

***A Study on the independence of the legal profession in Syria***

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**Acknowledgments**

The situation necessitated that this study be prepared hastily in order to be presented to human rights organizations and professional associations, especially those in Paris and Amsterdam, as a token of gratitude for their positions in support of righteousness and law.

They openly spoke the word of truth during my arrest and trial before the criminal court and the Bar Association tribunal in Damascus.

Regardless of how much I try to express my appreciation and gratitude, words will still fall short of giving these distinguished organizations their due right.

They spoke the word of truth before an unjust ruler when I was left helpless and honest men were scarce.

They have demonstrated that international human rights organizations, especially professional associations, are not designed for exchanging compliments, but to speak the word of truth and uphold justice.

To all of them, I extend my sincere gratitude and appreciation. I also present this humble study to explain my just position.

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**Introduction**

I was introduced to the legal profession by my late father and I tried to live this profession as I grew up. I have understood the legal profession as a mission to advocate for the oppressed and defend righteousness rather than a profession to earn a living.

A lawyer cannot undertake such a mission without a fair legal system that guarantees rights and public freedoms and is founded on a well-established principle known as the independence of the judiciary and legal profession. Many lives have been sacrificed in order for humanity to codify and uphold this principle.

The independence of the legal profession naturally requires that lawyers perform their duty by advocating for the truth and defending the oppressed without undue influences or pressures by any entity, whether legislative, judicial, executive or security-related, that aims to divert the mission of the legal profession away from realizing its noble objectives.

The independence of lawyers derives from their social function as partners of the judiciary in administering justice and establishing the truth. Therefore, the legal profession is the pillar of justice and its solid support.

Justice cannot be attained without an independent and impartial judiciary, which in turn cannot be attained without an independent and impartial legal profession. Therefore, there is a mutual relationship between a just legal system and the independence of the judiciary and legal profession.

The independence of the legal profession is a tool necessitated by virtue of the correlation between the missions of both the judge and the lawyer in a framework of respect for due process. It is the functional independent self-sufficiency that emanates from a sacred duty necessitated by the duly legitimate right to defense and the professional competence founded on principles of responsibility and accountability that guarantee lawyers’ performance of their mission in defending the oppressed and upholding law and truth. This practice spreads public peace regarding the legal system and engenders in lawyers the fortitude necessary to resist all kinds of inappropriate pressures and influences irrespective of their source.

The legal and juristic culture as a “science, art and ethics” which generates the faculty for defending public freedoms and human rights in a framework of community awareness is one of the most important components of the independence of the legal profession, as it positively impacts justice in general.

Conversely, lack of competence, dependency and various forms of cheap bullying undermine and diminish one of the most important pillars of justice and are, therefore, substantial causes of a crisis of confidence in the general legal system conducive to justice.

I will review the stages the legal profession passed through in Syria, including the impact of evolving legislations beginning with the French mandate over Syria, through the period of unity between Egypt and Syria, and until the most recent stage in which the military took over power in Syria. Such a review is necessary, as it provides the required background to understanding the current situation of the legal profession in Syria.

1. **Evolving Syrian legislations and their impact on public life**

Laws are the actual translation of the political and social philosophy and the creed through which societies craft legislation. The independence of the judiciary echoes the dominant philosophy at the political, social and economic levels. From our point of view, public policy in Syria has passed through four stages, each of which features distinct characteristics.

1. The French mandate, its aftermath and Syrian independence

The first stage includes the period of the French mandate, its aftermath and Syrian independence, during which the Syrian legislature was influenced by the winds of change that liberal individualism in the fields of politics and law brought to Europe in the early 1800s. This school of thought viewed the state as a social and humanitarian entity founded to protect individuals and safeguard their freedoms within the framework of requirements for coexistence. According to this school of thought, the state has a legal personality independent of that of the rulers, whether kings or presidents, as the rulers change with shifts in conditions and circumstances, whereas the state is a constant expression of the entire nation. As an example of the influence of sweeping changes in Europe in the early 1800s, I recall one of my father’s old friends, the late lawyer Farajallah Al-Saqal, who was affiliated with Aleppo’s branch of the Bar Association. When I was a child, I heard him narrate a story that impacted me tremendously and was the reason for my attachment to and eventual adoption of the legal profession. This story was also the reason for my future commitment to the impartial and esteemed law-binding judiciary that is above influences and personalization. Please allow me to recount the story as I believe it serves the idea I wish to communicate:

“As the resources of the Syrian revolution faded in the face of French Mandatory rule and after King Faisal’s regime collapsed in Damascus, the king left the city open to the hordes of General Gouraud. Gouraud entered Damascus over the dead bodies of its youth who were led by Yusuf Al-Azmah. As it became clear afterwards that Hanano’s revolution could no longer survive, Hanano dismissed his horsemen and went on to Jordan. From there he headed to Jerusalem, where he planned for a revolution against both the British and the Zionist Haganah gangs. The British occupation forces arrested him and handed him over to the French authorities, which had previously issued ***seven death penalties*** against him, to stand trial for revolting against the mandatory power, killing its citizens and declining of an independent state in the North. Hanano declined the partitioning of Syria, stating *“I see no alternative for Syria’s independence and territorial integrity.”*

The French authorities threw him in Khan Istanbul Prison in Aleppo. The French Attorney General visited him in prison later to tell him that he was accused of seven crimes each of which was punishable by the death penalty and that he had to ***hire a lawyer according to the law.***

Hanano asked him after asking him by his military honor to speak the truth: “*If you were in my shoes, who would you choose to represent you in this case?”* The Attorney General kept silent for a moment, and then said: *“since you bid me by my military honor to speak the truth, I say I would hire Farajallah Al-Saqal*”. The leader, Hanano, sent a letter to Al-Saqal through the French military prosecutor’s office. The lawyer came and was surprised to learn that the French Attorney General was the one to nominate him to such a difficult task. He told Hanano that he had just returned from studying at the Sorbonne in Paris and that he was specialized in such cases but that the French government was leaning towards executing him in order to strike every revolution with an iron fist. He added that he was afraid, in the event that the death sentence was issued, that some ignorant people would construe the outcome as complicity between him as a Christian Catholic lawyer and the French government.

However, Hanano insisted that he represent him, saying: *“no one will defend me but you, and should you decline, I will stand trial alone without a lawyer”*. Al-Saqal then went to the French Attorney General, who handed him the file, saying: “*I will do my best to execute your outlaw client Ibrahim Hanano*”**,** to which Al-Saqal replied: “*and I will do my best to defend my client, the leader of the revolution”*.

*“If you emerge victorious from the courtroom I shall be the first to congratulate you”*, the Attorney General said.

The lawyer tried first to challenge the court’s competence, so he communicated with General Renaud, commander of the second division of the French army in Aleppo, in his capacity as the French chief military judge in Aleppo. When his attempt proved futile, he communicated with General Gouraud in Beirut in his capacity as the commander-in-chief and chief military judge in Syria. Nonetheless, his attempt was unfruitful. Therefore, he started to refute the charges against Hanano one by one after the French prosecution portrayed him as a bandit and a rebel against the legitimate authorities. Al-Saqal, may his soul rest in peace, succeeded in proving his identity as a leader of a revolution, citing an interview that took place between Hanano and senior French officers who negotiated with him, took souvenir pictures together and treated him with the utmost respect.

He also argued that France, in its latest war with Germany, sacrificed millions of its youth in order to end the occupation of Alsace‏ and Lorraine, but still did not acknowledge our right, as a peaceful state, to fight for our homeland and national soil. He also cited the principles of the French revolution and the endorsement of peoples’ right to self-determination, arguing that the French presence in Syria was a form of occupation.

During that trial, the chief judge asked Hanano: *“if you were a leader of a revolution, there must be a popular mandate. So who mandated you to defend the Syrian people?”* That was when the late Saadallah Al-Jaberi, who later became a prime minister, stood up and said *“I mandated him, your honor,”* and soon all of the attendees repeated loudly: we mandated him – we all did. ***This indicates that the trial was held in public and under real popular monitoring.***

After the deliberations, which lasted ***four months and seven days,*** the French military criminal court ***acquitted Ibrahim Hanano of the charges leveled against him*** including seven death sentences issued in absentia, as the court acknowledged the right to self-determination for peoples under occupation and acknowledged that the French presence in Syria was a form of occupation. The shouts of crowds outside the courtroom reached the sky, praising the justice of France.

