

# A Legal Statement Legislative Decree No.7 of 2022





President of the Syrian Regime, Bashar Al Assad, issued the legislative decree No.7 of 2022, which consists of three articles stating the following:

## **Article One:**

“A general amnesty is granted for terrorist crimes committed by Syrians, except for those that led to the death of a human being as stipulated in the Anti-Terrorism Law No.19 of 2012, and the Penal Code promulgated by Legislative Decree No.148 of 1949 and its amendments.”

## **Article Two:**

“This amnesty law shall not affect the personal right lawsuits; the affected person may file his/her case before the competent civil court”.

## **Article Three:**

“This Legislative Decree shall be published in the Formal Newspaper and shall be effective as of the day of its issuance”.

In order to discuss this Legislative Decree from a legal point of view and refute it, we must refer to the following points:

**First: The dominance of the President of the Syrian Regime, which is represented in issuing an amnesty decree, is a violation of the constitution that aims to raise the presidents’ popularity to cover up the crimes committed by his security services.**



The basic principle on which the general amnesty decree is based, is the suspension of the legislative decree text that provides for the punishment imposed by a legal text.

Moreover, Article 75 of the Syrian Constitution of 2012 along with Article 71 of the Syrian Constitution of 1973 stipulate the following “People’s Assembly has the following authorities: 1- issuing laws ..... 7- Issuing general amnesty”, and Article 108 of the Syrian Constitution of 2012 along with Article 105 of the Syrian Constitution of 1973 stipulate the following “the president has the right to issue a special amnesty and rehabilitate law”.

- In a comprehensive review by the FSLA team to count these decrees from the outbreak of the Syrian revolution until the date of preparing this legal memorandum, we found that **19 amnesty decrees** have been issued, that varied between general amnesty decrees for the entire committed crime, and other special amnesty decrees related to certain crimes such as internal and external flight, kidnapping, in addition to a decree regarding amnesty for the Muslim Brotherhood and a decree regarding Syrian and non-Syrian perpetrators of terrorist crimes. These decrees are as follows:

1- Legislative decree No.61 of 2011	10- Legislative decree No.32 of 2015
2- Legislative decree No.10 of 2012	11- Legislative decree No.8 of 2016
3- Legislative decree No.30 of 2012	12- Legislative decree No.15 of 2016
4- Legislative decree No.71 of 2012	13- Legislative decree No.11 of 2017
5- Legislative decree No.23 of 2013	14- Legislative decree No.18 of 2018
6- Legislative decree No.70 of 2013	15- Legislative decree No.20 of 2019
7- Legislative decree No.71 of 2013	16- Legislative decree No.6 of 2020
8- Legislative decree No.22 of 2014	17- Legislative decree No.1 of 2021
9- Legislative decree No.4 of 2015	18- Legislative decree No.13 of 2021
19- Legislative decree No.7 of 2022	

In contrast to this large number of amnesty decrees issued by the President of the Syrian Regime, we find that the Syrian People’s Assembly issued only two amnesty laws. Law No.17 of 2000 included the general amnesty law, and Law No. 56 of 2002 which grants general amnesty for crimes stipulated in military laws related to military service.



## **Second: The Anti-Terrorism Law, the formation of its courts and the ruling issued by it are considered a violation of the Syrian Constitution, the principles of criminal trials and the international law.**

The Anti-Terrorism Law was established by Law No.22 of 2012. It was promulgated by Legislative Decree No.19 of 2012, which included in its acts the definitions of the terrorist act, the terrorist organization, the financing of terrorism and the penalties of committing or promoting a terrorist act.

### **Article 1**

Definition of a Terrorist Act: Every committed by using weapons, munitions, explosives, inflammable materials, toxic or incendiary products, or epidemiological or microbial agents regardless of the type of these means including tools used to serve the purpose of creating a state of panic among people, disturbing public security, or harming the infrastructure of the state.

### **Article 5**

Penalties of Using Terrorism Means: Whoever smuggles, manufactures, possesses, steals or embezzles weapons, ammunition or explosives of any kind with the intention of using them in the execution of a terrorist act shall be punished with hard labor from fifteen to twenty years, and a fine twice the value of the seized items. In case these acts are accompanied by killing or incapacitating a person, then the penalty shall be death penalty.



## Article 7

Whoever commits a terrorist act that results in a human disability, partial or total collapse of a building or damage to the infrastructure of the state shall be punished with life imprisonment with hard labor and a fine twice the value of the damage.

