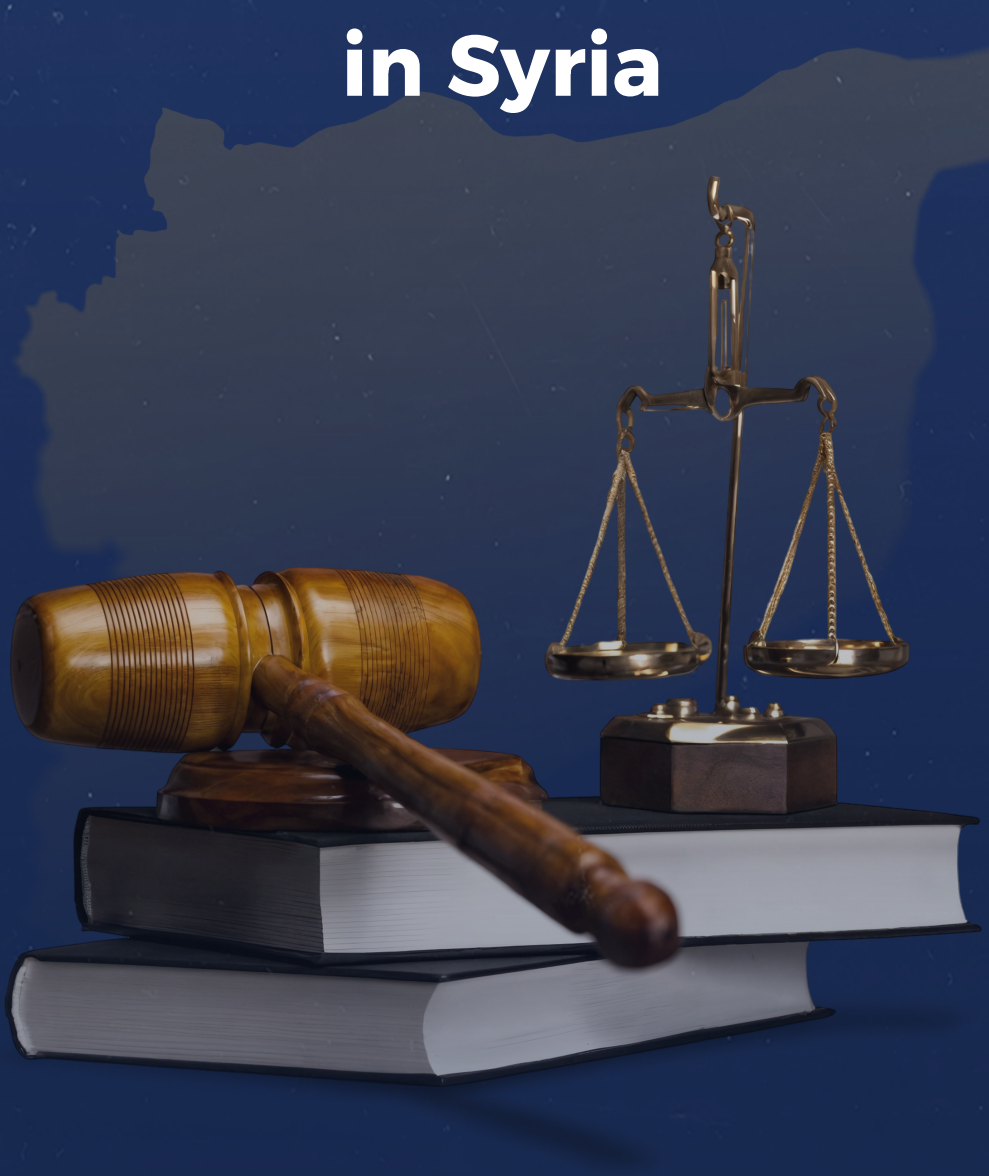
Laying the Groundwork for Judicial Reform in Syria



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لدعم الانتقال الديمقراطي في سوريا

THE DAY AFTER
Supporting Democratic Transition In Syria

The Researchers

Lead Researcher:
Ayman Abu Hashem
(Attorney at Law)

Researcher:
Riad Ali
(Judge)

DAY Team

Director of programs
Anwar Majanni

Executive Director
Moatasem Al-Sioufi

tda-sy.org

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Executive Summary

The central focus of this research is to examine the requirements and conditions for judicial reform in Syria. It has led to a deep exploration of the broader justice sector, guided by a theoretical framework rooted in lived realities. The study set out to identify and understand the full range of challenges facing the Syrian judiciary, whether inherited from the early formation of the modern Syrian state, which was shaped by military coups, political instability, and shifting constitutional frameworks, or produced during the decades of Baath Party rule, when the judiciary was subordinated to executive authority and the security for over fifty years. This trajectory reached a grim climax during the Syrian revolution and the brutal war waged by the regime against its own people, a period in which the judiciary became, on one level, a tool to legitimize state and security force abuses, and on another, a toothless body constrained, and unable to either overcome nor contest its limitations.

To ensure methodological rigor, the study returned to the historical context of the Syrian judiciary's formation and evolution, aiming to better understand its structural deficiencies and to lay the groundwork for a Syrian-led vision of judicial reform with a technical and operational focus. It sought to examine the judiciary's local realities and how they have shifted over the course of the conflict, while also drawing on comparative experiences of judicial reform in transitional settings that could offer valuable insights for Syria. These dimensions, which are both conceptual and practical, were explored through a prelude and four main chapters, the final of which presents the study's central proposal: a defined vision for reforming the Syrian judiciary, accompanied by its core findings, recommendations, and proposed interventions.

The introductory chapter of this study, entitled Understanding the Nature, Structure, and Jurisdiction of the Syrian Judiciary, is divided into two sections: the first, The Formation and Current Reality of the Judiciary under Ba'athist Rule, and the second, Judicial Architecture: Types, Structures, and Jurisdictions.

Understanding the factors that shape the judiciary, and the political, social, and economic environment surrounding it, requires first tracing the constitutional and legal foundations of judicial authority, as well as the transformations that accompanied the emergence and development of the modern Syrian state established within its current borders in 1920 under the Treaty of Sèvres, before which Syria had been part of the Levant under Ottoman rule for four centuries. Shortly after the collapse of Ottoman control, a constitution of 147 articles was approved, but it was suspended just days later following the entry of French forces into Syria and the imposition of the French Mandate.

The 1920 Constitution included provisions outlining the formation and powers of the Supreme Court. Chapter Ten specifically addressed the judiciary, affirming the independence of the courts and safeguarding them against interference. It stipulated that the composition of the courts, their levels, jurisdictions, and powers, as well as the process of electing and appointing judges, their ranks, promotion mechanisms, and disciplinary procedures, would be governed by a special law applicable across all provinces. The 1920 Constitution also prohibited the formation of exceptional courts and committees that could, in an absolute sense, deprive the regular judiciary of any part of its jurisdiction. In 1930, the French High Commissioner declared a constitution based on the 1928 draft. This version offered little detail on the judiciary. It remained in force until Husni al-Za'im seized power at the end of March 1949, suspending the constitution and dissolving parliament. In August of that year, a second military coup took place, led by Sami al-Hinnawi. Four months later, Adib al-Shishakli carried out his first coup.

During al-Hinnawi's tenure, the Constituent Assembly drafted a new constitution on 5 September 1950. This document left a lasting imprint on Syrian political life and included key principles related to the judiciary. In this context, Article 10 reaffirmed the ban on establishing exceptional courts and stated that civilians may not be tried before military courts. It affirmed that the judiciary is an independent authority, and that judges are independent and subject only to the law in their rulings. This constitution also enshrined a core principle:

the supremacy of constitutional provisions over domestic legislation, and the prohibition of enacting laws that contravene the constitution. If a law were referred to the Supreme Court on grounds of unconstitutionality, its enforcement would be suspended until a ruling was issued. This principle serves to protect judicial independence from interference or overreach by the legislative or executive branches, as the rules establishing the judiciary are constitutional in nature and may not be circumvented by ordinary law or decree.

The 1950 Constitution remained in effect until the union between Syria and Egypt, at which point a temporary constitution of 73 articles was issued in March 1958. On 30 September 1961, Judicial Authority Law No. 98 was issued, which is still still in effect today. However, after the Ba'ath Party took power on 8 March 1963, it amended this law in a way that subordinated the judiciary to the executive rather than preserving its independence. To consolidate its control over the judiciary, especially in matters touching on the structure of state authority, the Ba'ath Party created a range of exceptional courts and committees that stripped the ordinary judiciary of its role. These included the exceptional military courts of 1965, the Supreme State Security Court (SSSC), military field courts of 1968, and, later, the Counter-terrorism Court established in 2012. A review of the cumulative changes to the constitutional and legal framework under Ba'athist rule reveals that the judiciary was significantly undermined by executive overreach, with infringements on judicial independence codified and legitimized through provisions that explicitly permitted such interference.

The second part of the introductory chapter addresses the structure of the Syrian judicial system, types of courts, and their jurisdictions. It is essential to clarify the structure of the judiciary and its components, especially given the diversity of jurisdictions and the differing levels of authority assigned to each. This was done via a general overview of the Syrian judiciary, as follows:

01 The regular judiciary, which is subordinate to the Supreme Judicial Council. Its work is governed by Judicial Authority Law No. 98 and its amendments, and includes civil and criminal courts, as well as personal status courts.

02 The administrative judiciary (the State Council), which has both judicial and advisory branches. It operates under State Council Law No. 32 of 2019, which replaced Law No. 55 of 1959.

In addition to these, there are the military courts, real estate courts, and a range of exceptional courts and committees.

In this chapter, the study observes how the Syrian experience under Ba'athist rule mirrored that of totalitarian regimes, particularly in the reduction of the powers of ordinary court and the parallel expansion of exceptional judicial authorities. This trend was reinforced through laws and decrees that violated the constitution and fundamental legal principles, and by establishing exceptional courts and committees under various names, directly subordinate to the executive authority. Syria has a long and bitter history of exceptional courts that deprived many Syrians of their lives, freedom, and property, especially after the Ba'ath Party seized power.

The military judiciary in Syria is, by design, classified as an exceptional judicial body. Its jurisdiction over civilians, expansive discretionary powers, including the ability to determine its own competence in cases, the requirement of a prosecution order from the Ministry of Defense, the direct subordination of military judges to the Minister, and their adherence to military regulations all attest to its exceptional nature. The same applies to the real estate courts, where appointments, transfers, dismissals, and disciplinary actions concerning judges fall under the authority of the Minister of Justice, based on a recommendation from the General Directorate of Cadastral Affairs (GDCA).

The first part of this study addresses the shifting realities of the judiciary during the Syrian revolution and subsequent stages of conflict. It examines the profound transformations that have taken place, both in regime-held areas and in regions under the control of various de facto authorities. To this end, this part is divided into four chapters, each dedicated to monitoring and analyzing these changes within the framework of judicial governance specific to each region.

- The first chapter focuses on the state of the judiciary and courts in areas under the control of the Syrian regime after the 2011 revolution. It finds no significant changes in the structure of the judicial system. The regular judiciary has remained largely unchanged in terms of court types and levels, as have administrative and military courts. However, while the State Security Court was abolished, a new exceptional court was created to handle terrorism cases. Military field courts were recently abolished, with their cases now referred to the military judiciary. The regime also established exceptional committees under Decree No. 66 of 2012 to carry out civil judicial functions, thereby stripping the regular courts of part of their jurisdiction over real estate cases.

- The study shows that the judiciary's role and functions have shifted in ways that serve the regime's interests, particularly by justifying its unlawful practices against the Syrian people. This went beyond the exploitation of exceptional courts and committees, which the study discusses in depth, and extended to the use of the regular criminal courts and public prosecution to ratify illegal security procedures and practices. Several striking examples are cited in this chapter.

- Due to the regime's prioritization of loyalty over competence, integrity, and impartiality—qualities which are fundamental to judicial work—corruption, bribery, and forgery have increased beyond pre-2011 levels. In some instances, networks of judges and lawyers have been implicated in illegal buying, sale, and transfer of property, including through forged sale and purchase contracts, and by accepting forged powers of attorney to carry out property seizures and transfers.

- The second chapter of Part I examines the judicial experience under the Autonomous Administration of North and East Syria (AANES). After the Democratic Union Party (PYD), the Syrian branch of the Kurdistan Workers' Party (PKK), took control of areas in northeastern Syria, it declared the formation of the "Autonomous Administration" in 2012. This administration created a judicial system known as the "Social Justice System" and established "People's Courts." In April 2016, these courts were renamed "Social Justice Bureaus," and a series of laws and decrees issued by the AANES came into effect. These laws are almost entirely copied from Syrian state laws and legislation, with only minor amendments. When no relevant provision exists in these laws, the Syrian state's legal framework is applied.

- The judicial process in each region is overseen by so-called "cadres," who hold authority over judges' work and have considerable influence on the direction of court proceedings. The appointment, transfer, and dismissal of judges are effectively controlled by these cadres, the majority of whom are fighters affiliated with the PKK. The party exerts de facto authority over the region and directly oversees the operation of its institutions.

- From a broader perspective on the judiciary in AANES areas, several factors reflect the fact that judicial practices deviate from the standards of independence and impartiality. These include the multiplicity and complexity of court structures and justice bodies, the inconsistency in legal references between the Social Justice Charter and Syrian law applied in certain courts, and the strong partisan and ideological influence exerted by actors based outside Syria's borders. The most prominent example of this deviation is the sidelining of the civil judiciary, especially in security and political cases, as indicated by the existence of exceptional courts operating outside the legal framework, in a context of partisan control over judicial functions.

- **The third chapter of Part I addresses the experience of the judiciary under the Interim Government and focuses on areas in northern Syria.** The regime's loss of control over certain regions beginning in 2012, along with the disruption of basic public services—including the judiciary—led the de facto forces on the ground to establish alternative judicial systems. These systems were shaped by each controlling military faction's interpretation of judicial functions and the role of courts in resolving disputes between litigants in those areas.

- After the formation of the Syrian National Army (SNA) in these regions, particularly after 2017, efforts began with support from the Turkish government, which exercises significant influence in the area, to reconstruct and unify the judicial system. The resulting legal and judicial framework largely mirrors that used in regime-controlled areas, particularly in the domains of civil, criminal, Sharia, and military justice. However, some branches of the judiciary that existed in Syria before 2011, or still exist today, are absent from this region such as administrative and real estate courts. There is no Supreme Judicial Council in these areas; instead, the Court of Cassation performs its functions.

- This particular arrangement reflects the reality that the subordination of the regular judiciary to the Ministry of Justice in the Interim Government, and of the Military Judiciary Administration to the Ministry of Defense, is nominal rather than actual. Despite the formal unity of law and the legal system, the appointment, transfer, discipline, dismissal, and payment of judges' salaries are all managed through Turkish coordinators. This reveals the weakness of judicial independence and impartiality in these areas, where the judiciary operates under a custodial structure that shapes its procedures, authority, and decisions.

- **The fourth chapter here examines the judicial experience under the Salvation Government, affiliated with Hay'at Tahrir al-Sham (HTS).**
  The research shows that the judiciary in this region is fully subordinate to the Minister of Justice, who also chairs the Supreme Judicial Council. The Council is composed of the Minister, the President of the Supreme Judicial Council, the Attorney General, and three other members, all appointed by the Ministry of Justice.

- The courts are bound to apply "the provisions of Islamic Sharia in accordance with what is indicated in the Qur'an and Sunnah, as determined by Sharia scholars, and with the laws and regulations derived from Islamic Sharia, and with the decisions and circulars issued by the Supreme Judicial Council." A number of laws have been enacted and ratified by the "General Shura Council" with the aim of unifying judicial work in these areas. The courts under the Salvation Government issue penalties including flogging and the death sentence. The Ministry of Justice of the Salvation Government has established a Judicial Institute. Admission to the institute requires a degree in Islamic Sharia; applicants holding only a law degree are not accepted into the court system. There is no law regulating judicial functions, no defined set of judicial rights and duties, and no equivalent to a Judicial Authority Law. This reflects the fact that judges lack any form of immunity from transfer or dismissal and remain vulnerable to the influence of other actors, particularly security and military authorities.

> A dramatic development took place after the completion of the majority of this study, and during the drafting of its final chapters. The sudden collapse of the Assad regime followed by the liberation of Syria, by Hay'at Tahrir al-Sham (HTS) and other factions, was an unexpected turn of events that has reignited urgent and pressing questions about the future shape of the judicial system in the new Syria. How can the disparities and differences between the judicial systems outlined in this chapter be reconciled? This is especially pertinent given that the fourth chapter of Part III, as will be discussed later, examines how the fragmentation of judicial systems across Syria's geography has impacted the rule of law and the justice sector as a whole.

In an effort to shed light on and benefit from experiences of judicial reform in countries that have undergone transitional phases, the second chapter of the research focuses on models of judicial reform in Latin America and Rwanda. These cases were selected due to their relative similarity to the Syrian context, particularly in countries that have endured decades of authoritarian rule or internal conflict and war, and later sought to move beyond that legacy through institutional reform, including of the judiciary. The research reviews the experiences of several Latin American countries including Chile, Argentina, Peru, Colombia, Guatemala, and Venezuela. It finds that while some countries have made tangible progress in judicial reform and human rights protection since the mid-1990s, others are still in the process of developing and implementing such reforms.

Despite the differences between these contexts, judicial reform efforts generally focused on three areas: the first involves changes to the legal framework itself; the second concerns the effective implementation of laws within the judiciary and its supporting institutions; and the third addresses the judiciary's role in public policymaking, as an oversight body and a counterbalance to the actions and decisions of other state authorities.

On the other hand, the experiences of these countries demonstrate that judicial reform is not merely a technical or procedural matter. It is deeply affected by economic and political crises which have had significant repercussions on ongoing reform efforts and have often exposed their vulnerability to instability. Studies on state and political reform in Latin America show varying levels of public trust in the judiciary: trust is relatively high in countries like Chile, Colombia, Costa Rica, and Uruguay, and lower in Ecuador and Paraguay. Guatemala stands out for particularly low public trust in its legislative branch.

Judicial reform efforts across the region have also focused on addressing professional and human resource gaps in the judiciary, challenges that cannot be overcome without building a more capable judicial system. These efforts have targeted technical and administrative shortcomings, the disorganized and underdeveloped nature of judicial infrastructure, and the persistence of outdated investigative practices rooted in authoritarian traditions.

- Judicial reform is also a component of United Nations development programs, often coordinated with justice sectors in countries that have signed legal and judicial reform agreements. These programs support initiatives that strengthen judicial institutions in areas such as combating drugs and crime, and improving women's access to justice. More broadly, the judiciary is expected to help foster a legal and institutional environment that enables trade, finance, and investment. However, the World Bank's experience in Latin America has shown that the judiciary often stands as a barrier to such ambitions, due to inefficiency, slow adjudication, limited access to justice, weak transparency and predictability, and low public confidence in the justice system.

- Amid discussions of judicial reform at the levels of institutions, structures, and jurisdiction, it is important to engage with the experiences of these countries, particularly those that faced conditions similar to Syria, while also recognizing the distinctiveness of Syria's legal and political context. These experiences offer valuable lessons: successful examples can inform reform efforts, while missteps can be avoided. The complexity of the Syrian situation calls for programs supported by international organizations that can play a clear role in shaping the legal and judicial architecture such as the World Bank, alongside the need for coordination and cooperation between the United Nations development system and the justice sector in the emerging Syrian state.

- **To arrive at an accurate and objective diagnosis of the structural and worsening problems of the Syrian judiciary, the first chapter of Part III examines the role of the Constitution, laws, and decrees in undermining judicial independence.**
  The research traces how successive Syrian constitutions imposed during the Ba'ath era included articles with vague or manipulable wording, which enabled the executive authority to issue laws and decrees that emptied these provisions of substance or circumvented them altogether. This facilitated executive dominance over both the legislative and judicial branches. These constitutions neglected to establish firm constitutional parameters for judicial authority; most notably, they left the formation of the Supreme Judicial Council to ordinary laws, which in turn included provisions that significantly weakened judicial independence and enhanced executive control.