The next day, Hanano wanted to thank the judges for his acquittal, so he visited his lawyer’s office in Al-Aziziyah district in Aleppo. Hanano and his lawyer headed to the courtroom, and upon their arrival Al-Saqal entered the chief judge’s office and asked for permission for his client to come in and thank the esteemed panel of judges for his acquittal. However, the chief judge declined to give permission, saying: *“I do not receive in my office a man who took up arms against the army of my country, and I do not shake hands tainted with French blood”.*

The lawyer, Al-Saqal, asked in response: *“but, your honor, you acquitted him yesterday?”* To which the judge replied: *“I was on the panel and we acquitted him in our capacity as judges, but now I’m a French citizen and I’m not honored to shake hands tainted with French blood”.*

Al-Saqal was moved by the judge’s position and telephoned General Renaud to convey his client’s thanks, but the general replied: *“there is no need for thanks. The judges were doing their job.* ***They saw the truth and ruled by it”.*** The lawyer then told General Renaud to convey gratitude to the judges. However, the general said: *“I dare not convey to a French judge, even if he were one of my subordinates, gratitude for the performance of a duty.”*

This and other evidence indicate the nature of the spirit that dominated the judiciary in Syria during that time period. That spirit was rooted in liberalism influenced by eminent free thinking figures in the fields of politics and economics, and had a great impact on subsequent stages in Syria’s history, including Khaled Al-Azm’s government and beyond.

In that period, legislative process was confined to enacting provisions that protected the common interests of citizens and repealing laws that aimed exclusively to protect the interests of one particular group or the privileges of one particular class.

During that period, criminal justice was no longer exercised by governors as a tool of political oppression against political dissidents, who were no longer viewed as enemies of God and the homeland. They were almost opponents to the governors whose replacement would not affect the nation, but could push the wheel of time forward. There are numerous instances of trials of political dissidents held during the period that followed independence. During that period, a legal system prevailed that applied the individualization of the penalty principle whereby the system considered the noble motives of political dissidents and the sense of duty driving them.

It was necessary to preserve this independent judicial system that feared no one in the administration of justice, did not allow any authorities to infringe on each other, enjoyed skill, prestige and respect and was able to establish equality for all under the law.

During this stage, the majority of current laws were enacted including the Penal Code promulgated under ***Legislative Decree No. 148*** of June 22, 1949; the Civil Code promulgated under ***Legislative Decree No. 84*** of May 18, 1949; and the Law on Associations and Political Parties promulgated under ***Decree No. 47*** of 1953. In this stage, Syria participated in drafting the Universal Declaration of Human Rights of 1948, as the Syrian society produced prominent jurists most of whom graduated from the Sorbonne in France. Generations in the 1950s and 1960s were taught and trained by those eminent figures and adopted and later defended their values and principles. Among those were Dr. Adnan Al-Ajlani, Dr. Marouf Al-Dawalibi, Dr. Mustafa Al-Sibai, Dr. Fares Khoury, Dr. Mustafa Al-Zarqa, Dr. Abdul Wahab Homad, Dr. Rizkallah Antaki, and many others who were pioneers of the period and had major roles in politics, economics, parliamentary life and general public life in Syria. They were landmarks and beacons paving the way for future generations.

1. Stage two: Period of unity with Egypt

The second stage covers the period of unity with Egypt during which socialist concepts permeated the laws as concern for the interests of the working class grew. Legislations were enacted to guarantee more interests for workers and farmers at the expense of certain classes in society, yielding the idea of nationalization, the Social Insurance Law, the Unified Labor Law, the Agricultural Reform Law and other laws that reflected the features of that stage characterized by the expanding soviet communist wave. This was also reflected in the unified state in the form of correspondence between the national and socialist struggles. Among the results, the ***Legislative Decree No. 50*** of January 25, 1961 was issued amending ***Article 1*** of the State Council Law and rendering the council an independent body that reported to the cabinet. This was the first blow to the independence of the judicial system as administrative justice was subjugated to the very executive authority against which the council was supposed to rule. Therefore, the general interests of the state were given preponderance over the interests of individuals before the administrative court, which was supposed to treat the litigants equally and not favor one party over the other. However, despite the expanding powers of the security apparatus, the judicial system maintained an acceptable level of independence, as the Higher Judicial Council remained independent of the executive authority and judges maintained their impartiality and loyalty to the law.

1. Stage three: Secession stage

During the secession stage, laws have remained the way they were with an attempt to rebound towards the consolidation ​​of modern, liberal and human rights values that have affected Syria with the winds of change that came in the wake of the French Revolution at the hands of the free thought. We aren’t going to develop this idea, but just highlight that this is evidence referring to the private Syrian civilization that felt in need of militarization of society, abolition of political life and elimination of civil society.

1. Stage four: the revolutionary period, following March 8, 1963

The last stage is the revolutionary stage that followed March 8, 1963 during which the military assumed power, and principles of revolutionary legitimacy prevailed over the constitution. Consequently, strict restraining laws were enacted and the harshest penalties were sanctioned against those who dared to oppose the goals of the March 8 Revolution or hinder the socialist transformation, as follows:

On the morning of March 8, 1963, a state of emergency was announced by ***military decree number 2*** issued by the revolutionary command council at that time. The announcement of a state of emergency violated the law declaring ***a state of emergency number 51*** of 1962 issued after separation from Egypt, which was the base for the military decree.

***Paragraph (a)*** of ***article (2***) of the ***state of emergency law number 51*** stipulates that the council of ministers held under the leadership of the president of the republic is authorized to declare a state of emergency upon a vote with two thirds majority. But the declaration of March 8, 1963 was issued by the revolutionary command council which was not authorized to declare a state of emergency. However, and despite this lack of authorization, the state of emergency was effective for nearly fifty years, until it was annulled in March of this year as a result of the popular uprising.

***Article (2)*** of the same emergency law also stipulated that *“The declaration should be submitted to the parliament during the first session to follow.”* However, the state of emergency law, which was in effect for nearly fifty years, was never submitted to the parliament prior to the nullification of the law less than six months ago, and the legislative authority never authorized the government to take any exceptional measures.

The emergency law cast a long shadow over all aspects of political and social life in Syria. It also contributed to the violation of many basic rights for Syrian citizens such as freedom of opinion and freedom of assembly and other rights.

In addition to that, ***the Syrian constitution of 1973***, which is currently in force, stipulated that the president can declare a state of emergency, but no declaration was issued since the law was enacted.

After that, a wave of new stringent laws was enacted to curtail freedoms using the same vague language without any checks and balances. These laws aimed to control the political and security regime, and to hold all powers in the state:

***Decree number 6 of 1964*** was issued to enact the Protection of the Revolution law which criminalized and punished any person who opposes the goals of the revolution of March 8th, or resists the socialist regime, be it orally, in writing, or in action. According to this law, whoever is found guilty of committing any of these actions shall be punished by life in prison and execution in some cases. This law is still in force until now.

***Decree number 47 of 1968*** was issued to establish the Supreme State Security Court with jurisdiction to consider all cases referred to it by the military governor. In other words, this court’s jurisdiction and mandate was decided via instructions from the president in his capacity as the marital law governor or his deputy (the minister of interior). According to this decree, no judiciary organ has the authority to interfere in deciding the jurisdiction of the State Security Court. Hence, this court with its investigative authority is authorized by law to conduct the most important judicial functions. Still worse than that, litigation was conducted in this court in two stages:

The first stage combines prosecution, investigation, referral, and cassation in one department which is the indictment chamber of the state security court. In this case the prosecution magistrate, who represents the state, is the investigating magistrate who is supposed to take a neutral position and to issue his final decision against the defendant without any supervision.

The second stage consists of a chairman, an officer in the army, and a judge assigned by ministry of justice. The rulings of this body are not subject to appeal. It only requires the endorsement of the martial law governor. The comic thing is that this court, which deprived many Syrians of the best years of their lives, issues its rulings without any reasoning. Most of its rulings, despite the grave sentences they impose, consist of one page only presenting the decision since these decisions are not subject to any judicial supervision or appeal.

Things get even more humorous; since cases are referred to this court by the deputy of the martial law governor (minister of interior) in accordance with referral order from a security organ, the withdrawal of the referral order at any time is enough to stop litigation, even after the court issues its ruling. Then the defendant or the prisoner can be freed, as if the judicial ruling is worthless, and the whole matter depends on the discretion of the security organ that arrested the defendant. The security organs are able to release the prisoner at any time, and all they need to do is to issue an official letter to the court stating that they decided to “withdraw the martial referral order”. Upon receiving this official letter, the court issues an official letter to the prison asking to release the prisoner after serving part of the sentence, be it long or short, depending on the discretion of the security organ. In such a case, the court’s official letter reads, for example, “Mr. Riad Al Turk was sentenced in 2001; the referral order was withdrawn after he served half the sentence”. Also in the ruling issued against Aktham Neassa in 1991, the referral order was withdrawn after he served part of the sentence. And this happened again with Neassa after he served three months of his sentence, and in many other instances.

