

## **Memorandum to the Syrian Government**

**January 31, 2002**

### **Decree No. 50/2001: Human Rights Concerns**

Decree No. 50/2001, promulgated on September 22, 2001, provides for sweeping and unreasonable controls of newspapers, magazines, and other periodical publications, as well as virtually anything else printed in Syria, from books to pamphlets and posters. Provisions of the decree apply to publishers, editors, journalists, authors, printers, distributors, and bookstore owners, and subject them to imprisonment and steep fines for violations of the law.

Many of the decree's provisions seriously compromise the exercise of the right to freedom of expression, which the Syrian government is pledged to uphold as a party to the International Covenant on Civil and Political Rights (ICCPR). In April 2000, the United Nations Human Rights Committee published its Concluding Observations on the government's second periodic report on compliance with the ICCPR. Among other concerns, the committee noted that the activities of human rights defenders and journalists "remain subject to severe restrictions" which are "incompatible with freedom of expression and opinion as provided for in article 19 of the Covenant." The committee called on the Syrian authorities to "protect human rights defenders and journalists against any restriction on their activities and ensure that journalists can exercise their profession without fear of being brought before the courts and prosecuted for having criticized government policy." Decree No. 50/2001, rather than advancing such protection, undermines it to a significant extent.

The decree prohibits the publication of information on a wide range of topics—including articles and reports about "national security" and "national unity"—and punishes the publication of "falsehoods" or "fabricated reports" with prison terms of up to three years and fines of 500,000 to one million Syrian lira (U.S. \$9,456 to \$18,913). Imprisonment of up to three months is the penalty for publishing a periodical without a license from the prime minister, who is empowered to deny licenses "for reasons he deems to be related to public interest." Periodicals that are not licensed as political publications are prohibited from publishing "political" articles. The publication of "propaganda" financed "directly or indirectly" with funds from foreign governments or foundations is punishable by prison terms of up to one year. Convictions for libel, slander, or defamation carry a maximum one-year prison sentence.

Implementation of this decree has the potential to stifle the free flow of information and opinions in Syria, and to deny citizens the right to be fully informed in this era of almost

instantaneous global information exchange. Human Rights Watch therefore strongly urges the government to revoke provisions of the decree that criminalize peaceful exercise of the right to freedom of expression, and to amend other problematic provisions that constitute unreasonable interference with the internationally recognized right to freedom of expression. Any restriction on the exercise of freedom of expression should be specific and narrowly defined, which is not the case with the vague and highly interpretive language in articles 29, 51a, 51b, and 55b of the decree. We urge the revocation or revision of these and other provisions of the law, noted below, that will have the effect, intended or otherwise, of unreasonably limiting the diversity of information in newspapers, magazines, books and other published material in Syria, and imposing a daunting regime of censorship on journalists, writers, editors, and publishers.

## **A Comprehensive Monitoring Regime**

The decree provides for the executive branch's close monitoring of all publications printed in Syria. It requires printing companies to maintain registers of everything printed and to provide copies on the day of publication to the Ministry of Information. This rule applies to owners of printing presses in Syria, which are defined in article 2c of the decree as "every machine or apparatus used in the reproduction of words, pictures, signs and figures onto paper, cloth or other material, not including photography equipment, typewriters used in business institutions or photocopying machines."

Printers must keep "a serially numbered register showing the date and title of every publication, its author's name, and the number of copies printed."<sup>1</sup> On the day of publication, printers must submit copies of the document to the Ministry of Information and indicate the number of copies that were printed.<sup>2</sup> Article 8 of the decree states that each printed publication must include the date of printing and the serial number from the company's register, adding that this measure applies "to all forms of publications, pamphlets produced by any printing method, graphics, pictures, [and] musical scores." Noncompliance with any of these provisions can result in prison terms of ten days to three months and fines of 10,000 to 50,000 Syrian lira (U.S. \$190 to \$950). In a highly disproportionate punishment, the decree further permits courts to order the temporary or permanent closure of printing businesses in cases of "repetition of offenses leading to breach of public security or national sovereignty."<sup>3</sup>

