship in the interest of protecting national security, except in time of public emergency which threatens the life of the country under the conditions stated in Principle 3.

Principle 24: Disproportionate Punishments

A person, media outlet, political or other organization may not be subject to such sanctions, restraints or penalties for a security-related crime involving freedom of expression or information that are disproportionate to the seriousness of the actual crime.

Principle 25: Relation of These Principles to Other Standards

Nothing in these Principles may be interpreted as restricting or limiting any human rights or freedoms recognized in international, regional or national law or standards.

APPENDIX 5

MEASURES NECESSARY TO PROTECT AND PROMOTE BROADCASTING FREEDOM

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Public Service Broadcasting

Recommendation 1: The independence of the governing body of the public broadcaster should be guaranteed by law.

The most significant way in which governments can enable state-funded broadcasting stations to fulfil their public functions is by ensuring that these stations have full independence in all editorial and operational matters. At a minimum, this requires a statutory guarantee of independence and a clear prohibition of government interference in any aspect of operation.

Public radio and television should be governed by a board that is independent of government. Government officials, Members of Parliament and political party representatives should not be eligible to serve on the governing board. Members of the board should not maintain any interest, financial or political, that could impair their ability to discharge their duties in a fair and impartial manner. Members should view themselves as independent trustees of the public interest in broadcasting, not as representatives of any special interests.

The members of the board should be appointed for a fixed term, preferably after public hearings, according to publicly available criteria which guarantee diversity of political, ethnic, social and professional background.

The selection process should contain safeguards to ensure that neither the government nor any political party will be able to dominate or undermine it.

The governing board should appoint the directors (or director) of public radio and television, who should report to the board; this will further promote the directors' independence from government. The directors of radio and television should be broadcasting professionals and should not hold leadership positions in any political party.

Recommendation 2: The principle of editorial independence should be guaranteed by law.

Editorial policy and decision-making in all broadcasting institutions should be free from interference by government. The editorial policy of publicly-funded broadcasting should follow agreed standards of political fairness and impartiality. However, these should not be set down in such detail as would interfere with editorial independence. There should be no standards which require, for example, that journalists should reflect the government's development priorities or its desire for national reconciliation. Editorial independence means the right of journalists and editors to make decisions on the basis of professional criteria, consistent with international standards, such as the newsworthiness of an event or its relevance to the public's right to know.

Recommendation 3: Public service broadcasting should be adequately funded by a means that protects the broadcaster from arbitrary interference with its budgets.

In most of the countries studied in this report, only the state has the resources to adequately fund public service broadcasting. In these countries, public radio and television must be funded by the state, at least in substantial part and for the foreseeable future. However, safeguards should be incorporated into the funding process in order to ensure to the greatest extent possible that the government or parliament shall not reduce or manipulate broadcasting budgets in retaliation for programming decisions with which they disagree. If a system of licence fees for viewers and listeners is introduced, it should not reduce the broadcaster's audience levels.

Private Broadcasting

Recommendation 4: The process for allocating broadcast licences should be independent and non-discriminatory.

In most of the countries studied, the mechanisms used for allocating licences to private broadcasters have been secretive and unfairly applied. As a result, in some countries, the government has delayed the awarding of licences on insubstantial grounds; in other countries, licences have been granted only to supporters of the government. These mechanisms should be amended to establish a procedure, preferably by statute, whereby private broadcasters can apply for and be awarded broadcasting licences according to a process that is fair and non-discriminatory and for rates that are commercially viable.

The criteria for awarding licences should take account of the public interest in promoting pluralism in views, programming and ownership. In particular, the licensing

authority should have statutory powers to ensure pluralism of social, ethnic and political voices, so that the country's broadcasting fairly reflects the diversity of the population.

Licence application hearings should be public, so that the merit of the application and the reasons for the authority's decisions are matters of public knowledge and debate.

Recommendation 5: Licences must be allocated by a body that is independent of government.

The body that allocates licences must be independent of government. The body may be the one which manages public broadcasting or a separate authority. However, a single authority with jurisdiction over public and private broadcasting is recommended because it facilitates the development and implementation of broadcasting policy, including a coordinated strategy to ensure that pluralism is achieved in broadcasting as a whole.

The independent licensing body should also have responsibility for the allocation of frequencies and other technical aspects of broadcasting.