The unconstitutional work of this court continued for nearly half a century. It was a useful instrument for the security organs in Syria to facilitate the application of their policies, which led to many tragedies and human catastrophes. Many of the victims are still languishing in prisons and detention centers in Syria.

After that came ***decree number 14*** issued in January 15, 1969, which established the general intelligence department. Article 16 of this decree stipulates that “*The general intelligence department should include a disciplinary board to discipline it cadre and those who are assigned for missions in the department. The employees of the department may not be prosecuted for any crime they might commit during execution of tasks assigned to them, except when the director of the department issues a persecution order”*.

***Article (4***) of ***decree number 5409*** of 1969, which appears meant to regulate the work of the intelligence department, stipulates that: *“The employees of the General Intelligence Department, or assigned or loaned to it, or contractors working directly with it, shall not be prosecuted in court for crimes stemming from the assignment or during execution of the assignment, before they are referred to the Disciplinary Board in the administration and a prosecution order has been issued from the director. The prosecution order remains required even after the end of employment in the department.”*

These articles serve to protect the employees of the General Intelligence Department from any judicial accountability for crimes they may commit during performance of their work. This in turn opens the door for grave violations of human rights, and for immunity stipulated in an article in the law.

Afterword, the presidential council (the revolutionary command council) issued in February 14, 1966 ***decree number 24*** modifying the composition of the Supreme Judicial Council in Syria which used to consist of seven judges chaired by the president of the cassation court with members drawn from senior judges. Prior to this decree, all board members were judges, but the decree modified its composition as follows:

The Supreme Judicial Council consists of the president of the presidential council (president of the republic), minister of justice acting on his behalf.

* Secretary-general of ministry of justice; in practice he is the deputy of the minister of justice and under his administrative authority.
* Attorney general of the republic, who is also under the administrative authority of minister of justice.
* President of the judicial inspection department, who is also under the administrative authority of minister of justice.
* In addition to president of court of cassation and his two most senior deputies.

This arrangement made the minister of justice, member of the executive branch, the sole power holder in the Supreme Judicial Council, since he enjoys a comfortable majority in the council (4 out of 7).

If we consider that this council supervises everything related to employing of judges and their dismissal, promotion, discipline, referral to retirement, or leave of absence, and every aspect of judges’ affairs, the whole picture will be clear to us: the minister of justice is the sole power holder in all the affairs of judicial branch. This was consolidated by ***article (132)*** of the current constitution which has been in force since 1973. This article stipulates *that president of the republic chairs the Supreme Judicial Council, while its composition, jurisdiction, and regulation are decided by law*. This essentially ended the independence of the judiciary which in turn undermined the independence of legal professions.

Then the field martial courts were established by *law* ***number 109*** of 1968. These courts are under the control of the army and designed to prosecute soldiers who desert the battle field. They consist of leaders of military formations, and are not required to abide by criminal procedures. The marital law governor expanded the jurisdiction of these courts to encompass all civilians and all cases that he decides to refer to these courts. It should be noted that these courts issued numerous death sentences against defendants accused of belonging to Muslim Brotherhood during the 1980s in accordance with ***decree number 49*** of 1981. This decree stipulated political affiliation with Muslim Brotherhood is punishable by the death sentence, even if the defendant did not commit concrete acts against the state. This principle contradicts one of the most important principles of human rights, since the decree imposes a death sentence for ideological affiliation.

Afterword, legislative decrees were successively enacted establishing different security organs, like the General Intelligence Department, the Military Security Department, the Department of Air Force Intelligence, and the Political Security Division, all of which give wide authorities and impunities for these organs.

Then the special ***law number 52*** of 1979 for the security of the Baath Arab Socialist Party was issued, which imposes a punishment of 5 years imprisonment for multi-party loyalty.

The **Economic Penal Law** was issued in May 6, 1966 by ***decree number 37***. The aim of this law was to control, curtail, and direct the economy. It is a special law and subsequent to the general penal law, so it has precedence.

Then ***legislative decree number 46*** issued in August 8, 1977, which established the court of economic security, which is an exceptional court. This court consists of a judge from among the ranks of the court of appeals and members who hold college degrees (bachelor, masters, or Ph.Ds.) who have worked in the field of economics for a certain period, which means that they are not judges. This court used to include an investigative magistrate and an indictment division that issued referrals and considered appeals to indictment orders issued by the investigative magistrate. But the indictment division was canceled in 1987, and by that a litigation phase was canceled which made the decisions of the investigative magistrate final and not subject to appeal. However, when the investigative magistrate decides not to pursue litigation, its decision is subject to the endorsement of the court of economic security, and without the supervision of the cassation court which is supposed to have the final say on such cases.

These courts were notorious in the field of justice in Syria, especially in the 1980s and 1990s. One minister of justice during that period (the late Khalid Al Ansari) contributed greatly to the deterioration of judicial independence by his direct interference in the work of that court. He presided over that court before he became a minister of justice, and he activated some of the vague articles of the law, like ***article (13***) ***of the economic penal*** law which imposes 15 year imprisonment sentence for resisting the socialist regime, and ***article (23)*** pertaining to smuggling money. The jurisdiction of this terrifying court was expanded in the early 1980s by ***decree number 11*** of 1981 to include smuggling crimes covered by ***decree number 13*** of 1974 if the value of smuggled goods exceeded thirty thousand Syrian pounds, in addition to the ***economic penal law number 37*** of 1966. It should be noted that defendants in this court were until recently tried while in custody and were not allowed to be released on bail, despite the constitutional principle of presumption of innocence until proven guilty. Hence, remand which is supposed to be used in a limited way and for absolute necessity was converted to a punishment. Fortunately for Syrian citizens, this court was cancelled recently after a long struggle, and after it played a major role in the weakening of judicial independence.

The current constitution was enacted in 1973 during the state of emergency in the country. The constitution laid the legal ground for the Baath Party’s monopoly over power in Syria, and for controlling the society by ***article (8)***.

Under ***article (91)*** of the constitution, the president is not accountable for any of his acts, except in the case of treason. He can’t be tried except by the Supreme Constitutional Court whose members are assigned by the president. Hence, the president is absolutely immune under the constitution.

The president also chairs the Supreme Judicial Council under ***article (132)*** of the constitution, in addition to his position as the head of the executive branch and his authority to assign the prime minister, and directing the general policies of the state and the government according to ***articles (93)*** and ***(94)*** of the constitution.

***Article (132)*** of the constitution states that: *“the president is the guarantor of judicial independence”.* While ***article (111),*** gives him the right to legislate whether during the absence of the parliament or between consecutive sessions. This means the president enjoys absolute power in enacting laws, despite the fact that the constitution stipulates the principle of separations of powers.

***Article (139)*** of the constitution established the Supreme Constitutional Court to consider challenges to the constitutionality of laws and elections. But members of this court are assigned by the president by a decree for 4 years term which makes them indebted to the president for assigning them. As for the way this court conducts its work, ***article (145)*** stipulates that challenging the constitutionality of laws can only be done by the president or by request from one quarter of parliament members. How could we imagine that the entity which enacts the law will challenge its constitutionality! Hence, no entity in Syria can challenge the constitutionality of a law except the entity that enacts the same law! This reality blocked the power of the court to consider challenges to the constitutionality of laws, and disrupted the work of this important regulatory organ.

As for the power of the court to consider challenges to the legitimacy of elections, ***article (62)*** of the constitution defined the mandate of the court for cases in which it receives a challenge to the validity of an election. The court is required to present a report to the parliament, the same parliament whose validity (or the validity of some of its members) is in question, to decide whether or not to follow the recommendation of the court to hold new elections. It is not feasible that the parliament will opt to repeat the election as its members were just elected, especially given that the court issues recommendations and not binding resolutions. This painful reality means that the constitutional court acts as a clique, and has turned its supervisory role to judicial decoration that has no value whatsoever.

This legislative reality casts a dark shadow on all aspects of life in Syria. The role of the state has turned from guarantor of peoples’ lives to a force that dominates their affairs by tyranny.