## **Prohibited Topics and Other Restrictions**

The decree gives authorities enormous latitude to restrict journalists, writers, and others from exercise of the right to freedom of expression. Article 51a criminalizes the publication of "falsehoods" and "fabricated reports." Violators are punished with imprisonment of one to three years and/or fines ranging from 500,000 to one million Syrian lira (U.S. \$9,456 to \$18,913), sums that represent enormous financial penalties in Syria. The article adds that the maximum penalties "shall be imposed if such acts have been committed by reason of ill-will, or caused public unrest, or harm to international relations, offense to state dignity, national unity, the

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<sup>1</sup> Article 6. This provision of the decree further stipulates that the register "shall be shown to the administrative or judicial authority on demand."

<sup>2</sup> Article 7.

<sup>3</sup> Article 43a.

morale of the army and the armed forces, or caused some damage to the national economy and the currency.” None of the broad terms used in article 51a are defined in the decree. The very vagueness of the terms allows broad interpretation so as to justify sweeping restrictions if authorities so wish.

A list of topics banned from publication is set forth in article 29 of the decree:

- Information about the investigation and charges in misdemeanor and criminal cases “prior to their being delivered by the court in an open session.”
- “Details of cases of libel, defamation, slander, or calumny.”
- “Details of secret trials and hearings of cases dealing with divorce, separation, hereditary disputes and those banned by courts, and reports made by forensic doctors in crimes of immorality.”
- “Confidential reports of the National Assembly.”
- “Articles and reports about national security, national unity, details of the security and safety of the army, its movements, weapons, supplies, equipment and camps, with the exception of information issued by the Ministry of Defense and approved for publication.”
- “Books, correspondence, articles, reports, pictures and news affecting the right to privacy.”

These prohibitions appear designed to rule out investigative reporting and commentary on a wide range of cases brought before Syria’s judicial system – including trials held behind closed doors, and litigation involving libel and defamation – as well as issues under consideration in the elected legislature, two important spheres of government activity where the public has a right to know. Article 14(1) of the ICCPR permits exclusion of the public and press “from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the Parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.” But the decree reverses the logic of this international standard by making the banning of information the rule and disclosure the exception.

The list of banned subjects also ensures that writers will exercise restraint with respect to information and analysis about controversial social and political issues. The term “national unity” is exceedingly vague and flexible, and can be applied to virtually any subject of domestic political concern. Similarly, the elasticity of the phrase “national security” will require journalists and others to exercise extreme caution on all subjects related to foreign policy and the Syrian military, thereby having a chilling effect on press freedom.

Violations of articles 51a and 29 can result in the suspension of a publication for a period ranging from one week to six months. If a publication violates these provisions twice within a year, the prime minister may, on the recommendation of the information minister, cancel its license.<sup>4</sup>

Article 19(3) of the ICCPR allows restrictions on the right to freedom of expression only in limited circumstances, namely in the interest of “respect of the rights or reputations of others” or “the protection of national security or of public order (*ordre public*), or of public health or morals.” Such restrictions must be “provided by law” and be “necessary.” These exceptions are narrowly framed, and the burden of demonstrating their validity rests with the state.

It is widely accepted that restrictions on freedom of expression must be proportional to the purpose sought to be achieved in any given case, and that permissible interference in the exercise of the right to freedom of expression must be interpreted narrowly and specifically. For example, restrictions for the purpose of protecting national security are permitted only in serious and specific cases of political or military threat to the entire nation. Similarly, limitations on expression imposed to protect public order (*ordre public*) must also be specific and proportional.

The prohibited topics in the decree appear designed to impose a regime of self-censorship on the press and other publications, and to prevent journalists and authors from writing about a wide range of domestic and foreign policy issues. Vague terms are left unexplained, inviting arbitrary interpretation by authorities. The decree wrongly places the burden on writers, editors and publishers to guess what the state might mean by “national unity” and “national security,” or to potentially face imprisonment, fines, suspension, confiscation, and closure. The internationally recognized norms of free expression require that the state justify any content ban by showing that restrictions are necessary to achieve a specific and legitimate purpose within one of the enumerated exceptions.