## Article 11

In order to guarantee the rights of the state and the those affected, the component Public Prosecutor, or whomever he delegates, has the right to order the freezing of movable or immovable funds of anyone who commits one of the crimes related to the financing terrorists acts or one of the crimes stipulated in this law, as long as there is sufficient evidence proving the crime.

## Article 12

The court shall rule by judgment of conviction for the confiscation of movable and immovable funds, their proceeds, and the items that were used or prepared for use in committing any of the crimes stipulated by this law. The court shall also order the dissolution of the terrorist organization, if existed.

## Article 43

of the Syrian Penal Code: No death sentence shall be carried out except after consulting the Amnesty Committee and with the approval of the president of the state.

## Court Formation:

The court's current formation and structure are as follows:

**Public Prosecution:** It consists of eight judges, including the chief prosecutor and a military judge.

**Investigative Judges:** It consists of seven Judges, who differ according to the crime, heading a different investigation room each.



**Criminal Court:** It consists of three judges, each with the rank of a chief counsel, and two other members, one of whom is a military man, and they are selected by a decree based on a proposal by the Supreme Judicial Council.

## Procedures of the Terrorism Court:

The articles of the aforementioned decree stipulated the procedures of trials that are legally followed in this court as follows,

Article 2: b- The investigative judge is appointed by a decree based on the proposal of the Supreme Judicial Council, in addition to his authority he has the authorities of a referral judge provided for in the laws in force.

Article 6: Judgements in absentia issued by the court are not subject to a retrial in the event of the arrest of the convicted person, unless he/she surrendered voluntarily.

Article 7: While preserving the rights of defense, the court is not bound by rules stipulated in the legislations in force during any of the roles and procedures of prosecution and trials.

Article 8: Cases of terrorism that are under consideration before other courts shall be transferred to the new court in their current state.

## In terms of the legality of forming a terrorist court and the legality of its rulings:

### 1- Amending the Judicial Police Law:

At the outset, we must point out that the Syrian Government issued the Legislative Decree No. 55 of April 21, 2011, amended by **the Legislative Decree No.109 of August 28, 2011**, to provide an amendment to the Code of Criminal Procedure allowing members of the judicial police (who are expressly named in the laws) to delegate their tasks to others without any appointment. Thus, the matter was no longer limited to the members of the judicial police, in fact, this came to allow other security services (intelligence service and military security) to refer the accused persons directly to the Terrorism Court. As such they were allowed to fabricate charges without legal controls. Furthermore, not appointing the authorities of those authorized in an explicit and clear



manner is a clear violation of the provisions of the Constitution. As a result, this allowed every security agency to arrest any person and refer him/her to the Terrorism Court after extracting confessions from him/her by force and coercion, and it is known to everyone that no lawyer can represent the accused person before these security agencies.

## 2- Procedures before the Terrorism Court:

The court law expressly stipulates, in **Article 5**, that the court is exempted from adherence to the rules and procedures stipulated in the Code of Criminal Procedures. This concern is reflected in **Article 2 paragraph B** as follows “The investigative judge is appointed by a decree based on the proposal of the Supreme Judicial Council, in addition to his authority he has the authorities of a referral judge provided for in the laws in force”, which allows the same investigative judge, who issued the accusation, to have the jurisdiction to issue an appeal request of the indictment issued by him/ her. As such, this constitutes a grave violation of the Syrian Constitution as stipulated in Article 28 paragraph 4 as follows “The right of litigation and conducting the means of appeal and defense before the judiciary is protected by law. Moreover, appealing to the same judge constitutes a ground for the decision to deprive the accused of the right to appeal, and the same applies to **Article 6**: “Judgments in absentia issued by the court are not subject to retrial in the event of the arrest of the convict unless he/ she surrenders voluntarily”. Thus, if a person gets arrested, he/she loses the right to appeal the decision in absentia, the decision becomes final against him/her, and the penalty is executed. At the same time, he/ she is deprived of the right to defense, which is protected by the constitution in the text of **Article 28** paragraph 4. As follows “Depriving the accused of the right to appeal constitutes a violation of the provisions of the Constitution and the provision of the Article No. 333 of the Law 112 of 1950 (Code of Criminal Procedures), which states the following “If the absent accused surrenders to the government or is arrested before the statutes of limitations has expired, the judgement and all the ongoing transactions, as of the issuance of the arrest warrant or the time-out decision, shall be deemed void, and the trial shall be repeated in accordance with normal procedures.”