**II – Social reaction to the encroachment of security apparatus and the arsenal of laws that curtail freedoms, and how the security authorities dealt with it**

I would like to shed some light at the reaction of Syrian society to the legislative path that the country witnessed in the last few decades; and the role of trade unions and different social groups in general as a reaction in facing these general policies, and in regards to the social support to judicial independence, and the role of the lawyers and legal professions.

1. *Demands of the Syrian society and amendments triggered in the nineteen seventies*

In the late nineteen seventies, and prior to the incidents of the Muslim Brothers in the nineteen eighties, the Arab country of Syria witnessed a very important associations movement through which professional associations, of lawyers, engineers, doctors, pharmacists and others, that demanded to go back to operating under common law rules and organizations and abolish revolutionary laws and decrees, particularly the state of emergency that was declared when the military (Baath Party) seized power in Syria on 8 March 1963. The decrees and laws that followed had a very big effect on Syrian society and on labor professional laws that regulate intellectual and scientific professions. During this time, the authority strongly suppressed these movements, threw activists in jails, rushed to amend professional laws concerning most of these professions and associations in the Arab country of Syria, and did everything possible to crush their independence, values and the impact of their legacy.

As an example, the **Law Regulating the Legal Profession** was amended substantially during that period of time. Also as a result of these historical circumstances, the legal practice was strongly obstructed and its role in defending public rights and freedoms and the independence of the judicial system was warped. Following are the details:

According to the ***Law Regulating the Legal Profession No. 14*** dated 22 April, 1972, the legal profession was defined as follows:

* A profession where lawyers offer their services to the general public, regulated by this law.
* The legal profession has national and humane goals that aim to defend natural and objective rights of individuals, the nation, the people and humanity.
* The legal profession seeks to achieve unity, advancement, building the Arab socialist society and ensuring the rule of law for all under the slogan of rights and Arabism.

Summary of the objectives of the legal profession:

* Defending the interests of the Syrian Bar Association and protecting the traditions of the profession.
* Mobilizing the strengths of the association members and regulating their efforts to develop legal thinking.
* Contributing to the development of legislations and facilitating the ways of justice for litigants.
* Promoting legal research and raising the educational level of members.
* Organizing and preparing studies and legal legislations aiming at developing Arab legislations to ensure public freedoms, justice, human rights and the rule of law.
* Providing members of the association with economic, social and cultural services.
* Regulating legal practice on a cooperative basis.
* Coordinating with universities and higher educational institutions to develop and raise the level of education curricula, and assist the judicial authority in ensuring the good application of justice based on one goal and the solid link between justice and the quality if educational institutions.
* Conducting meetings, seminars and conferences to build methods of cooperation, encounter and brotherhood between lawyers.
* Building linkages of encounter and cooperation with legal organizations and Arab Bar Associations.
* Committing to the right to litigation before civil courts and abolishing exceptional courts and special committees.
* Cooperating with professional associations and public organizations to strengthen public powers in order to realize its objectives in achieving unity, freedom and socialism.

On 22 June 1976, the General Assembly of the Bar Association in Damascus issued ***resolution No. 1***, which later on, had the biggest effect on the future of association work in Syria:

This General Assembly of the Bar Association in Damascus met based on the demand of 217 lawyers from the Damascus branch calling upon a general assembly to discuss the declared state of emergency and ways of its misuse.

During that time, ***Resolution No. 1*** had historical importance because it expressed the reaction of Syrian society, including its associations and bodies, to this new arsenal of stringent laws that are meant to curtail basic freedoms. Considering that ***resolution No. 1*** dated 22 June 1978 was issued by the General Assembly of the Bar Association, we shall briefly cite some of what it stipulated:

Based on the provisions of the first and second articles of ***Law No 14*** for the year 1972, stipulating the practice of the legal profession in Syria, and the decisions taken during the conferences of Arab lawyers held in 1975, 1976 and 1977 that agreed on a number of principles that we shall briefly list:

* Affirming their belief in and respect for fundamental freedoms, civil, political, social and economic rights stipulated in international declarations, agreements and protocols, and that providing freedom for the citizen and achieving democracy and human rights is the way to realize unity.
* Recognizing that the issue of rights and fundamental freedoms of citizens suffers adversity, neglect, violation and abuse.
* Calling upon Arab governments to realize and respect fundamental rights, guarantee the rule of law and the independence of the judiciary, abolishing exceptional laws, regulations, and empowering the judicial system to conduct its work without interference or influence, releasing political prisoners or providing them a fair trial, guarantee freedom of expression and press freedom, respecting the private life of individuals, the right to life, the prevention of torture, physical liquidation and cruel treatment.
* Calling upon the legislative authorities of Arab states to abolish laws that are contrary to constitutional principles and violate human rights stipulated in the International Conventions.
* Considering torture a crime that violates honor and forbidding its committer from joining the Bar Association in accordance with the Universal Declaration of Human Rights.
* Urging protest against any law that involves the principle of the rule of law and restricts freedoms and basic human rights.
* Allowing associations and the Committee for the Defense of Democratic Freedoms and Human Rights to continue their role in defending public and private freedoms, and monitoring and fact finding cases where the basic rights of citizens are violated.

Part of the General Assembly’s commitment to its duty in eliminating injustice and oppression and defending citizens in accordance with the provisions set forth in ***paragraph (e) from Article (4)*** of the Code of Legal Practice, through the preparation of law studies, proposals of laws that aim to develop, organize and unify Arab legislations to ensure public freedoms, justice, human rights and the rule of law…. The General Assembly of the Bar Association in Damascus calls upon the board of directors of its branch and provides recommendations to the general Assembly that will be held within the next few days to do the following:

* To demand the termination of the state of emergency that was declared through ***military*** ***decree No. 2*** dated 8 March, 1963.
* To seek amending the Emergency to restricts the declaration of this state, and that its duration does not exceed a period of three months subject to extension to another three months after holding direct public referendum.
* To consider exceptional orders issued in violation of the Emergency Law, which became a substitute Syrian legislative institution, and to demand lawyers and judges to neglect it, not comply with its contents, or file any pleading on its grounds and totally boycott it.
* To consider any lawyer, especially lawyers of official departments, public institutions and the public sector, who advises these bodies to work and seek to obtain martial orders, confiscates and seizes people’s money, confines their freedom, trespasses judicial provisions and infringes the entire judicial system, as either committing a professional error that he/she should be held accountable for before the Council of Discipline, because by committing that, he/she would have broken the oath he/she has taken and violated the pledge that he/she has committed to and behaved in a manner that degrades the integrity of the legal profession and decreases it high importance.
* To abolish all exceptional courts and refer all cases to the regular judiciary. And to all ruling issued by these exceptional courts and all legal decisions issued and continue to be issued contrary to the provisions of the law and the principles of justice as null and void.
* To demand lawyers not to appear or file pleadings before exceptional courts and totally boycott them subject to punishment before the Council of Discipline so that the sacred institution of legal professions does not become a veil that legitimizes the actions taken by these courts.
* To forbid all forms of physical and mental suppression, subjugation, repression and torture that contradict dignity, nationalism and humanity, and apply the principle of the rule of law and the independence of the regular judiciary and enable it to perform its duties in complete freedom, and put an end to all cases of arbitrary arrest, release all prisoners of conscience or belief and refer them to the regular judiciary to receive a fair and public trial that provides them the right to defend themselves and respects their fundamental rights.
* To oppose all forms of arrest, accusation and indictment and contest all forms of punishments practiced by non-judicial bodies whose procedures are not subject to any legal or judicial monitoring.
* To consider the principles of the***Universal Declaration of Human Rights*** as the basic constitution of the citizen and present its provisions as having precedent over any local legislative text in case of any contradiction between the declaration and the national laws.
* To establish a special committee within the Bar Association in Damascus whose duty is to execute this resolution through monitoring all actions considered to trespass on the rights and freedom of citizens. This committee should submit its report to the General Assembly at its next session.
1. *Resolution of the General Assembly of the Bar Association at the Damascus branch announced on 22 June 1978*

A resolution was issued by the General Assembly of the Bar Association at the Damascus branch and announced on 22 of June 1978.The aforementioned decision was contested by some lawyers loyal to the government, but the Court of Cassation accepted the decision with the exception of one article that stipulates accountability for the violating lawyers before the *Council of Discipline*. This demonstrates the credibility of the judicial authority during the late nineteen seventies which was still influenced by the long traditions of the judiciary and legal profession which consolidated its roots during the first phase we described earlier in this paper.

