A Human Rights Review of the Syrian Penal Code

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Executive Summary – Media Talking Points

In order to ensure equality under the law for all citizens of the Syrian Arab Republic and provide laws that will allow the Syrian government and judicial systems to protect the liberties and freedoms of every Syrian man, woman, and child, and to promote strong communities where institutions for individuals and families can flourish, this Report recommends the following reforms to Syria’s Penal Code. These reforms can be summarized using the 4 P’s:

**PUNISHMENT - PROCEDURE - PROTECTION - PARTIALTY**

- **Punishment:** Punishing Criminals, Reducing Crime, and Keeping Society Strong
  - **The Death Penalty:** End Mandatory Capital Punishment, Reserve the Death Penalty for only the Most Serious Crimes, and Increase Transparency
  - **Forced Labor & Civil Degradation:** Redefine Civil Degradation with Specific Segments, Monitor Types of Forced Labor, and Increase Transparency

- **Procedure:** Ensuring Fairness & Justice in the Judicial Process
  - **Trials in Absentia:** Enact Protective Measures, Allow for Representation of Absent Defendant, and Use Sparingly.
  - **Protection Against Self-Incrimination:** Offer Full Right for Self-Incrimination and Restrict Code to Testimony Concerning Others

- **Protection:** Preserving Basic Human Rights by Insulating Speech and Society’s Most Vulnerable
  - **Free Speech and Freedom of the Press:** Repeal Portions of the Code that Infringe on Free Speech, Narrowly Define Acceptable Regulations, and Protect Political Activity and Political Speech.
  - **Women and Children**
    - **Women – Equal Treatment and Stopping Gender-Based Violence**
      - Remove Reservations to the Convention on Discrimination, Repeal Portions of Code that Impede Women’s Rights, and Criminalize Domestic Violence and Sexual Harassment
    - **Children – Education, Labor, and Abuse**
• Extend Greater Protections from Abuse and Neglect to Children of Both Sexes; Criminalize the Sexual Exploitation of Children, and Repeal “Honor Killing” of Child Exception.
  o Bodily Integrity and Privacy
    - Addition of Explicit Exception to Abortion Ban in Cases Where Mother’s Life is Endangered, Repeal the “Honor” Excuses to abortion in Article 531, Repeal the Ban on All Discussions of Contraceptives, and Repeal the Criminalization of Acts of Homosexuality in Article 520.

• Partiality: **Holding the Government Accountable and Ending Despotism**
  o Impunity Under the Penal Code: Amend the Penal Code to Protect Citizens from Illegal Actions by Government Officials.

**Why do these reforms matter?**

For far too many years, the citizens of Syria have failed to flourish because of the corruption and lacking rule of law in Syria’s political and judicial structures. While many of the laws on the books protect Syrian freedoms in theory, they are discarded and trampled in practice.

But now, with these reforms, oppressed Syrians who have been living in fear for far too long can now be free to practice their faith, raise their families, and live with dignity. This is an opportunity for Syria to lead the Middle East and the world from this day forward by creating and enforcing a legal regime that best protects the morality, dignity, safety, and freedom of all of its citizens.
Background: A Violent Struggle for Freedom

In the past three years, the internal armed conflict between President Bashar al-Assad’s government forces and the coalition of opposition forces including the Free Syrian Army has produced unceasing waves of human rights abuses, war crimes, and crimes against humanity. Government forces were responsible for the vast majority of these violations, carrying out indiscriminate attacks on residential areas using aircraft, artillery shells, mortars, incendiary weapons, and cluster bombs; arresting thousands of people, including children, and subjecting them to enforced disappearance; torturing detainees and engaging in ill-treatment, resulting in at least 550 deaths; killing extrajudicially; shooting peaceful protesters and public funeral attendees with snipers; targeting health workers treating the wounded; and more. Some of the armed groups fighting the government have also committed various human rights violations, whether it is torturing and summarily killing government soldiers or indiscriminately bombing areas killing and injuring civilians. However, the UN Human Rights Council reported in February 2013 and August 2013 that while “government forces had committed crimes against humanity, war crimes and serious human rights abuses,…war crimes committed by armed opposition forces did not reach the ‘gravity, frequency and scale’ of those committed by government forces.”

Even before these violent outbreaks occurred, the Syrian penal code and justice system failed to afford the basic protections to which every individual is entitled. As late as 2007, a state of emergency imposed in 1962 still remained in place, resulting in a rise in political incarcerations, torture, mistreatment of women, racial discrimination against Kurds, and other human rights abuses. In February 2013, the government attempted to address some of these shortcomings, holding a referendum on a new Constitution ending the Ba’ath party’s monopolistic stranglehold on power. Their efforts, however, came up far short of opposition demands. Now, the government continues to attribute killings of protesters to gangs, passing a new anti-terrorism law in July 2013 that has been used to detain and unfairly try political activists and others on vague charges of committing “terrorist acts” before a new Anti-Terrorism Court.

Meanwhile, the many multi-national attempts to end the conflict and stabilize Syria have failed to bring a much-desired peace to the region. In January 2013, Russia and China utilized their veto power to stop UN Security Council resolutions attempting to address the Syrian conflict. And, in September 2013, as the governments of the United States and France weighed the possibility of conducting air strikes, U.S., Russian, and Syrian diplomats reached an agreement for Syria to disable its chemical weapon stores. Removing and disarming Syria’s chemical weapon stockpile, however, has proved difficult given the tumultuous conditions in the country, leading many to call the effort to meet the Spring 2014 deadline “Herculean.” Indeed, removing chemical weapons has done little to stop the fighting between the Assad-led government and opposition forces.

While peace continues to evade the Syrian government and opposition forces, in November 2012, various opposition groups gathered their strength to form the National Coalition for Syrian Revolutionary and Opposition Forces. This coalition is increasingly recognized internationally as “the sole, legitimate representative of the Syrian people.” The United States, the European Union, the Arab League, and
many other nations have issued their support for the National Coalition, and many nations continue to impose sanctions on Syria while calling for President al-Assad to relinquish power.\textsuperscript{8}

It is against this background that this report recommends amendments and modifications to the Syrian Penal Code. More than just textual changes, these recommendations aim to embody the advancement many Syrians currently seek: freedom from arbitrary and oppressive prosecution, an end to indiscriminate violence, and a firm commitment to the human rights so often trampled by an domineering regime. These recommendations are based on a comparison of the current Syrian Penal Code with international law as well as the laws of other nations.

A just and fair penal code is merely one small step among many still needed to achieve the National Coalition’s vision for the future of Syria. Hopefully, however, this report will allow President al-Assad’s successors to begin building a judicial system based on the rule of law and international human rights norms.
I. PUNISHMENT: THE DEATH PENALTY, FORCED LABOR, AND OTHER PENALTIES

Article 37 of the Syrian Penal Code lists criminal sentences at common law as death, forced labor in perpetuity, perpetual detention, a term of forced labor, or a term of detention.\(^9\)

Due to the ongoing conflict in Syria between the government and the loose coalition of anti-government forces, records of sentencing and punishments are scant at best. The two reported executions in 2013 were carried out by Syrian rebels for treason. There is no information on what, if any, judicial proceedings led to these convictions and executions.\(^10\)

While we have very little information about the use of the death penalty, forced labor, and other penalties in practice in modern-day Syria, we are still able to make recommendations to strengthen criminal sanctions and penalties to ensure the rule of law and human rights norms are protected for all Syrian citizens while still maintaining Syria’s sovereignty to punish its citizens as it sees fit.

The Death Penalty

Among the international community, few issues are as hotly debated as the death penalty. As capital punishment is the most severe, and only irreversible, punishment accepted under international human rights standards, compliance with procedures to ensure fair adjudication and appeals are of utmost urgency, not only for those awaiting execution, but also for those States which choose to retain their sovereign right to apply capital punishment. It is vital that procedural safeguards and protections are in place, such as reservation of the death penalty for only the most serious crimes, prohibition of execution of pregnant women, minors, and the mentally ill, avoidance of cruel means of execution, and assurance of the right to appeal. These ensure a nation’s compliance with human rights standards.\(^11\)

While the Syrian Code provides a majority of these safeguards, compliance with international standards could be increased by instituting greater public recordkeeping and transparency regarding death penalty sentencing and execution, ending mandatory capital punishment, reserving the death penalty for only the most serious crimes by eliminating capital punishment for many crimes applicable in the current penal code, and a more transparent and open appeals process.
The Current State of International Law

General Provisions

The Death Penalty is one of the most passionately debated topics in international law today. Many nations are attempting to shift international law towards abolition of the death penalty. A large number of multi-lateral treaties and protocols extremely limit or completely abolish the death penalty. Protocol 6 to the European Convention on Human Rights (ECHR) limits imposition of the death penalty to times of war.\(^{12}\) The Thirteenth Protocol to the ECHR, the Protocol to the American Convention on Human Rights to Abolish the Death Penalty, and the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) all completely abolished capital punishment.\(^{13}\) The Human Rights Council (HRC) “vigorously encourages” ratification of the Second Option Protocol to the ICCPR.\(^{14}\)

However, individual nations have the sovereign right to determine their own political, social, and legal systems, and many retain the death penalty. Treaties that retain the death penalty outline requirements to ensure protection of the human rights of the accused. Both the Universal Declaration on Human Rights and the ICCPR acknowledge a fundamental right to life, which must be protected by law.\(^{15}\) To ensure that this right is not arbitrarily denied, international law limits imposition of the death penalty for “only the most serious crimes” under laws that are in force at the time of the commission of the crime and in compliance with fair trial proceedings.\(^{16}\)

Case law from the United Nations Human Rights Council (HRC) provides additional instruction on what constitutes a “most serious crime” warranting the death penalty. The requirement traditionally includes intentional killings or attempted killings and perhaps intentional infliction of grave bodily harm.\(^{17}\) Additionally, there is suggestion that certain crimes with drastic potential impact could warrant capital punishment even if no one was actually injured.\(^{18}\) In \textit{Lubuto v. Zambia}, the HRC determined that mandatory application of the death penalty for aggravated robbery was in violation of ICCPR Art. 6(2), as the crime was not among “the most serious.”\(^{19}\) HRC decisions have found several crimes not serious enough to warrant the death penalty. These include, but are not limited to, treason, piracy, robbery, traffic in toxic wastes, abetting suicide, a third homosexual offense, property offenses, embezzlement, and theft by force.\(^{20}\)
Additionally, the method of execution should be as humane as possible, and occur “in such a way as to cause the least possible physical and mental suffering.” While the HRC has not outlined which means are acceptable, efficiency seems to be a concern. The HRC held in N.G. v. Canada (469/91) that asphyxiation by cyanide gas was unacceptable, as the process took nearly ten minutes. Parties to the ICCPR agree to not execute women who are pregnant or persons who are under eighteen at the time of the commission of the crime. The HRC has also indicated that execution of a mentally ill individual would violate article 6(1).

**Sentencing & Appeals Provisions**

The ICCPR assures the right to seek pardon or commutation for a death sentence. This right is assured to all criminal defendants under ICCPR Article 14(5), but is particularly important with capital punishment. International law considers making detailed, individualized sentencing decisions essential to fair sentencing. When in written form, detailed decisions provide a cleaner basis for the appeal required by ICCPR Article 14(5) and Article 6(4). Some HRC decisions have held that mandatory capital sentences, which left “no room to consider the personal circumstances of the accused or the particular circumstances of the offence,” violated ICCPR Article 6(1). The International Criminal Court (ICC) and many international tribunals require consideration of aggravating and mitigating circumstances, as well as the individual circumstances of the individual and the crime.

Mitigating circumstances deal with the convicted person’s culpability for the crime without undermining the gravity of the offense itself. These circumstances factor in issues such as duress, diminished responsibility, vulnerability, low IQ, conduct after the act, efforts to compensate victims, or cooperation with the court.

Aggravating factors include cruelty, means of commission of the crime, status of the victim, vulnerability of the victim, effect of the crime on the victim and victim’s relatives, willingness of participation in the crime, superior responsibility, abuse of trust, or directness of participation. Aggravating factors must be proven to the same standard as the conviction itself (in the ICC, beyond a reasonable doubt). The ICC requires one or more aggravating factors for life imprisonment (the ICC’s most severe sentence), suggesting that at least one or more aggravating factors would be necessary to impose a death sentence.

The ICCPR clearly delineates “the inherent right to life” for every human being. This right ensures the death penalty may only be imposed for the most serious crimes and may only be carried out “pursuant to a final judgment rendered by a competent court.” Protections for the right to life also require the right to seek pardon or commutation of the offense.
Current State of Foreign Domestic Law

As with international treaty law, foreign domestic law is divided as to the general acceptability of capital punishment. The numbers of countries with and without the death penalty clearly show that there is no international consensus on the topic. As of 2013, ninety-seven countries had banned the death penalty for all crimes. Another eight countries have abolished the death penalty for ordinary crimes only, meaning they allow the death penalty only for exceptional crimes such as crimes under military law or crimes committed in exceptional circumstances. An additional thirty-five countries, considered “abolitionist in practice,” have not carried out an execution in ten or more years and are believed to have a policy or established practice of not carrying out executions, although the death penalty has not been legally banned for ordinary crimes such as murder. Some of these thirty-five “abolitionist in practice” countries have also made an international commitment to not use the death penalty. In contrast to these numbers, some 58 countries still have capital punishment.