### **Ban on “Political” Articles**

The decree prohibits periodicals that are not licensed as political publications from publishing “political” articles, and prescribes fines ranging from 20,000 to 50,000 Syrian lira (U.S. \$380 to \$950) for violations, pursuant to article 44d. This provision amounts to blanket government censorship. It violates international standards of freedom of expression and should be repealed. Privately owned periodicals, including those published by professional associations and other independent nongovernmental organizations in Syria, should have the right to publish information, analysis, and commentary on political issues without government interference.

### **Prohibition of Foreign-Funded “Propaganda”**

Article 55b of the decree prohibits “propaganda publications” financed “directly or indirectly” by foreign companies or foundations. The term “propaganda” is not defined in the decree. Violators are subject to prison terms of six months to one year as well as fines “equal to twice the payment received.” Article 55a provides for even harsher sanctions for anyone who, “through contacts with a foreign country, has received payment from the said country, its

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<sup>4</sup> Article 22(3).

representatives or agents, in return for propaganda publications.” Violators of article 55a face imprisonment of six months to two years and fines ranging from 50,000 to 100,000 Syrian lira (U.S.\$950 to \$1900).

These provisions suggests that authorities have wide discretion to prosecute members of independent civil society groups that receive funding from abroad to publish periodicals, reports, or other documents if the content does not meet with government approval. In addition, the prime minister is empowered to cancel the license of any publication if the articles are violated.<sup>5</sup> Syrian nongovernmental organizations (NGOs) should have the freedom to seek and receive financial support from abroad for the purpose of peaceful civic activities, including the collection and dissemination of information in their own publications. Articles 55b and 55a contradict key principles that have gathered wide international acceptance and are enshrined in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.<sup>6</sup>

### **Broadening the Scope of Prosecution for Political “Crimes”**

Two provisions of the decree dangerously open the door for the prosecution and imprisonment of journalists, writers, and others who publish and distribute materials that the state links to instigation of, or praise for, crimes or attempted crimes. The provisions are problematic because peaceful political activity remains criminalized in Syria. As of this writing, ten outspoken activists who peacefully advocated reform and democracy—including members of parliament, lawyers, and a prominent academic—are facing prosecution in the Damascus criminal court and the state security court for alleged political offenses. The charges against the two parliamentarians, Mamoun al-Homsi and Riad al-Seif, include “seeking to change the constitution through illegal means,” “inciting inter-religious division,” “defamation” of state institutions, and “organizing subversive meetings” and “gatherings aimed at causing disorder.”<sup>7</sup> The decree would allow authorities to prosecute others for influencing or supporting political activists who are under arrest or on trial for these or similar spurious criminal charges.

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<sup>5</sup> Article 22(4).

<sup>6</sup> Article 13 of the declaration states that everyone “has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means.” Article 6 of the declaration states: “Everyone has the right, individually and in association with others:

(a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;

(b) As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms;

(c) To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.”

<sup>7</sup> The trials of independent parliamentarians Mamoun al-Homsi and Riad al-Seif in the Damascus criminal court commenced in October 2001. The other eight defendants have not yet been formally charged.

Article 52a of the decree states: “Any person who instigates others through publications which are distributed, sold, prepared for sale, displayed in public places or streets, with such publications directly resulting in an attempted crime, shall be punished by the same penalty imposed upon the accomplice of the said crime.” This provision, for example, could implicate writers who advocate freedom of association for all political groups in Syria if such calls were followed by the arrest and prosecution of individuals for carrying out peaceful meetings and other activities that authorities deemed “criminal.” Even more alarming is article 52b, which clearly can be read as prohibiting anyone from supporting or defending the activities of political detainees or prisoners. Article 52b states: “Any person who praises acts of crime, plunder, looting or arson in a manner which instigates or encourages repetition of such crimes shall be imprisoned for a period ranging from six months to three years and shall pay a fine ranging from 100,000 to 200,000 Syrian lira [U.S.\$1900 to \$3800].”