After this, all professional associations in the Arab country of Syria followed lead and started issuing decisions that encourage the liberation of public freedoms.

Later on, the Permanent Bureau of the Arab Lawyers Union adopted ***resolution No. 1***, which was published in local newspapers, and to put it into effect, the Bar Association took a decision to cease its work for one day (a strike).

This was the ceiling of the demands for public freedoms and human rights on 22 June 1978 by intellectuals and trade unions. Those demands derive form the winds of change that blow on the world thanks to the pioneers of free thought in Europe.

If the political authority at that time enough futuristic vision and wisdom and sided slightly to the popular demands and listened to the voices of trade unionists and intellectuals, the current generations would have avoided the high human cost that it paid during the Arab Spring that we live in now. But the authoritative reaction which was drunk with power and did not benefit from the lessons of history stayed its usual course of security measures and oppression and sometimes vengeance measures.

Following this, the media war against the association’s movement increased and a decree was issued authorizing the dissolution of associations, and the campaign of arrests against the leaders of this movement at the time began. Among the arrested leaders were ***Captain Sabah Al-Rukabi***; ***former Syrian Minister of Defense; and the bearer of the Medal of Merit*** the deceased ***Rashad Barmada*** (detained for 45 days); ***attorneys Salim Aqeel, Abdul Majeed Manjuna and Thuraya Abdul Karim*** (arrested for almost nine years); ***attorneys Muhammad Al-Hamawi, Michel Arbash, Bahjat Masuti, Adnan Urabi, Haitham Al-Maleh, Asa’ad Al-Ali*** and ***Said Nino*** (detained for seven years); and ***attorneys Muwafaq Al-Kazbari*** and ***Mahmoud Al-Sabuni*** and others.

The campaign of arrests also included members from the Engineers Association, like ***Ali Khir Bik*** which was detained for 15 years; ***Karamah Badrah*** detained for 7 or 8 years in a solitary confinement. This campaign also included many more doctor, pharmacists sand other members of professional associations.

Following this, the ***Law Regulating the Legal Profession*** was amended in accordance with ***Law No. 39*** dated 21 August, 1981, whereby ***Article (3)*** under the title *“the Association of Lawyers and its Goals”* stated the following:

***Article (3)****: The Lawyers’ Association is a social, professional organization that believes in the goals of Arab nations of socialist unity and freedom, and is committed to work on achieving these goals in accordance with the principles and decisions of the Socialist Arab Ba’ath Party and its directions.*

***Article (4)****: The Lawyers’ Association – operating in cooperation with the official and People’s authorities in the Arab country of Syria, and also in coordination with the office responsible for the regional leadership of the Socialist Arab Baath Party – strives to achieve the following goals* (summarized here):

* To take part in mobilizing the energies of the general public for the sake of achieving the goals of the nation of unity, freedom, and socialism.
* To take part in developing the legal thinking as to serve the realization of the Arab Socialist society
* To contribute in developing legislations to serve the socialist transformation
* To defend the interests of the Lawyers’ Association, and of its members, which are related to practicing their profession
* To provide association members with economic, health-related, social and cultural services.
* To organize the legal practice on a cooperative basis.

Concerning the Disciplinary Authority and in accordance with the old ***law No. 14*** dated 22 April, 1972, ***Article (75)*** prosecutes, before the branch authority, any lawyer who violates one of the duties of legal practice stipulated in this law and in the internal laws, or any lawyer who behaves in a manner that degrades the dignity or value of the legal practice profession or carries out a conduct in his personal life connected to a dishonorable scandal.

While the current law stipulates in ***Article (85):***

“*Any lawyer who deviates from the objectives of the Bar Association or breaches any of those obligations of the legal profession, which are set forth in the present Law or in the internal regulations, or who behaves in a way that diminishes the dignity or standing of the legal profession, or who, in his personal life, behaves in a way that is associated with a disgraceful scandal, shall be punished.”*

***Article (107)*** from the new Law Regulating the Legal profession provided the Council of Ministers the authority to dissolve the general assembly and the Bar Association and stipulated the following:

“***The Council of Ministers*** *may dissolve the General Assembly, the Board of the Lawyers’ Association, and the committees of branches, if any of these bodies deviates from its tasks or objectives.* ***Such a resolution is not permitted to be reconsidered or contested in any way****”.*

Accordingly, the government continued its efforts to close down access to social political support for demanding general freedoms and respect of human rights and the independence of the judiciary and the legal professions.

Judges and lawyers kept struggling to obtain their rights in independence and the return to the liberal, modern and civil values that were spread by liberal thinkers in Syria, from university professors, intellectuals, politicians, associations members and parliamentarians, that some were previously mentioned following the of independence of the country.

Social movements were not only restricted to the associations movement. Freedom and democracy are a national requirement, and it is every person’s duty to demand them. Repressing these two basic requirements through suppression, imprisonment and punishment is like extinguishing fire using bombarding flames. Soon enough, Arab societies will discover ways to express the demands that correspond to their true cultural roots, away from the manner in which some regimes attempt to portray them as primitive, archaic and clannish.

Then came the distressing incidents of the nineteen eighties when the ruling authority launched an armed conflict against a group of Muslim Brothers, in which the political authorities invested to proceed in their march of militarizing society. This march caused severe damage to the active social movement and its forces in terms of demanding reform, public freedoms and human rights.

However, history remains devious and its movement unceasing. We sometimes witness periods of dormancy that soon enough burst out long lasting movements from under the ashes and from above the stars. And before we know it, freedom tendencies and the longing for freedom will find their own outlets, and the ray of hope will shine across declarations, movements, forums, writings and other forms of expression.

In the spring of 2001, Damascus witnessed home forums where crowds, among them the cultural elite, gathered and longed for the breath of freedom. Then the authorities came and arrested the best among them and turned this page in history thinking that it would never return. However, history, and as we have known it, is devious. The Damascus Declaration came in 2004 and defined the path for definitive peaceful democratic change within the framework of public freedoms and human rights, and cut strings with the authority, which with experience, proved that it was not in support of reform. The authorities returned once more to conduct their arrests and operate their security fist after the declaration tried to determine a position, opposing that of the authority, regarding the relationship with Lebanon. The last arrests were on the background of some opposition forces attempting to determine a clear cut structure for themselves.

During these decades, repression, arrests and imprisonment mechanisms practiced against wide streams of the general public in Syria continued at exceptional courts. Today, ten years have passed, and whoever was prevented from practicing his right to peaceful assembly and peaceful expression of opinion in home forums during the early years of this decade continues to cry freedom. It is the voice of freedom that never fades…the voice of conscience and popular sentiments that became bored of waiting and being thrown into prisons, basements, solitary confinements and detention centres … longing for a dignified life … a better future for themselves and for coming generations … a future where school children are protected rather than killed … a future where the nails of prisoners are not being plucked out and their skin is not slaughtered … they long for a modern constitution without an eternal ruler … they long for a ruler whom people can question, hold accountable, and even change.

What matters to me in all this quickly compiled work, and to avoid drifting from the subject matter, is the situation of lawyers today and whether the spirit has returned to them after all this suffering.

1. *Mobilization of lawyers since the beginning of the peaceful protests in Syria and their repression*

The past six months witnessed an unprecedented movement within the framework of associations, especially the Syrian Bar Association. On the background of peaceful expression of opinion among a number of Syrian lawyers, attorneys ***Mahmoud Arafeh*** and ***Khaled Muzher*** from the Bar Association in Aleppo were humiliatingly arrested at two in the morning of 19 July 2011 by a number of masked men who drove public transportation vehicles.

In the same degrading manner, attorney ***Ahmad Hajj El Hamdo*** from the Aleppo Bar Association was also arrested at around one thirty in the afternoon of 22 July 2011, as well as attorneys ***Mustafa Hajj Abdullah*** from the area of Manbaj (north of Aleppo) and ***Salam Othman*** from Al Bab area in Aleppo on the background of peaceful freedom of opinion.

This coincided with a number of lawyers, among them the previously mentioned lawyers who were arrested, to approach the public prosecutor’s office in Aleppo and file a complaint to set in motion the lawsuit filed against a group of people in Syria known as “Al-Shabbiha” who are armed groups who commit crimes such as killing, robbery, violence and other heinous crimes in order to defend the ruling regime.