The international community has adopted four international treaties providing for the abolition of the death penalty. The four are: Second Optional Protocol to the International Covenant on Civil and Political Rights; Protocol to the American Convention on Human Rights on the Abolition of the Death Penalty; Protocol No. 6 to the European Convention on Human Rights; and Protocol No. 13 to the European Convention on Human Rights. Syria is a state party to none of these four.

On December 20, 2012, the UN General Assembly adopted Resolution 67/176, a moratorium on the use of the death penalty. It reaffirmed similar resolutions passed in 2007, 2008, and 2010 calling upon states maintaining the death penalty to establish a moratorium on executions with a view towards abolishing it and reiterating other international norms providing safeguards to those who have been sentenced or could be sentenced to the death penalty. Syria voted against the resolution.

General Provisions

The criminal codes of states exercising capital punishment mirror the procedural provisions of international law. As required by ICCPR Article 6(2), China permits executions only for “the most heinous crimes.” Similarly, the United States permits execution only for a specific list of crimes and those crimes involving intentional participation in a killing or act with such risk of killing as to show a grave disregard for human life.
Lethal injection is the most common method in the United States, but executions by electrocution, hanging, firing squad, and gas chamber have also occurred within the past thirty years.\textsuperscript{47} Japan executes by hanging and China executes by shooting.\textsuperscript{48} In line with international restrictions on persons who are not subject to capital punishment, India refuses to execute pregnant women. China prohibits execution of pregnant women and of minors.\textsuperscript{49} The United States prohibits execution of minors (those who committed crimes prior to their eighteenth birthday) as well as the mentally ill.\textsuperscript{50}

**Sentencing & Appeals Provisions**

To ensure proper sentencing, the Russian Federation requires a written record of the sentencing decision including a description of the crime, the evidence, and any mitigating or aggravating factors.\textsuperscript{51} Additionally, the trial judges must reach a unanimous decision.\textsuperscript{52} Japan requires that the court give the reasons for its decision.\textsuperscript{53} Prosecutors in United States must inform the accused if they seek the death penalty and must list the reasons for seeking the sentence.\textsuperscript{54} United States courts may consider mitigating factors in capital sentencing and must find aggravating factors in order to impose a death sentence.\textsuperscript{55} Additionally, the United States requires that race, color, religious beliefs, national origin, or sex are not considered in sentencing.\textsuperscript{56} French courts require that the court and the jury answer whether the accused is guilty of any mitigating factors.\textsuperscript{57} The Statute for the Iraqi Criminal Tribunal, where a crime is not already delineated, instructs Trial Chambers to consider “the gravity of the crime,” and “the individual circumstances of the convicted person.”\textsuperscript{58}

The right to appeal conviction of a capital crime is not only recognized but also carefully protected by many foreign domestic courts. India allows appeal of any sentence and assures the right to seek commutation of a death sentence.\textsuperscript{59} The United States also allows for appeal.\textsuperscript{60} The Russian Federation allows for appeal, and in capital punishment cases, requires a two-thirds majority vote by the judges to uphold sentencing.\textsuperscript{61} Death sentences in China are subject to request for commutation and must be approved by the Supreme People’s Court.\textsuperscript{62} Additionally, China allows for a two-year suspension of execution to allow for possible rehabilitation.\textsuperscript{63}
Current State of the Syrian Penal Code

The current state of Syrian criminal law provides for the death penalty in the following circumstances:

- Aggravated murder: Premeditated murder; murder to further a felony; murder of one’s ascendants or descendants; and murder of a state employee charged with the implementation of the Narcotic Drugs Law during the performance of his function.
- Arson resulting in death.
- Gang robbery resulting in death.
- Terrorism-related offenses, including terrorist acts and the financing of terrorist acts, regardless of whether such acts result in death or not.
- Drug trafficking not resulting in death and drug possession.
- Numerous treasonous acts, broadly defining treason to even include actions such as political dissidence.
- Military offenses: Espionage by military personnel; desertion; and insubordination/rebellion.
- Other offenses not resulting in death: subjecting a person to torture or barbaric treatment during commission of a gang-robbery; attempting a death penalty-eligible crime; and being convicted for the second time for a felony punishable by forced labor for life.

Syria has very limited numbers of crimes with mandatory death penalty sentences, due to Article 243 permitting courts to commute death sentences to forced labor if they find mitigating circumstances. However, there are some crimes and situations in which courts are forbidden from considering mitigating circumstances, especially if recidivism factors are found in which someone irrevocably condemned to forced labor in perpetuity commits a second crime carrying the same penalty.

Syrian Law also provides for categories of offenders who are excluded from the death penalty.

- Individuals under 18 at time of offense: “A death sentence cannot be imposed for offences committed by a person under 18 years of age pursuant to article 29 (a) of the Juveniles Act, as amended by Legislative Decree No. 52 of 1 September 2003.” Under Article 237, the maximum penalty for juvenile offenders is imprisonment with obligatory work. Additionally, Syria is party to the ICCPR and to the Convention on the Rights of the Child, both of which prohibit the execution of minors under the age of 18.
• Pregnant women: Under Article 43 of the Penal Code and Article 454 of the Code of Criminal Procedure, a pregnant woman can only be executed after she has given birth to her child. Additionally, the ICCPR prohibits this.

• Women with small children: Syria has ratified the Revised Arab Charter on Human Rights, which prohibits execution of nursing women for at least two years after giving birth.

• Mentally Retarded: Under Articles 232 and 241 of the Penal Code, the death penalty is commuted to imprisonment if the offender is mentally deficient.

• Mentally Ill: An offender who was mentally ill at the time of the offense is exempted from the death penalty. Furthermore, "If the offender is afflicted with insanity after committing an offence, during the investigation or trial or after sentencing, enforcement of the penalty is deferred until he is cured."

Sentencing & Appeals Provisions

Clemency procedures are found in articles 459 to 467 of the Code of Criminal Procedure. The death penalty cannot be carried out until the Commission of Grace has issued an opinion and approval has been granted by the Chief of State. Syrian delegates to the United Nations have reported that "any person sentenced to death is entitled to apply to the Head of State for a pardon and may renew his application after one year in the event of its rejection." The decisions of the civil and military criminal courts that sentence a person to death are final. The only way to review the case is to lodge an appeal before the Court of Cassation, which has jurisdiction only regarding the formal, procedural and legal aspects of the conviction. If a death-sentenced person does not lodge an appeal before the Court of Cassation, the Public Prosecutor is under an obligation to do it on his behalf.

Discussion and Recommendations

Syria’s use of the death penalty in its penal code is strong in its prohibitions against executions of minors, pregnant women, the mentally disabled, and the mentally ill. It also provides for strong procedural protections dealing with clemency and appeals. However, this analysis finds three areas that need improvement: ending mandatory capital punishment, reserving the death penalty for only the most serious crimes by eliminating
capital punishment for many crimes applicable in the current penal code, and making records of both sentences and appeals more transparent and open.

End Mandatory Capital Punishment
Provisions such as Article 248 (Recidivism), Article 263-266 (Treason), Article 305 (Terrorism resulting in death), Article 325 (Attempting or Committing Homicide in Execution of a Gang-Crime), and any others that mandate the death penalty (“shall be punishable by death”) should be amended to AT LEAST state “may be punishable by death.” Some of these crimes (see below) should be amended to not allow the death penalty at all.

Reserve the Death Penalty for Only the Most Serious Crimes
Case law from the United Nations Human Rights Council (HRC) provides guidance on what constitutes a “most serious crime” warranting the death penalty. The requirement traditionally includes intentional killings or attempted killings and perhaps intentional infliction of grave bodily harm. Additionally, there is suggestion that certain crimes with drastic potential impact, such as terrorism, could warrant capital punishment even if no one was actually injured. However, Syria’s civil war and history of politically motivated criminal charges suggest that Syria, in order to create a stable criminal courts system respecting the rule of law and international norms, should take special consideration to strictly reserve the death penalty for only the most serious crimes.

For this reason, this report recommends that Syria reserve the death penalty for homicide, arson, terrorism, and other grave aggravated offenses that result in loss of human life. None of these crimes should result in mandatory capital punishment, however (see above).

Increase Transparency in both Death Penalty Sentencing and Appeals Process
Within both the Penal Code and the Code of Criminal Procedure, provisions should be enacted to make death penalty sentencing requirements more explicit and make reporting more transparent. This will effectively lead to the appeals process having more records to process in determining clemency requests and sentencing appeals. Furthermore, this would allow Syria to show the international community they are abiding by human rights norms in their use of capital punishment.
Forced Labor and Civil Degradation

Current State of International and Foreign Domestic Law

Article 8 of the ICCPR forbids forced or compulsory labor, not precluding the performance of hard labor in pursuance of a sentence imposed as punishment for a crime by a competent court. Article 8(3)(c)(iii) exempts this restriction from any service exacted in cases of emergency.

Some domestic criminal systems still support labor as a form of criminal punishment while others have abolished it. The United States, in Amendment 13 to the United States Constitution, ended slavery and involuntary servitude, “except as punishment for crime whereof the party shall have been duly convicted.” Alternately, Scotland passed legislation in 1949 abolishing penal servitude and hard labor. Similarly, Ireland outlawed penal servitude by statute in 1997.

Current State of Syrian Penal Code

The Syrian Penal Code never defines forced labor. Article 45 simples says, “Those sentenced to forced labor will be strictly required to do work with difficulty on par with their sex, age, and may be inside or outside of the prison.” However, it does provide forced labor as a mandatory or optional sentence for numerous crimes, ranging from treason to fraud. Article 63 explains that a sentence to forced labor in perpetuity includes civil degradation in perpetuity, while a sentence of forced labor for a period includes civil degradation on the day that the sentence becomes irrevocable until the expiration of the tenth year after the execution of the primary sentence.

Article 49 explains civil degradation as: revocation and exclusion from all public functions or employment and deprivation of all state pensions; revocation and exclusion from all functions or employment in community administration or corporations to which belongs to the sentenced person and deprivation of all pensions or retributions from any said community or corporation; deprivation of the right to be a state franchise holder or farmer; deprivation of the right to vote or eligibility, as well as all other civil, political, community, and corporate rights; incapacity from being a proprietor, publisher, or editor of a journal or other periodical publications; deprivation of the right to teach and of any employment in public or private education; and deprivation of the right to hold any decoration, any honorably titles, Syrian or foreign.
However, in keeping with Article 8 of the ICCPR, Syria claims that persons punished by imprisonment with hard labor only serve simple imprisonment in actuality. Since the enactment of the Penal Code in 1949, hard labor has been only a theoretical penalty as persons punished by this penalty are treated exactly like other prisoners. However, due to Syria’s State of Emergency status for over half a century, these claims should be taken with a grain of salt.

Discussion and Recommendations

Syria’s broad definition (or lack thereof) for forced labor, along with their extensive and broad use of civil degradation are problematic for numerous reasons. If Syria’s justice system wants to be seen as fair on the international stage, there are several simple reforms that should be instituted. First, civil degradation should be eliminated as a punishment, broken into its individual parts, and applied sparingly as sentences for crimes deserving of them. For example, if Syria wants to revoke the right to vote, they should do so for only the harshest crimes and, even then, strongly consider allowing a path to regain the franchise. Another example would be to limit the future right of criminals to teach only in those circumstances in which they have, for example, committed a crime against minors.

Second, Syria is more than welcome to maintain forced labor as a punishment, but they must show they are following the ICCPR and other international norms in their use of forced labor. Some simple ways to do this are explicit statutory definitions for what forced labor can and cannot entail for various demographics. Then, there should be a clearer record of what type of labor a convicted criminal is sentenced to.

There is a lot of debate, but also a lot of allowance within the international community for labor and loss of certain freedoms being a part of sentences for convicted criminals. But Syria and other countries must utilize these punishments in a transparent and targeted way to ensure that human rights are not being trampled upon and the rule of law is being maintained.
II. PROCEDURE: ENSURING FAIRNESS AND JUSTICE IN THE JUDICIAL PROCESS

The Syrian Code of Criminal Procedure, if enforced fairly and justly, provides a large majority of the procedural protections encouraged and mandated by international legal norms such as Article 14 in the ICCPR, whether it is being presumed innocent until proven guilty, the right to an interpreter, or right to a speedy trial. The Arab Charter of Human Rights has similar protections as well.\(^\text{109}\)

For example, the Syrian Code of Criminal Procedure protects the principle that confession is to be made freely and is to be rejected if extracted by force.\(^\text{110}\) Article 423 of the Code of Criminal Procedure provides for the inspection by a magistrate and judge of the peace at least once a month of the treatment of persons in detention centers and prisons.\(^\text{111}\) Articles 424 and 425 maintain that no one may be detained without charge, since this would constitute the punishable offence of illegal deprivation of liberty.\(^\text{112}\) Furthermore, Article 108 requires any person being detained to be informed of reasons of detention as well as be delivered copies of the arrest warrant and detention order.\(^\text{113}\) Article 104 of the Code of Criminal Procedure helps ensure expeditious proceedings in the interest of the accused.\(^\text{114}\) Article 181 of the Syrian Penal Code forbids double jeopardy.\(^\text{115}\) The accused also has the legal right to an interpreter.\(^\text{116}\) The accused also has a right to an attorney.\(^\text{117}\)

Even though Syria’s procedural protections for the accused are quite extensive, there are still two procedural issues in need of reform: trials in absentia and protections against self-incrimination.