One of the most entrenched issues affecting judicial independence was the interference of the executive branch in the judiciary's affairs. This manifested by the President of the Republic presiding over the Supreme Judicial Council, as well as his exclusive power to appoint members of the Supreme Constitutional Court. Another mechanism of control is the creation of exceptional courts and committees that have stripped the regular judiciary of many of its core functions. The laws and decrees that established these bodies explicitly exempt them from following regular legal procedures, and some of their rulings are not subject to appeal or review by any legal means.

The second section of Part III addresses the problem of the Syrian judiciary's failure to meet international standards.

This failure relates to its disregard for the core requirements of independence and integrity, the absence of conditions necessary to ensure fair trial standards, and its violation of the principle of separation of powers. These shortcomings have resulted in violations of numerous international instruments, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Basic Principles on the Independence of the Judiciary, among others. The Syrian judiciary's non-compliance with these instruments has led to a profound lack of trust by the international community in its ability to prosecute and hold violators accountable. Instead of fulfilling its role in delivering justice, the judiciary, particularly through its exceptional bodies, has served as a tool of intimidation and suppression against society.

The third section examines a pervasive issue within Syrian judicial institutions: the spread of corruption and administrative dysfunction.

Corruption and bureaucratic stagnation were widespread, and organized networks had deeply infiltrated the judiciary and court systems throughout the conflict period. According to Transparency International's 2024 report, Syria ranked 178th out of 180 countries on the Corruption Perceptions Index, with the judiciary identified as one of the most affected institutions.

These systemic problems are compounded by additional challenges: the absence of efforts to improve the academic and professional capacities of judges; the lack of an independent budget for the judiciary; insufficient judicial salaries that do not meet basic living costs; overwhelming caseloads relative to the limited number of judges and court staff; continued reliance on outdated, paper-based systems instead of digital technologies; and outdated inspection practices carried out by judicial inspectors who often lack the qualifications to evaluate their peers.

The fourth chapter of Part III delves into the consequences of the coexistence of multiple judicial systems across Syria. It examines the difficulties arising from divergent laws, procedures, and institutional structures across different regions. This includes the inconsistencies in judicial system formation, and the existence of multiple judicial bodies even within a single region. These discrepancies have fragmented the litigation process and created practical challenges for legal professionals and citizens in identifying the appropriate judicial body and applicable laws. In some cases, more than one court may issue conflicting rulings on the same matter.

The fragmentation of judicial systems, combined with the erosion of judicial independence and the judiciary's limited capacity to fulfill its duties, has resulted in a broader loss of public confidence. In many cases, the judiciary has become a tool for local controlling forces to implement their agendas and legitimize violations. This has led to public reluctance to engage with the judiciary, and in some instances, a resort to force or violence as a means of claiming rights.

In response to the complexities of this issue—and before pivotal developments of December 2024 ,8—the research presented a dual hypothesis. The first component focuses on addressing the current disparity in judicial systems by proposing initiatives to reduce legal and institutional gaps across regions. The second outlines a future-oriented scenario based on the assumption of reunifying Syria's judicial system within a single geographic and legal framework. This would involve establishing common standards among governance structures across different regions, including unified criteria for judicial appointments, harmonized legal codes, and other measures that protect the right to litigation and its broader implications. We can be optimistic that, after the fall of the regime, there is great opportunity to put the second part of this hypothesis into action, if and when judicial reform can proceed on clear and solid foundations.

The fourth and final part of the study presents a Syrian vision for judicial reform. It concludes with a set of "conclusions, proposals, and recommendations" structured across eight integrated tracks:

- In the Syrian context, a dialectical link must be forged between political reform and the requirements of judicial reform. Fair and secure access to litigation cannot be guaranteed without adhering to the principle of equal citizenship and rule of law—as stipulated by the interim constitutional declaration—and for the transitional period to include serious, concrete efforts at legal and judicial reform. The prospects of political transformation in Syria succeeding will depend on ensuring that the two tracks (of peace and justice) go hand in hand. An independent judiciary in Syria is unimaginable without fundamental political changes that aim to build governance institutions that align with the standards of a modern state, of which the independence of the judiciary is a fundamental pillar, and to restructure the army and security institutions in accordance with the principles of the rule of law.

- For the judiciary to fulfill its role in safeguarding the rule of law, a safe environment must be established that is free from insecurity and lawlessness. This requires the new administration to repeal a broad range of Syrian laws that violate freedom of expression and have been weaponized by the Assad regime and its security apparatus to silence, marginalize, and eliminate political dissent. These include the Revolution Protection Law and the Arab Socialist Ba'ath Party Security Law, and the Counter-terrorism Law. Abolishing these unjust laws is particularly relevant to providing the conditions for a safe environment, which also requires the issuance of modern legislation that addresses the shortcomings and deficiencies that characterized many previous laws, such as the laws on political parties, elections, and the media, as well as those that placed restrictions on the work of unions, civil society organizations, and others.

01 Track

Providing Political Will and a Safe Environment for Judicial Reform

02 Track

Legislative Reform to Guarantee Judicial Independence

- To avoid repeating the painful history of laws that violate human rights and fundamental freedoms, the new constitution must include firm constitutional guarantees that cannot be circumvented by subsequent legislation or decrees. Among these, the independence and impartiality of the judiciary must be explicitly protected. This requires amending legislation related to the Supreme Constitutional Court to free it from executive control, and to have an effective oversight role over draft laws proposed by the legislature.

- Since so-called "basic laws" are considered complementary to the constitution—such as those governing political parties, elections, judicial organization, local administration, and the media—the new constitution must include a special mechanism for their enactment. This may include requiring a supermajority vote in parliament, submission to constitutional review prior to their issuance, and a ban on the executive authority issuing legislative decrees related to these matters.

In this context, amending the Judicial Authority Law is essential. The composition of the Supreme Judicial Council must be revised to exclude the President of the Republic and any members of the executive branch. The structure and independence of the judiciary must be enshrined in the text of the constitution, and the rules that establish the judiciary must be treated as constitutional provisions. It must also be stipulated that all exceptional courts and committees are to be abolished, and that their future establishment is prohibited. The jurisdiction of the military judiciary must be strictly limited to criminal cases involving military offenses committed by members of the armed forces and must not extend to civilians under any circumstances.

New laws must also be enacted to regulate the work of transitional bodies and institutions. These laws should ensure the continuity of public institutions, facilitate the return of refugees, displaced persons, and migrants, and address key issues such as reparations, accountability, transitional justice, property restitution, and compensation in cases where restitution is not possible. As the new administration begins to establish national bodies to address these issues, the ability of these newly created bodies to fulfill their roles and responsibilities will depend largely on the legal framework they rely on and the guarantees and powers they are granted to achieve their objectives.

- While repealing, amending, and improving legislation, and reforming judicial structures to ensure independence and impartiality, is essential, such efforts will have limited impact unless accompanied by broader reforms within the judicial apparatus itself. These reforms must include developing mechanisms for judicial work that benefit from global technological advancements, adopting an independent judicial budget, and drawing on the experiences of countries with more advanced justice systems. It is also necessary to increase the number of judges in proportion to the anticipated rise in caseloads, especially given the volume and nature of lawsuits expected in the aftermath of decades of authoritarian rule and years of war and conflict, many of which will differ significantly from the cases typically seen by the Syrian judiciary. In parallel, the number of judicial assistants (clerks) must also be increased, and their professional capacities enhanced.

- The report recommends prioritizing reforms to the Constitutional Court and the Supreme Judicial Council, alongside other urgent amendments required for comprehensive judicial reform. It is worth noting that State Council Law No. 32 of 2019, which regulates the administrative judiciary, is considered advanced in comparison to other laws governing the judiciary. However, under the Assad regime, this was merely theoretical, as the security services dominated all state institutions, including the administrative judiciary. The new stage in Syria requires restoring the powers of the State Council, both for its role in drafting draft laws that comply with the principle of legal legitimacy, and its judicial role itself. During the upcoming years, it is expected that the number of lawsuits before the Council regarding compensation for a wide range of victims and litigants will increase.

- The jurisdiction of the military judiciary in Syria must be limited to criminal cases involving military offenses committed by armed forces personnel, and civilians must be fully protected from trial before military courts. This principle must be enshrined in the new constitution. As for exceptional judicial bodies such as the Counter-terrorism Court, the recently abolished military field courts, and the various committees that stripped the regular judiciary of jurisdiction, they must all be permanently abolished. Ongoing cases before these bodies should be transferred to the competent regular judiciary, and the future establishment of similar courts and committees must be constitutionally prohibited.

- To ensure the rights of litigants and provide redress for those harmed by rulings and decisions issued during the conflict—whether by regular, military, or exceptional courts—and operating under fear, coercion, or entrenched networks of influence, the study recommends establishing a formal grievance process. This mechanism would allow affected individuals to submit claims for a defined period, such as five years, starting from the onset of any transitional phase in Syria. These grievances would be reviewed by specialized judicial committees operating under the authority of the Supreme Judicial Council.

- Several institutions, though not formally part of the judiciary, are closely linked to it and play an essential supporting role in the justice system. These auxiliary bodies include law enforcement agencies tasked with executing judicial decisions, forensic medicine departments, and bailiffs' offices. The judiciary cannot perform its functions effectively unless personnel in these institutions demonstrate a high level of professionalism, independence, and integrity.

- The Bar Association, for example, is considered a second pillar to the judiciary. It is therefore necessary to amend the law regulating the legal profession to guarantee the union's independence, enhance the professional and academic credentials of lawyers, and promote specialization in lawsuits and pleadings according to the experience of those serving on the union's branch councils. As for other parallel institutions tasked with law enforcement, some of which have been implicated in violations that may constitute war crimes or crimes against humanity, these must undergo legal and structural reform. Their members should be trained in human rights principles and held to international standards that clearly define the responsibilities and duties of personnel, regardless of their specialization or rank.

- Thus, reforming the judiciary alone will not be sufficient to restore public confidence or achieve genuine justice. A number of institutions operate in parallel with the judiciary, and the legitimacy and effectiveness of many judicial procedures and rulings depend on the competence and impartiality of these entities. For example, if the forensic medicine sector is not characterized by high efficiency and integrity, it may lead to the loss of rights and allow perpetrators to evade accountability. Historically, this institution has received little attention or support from the former regime, both before and after 2011. In many cases, individuals without specialized training in forensic medicine have been assigned to perform these critical functions and, in many cases, used to cover up violations and crimes committed by the security services.

04 Track

Reforming the Bar Association and Auxiliary Judicial Institutions

Track 05

The Judiciary's Supervisory and Oversight Role

- In modern political systems, the judiciary serves as a safeguard for political life and plays a central role in overseeing electoral processes. This role is premised on its independence, impartiality, and integrity. Judicial oversight of administrative and electoral committees, its adjudication of electoral disputes, and its authority over crimes committed during different phases of the electoral process, are all essential guarantees for protecting citizens' electoral rights from violation or abuse. It is the judiciary's responsibility to ensure protection for all parties involved in the electoral process, thereby reinforcing genuine democratic practice and guaranteeing free, fair, and transparent elections.
- A review of Syria's electoral law reveals that the legislature has not granted the judiciary full oversight powers. Instead, it assigned marginal and symbolic roles that fall short of fulfilling their intended purpose, roles designed to serve the needs of the ruling authority.
- It is therefore not possible to move forward with the political transition process, or to hold free and fair elections at any level, without an empowered judiciary capable of performing its duties independently, and without being manipulated by the dominant political power. The judiciary in Syria must be enabled to play a genuine role in supervising upcoming elections, not merely a formal or superficial one.
- This requires the establishment of an independent and neutral body to manage the electoral process, operating under fair legislation and in line with the standards set forth in the International Covenant on Civil and Political Rights. The judiciary must be granted a greater supervisory role over elections. Following its reform, the Supreme Constitutional Court should be responsible for all stages of presidential elections from the opening of candidacy through to the announcement of final results. Decisions issued by the Independent Elections Commission should be subject to appeal before the Supreme Constitutional Court, whose rulings would be final. This court would also be the competent authority to review appeals related to the results of the People's Assembly elections.
- The Administrative Judiciary should be given jurisdiction over appeals filed against decisions of the Independent Elections Commission during the People's Assembly elections, as well as during local administrative council elections, including appeals concerning the results of those elections.

Track 06 Benefiting from International Experiences in the Field of Judicial Reform

- In numerous international contexts, formerly dictatorial regimes have moved beyond authoritarian models of individual or family rule, entering new phases of institutional reform, including within the judiciary. In Syria, the transitional phase or a change in political regime remains pending, but when it occurs, it must be followed by a series of structural reforms across the institutions of the Syrian state. Given the extensive shortcomings within the Syrian judiciary identified in this study, judicial reform efforts will require guidance drawn from countries with comparable experiences, some of which encountered setbacks, while others achieved meaningful progress.
- One of the most significant examples is Chile's judicial reform process, which took ten years to complete its first and second stages. Several elements of Chile's experience are particularly relevant to Syria's future reform efforts. These include: ensuring full government funding of the reform process; increasing state budget allocations for the justice sector; and establishing continuous training and professional development for judges, prosecutors, public defenders, and other judicial staff. The Chilean model also highlights the need for more transparent, efficient, and fair judicial administration, stronger protections for defendants' rights, and modernization of judicial infrastructure, including the construction of new courts in various cities and the rehabilitation of prisons in a manner consistent with detainees' rights.
- The Rwandan experience also offers important lessons, particularly in the domain of judicial accountability. Rwanda's post-conflict reform journey was long and difficult, with multiple early setbacks during the initial years of Paul Kagame's government. The country's civil war had deeply fractured the social fabric along ethnic and tribal lines, a situation that bears some resemblance to Syria's societal divisions. Kagame's program for national reconciliation, comprehensive development, and anti-corruption measures, initiated after he took power in 2000, resulted in major progress in reforming Rwanda's judiciary and law enforcement institutions, and in rebuilding public trust in the rule of law following the war. These reforms were made possible by the consolidation of political stability, investment in social capital, strategic planning, and a forward-looking vision, all of which contributed to Rwanda becoming the fastest-growing country on the African continent in recent years.

- The research emphasizes the need for the judiciary to assume roles that extend beyond its conventional responsibilities of adjudicating civil, criminal, Sharia, and administrative cases. While these functions constitute the core of judicial authority under normal circumstances, and have been addressed in earlier sections, countries emerging from violent conflict, such as Syria, require their judiciary to take on additional, non-traditional roles. These include responsibilities aligned with the principles of transitional justice, securing redress for victims, and resolving complex issues such as disputes over real estate ownership and other consequences of prolonged conflict and division.

- In light of this, the study examines the role of the Syrian judiciary during the transitional phase, particularly its role in managing transitional justice mechanisms. This includes the establishment of specialized judicial committees composed not only of judges and legal professionals, but also of experts in human rights and transitional justice from civil society organizations. These organizations bring valuable field experience and knowledge accumulated over the years of conflict. The proposed committees would be tasked with the following:

Track 07

The Role of Judicial Reform in the Transitional Phase

- Conduct investigations into gross and systematic human rights violations committed by the regime or other actors.
- Prosecute both direct perpetrators and those who bear command responsibility for war crimes or crimes against humanity.
- Document patterns of violations and recommend repeals or amendments to laws that have enabled impunity.
- Produce analytical reports on the structural and institutional roots of systematic abuses and propose constitutional and legal safeguards to prevent their recurrence.
- Contribute to national reconciliation efforts through mechanisms of accountability, truth-telling, and both moral and material reparations for victims.

- It is a necessary, albeit not sufficient, step to establish transitional justice committees with an independent legal and judicial authority. They must also be provided with clear mandates and internal systems that organize their structure and operations, and ensure their effective independence. Just as importantly, victims must be given a role in shaping the operational frameworks of these committees, thereby enhancing their legitimacy within society.

Track
08

The Role of Civil Society in Judicial Reform

- All of the aforementioned legislative and institutional reforms will remain insufficient without the supportive role of broader societal forces, chief among them, civil society organizations. One of the most important contributions of civil society lies in monitoring the performance of public institutions, raising public awareness, and delivering key services. These roles are not intended to replace the state or operate in parallel to it under normal conditions, but rather to complement and reinforce the functioning of state institutions.

- One of civil society's core tasks during the transitional period will be to help reshape the relationship between state and society. It will play a central role in promoting legal awareness across Syrian communities and in educating the public about the importance of judicial reform. Syrian civil society organizations have accumulated significant experience over the years in areas such as public outreach, advocacy, human rights documentation, and training. As such, both organized and informal civil society are essential contributors to the judicial reform process. They help strengthen the principle of separation of powers, uphold judicial independence, and combat impunity through accountability mechanisms. Civil society can also support access to justice by enabling public interest litigation, empowering individuals or groups to pursue legal remedies even when they are not direct parties to a case, and by assisting those unable to access the judiciary independently.

- The role of civil society intersects with the judicial reform process at multiple stages: formulating, debating, and implementing reforms. This often occurs in collaboration with local community leaders and academic institutions. One of the key lessons learned from civil society engagement in the justice sector is that reform becomes proactive rather than merely reactive, generating momentum for change even in the absence of institutional readiness or political will. It is therefore recommended that civil society organizations adopt a more proactive stance, especially in moments of ongoing but incomplete reform efforts.

Track 09 The Role of Women in Judicial Reform

- The independence, impartiality, and integrity of the judiciary must reflect the structure and diversity of society itself. It is therefore essential to guarantee full equality before the law for women appearing before courts as defendants or litigants. Equally important is ensuring women's full and equal participation within the judiciary, through access to judicial careers, fair representation, and participation in public life. These goals may be supported through the adoption of more transparent judicial appointment procedures for women, as well as through the use of a quota system in the early stages of reform as a temporary measure to help achieve meaningful gender parity.

- Women's active participation in the judiciary is key to advancing gender equality, particularly when women are appointed to senior judicial positions. This not only strengthens women's access to justice and increases their confidence in the legal system, but also paves the way for broader female representation in decision-making positions across the legislative and executive branches. Securing women's participation in judicial reform is thus a foundational component of building a state rooted in equality, rule of law, and inclusive citizenship.

- Civil society has been instrumental in advancing women's presence in the judiciary. In Kenya, for example, women's representation in the judicial sector is among the highest on the African continent. In 2012, women held 40 out of 104 judgeships; by 2013, they held 187 out of 424. The official website of the Kenyan judiciary reported that women occupied senior positions, including three members of the Judicial Service Commission, two justices on the Supreme Court, eight on the Court of Appeal, and 30 on the High Court.

- The study recommends the inclusion of a dedicated chapter on women's rights in the future Syrian constitution. It draws on the precedent set by Tunisia's 2014 constitution, which, for the first time in the country's history, addressed women's rights in a separate chapter. Article 46 of that constitution states:

> **The state is committed to protecting the acquired rights of women and works to support and develop them. The state guarantees equal opportunities for men and women to assume various responsibilities in all fields. The state seeks to achieve parity between women and men in elected assemblies. The state takes measures to eliminate violence against women.**

- A field study titled "Women's Professional Participation in the Judiciary in Tunisia" found that by 2016, women made up %42 of judges in Tunisia and about %45 of lawyers. While this represents a significant quantitative rise in women's participation, the study notes that women remain underrepresented in decision-making roles and senior judicial leadership.

- Shortly before the completion of this research, a major and dramatic development took place: the fall of the Syrian regime following a military operation led by Hay'at Tahrir al-Sham (HTS) and opposition factions. Among the urgent tasks assumed by the new administration now overseeing public affairs was the reorganization of the judiciary. The administration issued a number of decisions related to judicial appointments, which drew criticism and concern from segments of civil society and human rights activists. These critiques centered on fears that such measures may compromise the principle of judicial independence and risk reproducing the very dynamic of executive dominance over the judiciary that this research has repeatedly cautioned against.

- The success of judicial reform, across all the dimensions explored in this study, will ultimately depend on the consolidation of the rule of law in the new Syrian state. This calls for ongoing monitoring of how the new administration engages with the judiciary, and a careful assessment of the impact of its forthcoming decisions and policies on the judiciary's role, scope, and independence.