The public prosecution in Aleppo refrained from setting the lawsuit in motion, and by doing so violated what was stipulated in Article One from the Code of Criminal Procedure, which states the following:

* The attorney general is mandated to establish and follow up on public interest litigation.
* The attorney general is forced to establish prosecution cases if the person concerned appointed himself as plaintiff.
* It is forbidden to abandon, cease, or hinder the process of a prosecution case.

Accordingly, and in response to the attorney general’s abstention from responding to setting in motion the prosecution case against “Al-Shabiha outlaws” from one side, the regression of the state of human rights in Syria from another side, and the arrest of some attorneys from a third side, attorneys from Aleppo decided to organize a sit-in at the lawyer’s club in Aleppo located in Al-Sabeel neighborhood.

Without any delay, about 120 persons from Al-Shabiha, supported by some members from the intelligence forces, surrounded the lawyer’s club in Aleppo, then stormed it and attacked all lawyers with beatings, and even members from the police were unable to protect lawyers from Al-Shabiha. The demonstration was interrupted by beatings through the use of batons and sticks, and as a result of this attack, attorney Abdulmune’em Kashkash was injured and arrested by Al-Shabiha and members from the intelligence and taken to an unknown place. They forced the lawyers to disperse by employing violence.

It is important to note that attorneys in Aleppo had issued a declaration stating that putting an end to the announced state of emergency that was in effect since 1963 obliges the Syrian authorities to refrain from invading the homes and offices of attorneys and arresting them illegally. At the end of the statement, the attorneys demanded liberation of public freedoms, respect for the right of peaceful expression of opinion and the release of their fellow attorneys prisoners of conscience.

At approximately the same time, a group of attorneys organized a sit-in at the Bar Association building in the governorate of Suwaida and issued a declaration containing the same content. As a result, security forces and some Shabiha members surrounded them and forced and threatened them to break the sit-in.

This also coincided with a sit-in organized by the Bar Association in Qunaitra protesting against the arrest of Qunaitra Bar Association board member attorney ***Ahmad Diab*** and his son.

Another sit-in took place at the Bar Association in Hama, whereby a declaration was issued, containing a number of demands pertaining to ceasing the government’s violence that is going out of control, releasing prisoners and demanding public freedoms and human rights.

Similarly, and as a result of unlawful killings, arbitrary arrests, forceful disappearances, and collective punishments practiced on Syrian cities and villages that show signs of protest or demand change, a group of lawyers organized a sit-in at the Bar Association’s hall inside the Palace of Justice in Damascus on Monday, 25 July 2011 to commemorate the souls of victims of unlawful murders who were killed on the background of demanding freedom and protesting against unlawful practices committed by security forces against lawyers in a number of Syrian cities, particularly in Aleppo and Suwaida.
They were confronted by pro-government lawyers whose interests lie with the ruling system, in addition to some elements outside the circle of lawyers, known as “*shabbiha*”, who tried to attack and beat them.
This led to the intervention by lawyer ***Mohammad Jihad al-Lahham***, the president of the Damascus Branch of the Bar Association, and the Damascus Attorney General, ***Judge Marwan Al-Luji***, who tried to blame the protesting lawyers for meeting in the Lawyers’ Hall in the Palace of Justice, which they said was not the right place for them to express their opinions. The Lawyers Hall in the Palace was then closed, and has remained shut until recently.

For their part, the protesting lawyers denounced the harsh security measures taken against their colleagues, including daily harassment tactics committed by pro-government lawyers which often led to assaults. In addition, they denounced office break-ins and inspections with no legal warrant by intelligence agents.

The lawyers declared their solidarity with the detainees, including their colleagues among them, and demanded a return to the Bar Association of old that enjoyed independence from the executive and security powers. They urged the current Bar Association to face up to its responsibilities, to protect against injustice and oppression by the intelligence authorities. They affirmed the need to ensure the independence of the judiciary from the intelligence agencies. The sit-in was ended with no injuries or arrests.

In response to calls on social network pages for a general sit-in at all branches of the Bar Association in all the provinces on 22nd August, 2011, a group of lawyers staged a sit-in at the Damascus Branch and protested against the expansion of government violence, extra-judicial executions, arbitrary arrests, enforced disappearance and mass punishment. They asked for the respect of human rights and public freedoms.

At about 2 pm, lawyer ***Mohamed Jihad Al-Lahham***, the head of the Damascus Bar Association, confronted trainee lawyers, shouting at them and ordering them to enter the training room, while threatening to inflict the strictest of penalties on anyone who disobeyed him. He then locked the doors to their room and to the building, and warned them against leaving, in order to prevent them from joining colleagues who had gathered in protest outside.

Intelligence agents were standing across the street from the Bar Association, taking pictures with precision cameras of all who entered or left the building and of the protestors, while pro-government lawyers and the elements known as “*shabbiha*” marched outside the main door in support of the regime, in an attempt to intimidate the protesting lawyers within.

When the last of the protesting lawyers left the building they were met by the group mentioned above of security agents and lawyers close to them, in addition to *shabbiha*, who were raising posters with President Assad’s picture and shouting pro-government slogans. The lawyers moved away to avoid confrontation.

Meanwhile, those lawyers whom the leader of the Bar Association locked up inside presented a statement describing current violations in Syria of human rights, which they said had reached an unprecedented level to which they, as well as many others were exposed. These ranged from arbitrary arrest, to enforced disappearance and torture and various forms of humiliation. They ended by asking the Bar Association to fulfil its duties in protecting its lawyers and the legal profession, and to ensure the independence of the association from the intelligence agencies.

The following day, intelligence agencies arrested the lawyer ***Mohammed Essam Zahgloul*** in connection to the drafting and presentation of the protest statement, and took him to an unknown location.

In response to the same calls on social network pages, a group of lawyers staged a sit-in demonstration in front of the local Bar Association in the Aleppo Palace of Justice and raised banners calling for freedom, justice, dignity, independence of professional associations, and an end to arbitrary arrests. They held up slogans for national unity in what was a silent sit-in until it was turned violent, with shouts and insults after a number of security agents, pro-government lawyers and *shabbiha* intervened, attacking and beating protesting lawyers. The police abstained from arresting those attacking the lawyers within the Palace of Justice.

In response to the same calls, a group of lawyers staged a sit-in demonstration in front of the Bar Association hall in the province of al-Raqqah located inside the Judiciary Complex building (*al-mugamaa al-qada’ee)*, to protest a worsening of the human rights situation in Syria, the spread of violence and the increase in break-ins and political arrests. The following lawyers were arrested as they left the building:

* ***Ms. Rim Shanaa***
* ***Yasser al-Kerbou***
* ***Mahmoud al-Hadi***
* ***Mahmoud al-Isa***
* ***Fahed al-Birm***
* ***Mohammad Shalash***
* ***Asid al-Moussa***
* ***Omar al-Aly***
* ***Mahmud Wali***
* ***Farhan al-Noani***
* ***Mohammad al-Gassem***
* ***Ghaleb Amin***
* ***Aly al-Fares***
* ***Abdel-Razaq al-Setm***
* ***Saleh Ibrahim al-Aly***

The security forces also broke into al-Raqqah Judiciary Complex, and arrested in a humiliating way each of: prominent human rights activist and lawyer ***Abdallah al-Khalil***, ***and Ms. Rana Ibrahim al-Khalil***, lawyer.

More than 30 other lawyers are on a list of individuals currently wanted by the various security agencies in connection to their participation in the sit-in at al-Raqqah, and we will make the list available soon.

Detention conditions in Syria are known to be inhuman and excessively dire, whether they are police custody centres or those of intelligence agencies.

Custody centres in Syria commonly lack sanitary facilities or toilets, ventilation or lighting, and they provide no means of communication, or access to any legal or humanitarian aid. Security forces have placed lawyers in custody for up to six days before interrogation, with no justification, simply to extend their suffering.

Detained lawyers have been placed together with criminal detainees in cells that measure 2 m by 3 m, with a single window or vent no larger than 30 cm by 30 cm. The cells hold around 15 detainees; in temperatures that may reach 50 degrees Celsius, poor ventilation and overcrowding that lead the inmates to take turns at sleeping or eating, while the rest of their colleagues fan the air with pieces of clothing for ventilation.

The unbearable detention conditions led the lawyers to announce a one-day protest hunger strike. The lawyers were otherwise not tortured, ill treated or humiliated while in detention, but some of them were arrested in a humiliating way.

Lawyers from the al-Suwayda Province Bar Association responded to the same social network calls, but security forces barricaded the road leading to their headquarter, which was surrounded by riot police and *shabbiha* while a prison van blocked its entrance. The lawyers headed instead for the Bar Association hall within the Palace of Justice but they were quickly surrounded and pressured to abandon the sit-in and leave the location.