A. Trials in Absentia

The Syrian Code of Criminal Procedure allows trials to commence and continue in absentia if, after process has been served upon him, he fails to attend the trial at the specified time.\(^\text{118}\) There is disagreement within the international community about this decision to prosecute individuals not present in the courtroom. In fact, certain courts have stated that “[i]t is an essential principle of the criminal law that a trial for an indictable offense should be conducted in the presence of the accused.”\(^\text{119}\) Largely the disagreement is premised on the idea that the accused has the right to confront those bringing charges against the defendant. In absentia prosecutions do find confirmation from the international law community in certain circumstances. However, it would be an overstatement to assert that this portion of Syrian
criminal procedure fully agrees with the accepted international community standards produced in international and foreign domestic documents.

Current State of International Law

The concerns over the in absentia provisions of the Syrian criminal procedure code implicate the international norm of a defendant’s right to be present at trial. Competent court authorities must take reasonable steps to inform the accused and counsel of the time and place in which the legal proceedings are to occur. The use of reasonable steps implies that such notice will be given with adequate time so that the accused and his counsel are able to prepare an adequate defense. This right is a crucial part of the recognized right to equality of arms. Once sufficiently notified, the accused will be afforded the right to remain present throughout his own trial, subject to certain exceptions.

In recent times, the right to be present at one’s own trial has taken a new character in the form of virtual presence, which may fulfill the defendant’s right to be present at trial. As long as the defendant can hear and challenge the case presented against him and prepare his own defense, actual physical presence at trial may not be required. When technology allows the defendant to accomplish the same ends his actual presence would preserve, his virtual presence amounts to the equivalent of physical presence. Adequate observation and opportunity for response to the prosecution’s case must be allowed, but assuming the character of virtual presence allows such interaction, the defendant will be considered present at the trial.

If the accused fails to appear after receiving adequate notice and time to procure his own presence, the trial may proceed without his presence. When failing to appear, the accused is presumed to have waived his presence at trial for the portions he was absent. The Human Rights Committee indicated that assuming such notice was received by the accused is not sufficient for a finding of waiver. The prosecuting authority must show that the respected principles of summoning and informing the accused in a timely manner were adhered to strictly. Without such a finding of adequate notice, there does not exist a presumption of receipt by the accused so that the trial can continue in his absence. Where proper notice has not occurred, the prosecution must effectuate the correct procedure so that the accused may be provided with the ability to attend his own hearing.

There are situations where the defendant can be dispatched from the courtroom when his own conduct has so interrupted the proceeding that removal must occur. All major international bodies have provided for these circumstances, and case law suggests that the
defendant should be allowed to return after promise to behave in swift a manner as allowable under the circumstances. The SCSL, Rule 80(B) states that, where possible, a removed accused should be allowed to follow the proceedings by video link.

An accused can waive the right to be present during the trial, where the accused is duly informed of his ongoing trial and chooses not to be present. As the ICTR recognized through rule 82bis, trial in absentia is allowed in limited circumstances. The Trial Chamber in Sesay stated:

“The Chamber, accordingly, emphasizes that it is settled law, nationally and internationally, that while an accused person has the right to be tried in his presence, there are circumstances under which a trial in the absence of the accused can be permitted. While due consideration must be given to ensure that all rights to a fair trial are respected, an Accused person charged with serious crimes who refuses to appear in court should not be permitted to obstruct the judicial machinery by preventing the commencement or continuation of trials by deliberately being absent, after his initial appearance, or by refusing to appear in court after he has been afforded the right to do so, and particularly in circumstances as in this case, where no just cause, such as illness, has been advanced to justify absence.”

In another case, the ICTY Chamber went further than the ICTR. The ICTY decided that, in case of illness, the trial may continue even if the accused is eager to be present. In the Miloševiћ trial, the defendant chose to defend himself, but became gravely ill. The Appeals Chamber held: “If Milošević’s health problems resurface with sufficient gravity, however, the presence of Assigned Counsel will enable the trial to continue even if Milošević is temporarily unable to participate.” The fact that counsel for the defendant was still present and able to defend the rights of the accused played no small role in this decision to continue. Extensive efforts were taken to preserve the record and ensure the validity of the subsequent decision rendered.

The ICC has also stated that “a tribunal’s reputation and credibility must be measured not in terms of judicial economy but its capability to deliver superior quality justice fairly and dispassionately and with reasonable expedition.” It is this principle that dictates the courts reluctance to execute trials in absentia.

International law suggests that if a proceeding continues without the presence of the defendant, the court should closely follow the other guarantees of adequate defense. Forcible removal of the accused does not nullify the defendant’s basic right to participate in
their own trial, and efforts should be made to reinstall the accused to the courtroom. Strictly adhering to the guarantees of an adequate defense avoids the appearance of a sham trial and instead preserves the rule of law where the defendant feels and appears censored from the justice process.136

Current State of Foreign Domestic Law

Criminal procedures around the world treat the absence of an individual in several differing ways. In Russia, the accused is allowed to be present during the investigatory stage of his charging, but the court is explicitly allowed to continue without the accused.137 At later hearings, the accused is able to consent to the courts proceeding in his absence through the filing of a petition. This ability is constrained to criminal cases of “minor or medium gravity.”138 In all other cases, the defendant is obliged to attend the criminal hearing, and article 247.2 operates so that if the defendant does not appear, the examination of the criminal case shall be put off.139

Courts of South Africa only authorize proceedings without the accused when the “accused conducts himself in a manner which makes the continuance of the proceedings in his presence impracticable,” or when two or more accused are tried jointly and very particularized findings are made.140 Upon the return of the accused to the courtroom, he may be informed of what he missed. He is also allowed to conduct his defense through the examination of those who testified in his absence if he happens to be without counsel.141 However, if the accused’s evidence has been concluded and the accused is absent, the verdict will be withheld until the return of the accused.142 There is no provision regarding the instituting proceedings without the presence of the accused.

Malaysia, Germany, and Japan allow their respective courts to direct the accused to attend court through the use of fines, personal notice, or force.143 However, none of these states provide for the institution of a charge against an accused without his presence at the institution of the hearing.144

On the other hand, France does provide for trials in absentia. Once notice of a trial date is recorded, given to the accused verbally, noted in the official record or by official state notice, and the accused does not appear on the date of the hearing, an application to set aside the charge is deemed non-existent.145 In immediate custodial cases, the hearing may be moved once, and if on the second date the accused fails to appear (despite ordered law enforcement searches for him), the court will decide the matter without further delay.146
Throughout this process, the court is required to record all procedural steps in the official record to ensure the greatest amount of fairness to the absent accused.\textsuperscript{147}

The United States has adopted the position that the Sixth Amendment to the Constitution provides for personal confrontation of the witnesses against him. However, the United States Supreme Court recognized that “the privilege of personally confronting witnesses may be lost by consent or at times even by misconduct.”\textsuperscript{148} In a similar case, the Supreme Court stated that “a defendant can lose his right to be present at trial if, after he has been warned by the judge that he will be removed if he continues his disruptive behavior, [and] he nonetheless insists on conducting himself in a manner so disorderly, disruptive, and disrespectful of the court that his trial cannot be carried on with him in the courtroom.” Once lost, the right to be present can be reclaimed as soon as the defendant is willing to conduct himself consistently with the decorum and respect inherent in the concept of courts and judicial proceedings.\textsuperscript{149} In handling an obstreperous defendant, the court suggested three potential solutions - binding, holding in contempt, and removal. The court opted to remove the defendant, but stated that the other two options possessed some merit in curbing such behavior.\textsuperscript{150}

Current State of Syrian Law

"Under the terms of the Code of Criminal Procedure, promulgated in legislative Decree No. 112 of 13 March 1950, as amended, every accused person has a guaranteed right to be informed of the charge brought against him and the evidence presented in substantiation thereof. He is given sufficient time and means to prepare his defense and contact a lawyer and has the right to a trial without undue delay since the Code does not allow the judge to delay the resolution of a case or the collection of evidence therein. Trials are normally held in the presence of the accused but, if he is unable to attend, he can be tried in absentia."\textsuperscript{151} In many cases, however, there are procedures in place to appeal verdicts delivered in absentia. “Verdicts delivered by military and single-judge courts in absentia may be contested within a period of five days commencing on the day following the date of communicating the verdict. Except in specified cases, all such verdicts are subject to appeal (articles 15, 79 and 80 of the Military Penal and Criminal Procedure Code).”\textsuperscript{152} One largely problematic provision concerning trials in absentia is that “a lawyer does not have the right to represent a defendant who is being tried in absentia.”\textsuperscript{153}
Discussion and Recommendations

There are some significant differences between Syrian laws and the majority of international states as well as the international tribunals pertaining to trials in absentia. Both Syria and the vast majority provide for the removal of mischievous or disruptive defendants, but Syria differs from much of the international community given their broad allowance of trials in absentia.

France is one other country in the international community who also conducts trials in absentia. If Syria is to continue to rely on trials against accused who are not present, this report suggests reforms that mirror the processes of France. The court should make one delay in the hearing to attempt to compel and license law enforcement to seek out the accused and if that remains unfruitful, then issue judgment. Also, the court should ensure that the official record denotes all procedural steps taken to gain the attendance of the accused at the hearing. As stated earlier, the vast majority of states and international tribunals recognize that trials in absentia are not preferred because it deprives the accused the right to confront his accusers. However, trials in absentia further the interest in bringing criminals to justice quickly even without their consent in circumstances where perpetual absence would only serve to slow the judicial system to a crawl.

One vital reform Syria must make if it is going to continue holding trials in absentia is allowing lawyers to represent a defendant being tried in absentia. Along with providing transparency in recordkeeping as a safeguard to protect judicial fairness and the rule of law, the protection of legal representation is a must. This report suggests that trials in absentia are avoided, but if they are continued, that these significant safeguards are added to attempt to preserve the right of the accused to confront his accusers.
B. Protection Against Self-Incrimination

Most international legal agreements and domestic constitutions and statutes provide defendants a right against self-incrimination. In some judicial systems, this right only means that the accused has the option to not answer any questions that might incriminate him. Other criminal systems add another component that forbids the trier-of-fact from drawing any negative inferences from the defendant’s refusal to answer.

Current State of International and Foreign Domestic Law

Many international agreements give defendants a right against self-incrimination. The International Covenant on Civil and Political Rights (“ICCPR”) states that “in the determination of any criminal charge against him, everyone shall be entitled to…not to be compelled to testify against himself or to confess guilt.”\(^{154}\) The American Convention on Human Rights (“ACHR”) states that “every person accused of a criminal offense…is entitled, with full equality, to…the right not to be compelled to be a witness against himself or to plead guilty.”\(^{155}\) The Statute of the International Criminal Tribunal of Yugoslavia (“ICTY”) states that “in the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to…not to be compelled to testify against himself or to confess guilt.”\(^{156}\) Similarly, the Statute of the International Criminal Tribunal of Rwanda (“ICTR”) states that “in the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to…not to be compelled to testify against himself or herself or to confess guilt.”\(^{157}\) The statute of the International Criminal Court (“ICC”) states that “in respect of an investigation under this Statute, a person shall not be compelled to incriminate himself or herself or to confess guilt.”\(^{158}\) It goes on to say “in the determination of any charge, the accused shall be entitled to…not to be compelled to testify or to confess guilt and to remain silent, without such silence being a consideration in the determination of guilt or innocence.”\(^{159}\)

Many international tribunal decisions also recognize the defendant’s right against self-incrimination. Saunders v. United Kingdom typified such decisions when it held that a fair trial requires that the defendant have the right not to incriminate themselves.\(^ {160}\) Further, many countries give defendants in their criminal courts a right against self-incrimination. French law states that the defendant has a right against self-incrimination during the investigation phase.\(^ {161}\) Russian Federation law states that the jury must be informed that defendant’s choice to keep silent in court has no legal effect.\(^ {162}\) Japanese law states that no person shall
be compelled to testify against himself or herself. German law states that any witness may refuse to answer any questions if replying would subject him to the risk of being prosecuted for a criminal offense or a regulatory offense. South African law states that a defendant has a right to remain silent and is not to be compelled to give self-incriminating evidence. Malaysian law states that the defendant has the right to remain silent.