The aforementioned **Articles No. 2-5-6** of the Code of Procedures of the Terrorism Court violate the principle of the right of a fair trial guaranteed by the Constitution. Moreover, these articles constitute a violation of the rights and guarantees guaranteed by **Article 14** of the International Convention on Civil and Political Rights, which entails the responsibility of the Syrian Government on all judgements issued by this court, which is a violation of the human right of having a fair trial.

## 3- Article 11 of Law 19 of 2012 states of the seizure of the property of those referred to this court:

The general competent attorney, or whomever he delegates, may order the freezing of movable and immovable funds for anyone who commits one of the crimes related to



financing terrorist acts or committing one of the crimes stipulated in this law. Legislative Decree No. 63 of 9/16/2012 also allowed the judicial police authorities to demand the ministry of finance to execute provisional prosecutions, such as provisional seizure of movable and immovable funds of accused people and travel ban during investigations carried on according to the Anti-terrorism Law No. 19 of 2012.

This text violates the Syrian Constitution **Article 15 paragraph 3** which stipulates the following “Special seizure is only commanded by an adjudication”. However, fund seizure is taking place without a final adjudication. Nevertheless, in cases of issuing adjudication, as explained above, this judgment is not considered legal, since it may be invalid in terms of the formation manner of its issuance. As a result, expropriation of accused people’s properties is an arbitrary action that violates rights and guarantees guaranteed by **Article 17 paragraph 2** of the Universal Declaration of Human Rights, which states the following “No one shall be arbitrarily deprived of his property”. Meaningfully, judgments that ruled over amnesty might be legally invalid. Therefore, the Syrian Regime must issue a law of absolute cancellation of all the judgments issued by these courts along with the legal impacts derived of these judgments, such as seizure of convicted people’s properties. The law must also include a legal rehabilitation and a **compensation of detainees who have been released**. All judgments issued against them are invalid by law, and the time they spent in prison is considered to be a violation of their personal liberty according to **Article 9** of the International Convention on Civil and Political Rights. **Article 5** stipulates the following “**Every person, who was illegally detained or arrested, has the right to receive a compensation**”, which results in the responsibility of the Syrian Regime to compensate these violations committed against detainees according to the perspective of the State Responsibility of The International Law “**Every internationally wrongful act of a State entails the international responsibility of that State**”. The responsible State must also make full reparation for the injury caused by the internationally wrongful act, according to **Article 31**.

- A law must be issued to cancel these courts that are considered an exceptional way that forms a breach of the Syrian Constitution and the international law, and expressly violates human rights and conventions that the Syrian Regime have signed, such as the International Convention on Civil and Political Rights.
- Some detainees are released from the detention centers and prisons, which does not conform with the minimum standards of human rights, **in a tragic form physically, psychologically, and in certain cases, mentally** since the duration of their detention is long and includes torture and inhumanitarian humiliating acts, which makes these people legal evidence to prove the criminality of the regime and its cruelty. Had the regime been serious and transparent in concern of releasing the detainees according to the Amnesty Decree, **it would have issued lists to show numbers of the released people** along with their crimes and the legal ground of arresting them this long.



## Third: Articles of the Amnesty Decree exempted numerous crimes that opponents were accused of without being included in the amnesty:

- The Syrian Regime and its security and juridical services adopted the policy of increasing the punishment while addressing accusations aimlessly against everyone who goes against its policy or criticizes the government's or security services' actions. As a post on social media platforms might lead you to be accused of a constitutional crime or of undermining the prestige or the financial situation of the state according to the Cyber-crime Law No. 20 of 2022 and to the amendment of the Criminal Code with the law No. 15 of 2022. The poster of this post might be imprisoned between 3-15 years according to the text of **Articles 285-286-287-292** of the Criminal Code and **Articles 26-27-28** of the Cyber-crime Law. The law was extensible in its clauses since this Syrian law does not specify certain actions in the posts which their publishers are to be under prosecutions for undermining the prestige of the state or disturbing the national unity. Moreover, the law does not specify matters in terms of the clause of trust destabilization of the national banknotes, or the clause of changing the constitution in an illegal manner or cutting a part of the Syrian ground. Thus, it left the door open for security services to interpret. Both laws were tightly related to each other in order to increase the punishment by using extensible clauses since this Syrian law does not specify certain actions in the posts which their publishers are to be under prosecutions for undermining the prestige of the state or disturbing the national unity. Moreover, the law does not specify matters in terms of the clause of trust destabilization of the national banknotes, or the clause of changing the constitution in an illegal manner or cutting a part of the Syrian ground. Thus, it left the door open for security services to interpret the law entirely in order to pursue the regime's critics and shut their mouths. The law does not distinguish to no degree between public liberties and the right to express and publish. Its articles are "general and extensible as an operational model used for fabricating accusations to any person who criticizes or opposes the regime. The law is considered a mean used by the regime to arrest the criticizing and opposing voices posted though social media platforms. It provides the authority to any security or juridical authority the right to arrest and imprison".
- The decree exempted **crimes of external correspondence and kidnapping**. However, everyone is aware that these crimes are a preset models made to accuse opponents by forcing the accused person to sign a confession under torture, pressure and coercion. Thus, this decree is not going to include many opponents, which causes not including these detainees in the amnesty decree