In response to the same calls, a group of lawyers in al-Hasakah province gathered at their Bar Association branch for a protest demonstration against events in Syria. The head of the al-Hasakah branch arrived and assaulted our colleague ***Mustafa Osso***, head of the Kurdish Organization for the Defence of Human Rights and Public Freedoms in Syria (DAD), dragging him by his coat, with the assistance of pro-government accomplices, to the outside of the building. A tense standoff followed between the protesting lawyers and the pro-government lawyers, chanting slogans for freedom, while the government loyalists praising the regime.

Aleppo recently witnessed a sit-in by lawyers outside the office of the First Attorney General, Judge ***Ibrahim Hilal***, at the Palace of Justice, in protest at the detention of four lawyers and at the spread of arbitrary detentions in general, and the serious human rights violations that are occurring in Syria. The four detained lawyers are:

* ***Mustafa Soliman*** and his wife, from Ashrafiya district of Aleppo
* ***Salam Othman***, from al-Bab district of Aleppo
* ***Ma’moun Mido***, from the Seif al-Dawla district of Aleppo
* ***Mahmoud Youssef Darwish***, from Bab Halab district

Meanwhile, a large number of lawyers have been arrested since the eruption of protests in Syria, with their numbers estimated at more than 80. The Bar Association has not taken any steps to ensure their rights or to defend them, and has on the contrary taken disciplinary action against them.

Among those lawyers detained in the last six months in connection to peaceful protests are:

* FromDamascus Bar Associationbranch**: *Ms. Ilham Kour, Bassel al-Manei; Mazen Salah; Mohammad Abdel-Qader Baladiyah; Youssef Turki al-Dawass; Mohammad Essam Zaghloul; Mohammad Abdel-Rahman Bahaa al-Rikadh; Emad el-Nemeiri.***
* From the Rif Dimashk Bar Association Branch: ***Salim al-Alam,*** disappeared since 1st June, 2011**; *Bassel Mohsen; Abdel-Razek al-Tinnawi.***
* From the Quneitra Bar Association Branch*:* ***Ahmed Diab***
* From the Aleppo Bar Association Branch:the lawyers previously cited, in addition to ***Gomaa al-Hamada al-Darwish,*** detained for the second time**; *Saleh al-Hajji bin Abdel-Rahim;* (**and ***Mustafa Soliman*** and his wife**; *Ma’moun Mido; Mahmoud Youssef Darwish and Salam Othman*** – mentioned above**)**
* From the Hama Bar Association Branch: ***Mohammad al-Abbas***, head of the Hama Branch Bar Association; ***Akram Wanus; Tamam al-Feel***,and ***Hassan Morshid.***
* From the Homs Bar Association Branch: ***Abdel-Wahab Raswani, Talal Mattar.***
* From the al-Suwayda Bar Association Branch: ***Gaber Mehanna, Nawaf al-Germany.***
* From the Latakia Bar Association Branch: ***Ahmed Bakkour, Akram Wafani***
* From the al-Raqqah Bar Association Branch: ***Emad el-Din Abu Aly****,* a member of the al-Raqqah Bar Association board, ***and Mustafa Abdel-Rahman.***
* From the Idlib Bar Association Branch: ***Wael Dibl; Amir Ibrahim Teressi; Wael Debb; Faisal Taha Rashwani; Gheith Amir Teressi;*** *and* ***Abdel Fattah Mohammad Taher.***
* From the Dayr al-Zawr Bar Association Branch: ***Jihad Hashem Weka’a; Saad al-Saoud; Moammar Khaled Qara***
* From the al-Hasakah Bar Association Branch: lawyer and activist ***Moahmmad Ibrahimi al-Darwish, and Saad al-Musharaf.***

In a related development, Bar Association branches across the country have started to press charges against a number of lawyers in connection to their peaceful expression of public opinion. They include ***Hassan Youssef Berro***, executive director of the Syrian Human Rights Organization, *Sawassia* in the province of al-Hassaka; the lawyer ***Mustafa Osso***, head of the Kurdish Organization for the Defence of Human Rights and Public Freedoms in Syria (DAD), against whom the al-Hassakah Bar Association Branch took disciplinary action; and the lawyer ***Faisal Badr***, a member of the board of trustees of the Human Rights Organization in Syria- MAF; and many others.

**III: THE CURRENT SITUATION OF LAWYERS AND THE HEAVY LEGACY OF THE PAST YEARS SUFFERING**

In general, the legal profession’s independence relies on a Bar Association that enjoys a necessary amount of independence in addressing all issues pertaining to lawyers.

It requires a bar association that can operate with transparency, independence and efficiency to carry out its functions far from any security dictates, in order to be entrusted with regulating and protecting the legal profession and its sovereignty. This would require:

* Administrative legislation to ensure the independence of lawyers from any inappropriate links with state bodies, and allow the Bar Association to address all their issues.
* To allow the lawyers’ representatives to reach senior positions within the Bar Association, far from inappropriate interference or influence, in order for these leaders to owe their loyalty to their constituency and not to outside powers that may have promoted them. It is only under such conditions that the most deserving, and not the opportunists, can attain positions of leadership within the Bar Association.

**Hence:**

The Bar Association is meant to be the only body mandated to question lawyers and to discipline them, but not to oppress them at the whim of the security agencies.

As a starting lawyer, I remember defending political prisoners and prisoners of conscience more than 20 years ago; I moved to working on the defence of human rights in a public and formal way as of 2004 and I distributed the Syrian Human Rights Organization publications to the Bar Association and to other professional associations in the country.

At the time, I made public announcements to the newspapers, satellite channels and the media – as head of the organization – and over all those years, the Damascus Bar Association did not move to defend my rights.

It took action against me years later, following the problem that began when I monitored the higher state security court trials, and when the Persecutor General, Judge ***Habib Nijmeh***, notified the state security intelligence about me, leading them to pursue me.

It is no secret that the head of the Syrian Bar Association, the lawyer ***Nizar Skif***, took disciplinary action against me, upon written instructions by the intelligence agency, which was put in my file. Traditionally, disciplinary action requires a prior summons by the head of the Bar Association, and questioning about the charges before taking action. As I was detained at the time, this step was overlooked, and the Damascus Bar Association Branch did not pay attention to this gross violation of the rules before it decided to ban me from the practice for life, simply because of a written order by the intelligence agency against me.

When I was summoned to the Damascus Bar Association Branch, I wore the striped prison uniform of criminals, and had my hands shackled as I entered under the gaze of my colleagues. I was taken to the office of the head of the Damascus Bar Association Branch, ***Jihad al-Lahham***, and found a representative of the state security intelligence waiting with him, and they exchanged comments throughout.

Instead of defending me during the trial, the head of the Bar Association Branch collaborated with the security service responsible for arresting. Making matters worse was the arrest of my defence lawyer, ***Haitham al-Maleh***, in connection to an article he had written about my “regressive” case.

To sum up:

The Bar Association should be an independent body recognized by law, not linked to any regional leadership, as is the case in Syria, and their boards should be freely and democratically elected not linked to any partisan influence or interference, as is also the case in Syria.

The extent of independence of the legal profession depends on its relationship with the justice system.

* Lawyers play an important role in promoting the rule of law which can allow for, and nurture the principle of respect of human rights and democratic freedoms.
* A state based on the rule of law will respect citizens’ rights, especially the right of an accused to be presumed innocent until proven guilty, by legal and constitutional means and in line with procedures for fair trial.
* It follows that respect for human rights requires a respect for rights defenders
* A sound legal system that promotes basic rights within society will widen the scope for rights defenders and allow a stronger role for lawyers as defenders of the rule of law and of public freedoms, and as educated citizens capable of monitoring the guarantees for fair trial.

This in turn requires that court circuits and authorities respect the role of the lawyer, cooperate with him and allow him the opportunity to defend the rights of his client, within the framework of the constitution and the law.

When I was defending a number of detainees at the State Security Court in Syria, a security agent accosted me in the court’s café, grabbed my personal papers and tore up an agenda in which I kept appointments and comments. He then proceeded to insult and curse me. It was later revealed that the head of the public prosecution, Judge ***Habib Nijmeh***, had instructed the agent to take this action. He did not stop there, but started a case against me at the State Security Court on charges of a criminal nature, in addition to the Bar Association charges, which together have ruined my professional career. My office has been shut, my profession robbed, I lost twenty years of legal practice, and I was transferred overnight from my seat at the bench to the dock, joining the victims of injustice and oppression that I used to defend.