- We hope this research will serve as a valuable resource for all those concerned with and working toward the reform of Syria's judiciary, whether in its traditional or evolving roles, and that it contributes to the aspirations of all Syrians, across communities and affiliations, to build a state rooted in citizenship, justice, and the rule of law.

Research Methodology

This study adopts a historical-analytical approach to explore and address its core topics. It seeks to describe each phenomenon scientifically and critically, according to its real-world manifestations, and to analyze it objectively from both quantitative and qualitative perspectives. This approach enabled the study to trace the historical evolution of the Syrian judiciary, the political circumstances that shaped it, the shifts in constitutional and legal references that defined its identity and functions, and the Baath Party's long-standing instrumentalization of the judiciary for authoritarian ends, resulting in the displacement of judicial institutions from their intended roles. The historical-analytical method forms the backbone of the introductory chapter and informs a large portion of the third chapter, which focuses on the structural deficiencies of the Syrian judiciary.

The research also relies on comparative methodology as a central tool for analyzing the different forms of judicial governance in Syria's various regions, the legal frameworks governing them, and the degree of independence enjoyed by courts and judges in each area of control. This approach supports the analysis in Chapter One, which documents the evolution of the judiciary throughout the conflict, with particular attention to the fragmentation of judicial systems. These divergent systems, each shaped by different de facto authorities, have weakened judicial unity and exacerbated conflicts of interest across regions. Comparative analysis is also employed in Chapter Two, which examines international experiences in judicial reform. By identifying areas of overlap, divergence, and distinction, the study assesses how elements of these models might inform the Syrian case.

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To inform the design of a judicial reform agenda and identify necessary training, functional, and institutional needs, the study makes use of monitoring, follow-up, and analytical tools. It draws on a desk review of numerous primary and secondary sources in Arabic and English. It also integrates the results and recommendations of focus groups and in-depth interviews with a range of stakeholders directly connected to judicial reform, including judges, court employees, lawyers, civil society activists, and members of women's organizations. These qualitative data sources reflect a demographically diverse respondent pool. Two sets of questions were posed to participants: one focused on diagnosing the current and chronic structural problems of the Syrian judiciary, and the other sought forward-looking proposals and recommendations for reform in the event of a political transition from authoritarianism to a state governed by institutions and the rule of law.

Finally, to avoid an overly theoretical focus and to ensure the research leads to grounded, actionable outcomes, the study employs an applied methodology in Chapter Four. This approach identifies and proposes the most effective practical solutions to the problems outlined. It culminates in a set of conclusions, proposals, and recommendations structured around nine integrated tracks. These are presented as a roadmap for judicial reform grounded in present realities, responsive to present and future opportunities, and capable of guiding Syria toward a functional and independent justice system.

Preface

The Syrian judicial system has long suffered from deep structural problems, which have steadily accumulated and worsened over the course of several decades. These problems reflect the impact of authoritarian rule in undermining the judiciary's independence, impartiality, and integrity, as well as the broader deterioration of judicial institutions and the justice sector as a whole. Compounding these internal deficiencies, the Syrian conflict has resulted in the fragmentation of the judicial system, with multiple governance structures and varied judicial practices emerging across different zones of control and influence.

Despite repeated calls for judicial reform, the former Assad regime has consistently disregarded these demands, responding instead with superficial or symbolic measures that have failed to address the root causes of judicial dysfunction. It has continued to use the judiciary as a tool to legitimize its violations and crimes against Syrians. Meanwhile, judicial bodies in areas under the control of de facto authorities, which were outside the regime's control, have often fallen short of international standards for transparency, fairness, and effectiveness.

These realities point to an urgent and growing need to undertake a serious, comprehensive process of judicial reform in Syria, one that began in earnest with the political transition. This study aims to contribute to such a process by proposing a reform-oriented approach grounded in core principles, values, and actionable procedures that are essential for advancing meaningful reform across all levels and dimensions of the judiciary.

The introductory chapter of this study traces the historical and legal evolution of the Syrian judiciary, highlighting the challenges that have undermined its independence and the role of the executive branch—especially since the Ba'ath Party came to power—in asserting dominance over judicial institutions. It examines the role of the Supreme Constitutional Court and the Supreme Judicial Council, and reviews the laws and decrees that have expanded the powers of exceptional courts at the expense of the regular judiciary. This chapter also offers a detailed overview of the judiciary's structure, types, and jurisdictions, and clarifies the operational mechanisms of judicial institutions, their hierarchical relationships, and the executive authority's grip over both regular and exceptional judicial bodies.

Chapter One analyzes how the judiciary has been transformed throughout the conflict. It investigates the shifts in judicial institutions both in areas controlled by the regime (prior to its collapse) and those that were outside its control, and assesses the implications of these divisions on the unity of the justice system. It also evaluates the extent to which judicial governance structures adhere to international standards of independence and integrity. The chapter further explores the challenge of reunifying the judiciary amid disparate lines of authority, conflicting legal codes, and the growing burdens facing rights holders including refugees, the displaced, and absentee property owners.

Chapter Two presents international experiences with judicial reform during democratic transitions, focusing on case studies from Latin America and Rwanda. These examples, the result of partnerships between national actors and international organizations, offer valuable insights for shaping a Syrian judicial reform vision rooted in civil peace and social justice. The chapter highlights the importance of adopting international best practices in judicial transparency, integrity, and independence, and stresses the need to train and prepare judges for specialized roles, such as those dealing with restitution, compensation, and real estate disputes, roles that will become especially critical in the post-conflict period.

Chapter Three identifies the Syrian judiciary's structural and systemic failures. It provides an objective diagnosis of the core problems affecting judicial institutions, including the role of constitutions, laws, and decrees in violating judicial independence; the judiciary's non-compliance with international standards; widespread corruption and administrative stagnation; and the fragmentation of judicial systems across different geographies. While many of these problems began under early Ba'athist rule, they have deepened significantly in recent years. The collapse of judicial credibility is among the clearest signs of state failure in fulfilling its obligations to its citizens. The chapter uses real-life examples to show how the judiciary has been transformed into a mechanism for legitimizing executive abuse, especially through exceptional courts that issue rulings far removed from fair trial standards.

The purpose of this analysis is to establish a general framework for reform, propose suitable implementation programs, and identify the challenges that will confront the reform process in the transitional period. These include the long absence of the rule of law, the erosion of judicial authority, and the rise of violence, corruption, and exploitation across Syrian society. The study also aims to outline procedures to rebuild public confidence in the justice system.

In response to these concerns, Chapter Four sets forth a Syrian vision for judicial reform, along with pathways, proposals and recommendations. This vision is informed by the outcomes of a focus workshop and a series of in-depth interviews with a qualitative sample of stakeholders. These discussions were designed to address two central questions: first, what are the principal shortcomings and structural deficiencies within the Syrian judiciary? And second, what proposals and recommendations can be advanced to address these deficiencies throughout the transitional phase?

Rather than offering a fragmented or one-dimensional response, the research proposes an integrated reform approach encompassing a range of interconnected priorities. These include the need to secure political will and create a safe environment conducive to judicial reform; the implementation of legislative and legal changes that enshrine the independence of the judiciary; and the restructuring and development of judicial institutions to ensure their capacity and integrity. The vision also addresses the importance of reforming the Bar Association and institutions that support the judiciary's work, while clarifying the judiciary's supervisory and oversight functions. At the same time, it draws on relevant international experiences to enrich the Syrian context, explores the expanded role the judiciary must play during the transitional justice phase, and highlights the need to strengthen civil society's contribution to the reform process. Finally, it underscores the critical importance of advancing women's participation in and through the judiciary, not only as a matter of equity but as a foundation for a truly inclusive and accountable system of justice.

Introduction:

Understanding the Nature, Structure, and Jurisdiction of the Syrian Judiciary

The rule of law in any country is the foundation upon which citizens' rights are secured and democracy is built. It ensures that no one stands above the law, and that the political order operates within a legal framework that guarantees participation, accountability, and the peaceful transfer of power. In contrast, authoritarian regimes rely on the concentration of power in the hands of a ruling elite that monopolizes the state's resources and suppresses the rights of its citizens. Such regimes actively resist the establishment of the rule of law, knowing that an independent, impartial, and credible judiciary would undermine their control.

For the rule of law to prevail, the judiciary must be free from interference, particularly from the executive authority. Yet totalitarian regimes often seek to subjugate the judiciary through a variety of means: by creating parallel institutions that usurp its role, by limiting its jurisdiction, especially over military and security agencies, and by tying its administrative, structural, and financial matters directly to executive control. These tactics erode judicial independence and compromise the judiciary's core function as a check on power. Many of these methods will be examined in detail in the pages that follow.

Although various Syrian constitutions since the country's formation within its present-day borders in 1920 have included legal provisions affirming the independence of the judiciary and protecting it from subordination to the legislative or executive branches, these guarantees have rarely been implemented. From the outset, Syria's subjection to the French Mandate (1946–1920) limited the realization of these ideals. The post-independence period, marked by repeated military coups, further undermined institutional stability. Of these, the 1963 coup led by the Arab Socialist Baath Party had the most profound and lasting impact on the judiciary. Upon seizing power, the Baath Party moved swiftly to bring all state institutions under its control—most notably, the judiciary—effectively extinguishing its autonomy and converting it into a tool of the ruling apparatus.

To grasp the depth of the Syrian judiciary's current condition and the forces that have shaped it, we must first examine its historical trajectory from the formation of the Syrian state up to the Baath Party's rise to power, along with the critical turning points that defined that period.

While the full picture from that era remains somewhat obscured by the political instability that engulfed the country and disrupted all aspects of public life, including the judiciary, as well as by the limited availability of records and references from that time, it remains essential to trace this foundational phase. Following this, we turn to the judiciary under Baathist rule, a period defined by the regime's deliberate subjugation of all state institutions to its ideological agenda through both coercion and cooptation. The judiciary, like all others, was not spared from this campaign of control.

Subsequently, we will outline the current structure of the Syrian judiciary, including its branches and hierarchical levels, in order to lay the groundwork for the chapters that follow. These will explore the structural problems afflicting the judiciary today, propose strategies for addressing its deficiencies, and consider broader reform measures essential to restoring integrity and independence to this sector.

Chapter 1. The Formation and Reality of the Syrian Judiciary under Baath Rule

The modern Syrian state, within its current geographical borders, was formally established in 1920 under the terms of the Treaty of Sèvres. Prior to that, it had been part of the broader Levantine region governed by the Ottoman Empire for four centuries. In the immediate aftermath of independence, the General Syrian Congress was elected and pledged allegiance to King Faisal as ruler of the country. This congress formed a constitutional drafting committee composed of twenty members, headed by Hashim al-Atassi, which produced a constitution containing 147 articles. The draft was approved by the congress on 13 July 1920.

However, this constitution, commonly referred to as King Faisal's Constitution, was never properly implemented. Its effect was swiftly interrupted by the entry of French forces into Damascus under General Gouraud on 24 July 1920, just eleven days after its approval.

The constitution addressed in some detail the formation and jurisdiction of a Supreme Court. It stipulated that, when necessary, the court would be formed by royal decree and composed of sixteen members: half drawn from the Senate and half from the presidents of the Courts of Cassation. The members were to be selected by lot from their respective bodies. The court was to be divided into two sections: an accusatory section comprising seven members (four from the Senate and three from the judiciary), and a judicial section comprising the remaining nine. A decision to indict required the approval of at least five members of the accusatory section, while judgments from the judicial section required a minimum of six votes in favor. Judgments issued by this court would be final and governed by substantive law.[1]

1 Articles 96, 97, 98 and 99 of the Constitution of the Syrian Kingdom (1920).

It is evident that, had it been enacted, this Supreme Court would have effectively functioned as a Supreme Constitutional Court. It was empowered to try members of the Council of Ministers, as well as individual ministers, senators, and representatives if charged with national treason.[2] It also held jurisdiction over provincial governors and members of provincial councils under similar charges. The constitution explicitly exempted the king from any form of legal accountability, declaring: "The king is respected and he is not responsible."[3] However, it did not grant the Supreme Court authority to review the constitutionality of laws passed by the General Conference, which was composed of the House of Representatives and the Senate.

Chapter Ten of the constitution further addressed the judiciary, emphasizing the independence of the courts and their protection from interference. It provided that the organization, jurisdiction, and procedural rules of the judiciary including judicial appointments, promotions, and disciplinary measures, would be governed by a unified law applicable across all provinces. It enshrined the principle of public trials, except in cases where secrecy was permitted by law,[4] and it categorically prohibited the establishment of courts other than those authorized by law. It also banned the formation of judicial committees other than those related to arbitration as stipulated by law. In effect, this constitution contained an unequivocal rejection of exceptional courts and committees that could undermine the jurisdiction and authority of the regular judiciary.

Following the entry of French forces into Syria, the 1920 Constitution was suspended. In 1928, Syria held its first general elections, resulting in the formation of a Constituent Assembly composed of 67 members. From among these, a Constitutional Committee of 27 representatives was elected to draft a new constitution. Although the committee completed its draft and submitted it to the Assembly for approval, the process was halted when the French High Commissioner suspended the Assembly's activities after it refused to remove certain provisions that conflicted with French interests. The Assembly was later dissolved altogether.

2 Articles 44, 56, 139 and 142 of the 1920 Constitution.
3 Article 7 of the 1920 Constitution.
4 Articles 113, 114, 115, 117 and 120 of the 1920 Constitution.

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In 1930, the High Commissioner unilaterally issued a constitution based on the 1928 draft, introducing amendments that notably included Article 116, which granted extensive powers to the French mandate authorities. This 1930 Constitution offered limited guidance on the judiciary. Its main contribution was defining the composition and jurisdiction of the Supreme Court. Article 97 stipulated that the court would be made up of fifteen members: eight elected annually by the House of Representatives, and seven senior judges selected from among the highest-ranking members of the judiciary, based on rank or seniority. These seven judicial members were to be appointed by the General Assembly of the Court of Cassation each year.

The court was to convene under the leadership of the highest-ranking judge, and decisions required a majority of at least ten votes. The Attorney General of the Court of Cassation would normally preside over the Public Prosecution Office, except in cases involving the trial of the President of the Republic, in which a special prosecutor would be appointed by the Court of Cassation. The court's procedures were to be governed by a separate law.

This constitution formally remained in force until the military coup of March 1949, which brought Husni al-Za'im to power. Upon seizing control, al-Za'im suspended the constitution and dissolved the parliament. His rule was short-lived, as another coup led by Sami al-Hinnawi followed in August of the same year. Just four months later, Adib al-Shishakli launched his first coup.

During Hinnawi's brief tenure, the Constituent Assembly drafted and adopted a new constitution on 5 September 1950. Though this constitution was only in effect for a few years due to the subsequent union between Syria and Egypt, it nonetheless left a significant mark on the country's legal and political life. Of particular note were its provisions relating to the judiciary. Article 10 explicitly prohibited the establishment of exceptional courts, affirming that civilians could not be tried before military courts. It asserted that the judiciary is an independent authority, and that judges are bound solely by the law in their rulings. Their honor, conscience, and impartiality were considered the guarantors of the rights and freedoms of citizens.[5]

5 Note that this principle was reiterated in subsequent Syrian constitutions, especially the 5 5 1973 Constitution and the 2012 Constitution.

The constitution also delineated the structure of the judiciary. Article 108 restricted its scope to the Supreme Court, Courts of Cassation, and other officially established courts. The Supreme Court was to consist of seven members, selected through a cooperative process involving both the executive and legislative branches. The President of the Republic would submit a list of fourteen qualified candidates, each of whom had to possess an advanced legal degree and be over forty years old, and the House of Representatives would elect seven members from this list.
Each Supreme Court member would serve a five-year term and could be reappointed. To safeguard their independence, the constitution stipulated that a member could not be dismissed except by a vote of at least four of the Court's members. The Court would elect its own president from among its members by absolute majority, to serve a term of five years (as detailed in Articles 118 ,116, and 119).
With regard to the jurisdiction and responsibilities of the Supreme Court, Article 122 of the 1950 Constitution stipulated that the Court had the authority to review the constitutionality of laws referred to it either by the President of the Republic or by one-quarter of the members of the House of Representatives, on the grounds that such laws were in violation of the Constitution. The Court was also empowered to review the constitutionality of draft decrees referred to it by the President, to adjudicate the trial of the President and ministers, to hear electoral appeals, and to rule on requests to annul administrative acts, decisions, and decrees that contravened the Constitution, statutory law, or regulatory decrees, provided that such requests were submitted by a party harmed by those measures. All decisions issued by the Court in such cases were final and not subject to appeal.

The 1950 Constitution stands out as the only constitution in Syria's modern history to have clearly articulated and safeguarded the independence of the judiciary in a comprehensive and detailed manner. Unlike later constitutions, it did not allow the executive authority to encroach upon or dominate the judiciary. Article 123 provided for the composition of the Supreme Judicial Council, which included seven members: the President of the Supreme Court (as head of the Council), two additional members of the Supreme Court, and four of the highest-ranking judges from the Court of Cassation. Through this structure, the Constitution enshrined the rules governing the judiciary as constitutional principles in their own right, not subject to secondary legislation or executive interference. The Supreme Judicial Council alone held the power to appoint, promote, transfer, discipline, and dismiss judges, based solely on proposals by its president. It was also the sole authority tasked with preparing draft laws pertaining to judicial affairs (Articles 124 and 125).

Additionally, the Constitution established a foundational principle: the supremacy of constitutional rules over ordinary legislation. It explicitly prohibited the enactment of any law that violated the Constitution. If a law was referred to the Supreme Court on grounds of unconstitutionality, its implementation would be suspended pending the Court's decision (Article 63). This provision represented a strong safeguard for judicial independence and a protective barrier against potential interference from either the executive or legislative branches, as the rules constituting the judiciary were framed as immutable constitutional guarantees.

Despite its forward-looking provisions, the 1950 Constitution was suspended on several occasions. It was first interrupted following Adib al-Shishakli's second military coup in 1951. After political changes led to Hashim al-Atassi assuming the presidency on 25 February 1954, the Constitution was reinstated and remained in force until the union between Syria and Egypt in 1958. That year, a provisional constitution consisting of 73 articles was introduced, leading to the dissolution of political parties and a fundamental restructuring of Syria's political and parliamentary systems. This shift marked the suspension of the 1950 Constitution and the repeal of its prohibition on exceptional courts.

Merely seven months after the formation of the union, Decree No. 162 was issued, declaring a state of emergency and martial law in Syria. The decree called for the establishment of state security courts across all regions. This marked the beginning of a bitter and enduring chapter in Syria's legal history: the expansion of exceptional courts. The provisional constitution of 1958 made only vague references to the judiciary in five brief and general articles. Notably, it made no mention of the Supreme Court, the Supreme Judicial Council, or the designated bodies authorized to exercise judicial authority. It deferred the definition of judicial institutions and their jurisdictions to special laws (Articles 63–59), effectively hollowing out the constitutional protections that had been laid out just years earlier. Accordingly, in 1959, Judicial Authority Law No. 56 was enacted. It included provisions for the formation of the Supreme Judicial Council. Although the law named the President of the Court of Cassation as the head of the Council, it also granted membership to the Undersecretary of the Ministry of Justice from both the Syrian and Egyptian regions. This opened the door to interference by the executive branch, as two of the eight Council members now represented the executive authority.

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Following the dissolution of the union between Syria and Egypt in late September 1961, a new Constituent Assembly and Parliament were elected. These bodies approved the reinstatement of the 1950 Constitution with some amendments, most notably, the change of the state's official name from the "Syrian Republic" to the "Syrian Arab Republic." Under this constitutional framework, Judicial Authority Law No. 98 was issued on 30 September 1961. Remarkably, this law remains in force to this day. The composition of the Supreme Judicial Council under Law No. 98 remained largely the same as it had been during the union period: the Council comprised seven members, including the President of the Court of Cassation as its chair, and included the Secretary-General of the Ministry of Justice as a Council member,[6] again embedding a representative of the executive authority within the judicial structure.