Recommendation 6: Licences should be revoked only in extreme circumstances.

Broadcasting licences should only be revoked in the event of gross abuse by the broadcaster, such as direct incitement to racial or ethnic violence (see Recommendation 10 below). Licences may only be revoked by the issuing authority. However, licences should also be subject to periodic renewal; the licensing authority may at this point refuse to renew a licence if the broadcaster has failed to meet the agreed conditions under which the licence was originally issued.

Recommendation 7: Measures to limit media concentration and cross-ownership should be adopted to ensure pluralism in information sources.

In the interests of promoting pluralism in sources of information, the licensing authority should have regard to the need to prevent media monopolies, whether state or private by establishing clear limits on media ownership, including cross-media ownership between the broadcast and print sectors.

Other Government Obligations to Ensure Pluralism in the Media

Recommendation 8: The government should create a legal climate conducive to freedom of expression.

Broadcasting can only be free from censorship and a means of freedom of expression if the general legal and political climate is favourable. Freedom of expression, information and the media should be enshrined in the constitution. Statutory provisions which restrict media freedom should be repealed, including secrecy laws, sedition and subversion provisions and criminal defamation laws.

The editorial independence of broadcasters and the right of journalists to protect their sources of information should be guaranteed in law. The public right of access to information should be enshrined in a Freedom of Information Law. Access to government sources of information should be guaranteed on a non-discriminatory basis and private broadcasters should be entitled to the same access to government sources of information, including interviews and press conferences with government officials, as public broadcasters.

Recommendation 9: The government should create a favourable economic climate for broadcasting.

Many of the restrictions on pluralistic broadcasting are economic. Independent licensing authorities should establish guidelines for non-preferential allocation of government advertising. Governments should end discriminatory taxes and import duties which favour state media and penalize the private sector

Private broadcasters should be entitled to use state-owned transmission towers and to purchase satellite time at rates that are reasonable and non-discriminatory. Legal provisions and technical and tariff practices by government agencies that could prevent or inhibit the free flow of information should be prohibited.

The government should also ensure that bodies with responsibility for overseeing broadcasting are adequately funded and that this funding cannot be used to manipulate or interfere with the independence of these bodies.

Recommendation 10: The government should counter the impact of any "hate speech" by ensuring the maximum diversity of viewpoints on the airwaves.

The best antidote to "hate speech" is more speech, from a diversity of sources, reflecting a tolerance of viewpoints. The most effective way to disseminate such viewpoints is through independent public broadcasting corporations, which generally can reach the largest audiences. In addition, it is crucial to have an independent licensing body which is mandated to ensure the existence of a variety of viewpoints on the air. In the event that radio or television stations conduct direct incitement to national, racial, ethnic or religious violence, the authorities are obliged to take action to stop it, under the provisions of Article 20 of the International Covenant on Civil and Political Rights.

Broadcasters should not be punished for broadcasting the views of others that are likely to incite hatred or violence provided that they themselves do not endorse those views, and provided that they broadcast counter views or else publicly express their disagreement with the views broadcast.

Recommendation 11: The government must ensure that the public are adequately informed about all matters related to their right to vote effectively. An independent mechanism should be established to ensure that all political parties have equitable access to, and fair coverage in, the public broadcast media during elections.

Public broadcasters should be required by law to broadcast information during election campaign periods that adequately and fairly informs the electorate about all matters relating to their right to vote effectively.

This, at a minimum, requires information about the political parties, candidates, campaign issues, and voting procedures. Public broadcasters should also be required by law to grant air time to political parties and candidates on a fair and non-discriminatory basis. Where an independent broadcasting authority has been established, the law on election broadcasts can be broadly stated; adoption of detailed regulations for election broadcasts, and monitoring of their compliance, should be left to the authority. These regulations should comply with international standards. Where there is no independent authority, the minimum requirements of broadcasting coverage necessary for a free and fair election should be set forth in law. Broadcasting complaints mechanisms must operate with particular speed during election campaign periods, when delays of even a few days can affect an election's fairness.

Recommendation 12: An independent mechanism should be established for responding to broadcasting complaints.

A mechanism should be established for the prompt and effective consideration of complaints of violations of broadcasting freedom. Where an independent broadcasting authority has been established, it should examine and determine complaints, and its decisions should be subject to judicial review. Where no such authority has been created, an independent body should be established for this purpose.

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