**Current State of Syrian Law**

In Syria, testimony is exempted from the penalties for false testimony, i.e. protected against self-incrimination, when “[t]he witness who, in telling the truth, would expose him/herself inevitably to a grave peril touching upon liberty or honor, or would expose his/her spouse (even divorced spouses), one of his/her ancestors or descendants, brothers or sisters, or allies of the same degree.” If the false testimony exposed another person to legal action or condemnation, the penalty should be reduced by half in the cases mentioned above.

**Discussion and Recommendations**

The Syrian right against self-incrimination should be both expanded and restricted from its current form. First, the right should be expanded to provide a full right against self-incrimination, ensuring that the trier-of-fact does not infer or presume anything from a defendant’s refusal to answer any questions. A refusal to answer a question should never be considered as evidence against a defendant. Second, the Syrian right should be curtailed so as not to exempt testimony from individuals that could incriminate their ancestors, descendants, siblings, or close friends. When the exemption is this broad, it allows for too much protection and ability for individuals to cloud the truth in the fact-finding process to ensure justice is served.
III. Protection: Preserving Basic Human Rights by Insulating Speech and Society’s Most Vulnerable

A. Free Speech and Freedom of the Press

One of the greatest indicators of a healthy democracy is the freedom of expression without fear of criminal prosecution or other governmental reprisal. This includes the freedom to write and publish ideas—even those that are critical or unpopular. Of course, such freedom is not without its limitations: generally, speech that incites violence or racial hatred is capable of being regulated by a governing authority. The Syrian Penal Code intrudes too far into this realm, broadly prohibiting political and non-political speech in many kinds of media.

Current State of International Law

Article 19 of the Universal Declaration of Human Rights holds: “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” While not a binding legal document, many international law scholars believe the Universal Declaration embodies customary international law that has come to be legally binding. Indeed, the Universal Declaration serves as the touchstone of several binding international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR).

Article 19 of the ICCPR affords all individuals the freedom to “hold opinions without interference”—a direct quote of the Universal Declaration—and the freedom to express these opinions “either orally, in writing or in print, in the form of art, or through any other media.” As a caveat, the ICCPR explains that such freedoms are subject to limitations prescribed by law that are “necessary for respect of the rights or reputations of others” and “for the protection of national security” or public order, health, or morals. One oft-repeated example of such an exception is speech that espouses theories of racial superiority or inferiority. Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, for instance, prohibits all propaganda and organizations that serve to denigrate other races or spread racial hatred—a clear limitation on the freedom of speech that is nonetheless permitted.
In its General Comment No. 34 on Art. 19, the Human Rights Committee of the United Nations emphasized the narrowness of these exceptions, however, stating: “the relation between right and restriction and between norm and exception must not be reversed.” The Committee stressed that the State bears the burden of showing that its regulations are (1) prescribed by law and (2) strictly necessary to (3) serve a legitimate state interest.

In addition, the Human Right Committee cautioned that the limitations allowed by Article 19 “may never be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights.” This principle was confirmed in Marquis de Morais v. Angola, where the Committee stated that the right to freedom of expression includes “the right of individuals to criticize or openly and publicly evaluate their Governments without fear of interference or punishment.” Expanding on the protection of political speech, the Committee found in Bodrožić v. Serbia and Montenegro that “in democratic society, especially in the media, concerning figures in the political domain, the value placed by the [ICCPR] upon uninhibited expression is particularly high.” On this basis, the Committee found that the Serbian and Montenegrin governments violated Mr. Bodrožić’s freedom of speech as protected under Art. 19 by criminally convicting him for his subversive political journalism.

The European Convention on Human Rights, the African Charter on Human and Peoples’ Rights (Banjul Charter), the Arab Charter on Human Rights, and the American Convention on Human Rights also extend protections to the free exchange of opinions and ideas and the freedom to associate concerning those ideas. The protections afforded by the European Convention were the subject of Freedom and Democracy Party (ÖZDEP) v. Turkey, a case in which the European Court of Human Rights found that the government of Turkey violated citizens’ free-speech rights by disbanding a competing political party. The Government of Turkey argued that the dissolution of the party was justified as the group’s platform threatened the “unity” of the nation by advocating for racial minorities (the Kurdish).

The Court rejected Turkey’s argument, reasoning that “democracy thrives on freedom of expression,” even the expression of those ideas that “offend, shock or disturb.” Moreover, Turkey’s drastic measures were not in proportion to its stated need, especially considering “there can be no justification for hindering a political group solely because it seeks to debate in public the situation of part of the State’s population.” Thus, the European Court’s holding comports with the Human Rights Committee’s warning that the regulation of political speech must be prescribed by law, strictly necessary and seldom applied, especially in the context of political speech.
Current State of Foreign Domestic Law

While most States commit themselves, at least in theory, to the protection of speech, they distinguish themselves by the amount of permissible regulations they impose on speech. At the far end of the spectrum lies the United States, which is unique in its allowance of even hate speech and other types of “odious speech” under the comparatively broad protections of the First Amendment of its Constitution. Indeed, much of the United States’ policy concerning protected speech conflicts with Art. 19 of the ICCPR, which is more restrictive than the U.S. Constitution. Such wide-reaching policies make the United States a “recalcitrant outlier” of the international norms.

Germany falls in the middle of the spectrum. While speech is protected in its Constitution, it is one of several Western nations that criminally penalizes certain types of speech—particularly racially motivated hate speech. For example, Section 130 of the Strafgesetzbuch, the German federal penal code, makes speech that incites violence or hatred toward racial minorities a crime. As some scholars have noted, however, these German statutes are often inconsistently applied, strictly prohibiting speech directed at Jewish minority groups while allowing racially defamatory speech of other minorities like Kurds to stand.

Turkey, in contrast, represents a regime with comparatively more restrictions on speech—some of which likely fall outside of those allowed by the international instruments discussed above. When Art. 301 of the Turkish Penal Code was first enacted in 2005, it criminalized public denigration of “Turkishness,” the Republic or the Grand National Assembly of Turkey, the judicial institutions, and the military and security structures of the State. Violators of this Article could receive up to three years’ imprisonment, with an increase of up to a third for Turkish citizens. In 2008, however, as part of its negotiations to enter the European Union, Turkey amended Art. 301 to better comport with European conventions—to limited success. The 2008 version now forbids insults to the “Turkish nation” rather than vague “Turkishness,” limits the length of imprisonment to two years, and requires the approval of the Minister of Justice to prosecute potential violators. The review provision alone has been instrumental in decreasing the number of journalists and other activists prosecuted under the much-criticized Art. 301.

Current State of Syrian Penal Code

The following Articles in the Syrian Penal Code regulate speech and speech-activities in some manner: 214, 278, 282, 285, 286, 288, 307, 328, 335-6, 373-8, 410, 462-4, 519, and 745. Articles 373-7 are most like Turkey’s Art. 301 in that they forbid public insults or defamation of the Syrian
Chief of State or any governmental officials. Art. 377 is particularly concerning as it states: “Except in the case where the defamation was committed against the Chief of State, the defendant shall be discharged if the defamatory act is related to the function and recognized to be true.” By this provision, there is almost no defense to defamatory statements made against the Chief of State.

Articles 214, 288, 328, and 335-6\(^\text{197}\) are also concerning in that they likely hinder the free association of political parties and the free expression of political speech. Specifically, Art. 214 imputes any offense committed by a “voice of the press” to his or her publisher or editor-in-chief, thus creating an incentive for top-down regulation of speech in the press. Art. 328, without any specificity or tailoring, broadly prohibits “any secret society,” promising immediate dissolution and confiscation of property. Art. 288 threatens to imprison any person who “takes part in an association or political or social organization of international character in Syria” without the authorization of the Government. Articles 335 and 336 prohibit “seditious demonstrations and crowds” and threaten imprisonment for “anyone who in a public place, open or exposed to the public, had uttered seditious cries or chants.” According to these Articles, a “seditious crowd” can include a group of twenty or more people with an attitude susceptible of troubling public tranquility.

Articles 285 and 307 are more reminiscent of Germany’s statutes criminalizing racial hate speech in that they forbid anyone in times of war (285) and in times of peace (307) for producing propaganda that “excit[es] the spirit of denominational or ethnic groups and arous[es] conflicts between communities or different elements of the population.” Like the Turkish statutes at issue in Freedom and Democracy Party (ÖZDEP) v. Turkey, however, they could likely be abused by a regime to quash minority political parties. They could easily run afoul of Article 25 of the Arab Charter that secures to minorities “the right to enjoy their own culture, to use their own language and to practice their own religion.”

Article 745 stands alone as one that is likely too broad and too attenuated from a legitimate state interest to meet the dictates of international law. It imposes arrest and a fine on “[t]hose who had imprinted, sold, or displayed for sale prints, postcards, or images that give an inexact idea or generalization of Syrians and are susceptible to bring an attack upon their dignity or consideration....” Like “Turkishness,” it would be difficult to define not only what an accurate depiction of Syrians would entail but also what an “inexact idea or generalization” would be. Other Articles, such as 278, 282, 286, present regulations that are more ambiguous: they are not clearly prohibited\(^\text{198}\) but are ripe for abuse. Articles 278, 282, and 286 regulate speech and actions that could negatively affect Syria’s diplomatic relations abroad—an arguably reasonable intrusion upon speech given the clear national security interests.\(^\text{199}\) However, Art. 282, for example, threatens to punish anyone who publicly insults a foreign Chief of State, flag
or emblem if that State issues a complaint. Additionally, Art. 286 recommends imprisonment for anyone who, during the time of war, spreads false or exaggerated news that will affect the morale of the nation. These prohibitions likely sweep too widely, hindering what it is likely to be political speech at the whim of the government.

In contrast, Articles 410, 462-3, and 464 are likely permissible regulations of speech as they fall into the exceptions allowed under Art. 19 of the ICCPR. Art. 410, for example, which restricts the disclosure of certain legal proceedings, is likely in the interest of public order—provided it is enforced narrowly. And, Articles 462, 463, and 464 protect religious practices and funeral services from obstructionist speech—a likely allowable regulation under the state’s interest in preserving morals, which will be discussed further below. Like any speech regulation, however, even benign intrusions into the freedom of speech can be manipulated by abusive governmental regimes. Thus, some special precautions concerning exceptions for political speech may be warranted.

Discussion and Recommendation

In 2010, Syria ranked 173rd out of 178 countries in terms of freedom of the press. Two years later, Syria was ranked the “deadliest country” for journalists. These superlatives, however, are largely not a result of the text of the penal code but the increasingly repressive Assad regime, which has been able to employ many of the Penal Code’s provisions to imprison journalists and activists. As seen in the unlawful imprisonment and sentencing of Kamal al-Labwani in 2007, the Penal Code provisions that forbid insulting the Chief of State or forbid writings that damage Syria’s foreign relations easily lend themselves to being used to infringe upon Syrians’ free-speech rights. Thus, to ensure that the Syrian population’s interests in free speech and expression are adequately protected henceforth, this report proposes eliminating provisions that clearly conflict with international norms and modifying facially neutral restrictions to explicitly exclude political speech, limiting any potential for abuse.

This report recommends the immediate repeal of Articles 214, 278, 282, 285, 286, 288, 307, 328, 335-6, 373-8, and 745. Articles 373-8, like Turkey’s Art. 301, impermissibly infringe upon the right of the citizens to level critiques at the political system and express their own views of the
nation’s leaders. Indeed, “Democracy thrives on freedom of expression,” and Syrian democracy is no different.

Likewise, Articles 214, 278, 282, 286, and 328, as well as 285 and 307, are ripe for abuse, easily lending themselves to quashing rival political parties and international journalism. These articles are a clear misuse of Art. 19 of the ICCPR’s limited exceptions for the regulation of speech. Like the Turkish government in Freedom and Democracy Party (ÖZDEP) v. Turkey, Syria could use the merest reference to the interest of minority issues in a party platform to disband it. Lastly, regulations to protect the observation of religious rites, objects, and burials while neutral on their face, could be improved by adding clear exceptions for the exercise of protected speech, especially political, non-violent speech. In addition, such regulations should also keep in mind the Human Rights Committee’s and the European Court of Human Rights’ instruction that regulations of speech be narrowly construed and use the means necessary to serve a state interest. Here, imprisonment for a month to a year is likely an unnecessarily draconic means of ensuring that the state’s legitimate interest is preserved. Thus, Art. 464, for example, could read as follows:

Anyone who had harassed a funeral or a funeral service, within less than 300 feet of the church, funeral site, or residence being used for the funeral or had obstructed it by way of acts or threats, shall be subject to one month to one year imprisonment, a monetary penalty consistent with the Misdemeanor Fine given in Art. 54.

B. Women and Children

Although this section covers a broad swath of the population, the common theme is the protection of the underrepresented and marginalized. While women have made comprehensive strides in the fight for equality, they are still subject to discrimination and unequal treatment at all levels of society. Children are similarly vulnerable, often deprived of their childhoods by abuse, economic hardship, and forced labor. Parts of the Syrian Penal Code subject women to unequal treatment under the law and largely fail to protect both women and children from domestic violence and sexual abuse, among other harms.
Protection of Women: Equal Treatment and Gender-Based Violence

Current State of International Law

Many international human rights instruments include the issue of women’s equality as a part of affording basic human rights to all. Article 3 of the International Covenant of Economic, Social and Cultural Rights [ICESC], for example, exhorts States Parties to “ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.” Furthermore, the ICCPR and Universal Declaration of Human Rights secure the rights enumerated in these documents to all persons, regardless of sex. Indeed, Art. 26 of ICCPR guarantees that “All persons are equal before the law;” thus, the law “shall prohibit…discrimination on any ground such as race, colour, sex, language, religion, political or other opinion.”