This configuration did not last long. On 8 March 1963, the Arab Socialist Baath Party seized power through a military coup that was later celebrated by the regime as the "March 8 Revolution." On the very same day, the new authorities issued Military Order No. 2, which reimposed the state of emergency. This came despite the fact that the previous government, under Prime Minister Khaled al-Azm, had declared the end of the emergency law just months earlier, in November 1962.

In 1964, the Baath Party's regional leadership issued a new constitution that explicitly sanctioned the establishment of exceptional courts. It included provisions stating that "the law shall regulate the structure of the State Security Courts, define their jurisdiction, and determine the qualifications required of their judges." Under the framework established by Military Order No. 2, the Martial Law Governor, represented by the Minister of Interior, was granted unchecked authority over the freedoms and basic rights of citizens, effectively placing these matters outside the jurisdiction of the judiciary.[7]

6 The title of Secretary-General was abolished and the position of Assistant Minister was created in all ministries by Legislative Decree No. 298 of 1969 (Article 65 of the Judicial Authority Law and its amendments, according to the Hammurabi legal platform).

7 Razan Zaitouneh, "Is There Justice in Exceptional Courts? The Supreme State Security Court as a Model" (Arabic), Arab Orient Center, London, May 2007, link: https://www.asharqalarabi.org.uk/huquq/c-huquq-qadaia-3.htm.

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The Baath Party gradually consolidated its grip on the judiciary through a variety of tools and tactics. At times, this interference took the form of verbal directives and informal orders, which were difficult to trace or document. At other times, it was enacted through legislation and decrees at different levels, especially those issued after the Party assumed power. The most prominent of these will be listed briefly here as illustrative examples and addressed in greater detail in Chapter Three, Section Two, which focuses on identifying the structural and worsening problems of the judiciary.

In 1966, Legislative Decree No. 23 granted the Minister of Justice the authority to appoint and transfer judges selectively, consolidating executive influence over the judiciary. This control was further entrenched in the 1973 Constitution, which designated the President of the Republic as the head of the Supreme Judicial Council, with the Minister of Justice serving as his deputy. This arrangement was reaffirmed in the 2012 Constitution. As the ruling party, and in its capacity as the "leader of the state and society," the Baath Party also granted the President absolute authority to appoint members of the Supreme Constitutional Court.

In its effort to exert tighter control over judicial matters that affected the core interests of the ruling regime, the Baath Party resorted extensively to the creation of exceptional courts and committees. These bodies effectively stripped the regular judiciary of its authority. Among them were the exceptional military courts established in 1965, the Supreme State Security Court, the military field courts created in 1968, and the Counter-terrorism Court instituted in 2012. In parallel, the regime also relied on exceptional administrative committees to confiscate civilian property and real estate, through mechanisms set forth in legislation such as Expropriation Law No. 20 of 1983, Decree No. 66 of 2012, and Law No. 10 of 2018.[8]

8 Habib Issa, "Legal Essay Explaining Exceptional Courts in Syria" (Arabic], Mohamah Net, 14 January 2018, https://bit.ly/4ncAiXJ

The regime also cultivated a culture of impunity for security officers and personnel serving the state's repressive apparatus, shielding them from accountability even when they committed grave violations in service of the ruling authority. A number of laws were issued for this purpose, including Decree No. 14 of 1969, which established the State Security Administration, and Legislative Decree No. 549 of 1969, known as the Law on the Internal Regulations of the State Security Directorate.[9] More recently, Legislative Decree No. 69 of 2008 and Legislative Decree No. 55 of 2011 granted judicial police the authority to detain individuals for seven days—a period extendable to sixty days with approval from the Public Prosecution. These measures were accompanied by the broader reality that many aspects of daily life for Syrian citizens remained subject to the whims of the security apparatus, often requiring prior "security approvals."

9 Law Establishing the State Security Directorate, and Law Establishing the Internal Structure of the State Security Directorate, Syrian Human Rights Committee, 6 February 2004, https://www.shrc.org/?p=7451.

Chapter 2. The Structure of the Syrian Judiciary, its Types and its Jurisdictions

To understand the Syrian judiciary's framework and operational scope, it is first necessary to identify the core legal texts that define its structure and trace their historical development. The Syrian judicial system is grounded in several foundational laws, the most significant of which include:

01
The Syrian Constitution

02
The Judicial Authority Law

03
The Code of Civil Procedure

04
The Law on Evidence

These laws draw their lineage from Western legal traditions, initially introduced to the Arab region through Egypt's legal transformation in the early nineteenth century. That transformation culminated in the establishment of the Mixed Courts in 1875, which adopted Western legal codes due to the presence of foreign judges. These Western laws were subsequently translated and implemented in Egypt's civil courts in 1882, effectively shifting the country's legal system toward a European model.

Following Syria's independence in 1945, Syrian legal experts undertook a comprehensive effort to translate Egyptian legal texts into Syrian law. The Evidence Law was translated in 1947, followed by the Civil Code in 1949, the Code of Civil Procedure in 1953, and the Judicial Authority Law in 1961, among others.[10]

In order to understand the nature of the Syrian judiciary—its degree of independence, and the extent to which it fulfills its judicial mandate—it is necessary to clarify the structural framework within which it operates. A closer look at the structure of the judiciary can illuminate key insights into its independence, integrity, and impartiality. Syria's judiciary includes multiple branches with diverse jurisdictions, each exercising a different degree of authority. While a comprehensive examination of all types is beyond the scope of this report, we will focus on the most prevalent and operationally significant branches, especially those that will be further explored in subsequent sections of this study, in order to avoid redundancy and maintain analytical focus.

10 Hazem Zahour Adi, Structural Problems in the Syrian Judicial System, an article published on the Approaches to Political Development website, available at the following link: (accessed August 23, 2024)

https://www.ohchr.org/ar/hr-bodies/hrc/iici-syria/report-COI-syria-march2022

Types of Courts in Syria

A. Ordinary Courts

Ordinary courts have general jurisdiction to hear citizens' grievances and legal disputes, except in cases explicitly excluded by law. This judiciary, referred to as the original judiciary, has been enshrined in successive Syrian constitutions, most recently in the 2012 Constitution. Its organizational structure is governed by Judicial Authority Law No. 98 of 1961 and its subsequent amendments.

According to this law, the judiciary is generally divided into two levels: first-degree courts and second-degree (appellate) courts. First-degree courts are presided over by a single judge and are referred to as "individual judiciary," while second-degree courts are composed of panels of three judges and are known as "group judiciary."

The ordinary judiciary is responsible for adjudicating a wide range of civil, criminal, and personal status cases, as follows:[11] :

Civil Courts: hese include the Civil Conciliation Courts and Civil First Instance Courts. Their rulings are generally subject to appeal before the Civil Courts of Appeal,[12] and decisions issued by the appellate courts may be challenged before the Court of Cassation (Civil and Commercial Division). Judgments of the Court of Cassation are final.

Religious (Personal Status) Courts: These include Sharia Courts for Muslims (as a general rule), Religious Courts for the Druze community, and Spiritual Courts for Christian denominations. Their rulings may be appealed by way of cassation before the Court of Cassation (Personal Status Division).

11 For more details, see Article 32 and following of the Judicial Authority Law No. 98 of 1961.
12 Some rulings issued by first instance courts are final, while others are subject to direct appeal before the Court of Cassation.

Criminal Courts: These include the Criminal Peace Court and the Criminal First Instance Court, both of which handle misdemeanor cases. Their rulings may be appealed before the Misdemeanor Appeal Court, whose decisions can in turn be appealed before the Court of Cassation (Criminal Division– Misdemeanor Chamber).

The criminal judiciary also includes Public Prosecutors, who represent the prosecution before the courts, and Investigating Judges, who oversee the pre-trial investigation of criminal cases. Decisions by investigating judges are subject to review by Referring Judges, who then determine whether to bring the case to trial. Judgments by criminal trial courts may be appealed before the Court of Cassation (Criminal Division – Criminal Chamber).

Defendants under the age of eighteen are tried in the Criminal Peace Courts if the offense is a misdemeanor and the legally prescribed sentence does not exceed one year. Rulings in such cases may be appealed before the Misdemeanor Appeal Court. If the penalty exceeds one year, the case is heard by the Juvenile Felony Court, which consists of three judges. Rulings issued by this court may be appealed before the Court of Cassation.[13]

Court of Cassation: Based in Damascus, the Court of Cassation is the highest court of law and functions as a court of legal review. It is divided into three divisions: Civil and Commercial, Criminal, and Personal Status. The Court hears appeals against judgments rendered by lower courts across these three domains.

It is important to note that the establishment of specialized chambers within the courts, such as those designated for labor disputes, civil status issues, or traffic violations in high-population areas like Damascus and Aleppo, does not imply the existence of exceptional courts. These chambers are simply an administrative arrangement to distribute caseloads. This is evident from the fact that, in less populous regions, the same conciliation judge handles these types of cases alongside others under their jurisdiction. Moreover, the procedures followed in these chambers are identical to those applied in other courts of the same judicial level.

13 For more information, see Juvenile Delinquents Law No. 18 of 1974.

B. Administrative Judiciary (State Council)

The Council of State is an independent judicial and advisory body.[14] Headquartered in Damascus, the Administrative Judiciary issues its rulings in the name of the Arab people of Syria. The Council of State comprises two main sections: the Judicial Department and the Advisory Department, each with distinct functions, detailed below:

Judicial Department: The Judicial Department includes the following bodies: the Supreme Administrative Court, Administrative Judiciary Courts, Administrative Courts, Disciplinary Courts, the State Commissioners Authority, the Department of Unification of Principles, and the Inspection Department.[15] As an administrative judicial body, the State Council is competent to adjudicate a wide range of administrative disputes, including:

The State Council, in its capacity as an administrative judiciary, is authorized to adjudicate a wide range of disputes and appeals. These include challenges related to local administration council elections, as well as appeals against final decisions issued by administrative bodies in matters concerning taxes and fees. It also considers grievances filed by public employees contesting disciplinary actions, and it hears disputes involving salaries, pensions, bonuses, allowances, and other forms of compensation for public employees, individuals in comparable positions, office holders, and members of the People's Assembly. The Council also addresses disputes arising from the application of Basic Law for State Employees No. 50 of 2004 and other employment-related regulations applicable in public institutions. Moreover, it considers requests from affected parties seeking the annulment of final administrative decisions, particularly those involving appointments to public positions, promotions, referrals to retirement, or dismissals that occur outside of disciplinary proceedings. The Council also has jurisdiction over citizenship claims and the disciplinary trials of public employees and workers across all public institutions. In addition to these areas, it is empowered to consider all other administrative disputes as stipulated by relevant legislation.[16]

14 Before the issuance of this law, the State Council was attached to the Presidency of the Council of Ministers in accordance with Article 1 of the previous State Council Law No. 55 of 1959.
15 Article 2 of State Council Law No. 32 of 2019
16 Article 8 of State Council Law No. 32 of 2019.

Advisory Department for Directives and Legislations

This section includes the General Assembly, specialized departments, and the Legislation Drafting Office.[17] The General Assembly is tasked with issuing reasoned legal opinions on matters referred to it due to their importance. These referrals may come from the Presidency of the Republic, the Speaker of the People's Assembly, the Prime Minister, a minister or equivalent official, or the President of the Council of State. It also addresses cases where differing legal opinions arise between departments or contradict a fatwa issued by another body or by the General Assembly itself. Additionally, it reviews draft legislation prepared by the Legislation Drafting Office when deemed of significant importance. The opinions issued by the General Assembly are binding and must be justified.[18]

The specialized departments prepare legal reports and issue opinions on matters referred by the Presidency, the People's Assembly, the Council of Ministers, or various ministries. All public institutions are required to consult these departments when entering into any agreement involving the exploitation of national natural resources (Articles 69 and 70).[19]

The Legislation Drafting Office is exclusively responsible for reviewing, verifying, and drafting legislative instruments submitted by the Presidency of the Republic, the People's Assembly, or the Council of Ministers. It also conducts training and capacity-building programs for legislative drafting and may participate in similar initiatives organized by other public entities upon request.[20]

17 Article 2 of the aforementioned State Council Law.
18 Article 75 of State Council Law No. 32 of 2019.
19 Articles 69 and 70 of the State Council Law.
20 Article 73 of State Council Law No. 32.

C. Exceptional Courts

Totalitarian regimes not only issue laws and decrees that violate their own constitutions and the most fundamental principles of justice, but also actively seek to establish exceptional courts and committees—under various titles—that operate under the direct control of the executive authority. This tendency arises from the regime's recognition that simply manipulating the ordinary judiciary by inserting executive influence into its composition, may not always be sufficient to achieve its aims. The procedures of regular litigation, including the right to defense, the principle of public trials, and the ethical commitment of some judges to uphold legal standards, can all present obstacles when the executive seeks to intimidate or silence dissent. To bypass these limitations, the regime turns to entities it labels "courts" or "judicial committees," which are designed to operate outside the framework of due process and serve specific political objectives.

Syria has endured a long and bitter legacy of such exceptional courts, particularly since the Baath Party came to power. Therefore, the focus is on the structure and types of exceptional courts, including the exceptional courts and commissions established after 2011.

01
Military Courts

The military judiciary in Syria was established and organized under Legislative Decree No. 61 of 1950, following the military coup that brought Husni al-Za'im to power. This decree defined the personal, substantive, and territorial jurisdiction of the military judiciary and outlined the penalties applicable upon conviction. It stipulated that the trial procedures followed in the general judiciary should also apply to the military judiciary, unless they conflicted with the provisions of the Penal Code and the Code of Military Procedure under Decree No. 61 (Articles 23 ,13, and 33).[21] The military judiciary does not include a referral judge, and its judges are appointed from among those holding a law degree. Civilian judges may be seconded to military courts, but they remain under the authority of the Ministry of Justice in matters concerning promotion and discipline (Articles 35 and 36). The structure of the military judiciary comprises several bodies, including the Military Judiciary Administration, the Military Public Prosecution, the Military Judicial Police, individual military judges, investigating judges, the Military Criminal Court, and the Military Chamber within the Court of Cassation.

This judiciary is widely criticized for the fact that permanent military judges, despite exercising judicial authority, are directly subordinate to the Ministry of Defense and subject to military regulations (Article 39). Its jurisdiction extends beyond members of the armed forces to include civilians in a variety of cases, for instance when civilians are accused of attacking military personnel, or when they are involved as accomplices or co-defendants alongside military personnel (Article 50).[22] This practice runs contrary to democratic principles, which call for a strict separation between military and civilian life, and by extension between military and civil justice.

21 Meaning priority in application is given to the Penal Code and Military Trial Procedures. If the latter lacks certain procedures and principles, then the general Syrian Trial Procedures Laws will be applied.

22 On 28 November 2023, Bashar al-Assad issued Decree No. 29 amending paragraphs (d, h, and w) of Article 50, pursuant to which, all persons employed in the army or armed forces or in any military force formed by a decision of the competent authority in a profession during wartime or during a state of war or when the army or force is present in an area where a state of emergency has been declared, if the crime arises from their job, civilian employees of the Ministry of Defense if the crime arises from the job, a civilian who commits a criminal offense against a military person defined in the applicable Military Service Law, shall be tried before military courts. See: Syrian Ministry of Justice, link: http://www.moj.gov.sy/ar/node/1867 [Accessed 2 February 2024]

In such systems, the trial of civilians before military courts is generally considered impermissible.[23]
In cases involving minors, the Military Public Prosecution is required to separate the case files and refer the minors to the competent regular judiciary. Furthermore, the military judiciary has the authority to determine whether a case falls within its jurisdiction. If another judicial body raises a jurisdictional conflict, it is the military court that rules on the matter before the case can proceed (Article 51). This constitutes a serious infringement on the jurisdiction and authority of the regular judiciary.

If the accused is a military officer, or a civilian employee directly subordinate to the Ministry of Defense, the Military Public Prosecution must obtain a prosecution order. This order is issued either by decree or by a decision of the Commander-in-Chief of the Army and Armed Forces, depending on the case (Article 53). The martial law governor was also granted the authority to expand the military judiciary's jurisdiction to include additional crimes or to strip certain crimes from its purview and transfer them to the regular judiciary, or vice versa.[24]

Although military courts are not inherently exceptional in nature, in Syria they were deliberately structured as such. The inclusion of civilians within their jurisdiction, the wide discretion in determining competence, the requirement of prosecution orders from the Ministry of Defense, and their institutional subordination to the military establishment have effectively transformed the military judiciary into an exceptional judicial body.

23 Nasrat Munla Haidar, Independence of the Judiciary, a study published in al-Muhamoun (Lawyer) Magazine, published by the Syrian Bar Association, no. 8 ,7 and 1977 ,9.

24 This was supposed to have ended with the abolition of the state of emergency law that had been in effect for nearly half a century, pursuant to Decree No. 161 dated 21 April 2011, published on the official page of the Syrian Ministry of Interior. Link: http://moia.gov.sy/portal/site/arabic/index.php?node=551&cat=929&

02

Real Estate Courts

In 2014, Real Estate Judges Law No. 16 was issued, replacing Law No. 89 of 1958. Under the previous law, responsibilities such as defining, editing, partitioning, and eliminating common ownership were overseen by real estate judges.[25] The new law maintained these functions and placed real estate judges in charge of supervising real estate demarcation and registration procedures, tasks previously handled by conciliation judges within the ordinary judiciary. Real estate judges are also authorized to adjudicate disputes arising from the demarcation and registration process. However, conciliation judges retain the authority to annul registrations within two years of their completion, in accordance with Demarcation and Registration Law No. 186 of 1926.

Real estate judges are assisted by staff who are administratively linked to the General Directorate of Real Estate Interests. These judges are appointed, transferred, and dismissed by the Minister of Justice upon the recommendation of the Director General of Real Estate Interests. If a judge fails or neglects their duties, a confidential notice is first issued by the Director General. If the issue persists, it is escalated to the Ministry of Justice, which can take action based on a report from the Judicial Inspection Directorate, without referring the matter to the Supreme Judicial Council.

25 The Joint Ownership Removal Committees, established under Law No. 21 of 1986 to adjudicate the division of properties located outside the administrative unit's regulatory plan, were abolished by Law No. 1 of 2015. The latter reinstated Article 790 of the Syrian Civil Code, assigning jurisdiction over joint property division lawsuits to the conciliation judge, whether inside or outside regulatory plans.

The classification of real estate judges as part of the judiciary is highly contested. Although they are nominally called "judges," their appointment, oversight, and disciplinary measures fall squarely under executive control, not judicial authority. They are not subject to the Judicial Authority Law No. 98 of 1961, but instead fall under the Basic Law of State Employees No. 50 of 2004. Their salaries and allowances are paid from the budget of the General Directorate of Real Estate Interests, and any absence from work must be reported to the Director General, who also grants all types of leave.

This institutional arrangement raises fundamental concerns about the independence and judicial status of real estate judges. They operate more as administrative employees subordinate to the Director General than as members of an independent judiciary. The claim made in Article 11 of the Real Estate Judges Law that these judges enjoy the same immunity as those in the ordinary judiciary is therefore more symbolic than substantive.

Adding to their lack of independence, Article 23 of the law gives the Minister of Local Administration and Environment the power to issue the law's executive and regulatory instructions, in coordination with the Minister of Justice. These instructions were indeed issued in Decree No. 1239 on 18 June 2020. Article 7 of the decree grants the Minister of Local Administration the authority to determine the number of real estate judges in each governorate based on a proposal from the Director General of Real Estate Interests, despite the fact that the minister is not equipped to assess judicial needs, nor to determine the actual caseload or requirements in different regions. This further reinforces the exceptional and non-judicial nature of the real estate judiciary as it currently operates.