and opens the door for the regime's dealers to blackmail families of those detainees in order to include them in the amnesty.

## **Fourth: The Amnesty Law is legally mysterious, which makes it one of the financial blackmailing means used by the regime's services**

The decree exempted actions that led to death of a human being. However, the text of the decree is general in a manner that does not clarify that these actions **must lead directly** to the death of a human being. This means that any accusation addressed to the accused person might cause this person to be exempted from the amnesty even if his/ her action did not lead directly to the death of a human being. It is more than enough for an accused person to be member of an opponent group, that had practiced actions leading to the death of a human being, to be exempted from the amnesty. As a result, this opens the door for security services and juridical authorities to describe the crime in a manner that guarantees its committer to be included in the amnesty through means of financial blackmail.

## **Fifth: The decree does not clarify the destiny of enforced disappeared people who are kept in security centers and deprived of their right to have a trial before the terrorism court:**

This group of detainees, who are kept in the Syrian Regime's security centers, is not declared by the regime. Despite the fact that very few of them were brought before the court, they still are not included in the amnesty since the regime did not confess their existence in the first place. Therefore, this decree is considered deficient. The Syrian Regime along with its security services are not going to release but a small number of detainees since **their release would form the most crucial evidence on this regime's criminality and cruelty**. The issue is not particularly in this decree or the former decrees, but rather in the inexecution of these decrees by the regime and its security services. Moreover, there are former amnesty decrees, which are the **legislative decree No.23 of 2013 and legislative decree No.22 of 2014** as mentioned in the first paragraph of this legal memorandum, that contain terrorist crimes. Since the beginning of the Syrian Revolution, 19 amnesty decrees were issued. However,



according to the Syrian Network for Human Rights, there are **131 thousand detainees in the regime's prisons** as of the final amnesty decree No. 13 of 2021.

## **Sixth: Danger of the simultaneity between the issuance of this decree and the Tadamon Massacre to distract the attention of the international community and the international public opinion from this decree, and the danger of the regime's purpose of promoting for the refugees' return:**

We have warned over and over again about the Syrian Regime following the policy of distracting the international community and exhausting it with details. That is why we have expected the Syrian Regime to respond after the scandal of Tadamon Massacre and the brutal videos that were leaked according to The Guardian's report, a British newspaper. Therefore, this was the regime's first reaction in order to distract the Syrian people and the international community from the massacre and to promote to his security services that the regime is prepared for the national reconciliation and the return of refugees. In particularly, in terms of the current international political situation, in which the hosting countries are seeking a solution for the Syrian refugees' file. Thus, the actual danger lies in the existence of this security system. Forced return of refugees is considered a breach of the international law as refugees are going to be under the risk of being arrested and tortured. There are various civil reports that prove this breach, such as the report issued by **Human Rights Watch** under the title of "**Our Lives Are Like Death**", which states the cases of Syrians who returned to Syria from Jordan, Lebanon and Turkey and were arrested, tortured and abused physically and sexually. The report concluded to the following sentence "Syria is a death country, a kidnapping country. Anyone coming back will lose their money or their life". As well as the Amnesty International's report of 2021 under the title of "**Your Are going To Your Death**", which concluded that Syrian intelligence officers have subjected women, children and men returning to Syria to unlawful or arbitrary detention, torture and other ill-treatment including rape and sexual violence, and enforced disappearance. The solution that Syrians have waited for so long lies in the enforcement of **decision No. 2254 of 2015** issued by the Security Council in concern with executing a real political transformation, which Syrian have been demanding of since the beginning of their revolution against this Regime and Its agencies that have ruled Syria for more than 50 years firmly and bloodily. Syrians have offered all kinds of sacrifices to achieve this goal since there is no solution accepted in Syria as long as this condition is not achieved in accordance with a constitution that represents all Syrians, and respects human rights principles as an

inseparable part; a constitution that respects and protects the freedom and dignity of the Syrian citizen. All orders that declare the executive authority's control of issuing decisions and disstrain legal and court authorities should be canceled. Transformational justice should be applied in order to conciliate the security and military institutions to be loyal to the Syrian people only.