However, despite the existence of wide-reaching instruments like the Universal Declaration of Human Rights and the ICCPR, “extensive discrimination against women continues to exist.” For this reason, several international instruments exist solely for the purpose of protecting the human rights of women. These instruments (and their attendant bodies) include the Convention on the Elimination of All Forms of Discrimination Against Women [Convention on Discrimination], the Declaration on the Elimination of Violence Against Women, and the Beijing Declaration and Platform for Action, Fourth World Conference on Women [Beijing Declaration].

The Convention on Discrimination is widely considered the standard-bearer for women’s human rights, as it was the first international instrument to place women’s rights within the realm of human rights generally. It broadly defines “discrimination of women” as:

- any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 2(f) of the Convention on Discrimination calls on Party States “[t]o take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.” Specifically, Art. 2(f) instructs that States must “repeal all national penal provisions which constitute discrimination against women.” The Committee on the Elimination of Discrimination against Women [CEDAW], the
governing body created by Art. 17 of the Convention, emphasizes in its General Comment No. 28 that this Article imposes a duty not only to refrain from passing legislation that imposes unfair restrictions on women but also an affirmative duty to enact protective legislation, among other efforts, to end gender-based discrimination.\textsuperscript{210}

To enforce these measures, the Optional Protocol to the Convention on Discrimination empowers CEDAW to “receive and consider communications” on behalf of individuals or groups that claim to be victims of States’ violations to the terms of the Convention on Discrimination.\textsuperscript{211} Under these auspices, in 2003, CEDAW responded to the Communication of Ms. A.T. v. Hungary, where they found that Hungary violated the human rights of a female citizen by failing to protect her from domestic violence and abuse at the hand of her former common law husband.\textsuperscript{212} CEDAW attributed the cause of this failure to Hungary’s neglecting to issue “a specific law...prohibiting domestic violence against women, which would provide for protection and exclusion orders as well as support services, including shelters.” As a result, CEDAW ordered that Hungary ameliorate Ms. A.T.’s damages by proving a safe home and reparations; Hungary was also exhorted to take legislative action to incorporate the aims of the Convention on Discrimination in its domestic civil and criminal legal systems.\textsuperscript{213}

As this case suggests, violence against women stands as perhaps the greatest barrier to gender equality. For this reason, the Declaration on the Elimination of Violence Against Women was created solely to bring an end to physical, sexual and psychological abuse of women.\textsuperscript{214} The Declaration highlights the historical role violence against women has played in preventing women’s equality with men, namely:

[V]iolence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men.\textsuperscript{215}

According to the Declaration, States should condemn any forms of violence against women and should not invoke any traditional, religious or cultural belief or practice that sanctions violence against women.\textsuperscript{216} Notably, Art. 2 of the Declaration includes marital rape as a form of violence against women.\textsuperscript{217}

Perhaps the most widely accepted and progressive statement of women’s rights\textsuperscript{218}, the Beijing Declaration arose out of the Fourth World Conference on Women—“the largest-ever gathering of government and Non-Governmental Organizations (NGO) representatives at a United Nations Conference.”\textsuperscript{219} “The Beijing Declaration expanded the universe of women’s human right’s issues to include poverty, education, health services, employment, media
treatment of women, and violence against women, thus cementing the place of women in the international debate on human rights with its simple statement: “Women’s rights are human rights.”

Sadly, enforcement often lags behind the idealistic terms of the international instruments regarding women’s rights. Convictions for sexual violence in international courts such as the International Criminal Tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR) and the Special Court for Sierra Leone remain low. In the ICTR, for example, only 11 of the 21 completed cases involving sexual violence resulted in a conviction. Moreover, although 186 countries are currently signatories to the Convention on Discrimination, many have yet to fully implement the Convention’s terms.

Current State of Regional and Foreign Domestic Law

As of April 2011, 125 countries have passed legislation that either criminalizes domestic violence and/or provides for the issuance of protective orders on behalf of the abused parties. (See graph below.) In the Middle East and North Africa, only three out of seventeen countries have such laws. One hundred and seventeen countries forbid sexual harassment—that is, “unwelcome sexually determined behavior” that occurs in the workplace and educational sector or during the receipt of goods and services, sporting activities, and property transactions. Only four of the 117 are located in the Middle East or North Africa. Lastly, 52 countries currently prohibit rape that occurs between a husband and a wife. Marital rape is not prohibited by any of the states in the Middle East and North Africa.
Case Studies: Hungary, Nepal, Jordan and Morocco

Following CEDAW’s holding in Ms. A.T. v. Hungary, Hungary effected a wave of reforms in the advancement of women’s rights, particularly in the protection of women from violence. In 2003, it enacted a sweeping anti-sexual harassment act that imposed measures on both private and public employers to stop sexual harassment and gender discrimination in the workplace. In 2004, with the help of a growing women’s movement, Hungary created a new penal code that criminalized marital rape and human trafficking for the purpose of sexual intercourse. The revisions to the code also removed the provisions that allowed for the lesser punishment to perpetrators who claimed their crime was an “honor killing” and for rapists who married their victims. In 2012, Hungary further reformed its penal code by penalizing domestic violence—a change that afforded the commendation of CEDAW.

Nepal has also made great strides to protect the rights of women in the past twenty years. In 2002, the Nepal Supreme Court made a landmark ruling that recognized the crime of marital rape. In so finding, the Court rejected portions of the Muluki Ain (Nepal’s Civil Code) and the purported Hindu principles the government advanced in support of the exemption of husbands from being accused of raping their wives. The Court opined: “Sexual intercourse in conjugal life is a normal course of behavior, which must be based on consent. No religion may ever take [marital rape] as lawful...” In the wake of this ruling, Nepal proceeded to enact a
variety of legislation, including amendments to its penal code that criminalized domestic violence and sexual assault.\textsuperscript{238}

Lastly, Jordan and Morocco have recently taken steps to address domestic violence and sexual harassment. In 2008, Jordan enacted the Domestic Violence Protection Act, which imposes penalties if protective orders are violated.\textsuperscript{239} And, in 2010, Jordan amended its Penal Code to exclude the defense of “honor killings.”\textsuperscript{240} Likewise, in 2004, Morocco made sweeping changes to its civil codes to enhance the civil rights of women.\textsuperscript{241} Most importantly, Morocco withdrew its reservations to Articles 2, 9(2), 15 (4), 16, and 29 of the Convention on Discrimination in 2008—an act of further recognition of the rights of women.\textsuperscript{242}

**Current State of Syrian Penal Code**

Article 45 of the Constitution of the Syrian Arab Republic guarantees “women all opportunities enabling them to fully and effectively participate in the political, social, cultural, and economic life.”\textsuperscript{243} Under this article, “The state removes the restrictions that prevent women’s development and participation in building the socialist Arab society.”\textsuperscript{244} In addition, Art. 25 of the Constitution states that “The citizens are equal before the law in their rights and duties,” making no distinction between men and women. Notwithstanding these guarantees, Syria takes exception to several important articles in the Convention on the Elimination of All Forms of Discrimination against Women: Article 2, Article 9(2), Article 15 (4), Article 16(1)(c),(d),(f),(g) concerning equal rights and responsibilities in marriage, and Art.16 (2) concerning the legal effect of the betrothal and marriage of a child insofar as this provision “is incompatible with the provisions of the Islamic Shariah.”\textsuperscript{245}

In addition, the Syrian Penal Code infringes on the human rights of women in several areas.

- Art. 548 grants an absolute excuse to murder for “honor killings.”
- Arts. 489, 490 define rape only as forced sex that occurs outside of marriage, allowing for marital rape.
- Art. 508 suspends the punishment for rape if the rapist marries his victim.
- Art. 523, 524, and 527 severely impair women’s access to health care and pre- and post-natal care.
- Art. 470 penalizes ministers who marry women before their period of widowhood has expired, thus imposing a limitation on the right to marry.
- Art. 473 imposes a far greater punishment for adultery on women than on unmarried men and limits the evidence that can be used to convict a man of adultery.
• Art. 613 forbids barkeepers from employing unrelated women under twenty-one in their establishments, thus limiting the employment opportunities for women.

The Penal Code also fails to criminalize domestic violence and the various forms of sexual harassment that take place in the workplace, markets, and even at home.

Discussion and Recommendation

This report recommends three necessary steps: the revocation of the reservations to the Convention on Discrimination, the removal and/or modification of the Articles 548, 523-7, 489-90, 508, 504, 470, 473, and 613, and the additional penalties for domestic violence and sexual harassment to the Penal Code.

The first step in complying with international women’s rights law is the removal of reservations to the most important sections of the leading Convention on women’s rights. This especially includes Art. 2, which imposes the burden on states of ensuring their laws comply with the Convention. As Morocco saw in 2008, the removal of its reservations was a positive step in the direction of compliance, which was met with widespread approval both domestically and internationally.

Second, the Penal Code must be revised so as not to treat women unequally under the law, in contravention of Art. 26 of the ICCPR and Articles 25 and 45 of Syria’s own Constitution. Several provisions of the Penal Code unfairly punish or inhibit women. For example, Art. 473 increases the term of imprisonment by a third for all women found guilty of adultery as compared to unmarried men. Likewise, Art. 470 effectively imposes a period of widowhood only on women. And, Art. 613 limits women’s employment opportunities on the basis of their gender alone.

The Syrian Penal Code also fails to protect women and ensure them equal justice under the law. Indeed, Syria remains one of the few countries that still allows marital rape and an exception for “honor killings.” Articles 490 and 491 limit rape only to that which occurs outside of marriage, granting impunity for husbands who rape their wives. As the Supreme
Court in Nepal and the Declaration on the Elimination of Violence Against Women state, however, consent to sex is not implied merely because a man and woman are married. In addition, Art. 548 grants an “absolute excuse” to the crime of murder if a man kills after having surprised his spouse, ancestor, descendant, or sister engaged in adultery or illicit sex. Moreover, under this Article, a man may benefit from an “attenuated excuse” even if the actions of the spouse or daughter are ambiguous. These Articles effectively sanction the murder of women in full violation of their rights to life, liberty, and equal protection under the law.248

Lastly, the Syrian penal code should be modified to address domestic violence and sexual harassment. As of 2012, two-thirds of the world’s countries specifically address domestic violence through their laws—Syria is not one of them.249 Research from UN Women shows that (see graph below) the reporting of domestic abuse nearly doubles in states with domestic violence laws in place. In addition, in states where such legislation exists, the populace tends to see a decrease in the number of people who think domestic violence is acceptable.250

The Syrian Penal Code should also criminalize aggravated sexual harassment, using one of several model laws. Art. 27 of Bosnia-Herzegovina’s 2003 Law on Gender Equality, for example, establishes that “anyone who perpetrates violence, harassment or sexual harassment on the grounds of gender,” as defined in the Act, is guilty of a criminal offense meriting six months to five years imprisonment.251 South Africa’s Promotion of Equality and Prevention of Unfair Discrimination Act of 2000 provides another example of wide-reaching domestic legislation to further protect women.252 In particular, South Africa’s Act fulfills many of the Convention’s requirements, as listed in Ms. A.T. v. Hungary, in that it provides a wide range of civil and criminal protections. Finally, the United Nation’s Department of Economic and Social Affairs Division for the Advancement of Women recently issued an excellent resource on enacting such legislation titled “Handbook for Legislation on Violence Against Women.”253
Protection of Children: Education, Labor, and Abuse

Children represent the most vulnerable members of society. As such, they are the subjects of numerous international human rights instruments, which aim to protect children’s rights to survival, development, protection, and participation.

Current State of International Law

The Declaration of the Rights of the Child [DRC] constitutes one of the first documents to specifically address the human rights of children. It declares in its Preamble that such “special safeguards and care” are warranted due to the child’s “physical and mental immaturity.”254 The Convention on the Rights of the Child [CRC], however, remains the foundational piece of international human rights law regarding children.255 Currently, there are 193 States party to the CRC, making it the most-ratified treaty in the world.256 Art. 1 of the CRC defines “child” to mean every person under the age of eighteen, and Arts. 2 and 3 secure the same rights to the child regardless of their or their parent’s “race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”257 Significant rights ensured to a child by the Convention include:

- The right to have their best interests be the primary consideration in all judicial and other proceedings (Art. 3)
- The right to life, including the right to survival and development (Art. 6)
- The right to a name, a nationality, and to be cared for by the parents, as far as possible (Art. 7-11)
- The right to expression, association and the freedom of thought, conscience and religion (Art. 12-13)
- The right to the highest attainable standard of health (Art. 24)
- The right to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development (Art. 27)
- The right to education (Art. 28)
- The right to rest and engage in play (Art. 31)
- The right to be protected from economic and sexual exploitation (Art. 32, 34)

The Convention places the obligation on States to implement laws that protect these rights, exhorting them to “take all appropriate legislative, administrative, and other measures.”258

Most international instruments follow the CRC in defining “child” to mean a person under the age of 18, including the Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor, the African Charter on the Rights and Welfare of
the Child, the European Convention on the Exercise of Children’s Rights, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. 259

Current State of Foreign Domestic Law

Age of Majority

In keeping with the CRC and other international instruments, many nations define a child as someone who is under the age of eighteen for the purposes of their child protection laws.260 In sexual abuse laws, however, some nations lower the age of consent to fourteen (Germany261 and Canada262), fifteen (Cambodia263 and Sweden264) or sixteen (Finland265).