03

Committees Exercising Judicial Functions

Expropriation Law No. 20 of 1983 provided for the establishment of a preliminary committee tasked with appraising the value of expropriated properties. This committee is constituted by the expropriating authority through a final decision and is mandated to assess the value of properties based on their worth immediately prior to the issuance of the expropriation decree, explicitly excluding any price increases resulting from the expropriation project or market speculation (Articles 12 and 13). The committee's decisions may be challenged before a Review Committee, which is formed by a final decision of the Executive Office of the Governorate Council. The Review Committee is chaired by a judge appointed by the Minister of Justice and includes representatives from the expropriating entity, the owners of the expropriated properties, the Farmers' Union in the governorate, and the governorate itself. However, its rulings are final and not subject to appeal or review (Articles 23 and 24).

The law also mandates the formation of a Dispute Resolution Committee responsible for adjudicating all claims of ownership or other real rights related to properties within the expropriated area. It is also empowered to take over any ongoing related lawsuits that have not yet been settled by a final judgment (Article 18). This committee is formed by a final decision of the Minister of Justice and is chaired by a judge appointed by the minister, with two additional members: a representative from the General Directorate of Real Estate Interests and another from the expropriating body. Notably, the law makes no provision for representation of the property owners (Article 19). In handling the disputes or claims brought before it, the committee is granted the same authorities as the court originally competent to hear such cases (Article 20). Its decisions are subject to appeal before the governorate's Court of Appeal, following the same procedures and deadlines applied to appeals of urgent matters. The Court of Appeal renders a final decision in chambers (Article 21).

The establishment of such committees reflects a broader strategy by the former Assad regime to strip ordinary courts of their jurisdiction and delegate it instead to bodies formed and overseen by the executive branch. Since 2011, similar committees have proliferated, serving as instruments to pressure Syrian citizens, particularly those perceived as unsupportive of the regime, into vacating their homes and relinquishing their properties through processes orchestrated by these executive-aligned bodies. These developments will be revisited in the section addressing the post-2011 judicial landscape in regime-controlled areas.

Part I.

The Judiciary During the Syrian Conflict: Fragmentation and Parallel Experiences

Given the multiplicity of actors that came to control different parts of Syrian territory during the conflict, and the emergence of overlapping spheres of influence, where a single area was sometimes governed by more than one de facto authority due to shifts in military dynamics and the fluid nature of power, the result was a range of local governance models, each shaped by distinct ideas, networks, and strategies. These differences were reflected in the legal and judicial systems that emerged in each zone of control. Since it is not feasible to comprehensively examine all the legal and judicial experiments that unfolded across Syria—particularly those that proved short-lived due to changes in control—this study will focus on the major, enduring experiences that remain active at the time of writing. These include the judicial systems and legal frameworks currently in place in areas controlled by the Syrian government, the Autonomous Administration, the Syrian Interim Government, and the Salvation Government.

Chapter 3. The State of Courts and Justice in Regime-Held Areas Post-2011

During the conflict period, the structure of the Syrian judiciary in regime-held areas underwent no fundamental transformation compared to the pre-conflict era. While certain legal amendments were introduced, they had little substantive impact on the judiciary's institutional framework. In 2011, under popular pressure demanding freedom and reform including calls to abolish the emergency law and exceptional courts, the head of the Syrian regime issued Legislative Decree No. 161 on 21 April 2011, formally ending the state of emergency that had weighed heavily on Syrians since the Baath Party's rise to power.[26]

On the same day, Decree No. 53 abolished the Supreme State Security Court, transferring all pending cases to the competent ordinary judiciary in accordance with criminal procedure law.[27]

As the structure of the Syrian judiciary has already been addressed in the introductory chapter, this chapter focuses instead on the most significant post-2011 developments affecting the judiciary and how the Syrian regime has used the conflict to entrench its control, effectively transforming the ordinary judiciary into a tool with exceptional powers designed to assert even greater authority over the lives and property of Syrian citizens.

26 Muhannad al-Hasani, "Why was March 8 a Black Day in Syria's History?" (Arabic), Syria TV, link: https://shorturl.at/cCC1R

27 https://shorturl.at/R63zw From the Syrian People's Assembly website

First: Key Changes to the Judicial Structure After 2011

Although the security services never ceased their habitual violations against Syrians, the regime needed a legal substitute for the Emergency Law and the Supreme State Security Court to legitimize continued repression under a new guise. In 2012, it enacted Counter-terrorism Law No. 19, which functioned as a de facto replacement for the emergency framework. The law is rife with vague and broadly defined provisions, granting wide interpretive leeway to both security agencies and the specialized court established under Law No. 22 of the same year. In the following lines, we will discuss the composition and jurisdiction of the exceptional courts and committees created in the period following 2011, and they can be limited to the following:

01

The Court for Terrorism Cases

Established under Law No. 22 of 2012, this court is headquartered in Damascus, though additional chambers can be created by the Supreme Judicial Council as needed. The court operates under a minimal legal framework consisting of just nine articles, which define its structure and procedures. It is composed of three judges (a president and two members), one of whom is a military officer.

An investigating judge serves with the full powers of a referring judge. The court also has its own Public Prosecution office. All appointments, to both the bench and the prosecution, are made by presidential decree, upon recommendation by the Supreme Judicial Council, thus ensuring the court remains under executive authority control.

Appeals are handled by a special chamber of the Court of Cassation, also formed by decree. Rulings in absentia may not be challenged by retrial unless the accused surrenders voluntarily. Importantly, Article 7 of Law No. 19 explicitly exempts the court from adhering to standard procedural guarantees at all stages of prosecution and trial.[28]

28 See Article No. 7 of Legislative Decree No. 19.

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The court's jurisdiction covers the full scope of terrorism-related crimes under Law No. 19. A "terrorist act" is defined broadly as any act intended to spread panic, disturb public order, or damage the state's infrastructure or foundations, regardless of the methods or means used. Similarly, the law defines "terrorist financing" as the provision of funds, weapons, equipment, or "other items" for use in terrorism, either directly or indirectly, by individuals or organizations.[29]

These definitions are intentionally vague, with phrases like "other items" leaving wide room for arbitrary interpretation, especially when judges are appointed directly by the executive.[30]

The court also hears any case referred by its Public Prosecutor, who in turn relies on the judicial police, typically an extension of the security branches that dominate investigation and referral processes. In effect, these branches determine whether a case falls within the Counter-terrorism Court's jurisdiction.

Strikingly, the law establishing this court draws no distinctions between civilians and military personnel, or between adults and minors. All may be tried before it, regardless of status or age.[31]

29 See Article 1 of Legislative Decree No. 19.

30 "The special court uses the overbroad provisions in the Counter-terrorism Law, enacted in July 2012, to convict peaceful activists on charges of aiding terrorists in trials that violate basic due process rights, Human Rights Watch said. The charges are brought under the guise of countering violent militancy, but the allegations against the activists actually amount to such acts as distributing humanitarian aid, participating in protests, and documenting human rights abuses. " Source: Human Rights Watch, "Syria: Counterterrorism Court Used to Stifle Dissent," 25 June 2013, link: https://www.hrw.org/news/25/06/2013/syria-counterterrorism-court-used-stifle-dissent

31 Syrian Network for Human Rights, "At least 10,767 people are still subject to the Counter-terrorism Court, and the court has heard nearly 91,000 cases, and 3,970 cases of property seizure" (Arabic), 15 October 2020, link: https://snhr.org/arabic/12765/15/10/2020/ [Accessed 1 February 2024]

02 Police Disciplinary Court

The Police Disciplinary Court was established under the Internal Security Forces Military Service Law, issued by Decree No. 1 of 2012. Headquartered in Damascus, additional branches of this court may be established by decision of the Prime Minister, based on a proposal by the Minister of the Interior. Its primary mandate is to adjudicate disciplinary matters involving members of the Internal Security Forces (police), and it plays a pivotal role in determining whether personnel can be referred for prosecution. Public prosecution against police officers cannot proceed without prior approval from this court, except in cases involving flagrante delicto or offenses covered by the Economic Penal Code, two exceptions in which prosecution may begin without the court's referral. Decisions of the Police Disciplinary Court can be challenged within fifteen days from the date the convicted party is notified of the ruling.[32]

The court is composed entirely of police officers holding law degrees. Its president must be a high-ranking officer, and its members must be commanding officers; all are appointed by presidential decree upon recommendation from the Minister of the Interior.

This court is classified as exceptional for several reasons. First, it is composed of police officers themselves, raising serious concerns about neutrality, especially given their lack of formal judicial experience. Second, the appointment of its members by the President of the Republic, based on the proposal of the Minister of the Interior, places the court firmly under executive authority. Perhaps most critically, the court can effectively prevent victims of police misconduct from seeking redress through the regular judiciary, barring the two aforementioned exceptions. This confers a dangerous level of immunity on Internal Security Forces personnel and reinforces a broader culture of impunity.

32 See Article 23 of Legislative Decree No. 1 of 2012, the Internal Security Forces Military Service Law, which stipulates the events of the Police Disciplinary Court and its jurisdiction.

03 Exceptional Committees

In parallel with the various phases of war waged by the Syrian regime against towns and cities across the country since 2011, Legislative Decree No. 66 of 2012 was issued, creating two regulatory zones within the Damascus Governorate. In 2018, Law No. 10 amended several provisions of Decree 66 and allowed for the establishment of one or more regulatory zones in any area of Syria. These texts provided for the formation of a series of committees tasked with functions that, by their nature, fall under the jurisdiction of the civil judiciary.

Decree 66 states that the value of real estate within the regulatory zone is to be assessed according to its present condition by a committee formed by the governor. This committee is composed of a judge of advisor rank appointed by the Minister of Justice as chair, two real estate valuation experts appointed by the Minister of Housing and Urban Development, and two experts representing the property owners. Article 14 of the same decree calls for the formation of a "Dispute Resolution Committee" with judicial jurisdiction. This committee is responsible for examining all objections and claims related to ownership or property rights within the zone. It also absorbs all similar lawsuits currently before the courts that have not been concluded by a final ruling. It, too, is formed by decision of the governor and includes a judge of advisor rank appointed by the Minister of Justice as chair, a representative of the Real Estate Interests Directorate holding a law degree appointed by the Director General, and a representative of the governorate, also holding a law degree, appointed by the governor (Article 15). The committee is granted all the powers of the original court of jurisdiction in resolving disputes (Article 16), and it is explicitly exempted from adhering to procedural rules and deadlines stipulated in the Code of Civil Procedure (Article 18). [33]

33 See Legislative Decree No. 66 of 2012 and Law No. 10 of 2018.

The decree also establishes what are known as "Distribution Committees," tasked with appraising the value of regulatory plots and distributing them as shared quotas among rights holders in the zone. These are also formed by decision of the governor and follow the same composition: a judge of advisor rank appointed by the Minister of Justice as chair, two valuation experts appointed by the Minister of Housing and Urban Development, and two experts representing the owners (Article 24 of Decree 66).

Decisions issued by all three of the above committees may be appealed before the Civil Court of Appeal in the governorate. However, the appeal is reviewed in the deliberation chamber without summoning the parties or hearing their statements, according to the same procedures and timelines used to appeal urgent matters rulings. The appellate court's decisions are final and not subject to further review (paragraphs 8 ,6, and 14 of Article 2 of Law No. 10).

These committees were effectively granted the powers of the regular civil judiciary in matters of property valuation and dispute resolution. Yet their formation is legally unsound. They are established by decision of the governor,[34] in clear violation of the Judicial Authority Law, which designates the Supreme Judicial Council as the only body authorized to appoint, promote, discipline, or dismiss judges. Moreover, apart from the presiding judge, none of the members of these committees are judges. They are not required to have previous judicial or legal experience, and in most cases, they are not even required to hold law degrees.

That decisions issued by these committees may be appealed before the Court of Appeal does not confer upon them either legitimacy or true judicial character. As appeals are examined behind closed doors and without adversarial proceedings, this process does not provide an adequate safeguard of litigants' rights. The decisions issued by the Court of Appeal in such cases are final and not subject to further challenge.

34 The governor is considered a member of the executive authority and is appointed and dismissed from his position by decree (Article 39 of Local Administration Law No. 107 of 2011)

As such, the courts and justice institutions continue to operate under the same structure and methods as before 2011, and they remain incapable of meeting international standards for independence and impartiality, particularly in the realm of exceptional judicial bodies.[35]

Some argue that the Agricultural Wage Determination Committees, established under Agricultural Labor Regulation Law No. 56 of 2014 (which replaced Law No. 134 of 1958), fall under the category of exceptional committees. This view may have been justified under Law 134, as those committees did have the authority to adjudicate disputes between contracting parties, and their decisions were final if issued unanimously, or appealable to the Supreme Arbitration Council for Agricultural Labor if issued by majority.[36]

However, after the enactment of Law No. 56 of 2014, the role of these committees became strictly administrative. Their function is to attempt out-of-court resolution of disputes between parties to an agricultural labor relationship. If no resolution is reached, either party may bring a direct legal claim before the civil Magistrates' Court in the district where the land is located. These courts hold jurisdiction over all disputes related to the use of agricultural land, and their decisions are subject to appeal before the Court of Cassation (Article 145). Thus, these committees can no longer be considered part of either the ordinary or exceptional judiciary, as they do not exercise judicial functions or encroach upon the jurisdiction of the competent courts.

35 ILAC Report on the Rule of Law in Syria for 2021, p. 24
https://ilacnet.org/publications/ilac-rule-of-law-assessment-syria-2021-arabic/

36 For more, please see: Articles 217 to 230 of Law No. 134 of 1958 Regulating Agricultural Relations in the Syrian Region.

Second: The Intensification of Judicial Instrumentalization After 2011

In addition to the structural changes observed in the judiciary across areas that were controlled by the Assad regime, significant shifts have taken place since 2011 in the roles and functions of the judiciary, changes that have further served the regime's efforts to justify and legitimize unlawful practices against the Syrian people. The regime has not only made extensive use of exceptional courts and committees but has also turned to the regular criminal judiciary and public prosecutors to validate illegal security practices. One illustrative example is Legislative Decree No. 55 of 2011, which amended Article 17 of the Code of Criminal Procedure to authorize the judicial police, or those delegated to perform its functions, to detain suspects for up to seven days, extendable to sixty with the approval of the Public Prosecution. Yet even this amendment was routinely disregarded by security agencies and affiliated forces, as numerous detainees were proven to have been held in underground cells for months or even years without being brought before a judge. Some died under torture, and in such cases, the authorities issued death certificates without returning the bodies to their families.[37] These violations have worsened in light of the judiciary's inability to prosecute security personnel, who enjoy near-complete immunity.

37 Paragraph 40 of the 2022 Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, link: https://docs.un.org/en/A/HRC/51/45

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Despite the regime's attempts to create a public impression—particularly after 2011—that it had abolished certain exceptional courts and laws in response to long-standing demands from Syrians, in reality, these were merely replaced with alternative structures that often mirrored or even exceeded their predecessors in violating due process and undermining the rights of defendants. A clear example is the Counter-terrorism Court, which was established to replace the Supreme State Security Court. Yet the similarity between the two, both in terms of jurisdiction and function, quickly revealed a systematic effort to preserve and expand the reach of exceptional justice mechanisms under new names. Even the abolition of military field courts in 2023, and the transfer of their cases to the military judiciary, has not signaled a break from this trajectory, given the exceptional powers retained by military courts in Syria. The recurring creation of committees with quasi-judicial powers further underscores the regime's deeply rooted approach of treating the judiciary as a tool for advancing its authoritarian objectives.

We can also observe disruptions to the judiciary's functioning in areas affected by conflict, particularly those that experienced shifting control. Courts in such areas were often temporarily closed once they fell outside government control. During these periods, judges and court staff would continue their work from buildings located in government-held zones. For instance, several towns in the Damascus countryside such as Harasta, Douma, Al-Nashabiyah, Al-Kiswah, and Ain al-Fijah, remained outside government control for months or years. During that time, courts in these areas were closed, and operations were relocated to the Al-Zablatani Court. Individuals involved in legal proceedings were required to follow up on their cases there, which imposed significant costs, burdens, and risks.

In areas that were recaptured by Assad's military after prolonged periods of control by other forces, the regime has consistently refused to recognize judicial decisions issued by de facto courts—whether civil, criminal, or Sharia—including those related to property transactions and the registration of sales and purchases. For example, when the regime regained control over Eastern Ghouta and parts of Daraa Governorate, it categorically rejected all decisions issued by local courts established by former de facto authorities, regardless of the nature of those rulings or whether they met the formal standards of a judicial decision.[38]

38 WhatsApp interview with a Syrian judge currently serving in government-held areas, 22 July 2024. Name withheld for security reasons.

This led many residents in these areas, especially those who remained after the regime's return, to avoid the formal court system altogether and instead resolve their disputes through alternative, informal mechanisms.[39]

A particularly notable shift concerns the method of judicial appointment. In the years following the outbreak of the Syrian revolution, the Ministry of Justice increasingly appointed lawyers with over ten years of legal practice to serve as judges or prosecutors. According to one lawyer interviewed for this study, this approach aimed primarily to address a critical shortage of judges, driven both by the explosion of cases resulting from the ongoing conflict and by the defection of many judges who aligned themselves with the revolution. The regime responded by dismissing these judges under the pretext of "judicial and administrative reform"[40] or on charges of "serious legal violations,"[41] even when dismissal orders were issued years after the judges had already fled the country. The lawyers appointed as judges, by contrast, were known for their loyalty and obedience to the regime.[42]

This method of appointment, however, did not replace or eliminate the role of the Higher Judicial Institute, established in 2000, which continues to admit judicial candidates based on written and oral exams. Crucially, each candidate is subject to a thorough security vetting process that became significantly more stringent after 2011 to ensure regime loyalty. Candidates undergo two years of study and training before being assigned to judicial posts by the Ministry of Justice and the Supreme Judicial Council.

Due to the regime's emphasis on loyalty over the professional standards of competence, integrity, and impartiality—essential to any functioning judiciary—corruption, bribery, and forgery have increased markedly in the judicial sector since 2011. In some cases, networks of judges and lawyers have been involved in the illegal sale, purchase, or transfer of property, using forged sale contracts or fraudulent powers of attorney to carry out such transactions and seize the property of others.[43]

39 Rule of Law Assessment Report in Syria, International Legal Assistance Consortium (ILAC), 2021, p. 14, link: https://ilacnet.org/publications/ilac-rule-of-law-assessment-syria-2021-arabic/ [Accessed 14 March 2024]
40 "Judicial reform continues... and dozens of judges have been dismissed over the past three years!" (Arabic), Manqoul News, 11 May 2015, link: https://bit.ly/3Geary5
41 Dia Sahnaoui, "The Syrian regime president dismisses judges on unknown charges" (Arabic), The New Arab, 1 April 2024, link: https://bit.ly/46gvV7Y
42 WhatsApp interview with a lawyer working in government-held areas of Syria, 27 July 2024. Name withheld for security reasons.
43 See, for example: "The Regime Admits the Spread of Corruption and Reveals Judges Involved in Forgery Operations" (Arabic), Syria24, 25 November 2020, link: https://www.sy-24.com/59897/ [Accessed 24 August 2024]

Chapter 4. Judicial Practices under the Autonomous Administration in Northeast Syria (AANES)

Following the Democratic Union Party (PYD), the Syrian affiliate of the Kurdistan Workers' Party (PKK), gaining control over northeastern regions of Syria, the Autonomous Administration of North and East Syria (AANES) was established in 2012. This new authority formed its own judicial framework under the name "Social Justice System" and began setting up what were initially called "People's Courts" in areas such as Qamishli, Amuda, Darbasiyah, and Derik (also known as Malikiyah). As the administration's geographic control expanded, these courts were introduced in additional areas, including Hasakah, Afrin, Kobani (Ayn al-Arab), and Manbij. Although originally referred to as People's Courts, these institutions were renamed "Justice Courts" in April 2016. Until that point, a Court of Cassation had been part of the system, responsible for hearing appeals following decisions from the Court of Appeal. However, with the restructuring of the justice system in 2016, the Court of Cassation was abolished. Its functions were absorbed by the Court of Appeal, now rebranded as the Cassation Board, whose decisions became final and not subject to further appeal.