The government has a legitimate interest in discouraging and suppressing the publication and distribution of written material that constitutes incitement to violence or commission of internationally recognized criminal offenses. Peaceful political activity, however, should not be subject to criminal prosecution under Syrian law and supporters of such activity—including writers and others who defend those who have done no more than exercise basic human rights such as freedom of association and expression—should not be liable to prosecution under articles 52a and 52b.

### **Punishment for Publications Advocating Basic Political Reform**

Article 56d states that licenses of publications that “call for changing the state constitution through unconstitutional means” will be revoked, and all persons responsible for such publications—presumably the owner(s), directors, and chief editors—shall also be subjected to “the punishments stipulated in the laws in force.” Syria’s constitution reserves dominance of the country’s political system for the ruling Arab Ba’th Socialist Party, and critics who have advocated a more democratic form of governance have been charged with the serious criminal offense of attempting to “change the constitution through illegal means.” It is important to note that the term “illegal means” can encompass acts that are not violent and do not constitute incitement to violence. Article 56d thus virtually ensures that no publication in Syria will dare to publish articles that advocate constitutional change that would alter the ruling party’s role.

### **Imprisonment for Libel, Slander, or Defamation**

The decree criminalizes libel, slander, and defamation. Anyone found guilty of these offenses faces fines ranging from 100,000 to 200,000 Syrian lira (U.S. \$1,891 to \$3,783) *and* prison terms of two months to one year.<sup>8</sup> Penalties for those convicted of libel, slander, and defamation should be resolved by civil litigation rather than criminal prosecution, and such penalties should exclude imprisonment.

In addition, article 29 of the decree bans the publication of information about these cases, which is an outright violation of freedom of expression.

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<sup>8</sup> Article 49a.

## **Pre-Distribution Censorship of Foreign Publications**

Distributors and sellers of foreign periodicals must submit copies in advance of market distribution to the Ministry of Information, pursuant to article 9 of the decree. The ministry is empowered to ban the entry or circulation of these materials if “it is found that they infringe upon national sovereignty and security or offend public morality.”<sup>9</sup> This vague language provides authorities with virtually unlimited discretion to limit the access of Syrians to information contained in foreign publications. Although many foreign newspapers and magazines are available on the web, the limited use of the Internet in Syria makes this sort of censorship even more troubling.

## **State Controls on Newspapers and Other Periodicals**

### *1. Government Licensing*

The decree grants to the prime minister the power to license newspapers and other periodical publications, including those issued by “legally established political parties.” Article 12(a) permits the prime minister to “refuse to grant a license for reasons he deems to be related to public interest.” The term “public interest” is not defined in the decree. Article 12 (b) suggests that special conditions may be attached to the licensing of daily political newspapers. It states that such newspapers “must observe all instructions related to the preparation, specifications, editors, correspondents and news agencies, to be defined by the minister’s decision.”

Nongovernmental organizations, professional associations and unions are exempt from the licensing requirements, but the decree does not indicate if Syrian NGOs that have not been granted official legal status will be permitted to publish magazines or other periodicals. Such groups should be allowed to publish periodicals freely, without restrictions.

The publication of unlicensed periodicals leads to immediate confiscation by order of the information ministry, and prosecution of the owner, director, chief editor and printer, with punishment of imprisonment ranging from ten days to three months and/or fines from 10,000 to 50,000 Syrian lira (U.S. \$190 to \$950).<sup>10</sup>

### *2. Unreasonable Government Regulation of Ownership and Management of Newspapers and Other Periodicals*

The decree unreasonably restricts ownership of newspapers and periodical publications to persons who have been Syrian Arab nationals for longer than five years, are over twenty-five years old, and who have held a university degree or a periodical license as of September 22, 2001 (article 16). It also sets forth qualifications for directors and chief editors. Directors are required to have university degrees or to have practiced as journalists for over six years (article 18); chief editors must have university degrees, practiced journalism for ten years, or served as chief editors as of September 22, 2001 (article 19).

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<sup>9</sup> Article 10.

<sup>10</sup> Article 44.