Child Sexual Abuse and Sexual Exploitation Laws266

Nations such as Canada, Cambodia, Ecuador, Finland, Germany, Italy, Mali South Africa, and the United Kingdom have enacted child protection laws that criminalize intercourse, sexual touching, and other kinds of sexual contact with minors. Notably, several explicitly forbid the use of ignorance of the age of the offended person as an excuse to the crime.267

• Canada Criminal Code (2010)
  o Section 151: “Every person who, for a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of the body of a person under the age of fourteen years is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years or is guilty of an offence punishable on summary conviction.”
  o Section 152: “Every person who, for a sexual purpose, invites, counsels or incites a person under the age of fourteen years to touch, directly or indirectly, with a part of the body or with an object, the body of any person, including the body of the person who so invites, counsels or incites and the body of the person under the age of fourteen years, is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years or is guilty of an offence punishable on summary conviction.”
  o Section 153 – Sexual Exploitation.” Every person who is in a position of trust or authority towards a young person or is a person with whom the young person is in a relationship of dependency and who
    ▪ (a) for a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of the body of the young person, or
(b) for a sexual purpose, invites, counsels or incites, a young person to touch, directly or indirectly, with a part of the body or with an object, the body of any person, including the body of the person who so invites, counsels or incites and the body of the young person, is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years or is guilty of an offence punishable on summary conviction.

(2) In this section, “young person” means a person fourteen years of age or more but under the age of eighteen years.

- Cambodia, Law on Suppression of Human Trafficking and Sexual Exploitation NS/RKM/0208/005, 2008
  - Article 42 – Sexual Intercourse with Minors under Fifteen Years.
    - A person who has sexual intercourse with another person of the age of less than fifteen years shall be punished with imprisonment for 5 to 10 years.
  - Article 43 – Indecent Act against Minors under Fifteen Years.
    - ‘Indecent act’ in this law shall mean an act of touching or exposing a genital or other sexual part of another, or of having another touch the actor’s or a third person’s genital or other sexual part, with the intent to stimulate or satisfy the actor’s sexual desire. A person who commits an indecent act against another person of the age of less than 15 years shall be punished with imprisonment for 1 to 3 years and a fine of 2,000,000 to 6,000,000 riels. A person who repeatedly commits any offense stipulated in Article 42 or this article shall be punished with double the prison punishment.

- Sweden, Penal Code, 1999
  - Chapter 6 – On Sexual Crimes. Section 4.
    - A person who engages in a sexual act with someone under eighteen years of age and who is that person’s offspring or for whose upbringing he or she is responsible, or for whose care or supervision he or she is responsible by decision of a public authority, shall be sentenced for sexual exploitation of a minor to imprisonment for at most four years. This also applies to a person who, in circumstances other than those mentioned previously in this Chapter, engages in a sexual act with a child under fifteen years. If the person who committed the act exhibited particular lack of regard for the minor or if the crime by reason of the minor’s young age or otherwise is regarded as gross, imprisonment for at least two
and at most eight years shall be imposed for gross sexual exploitation of a minor.

- **Section 7.**
  - If a person sexually touches a child under fifteen years of age otherwise than as previously provided in this Chapter, or induces the child to undertake or participate in an act with sexual implication a fine or imprisonment for at most two years shall be imposed for sexual molestation. A sentence for sexual molestation shall also be imposed on a person who by coercion, seduction or other improper influence induces a person who has attained the age of fifteen but not eighteen to undertake or participate in an act with sexual implication if the act is an element in the production of pornographic pictures or constitutes pornographic posing in circumstances other than those relating to the production of a picture. This shall also apply if a person exposes himself or herself in such a manner that the nature thereof gives offence or otherwise manifestly behaves indecently by word or deed towards the latter in a way that flagrantly violates a sense of propriety.

- **Section 10.**
  - A person who, by promising or giving recompense, obtains or tries to obtain casual sexual relations with someone under eighteen years of age, shall be sentenced for seduction of youth to a fine or imprisonment for at most six months.

**Neglect**

Likewise, many nations have criminalized the neglect or maltreatment of a child, which pertains to the failure through non-action to meet the child’s basic physical, emotional, education, and social needs. Some domestic foreign legislation criminalizing neglect includes the following:

- **Canada**
  - a child is neglected if the guardian
    - a) is unable or unwilling to provide the child with the necessities of life,
    - b) is unable or unwilling to obtain for the child, or to permit the child to receive, essential medical, surgical or other remedial treatment that is necessary for the health or well being of the child, or
    - c) is unable or unwilling to provide the child with adequate care or supervision.

- **India**
“Child abuse” refers to the maltreatment, whether habitual or not, of the child which includes any of the following:

- (i) psychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment;
- (ii) any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being;
- (iii) unreasonable deprivation of his basic needs for survival such as food and shelter; or failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death; 270

• Philippines

  o (3) A neglected child is one whose basic needs have been deliberately unattended or inadequately attended. Neglect may occur in two ways:
    - a) There is a physical neglect when the child is malnourished, ill clad and without proper shelter. A child is unattended when left by himself without provisions for his needs and/or without proper supervision.
    - b) Emotional neglect exists: when children are maltreated, raped or seduced; when children are exploited, overworked or made to work under conditions not conducive to good health; or are made to beg in the streets or public places, or when children are in moral danger, or exposed to gambling, prostitution and other vices. 271

**Physical and Emotional Abuse** 272

In keeping with Articles 37 of the CRC, which states that no children shall be subjected to “torture or other cruel, inhuman, or degrading treatment or punishment,” many nations have criminalized the physical and emotional abuse of children. Some have even gone so far as to forbid the use of corporal punishment altogether. Examples of countries’ criminal codes against the physical and emotional abuse of a child include:

• South Africa

  o “abuse”, in relation to a child, means any form of harm or ill-treatment deliberately inflicted on a child, and includes:
    - (a) assaulting a child or inflicting any other form of deliberate injury to a child; (b) sexually abusing a child or allowing a child to be sexually abused; (c) bullying by another child; (d) a labour practice that exploits a child; or (e) exposing or subjecting a child to behaviour that may harm the child psychologically or emotionally. 273
• Costa Rica
  o Paragraph one: Children and adolescents have a right to receive counseling, education, care and discipline from their mother, father or tutor, as well as from their caretakers or the personnel from educational and health centers, shelters, youth detention or any other type of centers, that in no way represents an authorization of any sort to these parties for the use of corporal punishment or degrading treatment.\textsuperscript{274}

• Ghana
  o (1) No person shall subject a child to torture or other cruel, inhuman or degrading treatment or punishment including any cultural practice which dehumanizes or is injurious to the physical and mental well-being of a child.
  o (2) No correction of a child is justifiable which is unreasonable in kind or in degree according to the age, physical and mental condition of the child and no correction is justifiable if the child by reason of tender age or otherwise is incapable of understanding the purpose of the correction.\textsuperscript{275}

• Sierra Leone
  o (1) No person shall subject a child to torture or other cruel, inhuman or degrading treatment or punishment including any cultural practice which dehumanises or is injurious to the physical and mental welfare of a child.
  o (2) No correction of a child is justifiable which is unreasonable in kind or in degree according to the age, physical and mental condition of the child and no correction is justifiable if the child by reason of tender age or otherwise is incapable of understanding the purpose of the correction.\textsuperscript{276}

Current State of Syrian Penal Code

While offering some protection to children, the Syrian Penal Code could be modified to provide clearer and stronger prohibitions against child neglect, abuse, and violence. Specifically, the following Articles fail to protect children from physical abuse and neglect:

• Art. 484 only penalizes the neglect of a child under the age of seven and fails to define the acts or omissions that constitute "neglect."
Art. 486 imposes an aggravated penalty on parents who neglect the child under Art. 484, UNLESS the neglecting parent is a mother who neglected a newborn to safeguard her honor.

Art. 537 similarly reduces the punishment for homicide for mothers who murder newborn infants conceived out of wedlock if they do so in order to avoid dishonor.

Art. 185 allows corporal punishment of children by parents and masters “in a measure tolerated by common usage.”

The following Articles of the Syrian Penal Code also fail to adequately address the issue of the sexual abuse of children:

- Arts. 491-492 punishes anyone who performed “the act of sex” with a minor under the age of fifteen or any parent or guardian who performed “the act of sex” with a minor under the age of eighteen without defining “act of sex.”
- Art. 505 forbids only the use of a person’s hand “in an indecent manner” on minors under the age of fifteen and women over the age of fifteen without forbidding other kinds of sexual contact.
- Art. 510 only forbids the prostitution of female minors under the age of twenty-one.
- Art. 520-2 are the only sections to explicitly cover the prostitution of minors but only impose educational measures on the children themselves and not any additional punishments on their guardians or those responsible.

The Syrian Penal Code could also be reformed to include stronger protection against the abduction of children. Namely:

- Arts. 500-501 only forbid kidnapping for the purposes of either forced marriage or sexual acts.
- Art. 503 offers a lesser punishment for abductors who return the abductees unharmed within forty-eight hours, creating a sense of impunity for temporary abduction.

Lastly, the Penal Code is relatively silent on the issues of mandatory education and the employment of children in the labor market. Art. 603 imposes a punishment on parents who let their child wander without a home instead of providing education, failing short of explicitly prohibiting the failure to educate the child.
Discussion and Recommendations

This Report recommends that several changes be made to the Penal Code. First, the Penal Code provisions that touch on child neglect, sexual abuse, and abduction should be revised to explicitly define the terms “neglect,” “abuse,” “maltreatment,” “sexual abuse,” “sex acts,” and “child,” among others. The revisions should take into account the broad, gender-neutral definitions provided in the domestic codes given above, making sure that all variations of sexual misconduct and neglect toward both genders are included. In addition, the provisions on abduction should be modified to criminalize abduction for any reason.

Second, certain Penal Code provisions should be repealed or rewritten altogether. Art. 185 should be repealed because it broadly grants parents and other adults permission to impose corporal punishment on children—a practice that is inconsistent with the CRC and foreign domestic law. Child prostitution should also be given special attention in the Syrian Penal Code in keeping with Art. 34 of the CRC, as well as the Optional Protocol to the CRC on the sale of Children, Child Prostitution and Pornography, which requires States to criminalize child prostitution by law.277 Thus, Arts. 510, 521, and 5222 should be replaced by either a separate act or several new articles that clearly penalize the prostitution of children, the use of children to produce sexual materials, or the exposure of children to inappropriate sexual content or actions. Finally, if no other alterations are made, the Articles that mitigate crimes committed by mothers toward their newborns for the sake of honor must be repealed. Under Art. 2, 3, and 6 of the CRC, all children have the right to life—not just those born in the context of marriage.

The Syrian Penal Code should be bolstered by provisions against child labor and the deprivation of the right to education. Foreseeably, these issues are regulated outside the Penal Code as well.278

C. Bodily Integrity and Privacy

The rights to privacy and bodily integrity are not without controversy. They invoke every society’s most deeply held moral and religious convictions and concern the most intimate
elements of human existence: sexuality and the body. For these reasons, there is great variation and debate in international approaches toward the regulation of sexuality and reproduction. This report will present arguments that could be made from international law on multiple sides of these controversial issues, whether it be reproductive rights and the unborn child’s right to life or the scope of LGBT rights and the definition of marriage.

Current State of International and Foreign Domestic Law

Arguments and Practice in Favor of Lesbian, Gay, Bisexual and Transgender (LGBT) Rights

While most human rights instruments do not explicitly mention sexual orientation, many could be interpreted as already protecting these rights. Article 2 of the Universal Declaration of Human Rights (UDHR) states that “everyone is entitled to all rights and freedoms…without distinction of any kind, such as race, color, sex…and other status.” Arguably, “other status” could include sexual orientation; indeed, Canada, Germany, Sweden and Australia define gays as a distinct social group.