## Legal Conclusions:

- This huge number of amnesty decrees expressly constitute a breach and a deprivation of the legal jurisdiction from hands of the legal authorities and handle it to the executive authority, which is represented in the Syrian Regime's president, as well as the absolute abandonment of the constitutional authority of the People's Assembly in order to gain popularity for this regime's president before the international community as the president who guarantees his people's interest and seeks reconciliation and forgiveness. Thus, according to **Articles 71-75-108-105** of the Syrian Constitution, these decrees are considered to have the potential of being legally invalid.
- Rules issued by the Terrorist Court, which were not included in the amnesty, might be legally invalid. Therefore, the Syrian Regime must issue a **law of absolute cancellation of all the rules issued by these courts along with the legal impacts derived of these rules**, such as seizure of convicted people's properties. The law must also include a legal rehabilitation and a compensation of detainees who have been released. Also, a law must be issued to cancel these courts that are considered an exceptional way that forms a breach of the Syrian Constitution and the international law, and violates expressly human rights.
- This decree does not discuss the most common crimes that opponent parties were accused of, such as **crimes of external correspondence and kidnapping**. It also exempted the amendment of the Criminal Code and the **Cyber-crime Law**. These two laws are considered as a sword appointed towards the necks of Syrians to prevent them from criticizing and deprive them from their personal liberties that were guaranteed by the constitution. It also violates standards of human rights and the Syrian Constitution. It does not cover the minimum legal standards of the **Cyber-crime Law** practiced in most of the countries around the world in concern with human rights and the freedom of expression guaranteed by the Syrian Constitution and international laws and conventions signed by the Syrian Arab Republic, such as the International Convention on Civil and Political Rights. This law is considered as a method followed by the Syrian Regime in order to keep the Syrian citizens within the red borders that the regime have posed through this law to affirm the policy of shutting mouths, limiting personal liberties and preventing its critics even from the right of opposing it even via cyberspace.
- The decree must include the clause of **"this action led directly to the death of a human being"**. Then, it shall be considered as a public amnesty decree that



opponents can benefit from, which leaves no room for financial blackmailing that security and juridical services are going to enforce by means of taking advantage of the mysterious of the legal text.

- The regime along with its security services have no respect to the laws they issue. They deliberately leave legal gaps in these laws to hedge the release of all opponent detainees. Thus, a law must be issued containing **prison laundering** (تبييض السجون) and the release of all detainees, even the ones kept in security centers and were never brought before court. It should also contain the formation of reality committees that are able to guarantee the transparency of the juridical system, releasing all detainees, and seeking compensation of detainees for the duration of their imprisonment time since the arresting rules were legally invalid and not in accordance with any rule or legal cause.
- The nature of the formation of this regime and its way in managing the country's affairs and facilities, in which its security devices control every detail in the country and is considered above every account and legal inquiry. Therefore, this absolute authority ruined all these devices and let their only attitude to be violence and cruelty and the power language became their only method to communicate with Syrians and deal with them. It also made torture a political approach used to devastate the Syrians' will and working on making them slaves of this regime and its security agencies. Hence, the existence of such a rule is the problem. No solution shall be found before the departure of this regime along with its security system, as violence, murder and brutality became part of its services.
- There must be an enforcement of the decision **No. 2254 of 2015** issued by the Security Council in concern with executing a real political transformation along with a constitution that respects Syrians. Also, transformational justice must be applied. There must be effort put in order to execute prosecutions and form reality committees to achieve just accountability of these criminals and their leaders who gave the orders to commit such horrible crimes against the Syrian people or chose to be silent in the face of these crimes that were committed under their leaders' responsibility according to the international criminal code. Also, compensation of victims must be carried out as one step closer towards making transformational justice on behalf of the Syrian country that is legally elected to present the real demands of Syrians and organize the social agreement that all Syrians can live according to in order to build Syria, the future of all Syrians and achieve permanent piece.