Therefore, it is clear that this type of court cannot accept even a symbolic role for lawyers, due to the overlap of the work of the security agencies with that of the judiciary. The instructions and action that judge ***Nijmeh*** took are not worthy of a security agent, let alone of a judge.

This obvious interaction between the security and the judiciary in all its forms casts doubt on the work of the lawyer, as a **vital player in promoting the rule of law, defending the rights of the accused in a fair trial, and advocating for a wider margin for public rights and freedoms.** If it leads to confrontation within the courthouse, as happened to me, what must the situation be like in police, security and intelligence interrogation centres? What would have been the result if I had demanded my rights to protect against office break-ins and searches, and to protect the privacy of my correspondence?

In an incident in Latakia, when I went on a mission to the Palace of Justice, I was stopped at the door for inspection. I informed them that as a lawyer, I was legally exempted from searches while in the course of duty, and showed them my Bar Association identity card. At that moment, a bystander in plainclothes shouted at me, ordering me to submit to inspection and insisting that there were traitors among Syria’s lawyers. He then took my card from the security agent and led me to the office of ***Ms. Suhaila Ibrahim***, first Attorney General of Latakia, who supported his claims and said she had specifically ordered the inspection of all lawyers entering the Palace.

I reminded her of the law that bans the inspection of lawyers while on duty and that I was there on legal duty. She replied that the law in question had been suspended and would remain so until further notice!!

I was even more surprised to find out that the person at the gate charged with inspecting lawyers was none other than the head of the civil court who had left his work to search, even though there were a hundred security guards, carrying different types of arms to protect the palace. Why was it necessary for ***Ghassan Gaafar***, to abandon his post and replace security guards to inspect lawyers at the gate?

I am therefore not surprised to watch the sight of peaceful demonstrators lined up facing a wall, with their hands tied behind their backs in a primitive, frightful, manner, as they are exposed to beatings by the security forces who arrested them, or by anyone at the interrogation centre, under the eyes of the interrogation judges.

* A lawyer can only be independent if there is no interference in the relationship with his client, a highly murky issue in Syria. When I was detained, the head of the Damascus Bar Association refused to provide permits to lawyers wishing to visit me, a practice that prevails with all prisoners of conscience in Syria.

In addition, he interfered in my defence team by refusing to provide permits to more than three counsels, and preventing me of delegating more than three defence lawyers on behalf.

The Damascus Bar Association took these discriminatory measures against its lawyers, while criminal detainees – including murderers, rapists and drug dealers – can select whoever they please as their defence lawyers, who may visit them at any time, with no complications.

My own defence lawyers must first go from one place to another in search of the head of the Damascus Bar Association for a permit, which he grants only after negotiations and pleadings lasting more than a month or two. It doesn’t stop here, as these lawyers must then obtain a second permit from the Public Prosecutor in order to be able to visit me.

* A lawyer can only be independent if the judge respects his role and provides him with the liberty to present his case, make his defence and objections and allow him to meet his duties fully, otherwise the lawyer’s role would have no value.

The justice system should provide the litigant with a judge who is presumed to act with no prejudgment and to follow only his own conscience. Such a judge must enjoy a necessary, minimum level of independence and must share with the defence team a mutual feeling of support in order to safeguard their independence and attain the goal as prescribed by justice. This calls for respect of each other’s professional and social character in an attempt to attain the truth far from any inappropriate influences. Otherwise, the role of the lawyer will become merely useless ceremonial procedures that have to be followed as *“legitimate means”* to achieve *“illegitimate goals.”* Those goals are to pass ready-made prejudgements against the accused through a paralyzed judicial process that produces harsh sentences that cannot be justified given the weak reasons upon which they are based.

This explains the duality in the discourse between international human rights treaties that Syria has signed or ratified, and the reality of their implementation on the ground. This also explains the secret behind the frightful degradation in the human rights situation, leading to extra-judicial executions of thousands of Syrians, arbitrary arrests of thousands more, and enforced disappearances, in addition to widespread torture on a systematic scale. More than 100 victims have died in prison from torture, according to numerous human rights organization, in addition to mass punishment in all its forms over the last six months of protests, even after the announced end to the state of emergency, and under a legal environment that is supposed to be normal and within the limits of civil laws of the country.

Despite all these violations, not a single Syrian citizen has thought of pressing charges against the perpetrators, or even to sue for compensation. When I appeared at the criminal court in Damascus, headed by Judge ***Khaled Mahmoud***, on charges of causing military defeat in a time of war by spreading false news meant to undermine the morale of the country and weaken its national pride, I requested to know what the false news were.

They presented me with three statements that my human rights organization, *Sawasiah,* produced, one of which addressed death by torture while in detention, and another contained data on political detentions in connection to freedom of expression and beliefs. The third was about a poor village close to which the government was planning to set up a quarry. We requested the quarry to be moved far from the village because its houses were close to collapse and would not survive the quarry blasts. “However the (government’s) insistence on placing the quarry near the village led to cracks in more than 50 houses, and the collapse of a few, leading to the injury of their residents and to protests by the villagers. More than 100 were arrested and sent to the military court, which sentenced them to one year at hard labour.”

For my part, I presented the court with 113 official documents that included 72 signed police statements, all of which are evidence of the truth of the *Sawasiah* statements, refuting the claim that they were lies and proving that the public prosecutor looked at the claims by the families against the interrogators who caused the death by torture while in detention, and included witness accounts approved by the investigating judge about the incidence of torture.

But the criminal court overlooked all the documents and evidence presented to them, and did not refer to them in its decision against me. In addition, the court referred to publications by my organization obtained via the Internet in sentencing me to three years in jail, knowing fully well that this information was not presented in court and that I was not questioned about it during the whole trial.

What is the use of defence teams and representation in courts under such conditions, and is the right to counsel of any value if it is a procedural measure to reach a verdict that is decided in advance?

This totally contradicts the principle of the independence of lawyers, who must be able to present documents and evidence that will be taken into consideration.

**Conclusion**

Louis XII was not wrong when he said: *“If I were not a King I would have chosen to be a lawyer.”*

The legal profession is characterized by patience, intellect, hope, nobility, generosity, ethics, and sacrifice, and aids the disadvantaged.

I learned that a legitimate end may only be realized through legitimate means. I also learned that no matter how long the struggle persists, the word of truth will eventually prevail.

We may retreat at times and stumble at others, and at one point we may feel that we have lost everything, but we will stand up and rebuild, with the tools we inherited from our fathers, that which was destroyed. We will do so with our principles which have never been individual morals solely but rather a set of rules that ought to be respected by everyone.

Those tools might appear very old and rusty to the arrogant ones who took the back door into their fancy offices.

To those I say: *“souls were sacrificed until humanity was able to codify these genuine principles and values as well as deep-rooted guarantees for the legal and judicial professions. Today, these constitute collectively a precious metal, and the older it gets the more it shines. We, as a group of young lawyers, will not abandon them and will fight for them.”*

We realize that our path is not strewn with roses, but it is the only path. Should we emerge triumphant, we will pass down to future generations some of that which we inherited from our fathers. Should we fail, it will suffice to obtain the honor of trying and it will not harm us if we become martyrs of duty.

The path to assuming positions in professional associations that does not pass through loyalty to the profession, its practitioners and established values but enters, instead, through the back doors opened by the militarization of state and society, bullying policies as well as submission and servility is indeed swift. Nonetheless, it is equally swift to collapse. The Bar Association in post-revolution Egypt offers the best proof and example.

Although the security apparatus was able to remove those celebrated experts in the legal profession in the late 1970s and early 1980s and eliminate their presence in public life by locking them in prisons and detention centers, this apparatus failed to render them forgotten. Their memory will remain a source of inspiration for future generations and beacons for those who yearn for the values and principles of the legal professions.

Congratulations to them for they enjoyed, in their damp cells, cold cellars and narrow confinements, many times the freedom you have in your comfortable offices and luxurious lives.

Congratulations to those who obtained the honor of sacrificing for the sake of the values ​​and principles of freedom and for the sake of emancipation from all forms of tyranny. Those beacons shall shine eternally on the path to consolidating the values of justice, truth, law and equality.

***Paris, September 2011***

**Lawyer Mohannad Al-Hasani**

***Banned from practicing the legal profession for life by decision of the Bar Association Board of the Damascus Branch***