Moreover, LGBT individuals as human beings, regardless of their sexual identity, are entitled to:

- The individual right to marry (Art. 16 of UDHR)
- Freedom of association (Art. 16 of ICCPR, Art. 20 of UDHR)
- Privacy (Art. 12 of UDHR, Art. 21 of the Arab Charter on Human Rights)
- Equal protection under the law (Art. 2 of UDHR)

Recently, the United States struck down a federal law that banned same-sex marriage, stating that the law “violates basic due process and equal protection principles applicable to the Federal government.” Part of the United States Supreme Court’s decision rested on a previous case, Lawrence v. Texas, which struck down an anti-sodomy law. In Lawrence v. Texas, the Court struck down the anti-sodomy law because “[t]he liberty protected by the Constitution allows homosexual persons the right to choose to enter upon relationships in the confines of their homes and their own private lives and still retain their dignity as free persons.” As of 2012, 76 countries criminalized same-sex activity while 114 did not.

Arguments and Practice in Favor of Reproductive Rights

The Beijing Declaration was one of the first international instruments to explicitly link the availability of birth control with the advancement and empowerment of women. Paragraph 17 of the Beijing Declaration recognizes that “the right of all women to control all aspects of their health, in particular their own fertility, is basic to their empowerment.” Moreover, Art. 30 exhorts States to “Ensure equal access to and equal treatment of women and men in education and health care and enhance women’s sexual and reproductive health as well as
education.” The Beijing Declaration also called on States to address unsafe illegal abortions as they posed a significant health risk to women worldwide.\textsuperscript{283} Finally, the Convention on the End of Discrimination commits States in Art. 10(h) to ensure that women have “Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.”

Recently, the Constitutional Court of Colombia overturned the country’s criminal prohibition on abortion in all cases on the basis that it violated women’s fundamental rights. Specifically, the court held the procedure must be made available in some cases, like here where the pregnant petitioner had needed life-saving chemotherapy to treat her cancer. In issuing its ruling, the Court stated: “Sexual and reproductive rights…emerge from the recognition that…gender equality…and the emancipation of women and girls are essential to society. Protecting sexual and reproductive rights is a direct path to promoting the dignity of all human beings and a step forward in humanity’s advancement towards social justice.”\textsuperscript{284} In a recent decision in the case of\textit{Lakshmi Dhikta v. Nepal}, the Supreme Court of Nepal also ruled that the country’s government must guarantee access to safe and affordable abortion services. Foreign domestic legislatures are also taking steps to ensure women have access to the contraceptive information and services they need. In 2012, the Philippines passed legislation that enabled impoverished women to gain unprecedented access to contraceptives.\textsuperscript{285} Guatemala also took similar measures, enacting law that guarantees universal access to family planning services.\textsuperscript{286} “Globally,” however, “approximately 61 percent of the world’s population lives in countries where abortion is permitted without restriction as to reason or on broad socioeconomic grounds. The remaining 39 percent of the global population lives in countries with restrictive abortion laws that either do not permit abortion at all or only permit abortion under limited circumstances…”\textsuperscript{287}

\textit{Arguments and Practice in Favor of Unborn Right to Life, Traditional Marriage, and Religious/Moral Rights}

Article 6 of the ICCPR and Art. 6 of the Universal Declaration of Human Rights guarantee every human the right to life. Article 6(5) of the ICCPR even explicitly forbids the execution of the death penalty on a pregnant woman. Likewise, Art. 6 of the Convention of the Rights of the Child [CRC] states that “every child has the inherent right to life.” Some authorities have interpreted these provisions to include unborn children. In\textit{Griffiths v. Minster for Immigration}, a Federal Magistrate Court of Australia quashed a lower court’s ruling for failing to take into account the best interests of an unborn child as given in “the United Nations Convention.”\textsuperscript{288} In making its decision to re-consider the visa application at issue, the Court stated: “I do not accept that the best interests of the children would not cover the best interests of a child yet to be born though conceived. It seems artificial to ignore the United Nations Convention
and/or interpret it in such a narrow way that it would be confined to a “living child.”289 Similarly, in its report to the United Nations, the Syrian Arab Republic stated that this right applies “from the time when he is formed as a foetus in his mother’s womb and is born live until his death.”290 Advocates of recognizing unborn children as living beings worthy of the inherent right to life allow for women to have autonomous control over their reproductive systems and sexuality up until the point where another life is created. At that point, this new unborn life is worthy of protection as one of society’s most vulnerable.

Articles 16 and 23 of the UDHR and ICCPR, respectively, guarantee the right for one man to marry one woman exclusively, making no mention of the rights of men and women to marry members of the same sex. In addition, Articles 18, 19, 20, and 21, which guarantee the rights to free speech, association, religion, and assembly, all make exceptions for regulations on the basis of “public health or morals.” When it comes to the moral regulation of reproduction and sexual rights, international courts generally employ a doctrine known as “the margin of appreciation,” which calls for the referral of such cases to national legislatures and judiciaries. Indeed, in the landmark case, Handyside v. the United Kingdom, the European Court of Human Rights found that the British government rightfully seized the sexually suggestive children’s book sold by Handyside.291 The book’s contents were prescribed by law and necessarily regulated for the “protection of morals”—thus falling within one of the exceptions of Art. 10 of the European Convention.292 Notably, the European Court emphasized that national institutions, “[b]y reason of their direct and continuous contact with the vital forces of their countries,” were better able to determine what regulation on the basis of “morality” required. Thus, the onus of defining the regulation of speech on the basis of protecting “morals” largely rests with nations as “it is not possible to find in the domestic law of the various Contracting States a uniform...conception of morals.”293 This is in keeping with Art. 1 of the ICCPR, which secures to all people “the right to self determination” and the attendant right to “freely determine their political status and freely pursue their economic, social and cultural development.”

Current State of Syrian Law

The following Articles of the Penal Code touch on women’s sexuality and access to contraceptives:

- Art. 523 prohibits anyone through media, propaganda or even speech from “reveal[ing] processes intended to prevent conception...”
- Art. 524 prevents the sale of contraceptives.
- Art. 525 prevents propaganda aimed at facilitating abortive practices.
- Art. 526 prohibits the sale of instruments used for abortion.
• Art. 527 threatens imprisonment for any woman that receives an abortion or third party that performs an abortion without any exceptions for the life of the mother.
• Arts. 528-529 prohibit third parties from seeking or causing an abortion for a woman
• Art. 531 offers an excuse to those listed in Arts. 527, 528, or 529 if the abortion was performed to save the woman’s “honor.”
The following Articles concern sexual freedoms of both same-sex couples and heterosexual individuals.
• Art. 504 and 499 imposes special penalties when a woman’s virginity is lost, placing an external value on a woman’s sexual purity.
• Arts. 517-519 are vague prohibitions on “public indecency” and pornographic images.
• Art. 520 criminalizes sex acts that are “against the natural order.”

Discussion and Recommendations

Strong Recommendations
This Report strongly recommends four alterations to the Penal Code, regardless of the controversy concerning reproductive and sexual rights: (1) the addition of an explicit exception to the abortion ban in cases where the mother’s life is in danger, (2) the repeal of the “honor” excuses to abortion in Art. 531, (3) the repeal the ban on all discussion of contraceptives, and (4) the repeal of the criminalization of acts of homosexuality in Art. 520.

Only five countries in the world explicitly forbid abortions to save the mother’s life, another 61, including Syria, only allow abortion under very rare circumstances.294 But even this is changing: domestic courts (Colombia and Nepal) as well as the European Court of Human Rights (A.B and C v. Ireland295), the United Nations Human Rights Committee (K.L. v. Peru296), and the Inter-American Commission on Human Rights (Paulina Ramirez v. Mexico297) have all found that abortion is warranted when the mother’s physical or mental health is threatened.298 If Syria is concerned about protecting the health of the mother while also protecting unborn life, it may wish to expressly delineate what qualifies as endangering the physical and/or mental health of the mother. Moreover, the relaxed penalty for a woman who received an abortion to “save her honor” offends both the rights of the mother and the arguable rights of the unborn child. If a State chooses to prohibit abortion for the sake of the child, it should protect and ensure justice for all children equally.

The ban on discussion of the use of contraceptives not only impedes the reproductive rights of women but also the free speech rights of the patient and the doctor. Considering that as of 2000-2008, 43 percent of Syrian women used contraceptives, this Article has been proven to
be outdated, unacceptable, and a derogation of Syria’s duty under Art. 10(h) of the Convention on Discrimination to provide access to information about family planning. 299

Finally, the criminalization of homosexuality unfairly impedes on the rights to privacy, free association, and equal protection under the law of LGBT individuals. In Lawrence v. Texas, the United States Supreme Court analyzed the history of anti-sodomy laws, finding “The right the petitioners seek in this case has been accepted as an integral part of human freedom in many other countries.” 300

Suggested Alterations

This Report suggests clearly defining the Articles that concern “indecency” and pornographic materials to meet the narrowness and necessity standards as discussed in the Free Speech Section above.
IV. Partiality: Holding the Government Accountable and Ending Despotism

Not surprisingly, there are very few international instruments that serve to limit State’s sovereignty, especially under their own penal codes and judicial systems. Nonetheless, the Syrian Penal Code could be amended to include stronger protections against government impunity for crimes committed against its citizens. In addition, none of the above recommendations concerning the penal code will produce any of the desired effects if the State of Emergency regime can be invoked and sustained at any time. Thus, forward-looking Constitutional or penal provisions should seek to limit the terms and effects of an emergency state.

The State of Emergency Regime

“The State of Emergency Act, which was promulgated in Legislative Decree No. 51 of 22 December 1962, as amended by Legislative Decree No. 1 of 9 March 1963, and which is currently in force in the Syrian Arab Republic, is an exceptional constitutional regime.” 301 It is “based on the concept of an imminent threat to the country’s integrity, under which the competent authorities are empowered to take all the measures provided by law to protect the territory, territorial waters and air space of the State, in whole or in part, from the dangers arising from external armed aggression by transferring some of the powers of the civil authorities to the military authorities.” 302 Article 101 of Syria’s Constitution states that the President can declare and terminate a state of emergency. 303 The State of Emergency Act specifies the reasons justifying its promulgation “by stipulating that a state of emergency can be proclaimed in the event of war, a situation entailing the threat of war or a situation in which security or public order in the territory of the Republic, or any part thereof, is jeopardized by internal disturbances or the occurrence of general disasters.” 304

Syria claims that, since 1948, it has been subjected to a real threat of war by Israel. 305 This ongoing threat “gave rise to an exceptional situation that necessitated the rapid and extraordinary mobilization of forces in the Syrian Arab Republic and, consequently, the promulgation of legislation to ensure the Administration’s ability to act rapidly in the face of these imminent threats when application of the ordinary legislation cannot guarantee rapid action in such circumstances.” 306 Accordingly, Syria passed The State of Emergency Act in 1962 and has maintained it in force for over half a century. 307 Syria leans on the fact that all countries of the world have applied special legislation when threatened with the possibility of war in order to protect their national security. 308 “This is a fundamental right recognized in the
International Covenant on Civil and Political Rights, article 4 of which stipulates that: ‘In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation.”309

For over half a century, Syria has been in a state of emergency, justifying officials:

- to issue written orders for the adoption of measures, restriction of the liberty of persons, censorship of correspondence, communications and the information media, specification of the opening and closing times of public establishments, withdrawal of firearms and ammunition licences, evacuation or isolation of certain areas, appropriation of movable or immovable property, placement of companies under State control and prescription of penalties, up to a maximum of three years’ imprisonment and a fine of LS 3,000, for any violation of those orders.310

These extreme measures for over half a century have had vast effect on Syria’s rule of law. It has allowed leaders to abuse this special status to restrict freedoms and procedural protections enshrined into the Syrian Penal Code and the Syrian Code of Criminal Procedure in the name of national security.

The ultimate result: Syria and its leaders have been able to pretend to comply with a litany of international legal norms by pointing to valid laws on the books, while in practice, enforcing very little of these procedural safeguards for its citizens.

This Report recommends reforming Syria’s state of emergency statutes in order to begin enforcing the protections within Syria’s Code of Criminal Procedure and Penal Code to truly comply with international legal norms. If nothing else, additions should be made to the Penal Code specifying which crimes and procedures will not be affected by a State of Emergency, guaranteeing compliance with international human rights norm at all times.

**Impunity under the Penal Code**

The following Articles of the Penal Code potentially limit government liability for crimes committed against the State’s citizens:

- Art. 184 extinguishes liability for any criminal offense when “the act was accomplished in virtue of a disposition of law or under a legitimate order of authority.” Even if the
given order was illegal, “the agent shall be justified in the case where the law does not permit him to verify its legality.”

- Art. 225 allows public functionaries, agents or governmental officials to plead a mistake of fact as a defense to committing an illegal act, where Art. 224 denies that right to non-agent citizens.
- Art. 322 imposes a lesser penalty on governmental officials who attempt to influence a Syrian voter than the penalty imposed by Art. 312 on the average citizen.

“The immunity of a truly independent sovereign from suit in its own courts has been enjoyed as a matter of absolute right for centuries. Only the sovereign’s own consent could qualify the absolute character of that immunity.”\(^{311}\) Often, however, the sovereign does consent to grant an exception to its immunity. For example, The Crown Proceedings Act of 1947 allowed civil suits to be brought against the English Monarchy without a prior grant.\(^{312}\) Similarly, the Federal Tort Claims Act allows the federal government of the United States to be sued for tort actions of its employees.\(^{313}\) Art. 32 of the Law on the Basics of State Guarantees of Gender Equality also holds that “officials of state bodies, local self-governance bodies, or state-owned and communal organizations with regulatory, administrative, or managerial functions” will be held liable for any breaches of Kyrgyz law on gender discrimination. While the U.S. and the English Monarchy have only exposed their governments to civil liability, such actions are effective in combating governmental abuse.