Commenting on this shift, Khaled Ali, a leading figure in the judiciary and head of the Cassation Board in Qamishli, stated:

> **The new justice system has been in effect since April 2016. The old system was abolished. We are optimistic about the new system. New methods have been devised to resolve cases. We hope it will be a qualitative leap in resolving people's problems, especially since the litigation process has been limited to two levels, with the decisions of the Court of Cassation, previously called the Court of Appeal, being final. This will expedite the resolution of cases. Under the old system, decisions of the Court of Appeal were subject to appeal before the Court of Cassation.**[44]

Given these developments, this chapter will focus on explaining the judicial structure as it currently exists under the new system. Since many aspects of the previous system have been superseded, we will not dwell on the earlier structure in order to avoid unnecessary confusion between two consecutive phases of judicial administration.

44 Statement by Judge Khaled Al-Ali, quoted from the Facebook page of the Social Justice Council in the Jazira, 2 October 2016, link: https://www.facebook.com/Encumenaedaletacivaki/

Structure of Courts in the Autonomous Administration Areas

To understand the judicial system in areas under the Autonomous Administration, it is useful to approach its structure from the lowest to the highest level. This layered examination is necessary due to the complexity and overlap of jurisdictions, as well as the diversity of judicial bodies that operate under varying titles and mandates.

Reconciliation Committees

These committees form the foundational tier of the justice and social harmony system. Their primary role is to resolve disputes, mediate conflicts, and promote social cohesion. They are established as needed at all levels, from local communes[45] to district-wide bodies, either through direct elections or community consensus. Typically composed of socially accepted volunteers,[46] they function as community-based mechanisms for dispute resolution. Reconciliation Committees address civil, commercial, and family disputes, striving to achieve a mutually acceptable settlement between the parties involved, provided that the agreement does not violate the "principles of a democratic nation." If reconciliation is not possible, the dispute is referred to the Court of Justice (First Instance Court) for formal adjudication. In certain cases, and in coordination with Prosecution and Investigation Committees, Reconciliation Committees may also handle aspects of criminal cases, though without infringing on public rights or assuming prosecutorial authority.[47]

45 "The commune is the basic grassroots organizational form of direct democracy. It is the smallest administrative unit in the Democratic Autonomous Administration of North and East Syria. It is the place where the moral-political community develops, which produces social, economic, and cultural life. It is an independent council, and it is the place of decision-making, management, and the power to resolve social issues within the administrative and organizational sphere."
46 Article 75 of Social Contract Charter of the Democratic Autonomous Administration of North and East Syria, 2023.
Article 116 of the 2023 Social Contract Charter
47 See: Decree No. 18 of 2015 issued by the Joint Governance of the Jazira region under the name of the Jazira Province Reconciliation Committees Law, pp. 35-34.

Prosecution and Investigation Committees

These committees serve as prosecutorial and investigative bodies tasked with handling crimes committed against individuals or society. Their functions include identifying suspects, conducting investigations, collecting and documenting evidence, and preparing official reports and case files. Depending on the population size and needs of the city, these committees are typically composed of five to seven members, with efforts to maintain gender representation.

When the committee determines that a crime has been committed, it refers the case to the Court of Justice.[48] It may issue arrest warrants following an initial interrogation of the accused, detaining the individual for up to seven days. This period may be renewed once, not exceeding fourteen days, and in some instances, extended to a maximum of one month depending on the nature of the crime. After this period, the case must be formally transferred to the Court of Justice for trial.[49] Following the Court of Justice's ruling, the Prosecution and Investigation Committee retains the right to file an appeal before the Court of Cassation.

In locations where Justice Bureaus have not yet been established, the Prosecution and Investigation Committees are also temporarily authorized to ratify reconciliation agreements.[50]

In locations where Justice Bureaus have not yet been established, the Prosecution and Investigation Committees are also temporarily authorized to ratify reconciliation agreements.[51]

48 It is a well-known legal rule that it is not permissible to combine the powers of prosecution and investigation.
49 Decree No. 21 of 2015 issued by the Joint Governance of the Jazira Province, including the structure of the Social Justice Council in the Jazira Province.
50 Statement by Judge Khaled Al-Ali dated 2 October 2016 (previously cited).
51 See Circular No. 11 dated 26 April 2017 issued by the co-presidency of the Social Justice Council and posted on the Council's Facebook page, link: https://www.facebook.com/Encumenaedaletacivaki/

The role of women

- The Women's Courthouse is a civil and social institution dedicated to raising awareness and addressing women's and family issues across various aspects of life, primarily through reconciliation. It aims to promote a culture of social justice and combat all forms of inhumane practices against women, in coordination with relevant women's organizations. [52]

These courthouses include several committees, most notably the Social Reconciliation Committee, which is tasked with resolving disputes related to women. A representative from this committee attends court sessions involving women's cases, with the stated mission of defending women's rights in court.[53] However, the dual role played by the committee, acting first as a mediator or arbiter, and then, if reconciliation fails, as a legal representative or advocate for the woman before the Court of Justice, which also jeoperdizes the principle of judicial neutrality and is, in our view, procedurally unsound.

52 Article 117 of the 2023 Social Contract Charter,
53 See the internal regulations for the role of women in the three AANES provinces.

Social Justice Bureaus

Social Justice Bureaus are "bodies elected by municipal councils and composed of 5 to 7 members. Their mandate is to find solutions to disputes and problems referred to them by reconciliation or investigation committees."[54] Members are nominated by the provincial justice councils and "approved by the provincial People's Council." [55] Prior to the issuance of the new social contract, members were selected by local city councils from a list submitted by the Social Justice Council.[56]

Previously known as "People's Courts," these bureaus have jurisdiction over all civil, commercial, administrative, and criminal disputes, regardless of the parties involved.[57] They function as courts of first instance and hear cases that would ordinarily fall under the jurisdiction of civil conciliation courts (both civil and criminal), courts of first instance (civil and criminal), and Sharia courts. There is no specialization within these courts: the same chamber adjudicates criminal, civil, and Sharia matters without distinction.[58] Complainants cannot file a case directly before the Social Justice Bureau. Civil disputes must first pass through reconciliation committees, criminal cases through prosecution and investigation committees, and marital or family-related matters through women's offices. If a complainant bypasses this process and files a case directly with the court, it will be referred back to the appropriate committee. This procedural step is based on the principle that reconciliation is preferable to formal litigation and enforcement, particularly because committee members are residents of the community and presumed to have contextual knowledge of the case and the parties involved, enabling amicable dispute resolution.

Decisions issued by Social Justice Bureaus may be appealed before the Court of Cassation, except in cases where the monetary value of the dispute does not exceed 200,000 Syrian pounds or where the sentence does not exceed three months' imprisonment. In such cases, decisions are final.[59]

54 See Chapter Two of Decree No. 21 of 2015 (previously cited).
55 Article 116 of the 2023 Social Contract Charter
56 Chapter Two of Decree No. 21 of 2015
57 See Article 51 of Decree No. 2 of 2016 regulating the procedures for the social justice system issued by the Joint Governance of the Jazira Region.
58 A WhatsApp call dated May 2024 ,31, with a lawyer working in the autonomous administration areas and pleading before its courts. The lawyer refused to reveal his name for security reasons.
59 See Article 51 of Decree No. 2 of 2016 (reference cited above).

It is important to note that these bureaus are not authorized to adjudicate cases involving the validation of real estate or vehicle sales, or cases concerning the legal confirmation of marriage, lineage, or divorce. Even when such cases are heard and judgments issued, these rulings remain unenforceable, as the relevant administrative bodies—real estate directorates, transportation departments, and civil registries—are still operated by the central Syrian regime and only recognize decisions issued by its courts.[60]

In addition, the justice system of the Autonomous Administration has introduced a mechanism called the "Platform" (Justice Platform), which addresses cases that pose serious threats to society or stir public opinion. Large gatherings are convened, bringing together men and women from various social strata, alongside representatives of local civil society organizations and family members of the parties involved. The Social Justice Bureau determines the number of attendees. In principle, the session concludes with a single decision, although in exceptional cases the decision may be postponed at the request of platform members. After the case details are presented, the audience's views are heard. If a majority favors conviction or acquittal, the court must abide by that opinion. Rulings issued in platform sessions are considered final and not subject to appeal.[61]

60 A report issued by the Aso News Network on 2017/21/2 entitled "Report on the Regime's Courts" at the link:https://www.youtube.com/watch?v=uQY4mADsMSs
61 See Chapter Two of Decree No. 21 of 2015 (op. cit.).

Proponents of this model argue that the "philosophy of social justice in the Autonomous Administration areas" is rooted in empowering the community to resolve its own disputes based on ethics, conscience, and collective values.[62] Legal critics, including the authors of this study, contend that such procedures fall short of ensuring justice. Those whose views are being solicited lack the legal, academic, and procedural expertise necessary to determine the fate of an accused person, particularly when platform sessions deal with serious crimes such as murder and the embezzlement of public funds.[63] Moreover, the fact that the court's judges play no role in the decision-making process, and that rulings are final and immune to appeal, poses a serious threat to the integrity of justice.

Another noteworthy mechanism is the Jury System, which handles criminal cases clouded by ambiguity or doubt regarding the accused. Juries are composed of respected social figures. Each city's Social Justice Bureau compiles a list of such individuals. When a qualifying case arises, the Bureau selects no fewer than 11 jurors from this list. Jurors are sworn in before hearing the case and are tasked with rendering a decision on the facts—either conviction or acquittal. Verdicts are issued by a two-thirds majority, must be written and reasoned, and are binding on the Social Justice Bureau, which applies only the relevant legal provisions. These jury decisions are final in terms of establishing guilt.[64]

62 See the introduction to Chapter One of Decree No. 21 of 2015, reference previously cited.
63 Quoted from an interview with "Judge" Enur on Ronahi TV in the program "Cave Seyemin" on 2017/1/11 at the following link:https://www.facebook.com/Encumenaedaletacivaki/
64 See Chapter Two of Decree No. 21 of 2015 issued by the Joint Governance.

Courts of Cassation (Appellate Courts)

- Appellate bodies within the Autonomous Administration are known as Courts of Cassation, though they functionally serve as courts of appeal. Members are appointed by the Social Justice Council and typically include three to five judges of both genders; in practice, they are composed of three male or female judges.[68] These courts review decisions issued by the Social Justice Bureaus that are eligible for cassation, and their rulings are final and irrevocable.[69] Like the lower courts, the Court of Cassation does not specialize by case type. All matters—criminal, civil, and personal status—are heard by the same panel without separation into distinct chambers.[70]

  To qualify as members of the Cassation Board, candidates must meet specific requirements: they must be professionals in law, sociology, or psychology; they must undergo training at the Social Justice Academy; and they must not suffer from permanent impairments that would hinder them from performing their duties.[71]

  While decisions issued by the Cassation Board are final, there is an exceptional procedure known as a lawsuit for recusal or judge liability suit, which allows for challenging a final judgment. Such cases are brought before the district's Social Justice Council. Though this form of appeal is considered highly irregular, the Council is required to hold a public hearing, listen to the parties, and then either uphold the Court of Cassation's ruling or overturn it. If annulled, the Council issues a final decision on the matter.[72]

68 WhatsApp call dated May 2024 ,31 with a lawyer working in the autonomous administration areas who declined to be named for security reasons.
69 See Article 51 of Decree No. 2 of 2016 (cited reference).
70 WhatsApp call dated May 2024 ,30 with a lawyer working in the autonomous administration areas, who declined to be named for security reasons.
71 See Article 3 of Chapter Six of Decree No. 21 of 2015 (cited reference).
72 WhatsApp call dated May 2024 ,31 with a lawyer working in the autonomous administration areas who declined to be named for security reasons.

Execution Departments

- Once a ruling becomes final, it is referred to the local Execution Department for enforcement if the convicted party refuses to comply voluntarily. These departments consist of three to five members, both men and women, and may request the support of the Asayish (security forces) when necessary.

  The Execution Departments hold broad enforcement powers, including the authority to seize property, carry out forced sales, and impose coercive imprisonment when needed to implement court decisions.[73]

People's Defense Court

- Despite Article 72 of the 2014 Social Contract Charter explicitly prohibiting the establishment of special or exceptional courts,[74] this exceptional court, referred to by some as the "Counter-terrorism Court," was established under the 2014 Counter-terrorism Law.[75] It has jurisdiction over crimes defined by that law as terrorist acts. These include spreading fear among citizens; endangering their lives, freedoms, security, or property; and attacks using firearms or other lethal means on offices of the People's Protection Units (YPG), the Asayish (internal security forces), recruitment centers, security bodies, or national military units and their supply routes, communication lines, bases, or camps.

73 See Chapter Five of Decree No. 21 of 2015 (cited reference).
74 The new social contract charter issued on 12 December 2023 was silent on the issue of establishing exceptional courts and did not address it.
75 See Article 7 of Decree No. 21 of 2015 issued by the Joint Governance of the Jazira Region, which includes the structure of the Jazira Region's Social Justice Council.

Other acts under its jurisdiction include anything deemed to threaten national unity, peaceful coexistence among the region's communities, public safety, or social stability. Any act that weakens the ability of the People's Protection Units or the Asayish to defend citizens and safeguard public institutions, whether through armed confrontation or any form that exceeds the legally protected bounds of freedom of expression, is considered a terrorist offense under this law.

As with Syria's former State Security Court and the now-defunct Counter-terrorism Court, the definitions relied upon here are vague and overly broad. Terms such as "threat to national unity," "peaceful coexistence," and "social safety" grant the court sweeping discretionary powers. Notably, defendants may not be released on bail during the entirety of their trial.[76]

This court also suffers from serious structural deficiencies. Reports indicate that %74 of individuals serving as judges do not hold law degrees but only high school diplomas. Only %26 are law graduates, and none have undergone formal judicial specialization. These courts operate in secrecy and lack judicial independence, with international reports confirming their use as a tool against critics and opponents of the Autonomous Administration.[77]

76 See Articles 4 ,3 and 5 of the Counter-terrorism Law issued in the Jazira provincial government in Session No. 25, dated 27 September 2014.
77 Sasha Al Alou et al, "Autonomous Administration: A Judicial Approach to Understanding the Model and Experience" [Arabic], Omran Center for Strategic Studies, April 2021, p. 135.

Social Contract Protection Court

- Formerly known as the Supreme Constitutional Court,[78] the Social Contract Protection Court is tasked with interpreting the articles of the social contract and ensuring that laws and decisions issued by governing bodies conform to it.

The court consists of ten members, nominated equally by the Democratic Peoples' Council and the Social Justice Council of the Autonomous Administration, and approved by the Democratic Peoples' Council. If a proposed nominee is rejected, the proposing body must submit a new name. The nomination process must account for ethnic and religious representation, provincial representation, and a %50 quota for women. Members serve four-year terms, renewable.[79]

The court's responsibilities include interpreting the provisions of the social contract and reviewing the constitutionality of laws passed by the Democratic Peoples' Council, decisions issued by the Executive Council, and legislative and administrative acts from provincial councils. It adjudicates disputes over the application of the social contract between the Democratic Peoples' Council, the Executive Council, the provincial councils, and the Justice Council. It also resolves disputes between these entities and hears appeals relating to the social contract submitted by individuals, groups, or institutions, as well as those forwarded by Social Justice Bureaus and councils. Additionally, it certifies the results of general elections and referendums in accordance with the principles set forth in the social contract.[80]

78 Article 79 of the Social Contract Charter of 2014.
79 Article 119 of the updated Social Contract Charter of 2023, and Article 3 of the Social Contract Protection Court Law of 2024.
80 Article 2 of the Social Contract Protection Court Law.

Social Justice Council of North and East Syria

- The Social Justice Council of North and East Syria is the main supervisory body for overseeing the implementation of the justice system in areas under the Autonomous Administration. It monitors the performance of justice institutions, submits reports and draft legislation to the Democratic Peoples' Assembly (Parliament), and ensures coordination between the provincial justice councils. Its members are elected by the justice councils of the provinces (Article 116 of the Social Contract Charter), with attention to ensuring equitable gender representation (Article 114).

  A parallel structure exists in the form of the Women's Social Justice Council of North and East Syria, which includes representatives of the women's justice councils from each province and female members of the general Social Justice Council. It plays a coordinating role between women's justice bodies and the general justice system, and also works in partnership with women's organizations (Article 117, Paragraph 3).

  Each province has its own Justice Council, which organizes and supervises justice institutions within its jurisdiction.[81] The joint presidency and members of each council are elected by the province's justice institutions themselves. The joint presidency is then ratified by the provincial Peoples' Council, thereby ensuring fair and democratic representation of the region's communities and social groups (Article 116).

  There is also a Provincial Women's Social Justice Council, tasked with overseeing the work of women in the women's justice bodies at the city and provincial levels. It follows up on issues related to women, organizes women's roles within the justice system, and works to safeguard women's rights (Article 117, Paragraph 2).

81 The North and East Syria region consists of seven provinces: Jazira, Deir ez-Zor, Raqqa, Euphrates, Manbij, Afrin, Shahba, and Tabqa (Article 91 of the amended Social Contract Charter of 2023).

In addition to the civil justice system, military courts operate in some parts of the Autonomous Administration's territory, specifically in the Jazira region (Hasakah Governorate), Raqqa, and the Euphrates region (Ayn al-Arab/Kobani), but are absent in others, such as Deir ez-Zor and Manbij. These courts have jurisdiction over members of the security and military forces affiliated with the Autonomous Administration when they commit offenses during military service. They only consider cases involving a military party. These courts apply the relevant Syrian laws and may also try civilians if a military party is involved in the case.[82]

According to reports by Amnesty International, civilians have at times been referred to and tried before military courts. However, prosecuting members of the security or military apparatus before Social Justice Bureaus remains extremely rare, even in cases involving civilian plaintiffs. These personnel are effectively shielded from accountability. Most cases brought against them do not even reach the judiciary, as complainants are often pressured into withdrawing their claims before they are formally filed in court.[83]

82 WhatsApp call dated 31 May 2024, with a lawyer working in the autonomous administration areas who declined to be named for security reasons.
83 Sasha Al Alou et al, "Autonomous Administration: A Judicial Approach" (previously cited).

Applicable Law Before Judicial Bodies in the Autonomous Administration Areas

Article (19) of the Social Contract Charter of 2014 stipulates that current Syrian laws (civil and criminal) shall be applied insofar as they do not conflict with the provisions of the Charter.[84] In the event of a conflict between laws issued by the Autonomous Administration and those of the central Syrian government, the Supreme Constitutional Court of the province is authorized to decide the matter.[85] The law deemed most suitable for the Autonomous Administration shall then be applied (Article 91).

In an interview with a judge serving within the Autonomous Administration's justice bodies, he explained:

"We apply our own laws and customs to lawsuits. A large number of laws, decrees, and circulars have been issued to regulate judicial work. If there is no applicable provision in our laws, we refer to Syrian positive civil and criminal law, in accordance with Article 88 of the Social Contract in the Jazira Canton."[86] The Autonomous Administration has indeed issued numerous laws, including the Social Contract Charters of 2014 and 2023, a Penal Code, a Social Justice System Procedures Law, and various laws on political parties, associations, unions, investment, and resource management.

84 The 2023 New Social Contract Charter did not include a similar text and did not address this issue.
85 The name of the court was changed to the "Social Contract Protection Court" and there is nothing in the new social contract indicating that the court has the authority to decide on this matter.
86 Statement dated 2 October 2016 from the Social Justice Council's Facebook page, headed by Judge Khaled Al-Ali (previously cited).

However, a clear contradiction arises between what Judge Khaled Ali stated and what is stipulated in the Social Contract itself. While the judge claims that the courts prioritize the laws and customs of the Autonomous Administration, the Social Contract explicitly states that Syrian law must be applied first, provided it does not conflict with the Charter. According to the hierarchy of norms, the Social Contract, being the region's constitutional document, sits at the top of the legislative pyramid.[87]

Therefore, Syrian law should have primacy, and Autonomous Administration laws should only be applied when no contradiction arises or when Syrian law lacks relevant provisions. In practice, most laws enacted by the Autonomous Administration are near-replicas of Syrian legislation, with many provisions exhibiting striking similarity, sometimes even reaching verbatim replication.[88]

Courts in these areas also apply what is referred to as the Social Justice Law, which, according to interpretations by some court personnel, is drawn from social norms,[89] as well as the judge's conscience and personal background. This grants judges extremely broad discretionary power, and the notion of unwritten or uncodified "social justice" may vary significantly from one judge to another. This is particularly problematic given that many judges in the People's Courts neither hold a law degree nor have the qualifications required for judicial office. Consequently, this opens the door to inconsistency and arbitrariness in judicial rulings.