All periodical publications are required to obtain Information Ministry approval in order to change legally the owner, director, or chief editor.<sup>11</sup>

Newspapers, magazines and other periodicals in Syria should be permitted to operate freely, without government interference, including the right to select and replace owners and key staff of their choice, without the need for fulfillment of qualifications mandated by the state and prior approval of changes by a government ministry.

### *3. Discriminatory Provisions*

Article 16 of the decree states that the owners, directors, and chief editors of periodical publications must be Syrian Arabs, suggesting that members of the Syrian Kurdish minority, including stateless Kurds born in Syria, are not permitted to own newspapers and other publications or hold senior positions. If so—and this urgently needs to be clarified—the exclusion of Kurds, who ethnically are not Arabs, constitutes not only a blatant violation of article 2.1 of the ICCPR but also of article 26, which establishes the right to equal protection before the law for all persons. In addition, the decree leaves unclear whether newspapers, periodicals, and other materials can be published in the Kurdish language. Syria’s obligations under article 27 of the ICCPR grant specific rights to minorities, including the right to use their own language.<sup>12</sup>

Article 16 also bars ownership of a periodical—and the positions of director and chief editor—to anyone who has been sentenced to a criminal offense, stripped of civil or political rights, or dismissed from a job. This status is shared by, among others, hundreds, possibly thousands, of peaceful Syrian political activists who have been imprisoned often for long periods terms following criminal convictions on vaguely worded charges in the state security court. The procedures and practices of this court do not meet international fair trial standards and its decisions cannot be appealed to a higher tribunal. In sentencing political activists, the court typically imposed a supplemental legal sanction: the deprivation of civil rights from the day of sentencing to ten years following the expiration of the sentence. The application of article 16 effectively prohibits former political prisoners from owning newspapers or other periodicals, or assuming key roles as directors or chief editors of these publications.

Article 16 is grossly discriminatory and should be repealed.

### *4. State Regulation of Journalists*

Print and broadcast journalists, including researchers and translators working in the media, are required to be registered in the Journalists Union in order to obtain press cards issued

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<sup>11</sup> Article 20a states: “Prior to effecting any replacement relating to the director, proprietor or chief editor of the periodical publication, a notification should be submitted to the administrative authority. The said replacement shall be temporary and for a period not exceeding three months from the date of its submission, and shall be legally valid when approved by that authority.” Article 20b grants to any person whose application is refused the right to appeal the decision to a court of first instance.

<sup>12</sup> Article 27 of the ICCPR states: “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.”

by the information minister and valid for only one year (article 27 and 28). Journalists should not be required to join Syria's Journalists Union in order to practice freely their profession. First, such a requirement is at odds with the right of anyone to express himself or herself "orally, in writing or in print," as provided for in article 19(2) of the ICCPR. Second, Syrian journalists, researchers, translators and others involved in professions related to the press and publications should be free to organize their own independent professional bodies—free from state or Ba'th Party control—in line with the right to freedom of association enshrined in article 22(1) of the ICCPR.

The decree also includes a troubling provision that requires journalists to reveal sources to the information minister under certain conditions or forfeit their press card. Article 28c stipulates the following: "A journalist shall not be asked about the source of his information, except in the case of information attributed by him to some responsible source. The Minister may withdraw a journalist's card in the event of his refusal to disclose that source." The vague term "responsible source" is not defined in the decree, and obviously lends itself to arbitrary interpretations.

##### *5. Mandatory Publication of Government Replies*

The decree requires that newspapers and other periodicals publish, free of charge, "every correction or reply sent by ministries, public administrations or official institutions relating to articles or news published about their work, to be included in the first issue following the receipt of the said reply or correction, on condition that it is not published in other publications earlier."<sup>13</sup> For privately-owned publications, in particular, decisions concerning what to publish should be guided by editorial policy and judgment, not enforced by command of the state. The requirement of printing "every" correction and reply presumably rules out periodicals choosing to summarize such statements, and therefore has the potential to transform the pages of independent publications into mouthpieces for government officials, particularly if the replies are lengthy. Syrian government control of major daily newspapers, radio, and television gives officials ample means to challenge and dispute assertions and issues published in independent publications.

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<sup>13</sup> Article 30.