The Articles of the Syrian Penal Code easily lend themselves to absolute governmental immunity for any government agent or official. They should be amended to remove the special protections of government agents, especially in cases where the agent is acting pursuant to an illegal order. Indeed, agents should not be able to escape liability for their actions merely because they or their superior made a mistake of fact or failed to investigate the legality of their orders. A corollary act that allows agents of the Syrian government to be sued in tort for harms caused to citizens that were outside the course of their agency for the government would also assuage the likelihood of governmental abuse.


4 See id.

5 “Syria’s Chemical Weapons: Can it Be Done?,” The Economist, October 5, 2013.


8 Penal Code of Syria, art. 37.


11 Protocol No. 6 to the ECHR, article 1.2 (1983).


14 Universal Declaration on Human Rights art. 3 (1948); ICCPR art. 6(1) (1976).

15 ICCPR art. 6(1), (2).

16 Joseph et al. ¶ 8.22.


18 Id.

19 Joseph et al. at ¶ 8.22.

20 ICCPR Article 7, General Comment 20, ¶ 44.

21 ICCPR art. 6(5); see also Johnson v. Jamaica, ¶ 10.3, Communication No. 592/1994, U.N. Doc. CCPR/C/56/D/588/1994 (1996) (holding that a death sentence for a crime committed at age 17 violated art. 6(5)).
24 ICCPR art. 6(4).
25 INTERNATIONAL CRIMINAL COURT RULES OF PROCEDURE AND EVIDENCE (RPE) 145 (2002) [hereinafter ICC]; Statute of the International Criminal Tribunal for Rwanda art. 23(1) [hereinafter ICTR]; Statute of the International Criminal Tribunal for the Former Yugoslavia art. 24(1) [hereinafter ICTY].
27 ICC RPE 145(1)(b); ICTR RULES OF PROCEDURE AND EVIDENCE (RPE) 101(B), ICTY RPE 101(B).
29 ARCHBOLD INTERNATIONAL CRIMINAL COURTS: PRACTICE, PROCEDURE, & EVIDENCE ¶¶18-64 to 18-79 (Karim Khan et al. eds., 2005).
30 Id. at ¶¶ 18-49 to 18-63.
32 ICC RPE 145(3).
33 ICCPR art. 6(1).
34 ICCPR art. 6(2).
35 ICCPR art. 6(4).
36 Abolitionist for all Crimes: Albania, Andorra, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Belgium, Bhutan, Bosnia-Herzegovina, Bulgaria, Burundi, Cambodia, Canada, Cape Verde, Colombia, Cook Islands, Costa Rica, Cote D’Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Djibouti, Dominican Republic, Ecuador, Estonia, Finland, France, Gabon, Georgia, Germany, Greece, Guinea-Bissau, Haiti, Holy See, Honduras, Hungary, Ireland, Iceland, Italy, Kiribati, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia, Malta, Marshall Islands, Mauritius, Mexico, Micronesia, Moldova, Monaco, Montenegro, Mozambique, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Niue, Norway, Palau, Panama, Paraguay, Philippines, Poland, Portugal, Romania, Rwanda, Samoa, San Marino, Sao Tome And Principe, Senegal, Serbia (including Kosovo), Seychelles, Slovakia, Slovenia, Solomon Islands, South Africa, Spain, Sweden, Switzerland, Timor-Leste, Togo, Turkey, Turkmenistan, Tuvalu, Ukraine, United Kingdom, Uruguay, Uzbekistan, Vanuatu, Venezuela. Amnesty International USA, Abolitionist and Retentionist Countries, http://www.amnesty.org/en/death-penalty/abolitionist-and-retentionist-countries.
37 Abolitionist for Ordinary Crimes Only: Bolivia, Brazil, Chile, El Salvador, Fiji, Israel, Kazakhstan, Peru. Id.
38 Abolitionist in Practice: Algeria, Benin, Brunei, Burkina Faso, Cameroon, Central African Republic, Congo (Republic of), Eritrea, Ghana, Grenada, Kenya, Laos, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mongolia, Morocco, Myanmar, Nauru, Niger, Papua New Guinea, Russian Federation, Sierra Leone, South Korea, Sri Lanka, Suriname, Swaziland, Tajikistan, Tanzania, Tonga, Tunisia, Zambia. Id.
39 States with Capital Punishment: Afghanistan, Antigua and Barbuda, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belize, Botswana, Chad, China, Comoros, Democratic Republic of the Congo, Cuba, Dominica, Egypt, Equatorial Guinea, Ethiopia, Gambia, Guatemala, Guinea, Guyana, India, Indonesia, Iran, Iraq, Jamaica, Japan, Jordan, Kuwait, Lebanon, Lesotho, Libya, Malaysia, Nigeria, North Korea, Oman, Pakistan, Palestinian Authority, Qatar, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Saudi Arabia, Singapore, Somalia, South Sudan, Sudan, Syria, Taiwan, Thailand, Trinidad And Tobago, Uganda, United Arab Emirates, United States Of America, Viet Nam, Yemen, Zimbabwe. Id.
41 Id.
42 Id.
885a8eb5c607/ac1500012013en.pdf
45 CRIMINAL LAW OF THE PEOPLE’S REPUBLIC OF CHINA §43.
48 CRIMINAL LAW OF THE PEOPLE’S REPUBLIC OF CHINA §44.
51 STATUTE FOR THE SUPREME IRAQI CRIMINAL TRIBUNAL art. 24(Fifth) (2005).
52 CRIMINAL LAW OF THE PEOPLE’S REPUBLIC OF CHINA §§ 43, 46.
55 Id.
56 Id.


99 Joseph et al. ¶ 8.22.
101 ICCPR art. 8(3)(a)-(b).
102 http://www.legislation.gov.uk/ukpga/Geo6/12-13-14/94/section/16/enacted
104 Penal Code of Syria, art. 45.
105 Penal Code of Syria, art. 63.
106 Penal Code of Syria, art. 49.
108 Id.
121 See ICCPR art. 14(3)(d); ICTY art. 21(4)(d); ICTR art. 10(4)(d).
122 Id.
123 Id.
125 Id.
126 Id.
127 See, e.g. ICC art. 63(2).
128 ICC art. 63(2), Rules of Procedure and Evidence of the ICTY, r. 80(B), Rules of Procedure and Evidence of the ICTR, r. 80(B), East Timor Regulation 2000/30, s.5 (as amended by Regulation 2001/25), Rules of Procedure and Evidence of the SCSL, r. 80(B).
129 Rules of Procedure and Evidence of the SCSL, r. 80(B).
130 Prosecutor v. Barayagwiza, Decision on Defence Counsel Motion to Withdraw, November 2, 2000, paras 5-7.
133 Id.
135 HRC General Comment 13¶ 11.
136 Id.
137 Criminal Procedure Code of the Russian Federation 208.5.
138 Criminal Procedure Code of the Russian Federation, Article 247.4
139 Criminal Procedure Code of the Russian Federation, Article 247.2
140 South Africa Criminal Procedure Code, Article 159.
141 Id. Article 160(a)
142 Id. Article 160(d)
143 Malaysia Act 593.137(5); German Criminal Procedure Code, Article 232 (Strafprozessordnung 232); Japanese Criminal Procedure Code, Article 133.
144 Id.
146 Id.
147 Id.
150 Id.
154 ICCPR, Article 14(3)(g).
155 ACHR, Article 8(2)(g).
156 Statute of the ICTY, Article 21(4)(g).
157 Statute of the ICTR, Article 20(4)(g).
158 Statute of the ICC, Article 55(1)(a).
159 Id., 67(1)(g).
164 German Code of Criminal Procedure, 55(1).
166 Malaysian Code of Criminal Procedure, 173(ha)(iii).
167 Penal Code of Syria, art. 400.
168 Id.
173 Id. at Art. 19(2)
174 Id. at Art. 19 (3).
178 Id.
181 Id.
184 Id.
185 Id.
187 Id. at 722, 730-2.
188 Article 5 GG, Grundgesetz .
189 See Sections 84-91, 130, 185-200 of the German Federal Penal Code [Strafgesetzbuch, StGB]. Switzerland has also convicted citizens for denying genocide. See “Turkish politician fined over genocide denial,” SwissInfo.ch, available at http://www.swissinfo.ch/eng/archive/Turkish_politician_fined_over_genocide_denial.html?cid=977094.
190 Id.
195 Id.
196
198 Even the United States, perhaps the most speech-permissive regime, restricts words that” by their very utterance inflict injury or tend to incite an immediate breach of the peace.” Chaplinsky v. State of New Hampshire, 315 U.S. 568, 572 (1942)(allowing for a statute forbidding insults); see also Virginia v. Black, 538 U.S. 343, 359 (2003)(allowing for bans of threatening, violence-inciting language).
199 See Art. 19 of ICCPR.
203 See, e.g., Arizona Revised Statue § 12-2930 (regulating time, place, and manner of protest activities at funerals).
205 Art. 26, ICCPR. See also Art. 2, Universal Declaration of Human Rights.
213 Id.
215 Id.; see also Jennifer L. Ulrich, “Confronting Gender-Based Violence with International Instruments: Is A Solution to the Pandemic Within Reach?,” 7 Ind. J. Global Legal Stud. 629, 631 (2000) (“Violence against women, in its varied forms, sends an implicit but clear message that women must refrain from claiming the power that would make them equal or suffer adverse personal repercussions.”)
216 Id.
217 Id.
218 189 countries have signed the Beijing Declaration.
222 Id. at 9.
224 Graph Taken from “In Pursuit of Justice,” 33.
225 Only Egypt, Jordan, and Morocco, have laws addressing domestic violence out of Algeria, Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libyan Arab Jamahiriya, Morocco, Occupied Palestinian Territory, Oman, Qatar, Saudi Arabia, Syrian Arab Republic, Tunisia, United Arab Emirates, and Yemen. See “In Pursuit of Justice,” 136.
226 Id. at 24, 137.
227 Algeria, Iraq, Morocco, and Tunisia address sexual harassment in either their criminal or civil codes. See “In Pursuit of Justice,” 136.
228 Id. at 17, 136.
229 Id.
230 Id. at 33.
232 Id. See also Act IV of the 1978 on the Criminal Code (Hungary), Section 197 (defining rape to include when perpetrator is spouse), Section 175/B (penalizing human trafficking).
233 Id.
236 Id.
237 Id.
238 Id.

Id.


Id.


Art. 473.

Arguably, Syria has repealed its practice of honor killings through another act, Legislative Decree No. 37 of 1 July 2009, but these provisions still need to be excised from the penal code.

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“In Pursuit of Justice,” 33.

Law on Gender Equality, PA BiH no. 56/03 (Bosnia-Herzegovina), May 21, 2003.


Included in the Document Drive.


Id.

Id. at Art. 4.


261 Sec. 176, Criminal Code (Germany) (2009) (“Whosoever engages in sexual activity with a person under fourteen years of age (child) or allows the child to engage in sexual activity with himself shall be liable to imprisonment from six months to ten years.”).

262 Sec. 151, Canada Criminal Code C-46 (2010).

263 Law on Suppression of Human Trafficking and Sexual Exploitation (Cambodia) NS/ RK M/0208/005, 2008.

264 Ch. 6, Sec. 4, Penal Code (Sweden)(1999).

265 Ch. 20, Sec. 6, Penal Code, Law No. 39/1889, as amended up to Law No. 650/2003 (Finland).

266 Examples taken from The Protection Project, supra note 98.

267 Article 609-sexies, Italian Penal Code (1938, amended 2009) (“When the crimes prescribed in Articles 609-bis, 609-ter, 609-quater and 609-octies are committed against persons under fourteen years ... the offender cannot invoke ignorance of the age of the offended person as an excuse.”).

268 Examples taken from The Protection Project, supra note 98.

269 Child, Youth and Family Enhancement Act, Chapter C-12, Revised Statutes of Alberta 2000.


272 Examples taken from The Protection Project, supra note 98.

273 Section 1 (1), Children’s Act, Act No. 38 of 2005 (South Africa).


284 “In Pursuit of Justice,” 20;


286 Decreto No. 87-2005, Ley de Acceso Universal y Equitativo de Servicios de Planificación Familiar y su integración en el Programa Nacional de Salud Sexual y Reproductiva [Law on Universal and Equal Access to Family Planning Services and its Integration into the National Program on Sexual and Reproductive Health], DIARIO DE CENTRO AMÉRICA, No. 17, Apr. 27, 2006 (Guat.).


292 Id.
293 Id.
294 “In Pursuit of Justice,” 45.
298 Id.
302 Id.
303 Id.
304 Id.
307 Id.
308 Id.
309 Id.
313 28 U.S.C. § 2671 et seq.