87 Ahmed Abdel Hamid, "The Principle of Gradualism of Legal Rules" [Arabic], published on Egyptian Regulatory Reform Activity (ERRADA), 8 January 2012, link:
http://www.errada.gov.eg/index.php?op=show_feature_details&id=13&start=0&type=1
88 Interview dated 2 June 2024 with a lawyer practicing before the judiciary of the Autonomous Administration. He stated that he bases his memoranda and defenses on Syrian law, noting that he has not reviewed the laws issued by the Autonomous Administration, as they are, in his view, identical to Syrian law. His submissions are accepted, and thus he sees no need to consult the Autonomous Administration's legislation.
89 Video report by Aso News Network entitled "The Courts of the Autonomous Administration" [Arabic], 14 February 2017, at the link:https://www.youtube.com/watch?v=mptDKkt0lNU

Qualifications Required for Judges and Members of Judicial Bodies

The primary condition for assuming a judicial position in the Autonomous Administration areas is completing a training course at the Mesopotamian Social Sciences Academy, an academic institution specializing in legal and social sciences. This institution describes itself as a scientific academy specializing in legal and social sciences, with a mandate to develop the principles and institutions of social justice and democratic rights. It organizes and manages its training activities on the basis of the "democratic nation" philosophy, aiming to instill a social justice mindset and train its future cadres accordingly.[90]

The process often begins with a request from the Social Justice Council to the Autonomous Administration's Bar Association, asking it to nominate a number of candidates. Individuals may then apply voluntarily, and appointments are made based on institutional need.[91] Training courses at the academy range from 45 days to six months in duration and admit individuals holding university degrees in law or the humanities, as well as those with only a secondary school certificate.[92] Upon completing the course, participants may be appointed as judges to serve in the Social Justice Bureaus. The academy also includes a legal instruction department and is recognized, within the AANES only, as an equivalent to a university-level institution.

90 Chapter Seven of Decree No. 21 of 2015.
91 WhatsApp communication dated 31 May 2024 with a lawyer working in the Autonomous Administration areas, who declined to be named for security reasons.
92 According to a lawyer working in these areas, priority for appointment is often given to those with a law degree.

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To be eligible for appointment, a candidate must be from the areas under the Autonomous Administration and hold the right to reside there. Additional conditions, outlined in the Charter of the Social Justice System, include that the candidate must not have been convicted of a felony or a disgraceful crime; must not engage in any other profession while holding judicial office; must not have been dismissed from the judiciary for reasons related to integrity; and must either hold a law degree from a Syrian university or its equivalent, or be a graduate of the Mesopotamia Academy. Passing both written and oral entrance exams administered by the academy on behalf of the Social Justice Council is also a requirement.[93]

Before the promulgation of the Social Justice System Charter in 2019, the prerequisites for judicial office were significantly more lenient. A candidate did not need to hold a university or even a high school diploma. It was sufficient to be over the age of twenty-two, able to read and write, known to be experienced in resolving disputes, and in possession of a certificate of good conduct issued by the local commune. Candidates also had to accept participation in training courses, be free of communicable diseases or permanent disabilities that would prevent them from performing their duties, and be fully dedicated to the work of the judiciary.[94]

93 Sasha Al Alou, op. cit.
94 Chapter Two of Decree No. 21 of 2015

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A senior official in the Ministry of Justice of the Autonomous Administration confirmed to ILAC that no formal training program exists for judges in the People's Courts.[95] A lawyer practicing in the region noted that new judicial appointees typically undergo a 15-day training course, which covers the ideology and objectives of the Democratic Union Party (PYD) and provides a brief orientation to the legal texts issued by the Autonomous Administration.[96] In practice, the appointment, transfer, and dismissal of judges lies largely in the hands of the so-called cadres: a group composed mostly of fighters affiliated with the Kurdistan Workers' Party (PKK). These cadres exert de facto control over the region and oversee all aspects of governance with the backing of the international coalition against ISIS.[97]

The cadres manage judicial processes in each region and are said to exercise significant influence over judges, including directing the course of certain cases and verbally instructing judges on how to rule. This form of intervention is particularly prominent in first-instance courts, known as People's Courts, where the presence of the cadres is most direct.

It is worth noting that a lawyer may be registered simultaneously with the Bar Association of the Autonomous Administration and with the Syrian government's Bar Association, and may plead before courts affiliated with either party.[98]

From a broader perspective, the judiciary in the Autonomous Administration areas is characterized by a high degree of fragmentation and complexity. The multiplicity of courts and justice bodies, the divergence in legal sources between the Social Justice Charter and Syrian state law, the strong ideological orientation of the dominant political actors, and the pattern of interference by forces based outside the region all signal a judicial experience that diverges sharply from accepted standards of independence and impartiality. Perhaps the clearest example of this deviation is the marginalization of the civil judiciary in political and security cases, the existence of exceptional courts operating outside any recognized legal framework, and the extent to which judicial operations are subordinated to partisan control.

95 ILAC, the International Legal Assistance Consortium, is a Swedish non-governmental organization that works on legal matters and studies, evaluates, and supports legal bodies in countries experiencing conflict.
96 ILAC Rule of Law Assessment Report Syria, 2017-2018, page 118, link: https://ilacnet.org/publications/syria-rule-of-law-assessment/
97 Pınar Dinç, The Kurdish Movement and the Democratic Federation of Northern Syria, Journal of Balkan and Near Eastern Studies, 26 January 2020, p. 7.
98 WhatsApp communication with a lawyer dated 31 May 2024, op. cit.

Chapter 5. Judicial Structures under the Syrian Interim Government (SIG)

Following the loss of control by the Syrian government over several regions beginning in 2012, the provision of basic public services, including judicial services, was severely disrupted. In response, various de facto forces on the ground established alternative judicial structures, each shaped by the respective military faction's interpretation of the judiciary's purpose and its role in dispute resolution. These courts operated under the authority of the factions that established them and were fully subject to their directives. Accordingly, the legal systems applied varied greatly, reflecting the ideological orientation of each group. Some factions implemented Islamic law based on their own interpretation of Qur'anic texts or fatwas issued by faction-appointed "judges." Others applied the Unified Arab Law, which is a draft legal framework approved by the Arab League but never implemented in any Arab country. Still others relied on Syrian state law, albeit selectively and in ways that aligned with their interpretations of Islamic law, with a preference for legal provisions that predated 2011. This resulted in a fragmented and inconsistent judicial landscape, with significant variation in both structure and legal standards across different opposition-held territories.

Over time, many of these areas were recaptured by the former regime, while others changed hands multiple times. Beginning in 2017, the Turkish government expanded its military presence in certain northern regions of Syria, working in coordination with armed factions that, though formally aligned with the Syrian Interim Government (SIG), in practice operate under Turkish influence and oversight. With Turkey's support, limited administrative and institutional infrastructure was established in these areas, including the judiciary.

This chapter focuses on the judicial structures that have taken shape in those regions now under the de facto control of the Syrian Interim Government, particularly in the areas where Turkish-backed factions are active. It examines the structure and operation of the courts, the laws currently applied within them, and the mechanisms through which judges are appointed. It does not, however, address the earlier formations known as "Sharia bodies" that once existed in some opposition-controlled areas, as these no longer have a presence on the ground and are thus outside the scope of this study.

01

First: The Structure of the Judiciary in the Areas Controlled by the Syrian Interim Government

The structure of the judiciary in areas controlled by the Syrian Interim Government and the National Army largely mirrors that found in Syrian government-held territory. The legal and judicial systems in these areas emulate the official framework, particularly in civil, criminal, Sharia, and military matters. However, some court types that existed prior to 2011 or continue to operate within Syrian government areas, such as administrative courts, exceptional courts, and real estate courts, are absent here. Instead, certain committees have been established to handle sensitive cases beyond the scope of the regular judiciary. The following outlines the judicial system as adopted in these areas.

Civil Judiciary

- In the civil judiciary, the system comprises conciliation courts and civil courts of first instance operating across numerous localities, including Afrin, Sharran, Raju, Jandaris, Azaz, Suran, Akhtarin, Mare', Jarablus, Al-Bab, Al-Rai, Qabasin, Bza'a, Tal Abyad, and Ras al-Ain. There are also three courts of appeal located in Afrin, Ras al-Ain, and Al-Rai, tasked with reviewing first-instance rulings (both conciliation and first instance) in civil and criminal cases. In principle, their rulings may be appealed before the Civil Chamber of the Court of Cassation. [99]

Notably, judges in first instance courts also hear cases that fall within the jurisdiction of conciliation courts, assuming both roles based on the type or value of the case, which is an arrangement likely driven by the low number of court filings.

In smaller jurisdictions such as Qabasin, Suran, and Bza'a, a single regional judge typically assumes multiple judicial roles. This includes presiding over civil and criminal conciliation cases, juvenile matters, civil status disputes, labor conflicts, inheritance, and personal status cases, in addition to overseeing enforcement procedures. This system reflects the structure in force within Syrian state courts both before and after 2011, and the consolidation of responsibilities stems from the limited case volume and the small size and population of these areas.

99 The Court of Cassation is composed of only three judges and hears appeals in all types of cases: civil, criminal, and Sharia. A military judge joins the panel when reviewing appeals of military court rulings (WhatsApp call dated 16 May 2024 with a judge who declined to be identified for security reasons).

Criminal Courts

- The criminal judiciary under the Syrian Interim Government includes the Public Prosecution, criminal conciliation courts, and criminal courts of first instance. The Public Prosecution is tasked with initiating proceedings against those accused of criminal offenses ranging from violations and misdemeanors to felonies. In line with civil court practices, judges in criminal courts of first instance often serve a dual role: in some cities, they adjudicate both violations and misdemeanors as conciliation judges, and more serious misdemeanors as first instance judges. The rulings issued in either capacity may be appealed before the Misdemeanor Appeal Court.

In jurisdictions where only a regional conciliation judge is available, that judge alone hears all criminal cases classified as violations or misdemeanors within conciliation court jurisdiction. These rulings are also subject to appeal before the Misdemeanor Appeal Court. More serious misdemeanors and felonies, however, are referred to the Public Prosecution in the relevant city, which in turn sends them either to the investigating judge or the criminal court of first instance, depending on the case. Investigating judges handle cases of a criminal nature, including felonies, misdemeanors linked to felonies, and juvenile misdemeanors punishable by more than one year of imprisonment. Their decisions are subject to appeal before the referring judge. As for criminal courts, they handle felonies and related misdemeanors exclusively based on referrals from the referring judge, and their verdicts may be appealed before the Court of Cassation.[100]

100 WhatsApp communication with a judge on 16 May 2024, working in the Syrian Interim Government (SIG) areas, who declined to be named for security reasons.

Personal Status Courts (Sharia Judiciary)

- Personal status courts are responsible for adjudicating family and inheritance matters, including marriage, divorce, dowry, lineage, wills, and succession. Appeals of their decisions are submitted to the Sharia Chamber of the Court of Cassation. In areas where only a regional conciliation judge is present, that judge also hears personal status cases. Notably, there are no Druze sectarian courts or Christian ecclesiastical courts in these regions, due to the absence of Druze and Christian populations.[101]

Military Judiciary

- There is one military court operating in the Afrin and al-Rai regions, and another in the Ras al-Ain and Tal Abyad regions. In addition, several public prosecutors, investigating judges, and individual military judges are distributed across four departments. Rulings issued by these military courts are subject to appeal before the Court of Cassation located in the al-Rai region, where a military advisor serves as a member of the Court and participates in reviewing appeals submitted against military court decisions. The Military Judiciary Administration, headquartered in Azaz in the northern countryside of Aleppo, is affiliated with the Ministry of Defense of the Syrian Interim Government. [102]

101 WhatsApp communication with a judge on 12 May 2024, working in the Syrian Interim Government (SIG) areas, who declined to be named for security reasons.
102 Enab Baladi, "SIG Defense is Seeking Judges to Manage Military Courts" [Arabic], 16 May 2022, link: https://bit.ly/4eslnE0[Accessed on 6 March 2024].

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These courts are mandated to examine crimes committed by members of the military factions affiliated with the Syrian National Army, including internal clashes between factions.[103] However, they often go beyond this jurisdiction by trying detainees and arrestees from various factions, usually in coordination with the military police, on charges of affiliation with Kurdish groups, the Syrian government, or ISIS.[104] The military judiciary is also responsible for handling a range of crimes defined under Syrian law, including treason, desertion, offenses that directly harm the interests of the army, and crimes committed within military camps, institutions, or facilities under military control, regardless of whether the alleged perpetrator is a civilian or military personnel.[105]

A particularly striking feature of this judicial system is the way jurisdiction is determined: rather than following strict legal criteria, jurisdiction tends to depend on which authority carried out the arrest and investigation. If the military police is the arresting and investigating party, the case will fall under the jurisdiction of the military judiciary, even if the accused is a civilian. This jurisdictional arrangement stands unless one of the parties raises an objection before the military court, in which case the Military Criminal Court may, at its discretion, transfer the case to the civil judiciary.[106]

Final rulings issued by the military judiciary are implemented through the military public prosecution in Azaz or Ras al-Ain, as well as through individual military judges in other regions. Execution is carried out by the military police affiliated with the National Army, which maintains eight branches across the Aleppo countryside.[107]

103 Ibid.
104 Human Rights Watch, "'Everything is by the Power of the Weapon': Abuses and Impunity in Turkish-Occupied Northern Syria," 29 February 2024, link: https://www.hrw.org/report/29/02/2024/everything-power-weapon/abuses-and-impunity-turkish-occupied-northern-syria
105 WhatsApp communication dated 11 May 2024 with a judge working in the "Operation Peace Spring" areas. Name withheld for security reasons.
106 WhatsApp call dated 30 May 2024 with a lawyer who declined to be named for security reasons.
107 Mamoun Al-Bustani, Hassan Ibrahim, Hossam Al-Mahmoud, and Khaled Al-Jaratli, "Factional Dominance Over the Military Judiciary in Northern Aleppo," Enab Baladi website, 05 June 20222, link: https://bit.ly/46b6Pr6 [Accessed 7 March 2024].

Court of Cassation

- In the areas controlled by the Syrian Interim Government, there is a single chamber of the Court of Cassation headquartered in the town of al-Rai. It is composed of six judges, whose tasks are distributed across five chambers that effectively serve the functions of five appellate chambers: civil, criminal, military, Sharia, and juvenile. There is no dedicated chamber within the Court for adjudicating claims against judges. The court's internal organization, procedures, and decision-making processes are formally based on the Judicial Authority Law of 1961. In practice, however, its relationship with the Ministry of Justice is merely formal rather than functional, deviating from what the law stipulates.

  In the absence of a Supreme Judicial Council or a Legislative Administration Council to act as higher reference bodies for the court and other judicial institutions, the Court of Cassation has at times assumed powers usually reserved for the Supreme Judicial Council such as issuing judicial appointment decisions. However, even these powers are exercised in coordination with the Turkish coordinator, who also oversees the operation of the judiciary in the areas under his purview.[108]

  One of the major shortcomings of the Court of Cassation is its limited discretionary or interpretive role in addressing problematic applications of law by the region's criminal courts. For example, the courts in these "temporary" areas continue to apply Article 263 of the Syrian Penal Code, particularly paragraphs 2 and 3, despite the controversy surrounding its use. Paragraph 2 stipulates that "Every Syrian, even if not a member of a hostile army, who commits acts of aggression against Syria during wartime, shall be punished with life imprisonment." Paragraph 3 adds: "Every Syrian who enlists in any capacity in a hostile army and fails to leave it before any act of aggression against Syria shall be punished with temporary hard labor, even if he acquired foreign nationality through enlistment."[109]

108 Another judge working in those areas stated that the decision to appoint judges is currently issued by the Court of Cassation, as it exercises the duties of the Supreme Judicial Council.
109 See the text of Article (263) of the Syrian Penal Code.

According to former judge Dr. Abdul Hamid Al-Awak, the application of this article—originally used by the Syrian regime—has continued in the opposition-held areas, resulting in serious injustices. Many defendants have been prosecuted under it, including those who were coerced into serving in the regime's army, the Syrian Democratic Forces (SDF), or the Palestine Liberation Army. In theory, the Court of Cassation, within its jurisdictional powers, could have worked to reinterpret or limit the application of this article in light of the different political contexts and objectives that distinguish the opposition areas from regime-held territories. Yet, it has failed to do so, which contributed to a growing perception of judicial bias, and erodes trust in the court's ability to uphold justice even further. [110]

Special committees Acting as Judiciary

- **Joint Committee for the Restoration of Rights in Afrin and Its Countryside:** In response to the growing number of complaints related to the seizure of real estate owned by residents of Afrin and its countryside in northwestern Syria, as well as the imposition of levies on their olive crops, the Syrian National Army established the "Redress of Grievances and Rights Committee" in September 2020. The committee was created to address the violations committed by several military factions, aiming to restore usurped rights and propose appropriate solutions to these escalating problems. It was composed of factions belonging to the Syrian National Army: Sultan Murad, al-Jabha al-Shamiya, Jaysh al-Islam, Hamza Division, Ahrar al-Sharqiya, and Jaysh al-Sharqiya. [111] To note, these same factions created the committee and staffed it, meaning that the accused and the judge were effectively one and the same.

  The committee announced the end of its operations on 8 November 2022, calling on citizens to submit complaints to official institutions. It stated that this closure came by mutual agreement between its leadership, its members, and all faction commanders. The committee's working mechanism lacked transparency; there were no clear procedures for decision-making, nor clarity about who was authorized to issue or sign rulings.

110 Among the qualitative samples of the research is an interview with the former judge and Dr. Abdul Hamid Al-Awak.
111 Enab Baladi, "Six Months After Its Formation... What Has the Grievance Redress Committee in Afrin Achieved?" [Arabic], 26 February 2021, link: https://bit.ly/4kUinDH [Accessed on 14 March 2024]

One member explained that the committee received complaints by welcoming affected residents at its headquarters, reaching out through local mukhtars and community figures, or visiting gathering points directly. It also circulated various phone numbers and encouraged contact via social media platforms. Once a complaint was received, the committee would contact a representative of the faction in question. The two parties would then be brought together and heard. Afterward, the committee's "legal office" would issue a decision in line with the general framework established by the committee. Restitution could involve returning confiscated property to its rightful owner or formalizing a sale or lease agreement, if the owner consented.[113]

It appears that the committee's decisions were final and not subject to any appeal or review mechanisms. The Ministry of Justice of the Syrian Interim Government played no role in establishing the committee, selecting its members, reviewing its rulings, or exercising any form of oversight. The legal framework governing the committee's actions remains unclear.

Grievance Redress Committee in the Afrin Operations Area: In a similar vein, factions affiliated with the Second Corps of the Syrian National Army announced the formation of a grievance redress committee in the Ras al-Ain area and its surrounding countryside. The committee was formed by consensus among the factions operating in that region and consisted of representatives from these factions, alongside members of the military police, which served as the committee's enforcement arm for implementing its rulings.[114]

As was the case with the Afrin committee, the Ministry of Justice and the judiciary of the interim government played no role in this committee's formation or operation. Once again, the same military factions accused of violations were those responsible for forming and staffing the committee. The operational structure was similarly opaque, with no publicly defined procedures or known legal basis for its decisions. It is also unknown whether the committee members held legal qualifications.

113 Enab Baladi, "Afrin: The Joint Committee for the Restoration of Rights Denies the Withdrawal of Military Factions from It" [Arabic], 18 August 2021, link: https://bit.ly/43ZdqDL [Accessed 14 March 2024].
114 Al-Quds Al-Arabi, "Syrian National Army forms a committee to restore rights in Ras al-Ain, Syria, after increasing violations in the Peace Spring area" [Arabic], link: https://bit.ly/4lmdFyv [Accessed 14 March 2024].

02

Second: The Law Applicable in Syrian Interim Government (SIG) Areas

According to the former Minister of Justice in the Syrian Interim Government, the judicial process in opposition-held areas in the north unfolded in two phases. The first phase involved the establishment of a unified judiciary that adopted the Unified Arab Law across areas under the Interim Government's control. Beginning in 2017, however, judges working in the judiciary, including dissident lawyers and judges, chose to apply Syrian law with reference to the 1950 Constitution, which was seen as representative of the revolution. The judicial structure was then modeled after the Syrian Judicial Authority Law, leading to the formation of conciliation courts, courts of appeal, criminal courts, investigating judges, and the Court of Cassation.

The second phase began when the Turkish government launched a judicial initiative in the Euphrates Shield zone (northern and eastern Aleppo countryside) and the Olive Branch zone (the Afrin region northwest of Aleppo). Judicial work in these areas has since operated under the supervision of Turkish coordinators, in agreement with whom Syrian law was adopted as the primary legal reference.[115]

115 Enab Baladi, "Three Judicial Systems in Northern Syria: How Legitimate Are They?" [Arabic], 22 November 2020, link: [Accessed 6 March 2024]. https://shorturl.at/x8dCq

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- Ordinary courts—including civil, Sharia, and criminal courts—apply Syrian laws that were in force prior to 2011, such as the Civil Code, the Penal Code, the Codes of Civil and Criminal Procedure, the Personal Status Law, the Judicial Authority Law, the Civil Status Law, and other general legal texts. These laws are applied insofar as they do not contradict the principles of the revolution. Similarly, military courts apply the Syrian Penal Code and the Code of Military Procedure, along with other criminal laws previously enforced in Syria's military courts before 2011. Legislation issued by the regime after 2011 is excluded from
- application.

That said, certain provisions of Syrian law have been suspended, as they cannot be implemented under current conditions. For example, as stipulated in the Syrian Penal Code, the death penalty requires a presidential decree for execution, which is not applicable in areas governed by the Interim Government. [116] Although courts may issue death sentences in some cases, these rulings remain unenforced due to the absence of a head of state and the
- lack of a Supreme Judicial Council.[117]

Another peculiarity is the use of foreign currency in judicial decisions: fines and compensation awards are issued either in U.S. dollars or Turkish lira, depending on the individual discretion of each judge. It is even possible for the currency denomination to be altered at the appeals or cassation stage—for instance, a
- judgment issued in dollars may be revised to lira, or vice versa.[118]

As one judge observed, the issue does not lie with the applicable laws themselves. In fact, many of Syria's pre-Baath Party laws are considered to be quite sound. The core problem, rather, is the lack of enforcement of judicial decisions—particularly those that affect officials within the armed factions or individuals affiliated with them. In such cases, civil police forces often lack the power to carry out court rulings if these are opposed by the military factions, who continue to hold the real power on the ground. Moreover, the military judiciary itself is unable to hold first- and second-tier faction leaders accountable.[119]

116 WhatsApp communication dated 9 May 2024 with a lawyer working in the SIG areas. Name withheld for security reasons
117 Rayan Mohammad, "Courts in Northern Syria: The Judiciary is a Victim of Corruption and Threats" [Arabic], Al-Araby Al-Jadeed, 24 January 2021, link: [Accessed on 7 March 2024]. https://shorturl.at/WAyJp
118 WhatsApp communication dated 16 May 2024 with a judge working in SIG areas, op. cit.
119WhatsApp communication dated 17 May 2024 with a court clerk working in SIG areas. Name withheld for security reasons.

03

Third: Method of Appointing Judges and Required Qualifications

Judges in the areas controlled by the Syrian Interim Government are appointed in coordination with the Turkish government, which has assigned a designated coordinator for this task. The coordinator reaches out to Syrian judges who have defected from the regime, as well as to Syrian lawyers who have ceased working in regime-controlled areas. If these individuals agree to serve, the Turkish Ministry of Justice interviews them to explain the terms and conditions of the position, including the salary. Upon their acceptance, they are appointed to one of the courts in the region based on their prior judicial rank and experience.

According to updated figures, the regular judiciary includes 93 judges: 20 of them are defectors, 72 are licensed attorneys (professor lawyers), and one is a Sharia judge. Among them, six are women. This judiciary operates through 131 judicial circuits and 175 judicial assistants. As for the military judiciary, it comprises 28 judges, including 10 defectors from either the civilian judiciary or former military judges. Military courts function through 19 judicial circuits with the support of 67 judicial assistants / court staff / clerks. [120]

120 Muhammad Saeed Masri, "The Judicial System in the Syrian Interim Government Areas" [Arabic], Jusoor for Studies, 25 September 2024.

TDA

- There is no institute or training academy in these regions to prepare judicial appointees. Judges—whether defectors or lawyers—are appointed without undergoing preliminary training or subsequent skill-development courses.[121]

- A judicial inspection department exists, tasked with evaluating judges' performance and receiving complaints in accordance with approved regulations.[122] However, according to one judge, the department has little real authority. The individual currently in charge of judicial inspection lacks adequate experience, having only recently entered the judiciary, even though the position ideally requires a judge with long-standing judicial service.[123]

- The Turkish government does not issue formal appointment decrees. Instead, judges are verbally notified of their assignment, the court where they will serve, and their designated role. Local military factions, administrative councils, and even border authorities are also informed of the appointment and title. Salaries are paid directly by the Turkish government.[124] According to one judge currently serving in these areas, monthly pay does not exceed 12,000 Turkish lira—an amount insufficient to meet basic living needs, especially given that the minimum wage in Turkey is no less than 17,000 lira. Compounding this, most recent appointees are young lawyers with limited experience in adjudication.[125]

This arrangement indicates a largely symbolic affiliation of the justice sector with the Syrian Interim Government. Despite the formal appearance of a unified legal framework, both in terms of institutional reference and applicable codes, actual practice reveals minimal judicial autonomy and limited guarantees of impartiality in these areas.

121 WhatsApp call dated 30 May 2024 with a lawyer working in SIG areas. Name withheld for security reasons.
122 Northern Syrian Courts, the Judiciary, a Victim of Corruption and Threats, reference previously cited.
123 A judge who declined to be named, via WhatsApp communication dated 10 May 2024
124 Paragraphs 69 and 70 of the report of the International Commission of Inquiry on Syria dated 31 January 2019, link: https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F40%2F70&Language=E&DeviceType=Desktop&LangRequested=False.
125 ILAC Rule of Law Assessment Report 2021, op. cit.

Chapter 6. The Judiciary under the Salvation Government

In Idlib and its surrounding areas, the formation of the Islamic Committee's courts began in late 2013, continuing a project previously launched under the name "Judicial Council." The Islamic Committee was backed by several armed factions, most notably Ahrar al-Sham, the Nour al-Din al-Zenki Movement, and the Levant Corps. These factions established eleven courts across various parts of Idlib and its environs, representing the first attempt at unifying court structures in the area under a single legal framework. Previously, courts operated according to the discretion of individual judges and their personal interpretations of Islamic legal texts.

In areas controlled by Jabhat al-Nusra—later rebranded as Hay'at Tahrir al-Sham (HTS)—Sharia courts proliferated, issuing rulings likewise based on each judge's interpretation of Islamic law. During this period, lawyers were barred from practicing, and appeals were handled internally, often by the same judge who issued the original ruling. The Islamic Committee courts and those affiliated with Jabhat al-Nusra frequently operated side by side, and their verdicts often conflicted. In practice, it was the ruling of the court affiliated with the stronger faction that prevailed and was enforced.

In late 2017, the "Salvation Government" was officially announced with the backing of Hay'at Tahrir al-Sham. The new government included a Ministry of Justice tasked with organizing the court system within the group's areas of control, an area that spans a significant portion of Idlib Governorate.[126] The judicial apparatus under the Salvation Government operates with its own legal code, institutional framework, and administrative authority.

AlJumhuriya Net, "The Judiciary in Idlib: Factionalism and Multiple Authorities" [Arabic], 20 September 2018, link: [Accessed on 7 March 2024].https://shorturl.at/zPQTp

01

First: The Structure of the Judiciary in Areas Controlled by the Salvation Government

The judiciary in areas under the control of the Salvation Government is overseen by its Ministry of Justice. The Minister of Justice holds the authority to establish courts, which are referred to as Sharia Courts. These courts comprise various judicial chambers that specialize in financial transactions, civil disputes, criminal cases, personal status matters, and real estate issues. In addition, there are commercial courts that adjudicate disputes between merchants registered with the Chamber of Commerce and Industry. The system also includes a public prosecution office responsible for initiating criminal investigations, as well as appeal courts and enforcement departments.[127] Rulings issued by courts of appeal may be challenged before the Court of Cassation.

A five-member Judicial Council exists within the governmental structure, and this council appears to play a significant role in judicial affairs, particularly regarding the appointment, dismissal, and promotion of judges. All decisions issued by the Ministry of Justice are subject to review by the Judicial Council and require its ratification before coming into effect. However, the council itself is firmly under the authority of the Ministry: the Minister of Justice serves as its chair, while the remaining four members include the Attorney General and three additional individuals appointed by the Ministry and approved by the Government. [128]

127 A speech by the Minister of Justice in the Salvation Government at the dialogue seminar with the General Reconciliation Council, Salvation Government website, link:
https://syriansg.org/p/47886/12/2023/
128 ILAC Rule of Law Assessment Report, p. 79, op. cit.

- This arrangement illustrates the absence of judicial independence in these areas. The judiciary is wholly subordinate to the Minister of Justice, who not only oversees its institutional structure but also exercises control over the substance of judicial decisions. Even final rulings issued by the courts must be approved by the Minister; if he withholds approval, the case is returned to the court with instructions to amend the ruling in line with his directives.

- In parallel to the formal court system, several quasi-judicial committees operate under the auspices of various ministries. These include the Committee for Combating Food Fraud and Violations of Public Health Standards; a committee tasked with countering the smuggling of harmful substances such as tobacco, alcohol, and pharmaceuticals; and another committee dedicated to regulating currency exchange and financial transfers. Each committee is composed of judges appointed directly by the relevant ministry; in the case of public health, by the Ministry of Health, and for currency violations, by the Ministry of Finance. The decisions issued by these bodies are final and not subject to appeal.[129]

- Alongside these institutions, a "General Reconciliation Council" also operates in the area. Functionally similar to a tribal council, this body is not officially affiliated with the Salvation Government, though in practice it is controlled by Hay'at Tahrir al-Sham. It consists of conciliation committees based in each administrative district and staffed by respected local figures. These committees attempt to mediate disputes informally; if resolution cannot be reached, the parties are permitted to escalate the matter to the formal court system.[130]

- It is also worth noting that women are entirely excluded from judicial roles in the courts affiliated with the Salvation Government. There are no female judges, and women are not permitted to initiate legal proceedings or appear in court as plaintiffs, even in personal status cases, unless accompanied by a male guardian (mahram). They are allowed to appear in court only when named as defendants.[131]

129 A WhatsApp communication dated 26 June 2024, with lawyer Ahmed Al-Shahadi who works in Salvation Government areas.
130 Ibid.
131 Syrians for Truth and Justice, Silenced and Defamed: Women's Organizations in North-Western Syria Under Many Layers of Oppression, 12 January 2024, link: https://stj-sy.org/en/silenced-and-defamed-womens-organizations-in-north-western-syria-under-many-layers-of-oppression/

02

Second: Applicable Law

Article 1 of the Code of Civil Procedure No. 71, issued by the Ministry of Justice of the Syrian Salvation Government on 26 November 2022, states:

01

Courts shall abide by the provisions of Islamic Sharia as indicated in the Qur'an and Sunnah, as well as the rulings of Islamic jurists, the laws and regulations derived from Sharia, and the decisions and circulars issued by the Supreme Judicial Council.

02

Judges shall render their rulings in accordance with what is established and practiced by higher courts.[132]

132 Issue No. 2 of the Salvation Government's Official Gazette for 2023 [Arabic], link: https://shorturl.at/5W3yZ

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- According to the Ministry of Justice, courts operate on the basis of Islamic Sharia, comparative Islamic jurisprudence, and the Majallat al-Ahkām al-'Adliyya (Journal of Judicial Rulings). These sources now serve as the primary legal references for lawyers when drafting pleadings. The Ministry has also issued numerous decrees—some written, others verbal—clarifying legal interpretations and governing the implementation of Islamic Sharia in specific cases.[133]

- The Salvation Government has reviewed and adopted several laws through a legislative body known as the General Shura Council, in an effort to unify judicial practice across its territories. To reduce inconsistencies in the interpretation of Islamic legal principles, the government enacted the aforementioned Code of Civil Procedure, the Code of Criminal Procedure No. 73 of 2023, the Law of Evidence, and the Law of Enforcement (which regulates the execution of judicial rulings). It also proposed a draft law on "Public Morals" in early 2024, which has not been ratified.[134]

- Although a military court exists in areas controlled by the Salvation Government, there is no dedicated military penal code or procedural law. Instead, this court applies civilian criminal and procedural laws, along with the Majallat al-A kām al-'Adliyya and the circulars issued by the Ministry of Justice. It hears cases involving members of the military, as well as civilians when a military party is involved in the dispute. Military judges are appointed by the Supreme Judicial Council upon the recommendation of the Minister of Justice. Rulings issued by the military court are subject to appeal before a special committee known as the Committee for the Ratification of Military Rulings, which consists of three judges holding degrees in Islamic law and appointed by the Supreme Judicial Council based on nominations by the Minister.

133 ILAC, Rule of Law Assessment Report 2021, p. 85, op. cit.
134 Al Jazeera Net, "Mixed reactions in Idlib regarding the draft 'Public Morality Law'" [Arabic], 31 January 2024, link: https://shorturl.at/iHwzl

- A second criminal court was also established to adjudicate terrorism-related cases, despite the absence of a dedicated counterterrorism law. This court has not yet commenced operations. Notably, courts under the Salvation Government issue sentences that include flogging and capital punishment. Unlike in areas controlled by the Syrian Interim Government, death sentences are carried out.[135]

The United Nations Commission of Inquiry has reported that basic fair trial guarantees are not upheld in areas governed by the Salvation Government. Detainees accused in security-related cases were consistently denied access to legal representation. In many instances, civilians were brought before military courts, and some detainees were reportedly unaware of their conviction status or the nature of their sentence. There have been documented cases of individuals being sentenced to prison without appearing before a judge or court.[136]

135 WhatsApp communication dated 2 September 2024 with a lawyer working in Salvation Government areas. Name withheld for security reasons.
136 From the report of the International Commission of Inquiry of September 2024, link: Report of the Commission of Inquiry on Syrian Arab Republic to the 57th regular session of the Human Rights Council | OHCHR

03

Third: Conditions for Appointing Judges and Their Qualifications

The Ministry of Justice in the Salvation Government has established a Judicial Institute, admission to which requires a bachelor's degree in Islamic Sharia. Holders of a law degree are not eligible to apply. The training program at the institute spans one full year. Judges are appointed and dismissed by the Supreme Judicial Council, based on recommendations from the Minister of Justice.[137]

In parallel, a Center for Judicial Studies and Research was established to conduct research aimed at improving judicial processes. The center is tasked with developing a scientific plan for enhancing the skills of the judicial cadre and implementing relevant studies and recommendations. However, there is no legislation governing the structure and operations of the judiciary, no equivalent of a Judicial Authority Law, nor any legal framework outlining the rights and duties of judges. This absence of legal protection leaves judges vulnerable to arbitrary transfer or dismissal and places them under the control of other power centers, particularly security and military authorities.

137 WhatsApp interview with lawyer and legal researcher Ahmed Sawan.

TDA

- Judicial appointments are not based on legal qualifications or experience, but on familiarity with Islamic jurisprudence and a perceived "revolutionary background." Officials from Hayat Tahrir al-Sham and other influential actors exert substantial influence over court rulings, resulting in decisions that often blend Islamic Sharia with Syrian statutory law in vague and inconsistent ways. Many judges appointed by the Salvation Government lack adequate legal training and instead apply Islamic principles according to their own interpretations. Acknowledging this shortcoming, the Ministry of Justice assigns a legal advisor (typically a practicing lawyer) to each judge to provide procedural and substantive counsel on pending cases.

- The total number of judges working in Salvation Government-controlled areas is 65, covering a range of judicial functions, including financial transactions, preliminary criminal rulings, public prosecution, criminal courts, appeals, and commercial litigation. Judges frequently report a lack of sufficient financial resources to support their work.[138]

- The current state of the judiciary in the Salvation Government areas reflects a centralized and politicized approach that controls all aspects of judicial life, from institutional design to the selection of judges and the interpretation of law. The judiciary functions as a tool of the ruling authority, rather than as an independent body guided by professional standards. While the Ministry of Justice and the Shura Council have made attempts to codify new legal frameworks to bring greater consistency to the system, it remains difficult to speak of "good governance" in a context where judges lack both legal competence and independence, and where their subordination to the executive branch is near-total.

138 WhatsApp communication dated 3 September 2024 with a lawyer working in Salvation Government areas. Name withheld for security reasons.

Part II.

International Experiences with Judicial Reform in Transitional Contexts

Many observers consider the collapse of authoritarian regimes in Eastern Europe and the ensuing wave of democratization among these states to be one of the most significant developments of the final decades of the twentieth century. In these contexts, the role of justice systems emerged as a central feature of the broader transitional process. Scholars of comparative judicial studies developed theories around the process of "judicial reform" in countries undergoing democratic transformation, seeking to understand the persistent fragility of institutionalizing independent judicial systems.

Establishing a judiciary that is independent, fair, and effective is a critical instrument for countries attempting to break from their authoritarian pasts. Courts play a pivotal role in the transition: drafting and interpreting new legislation, adapting old legal frameworks to emerging realities, and curbing the arbitrary exercise of power. However, experiences from several countries reveal that judicial reform is a deeply political endeavor, both highly resistant to change and especially susceptible to interference by political actors.

Post-conflict societies are often marked by weak rule of law, widespread human rights violations (past and present), impunity, and economic collapse. In response to such legacies, a variety of transitional justice mechanisms have been developed, including domestic and international prosecutions, truth commissions, and reparations for victims. All these measures depend on strong institutional frameworks.

In many developing countries, judicial reform is prioritized as a prerequisite for attracting investment and rebuilding state legitimacy. Governments undergoing transitions increasingly recognize that economic reform cannot be sustained without parallel reform of legal frameworks and institutions. The degree to which reforms are adopted varies widely by region. Across the globe, many states receive international development assistance for judicial reform based in part on a widespread donor belief that legal reform is essential for development. Ultimately, a state's success or failure in judicial reform is measured by indicators that reflect the strength of the rule of law and its broader impact—positive or negative—on political transition processes.

There is no universal blueprint for judicial reform. Rather, each reform agenda must be tailored to the specific national and local context in which it is implemented. Examining a range of international models is therefore essential; not only to understand best practices but also to explore the obstacles and contradictions that commonly hinder reform efforts. Such study enables deeper insights into how internal and structural factors shape legal systems, and how international programs can support the role of courts and judges.

In this spirit, the following chapters explore diverse experiences of judicial reform. Some unfolded in the wake of broad democratic openings, such as in Latin America. Others, like Rwanda's, were shaped by the legacies of violent conflict and the need for justice in its aftermath. These case studies offer comparative lessons that may inform a Syrian vision for judicial reform: one that draws on the successes of past efforts while avoiding the pitfalls that led others to stall or fail.

Chapter 7. Judicial Reform Models in Latin America

Throughout their modern histories, many Latin American countries have experienced long periods of dictatorship marked by state repression, forced disappearances, and mass violence. Some political figures from the region, such as Pinochet in Chile, have become emblematic of absolute power and systemic brutality.

In consolidating their rule, these regimes reengineered the legal and judicial systems to serve their survival. Courts were subordinated to the logic of authoritarian power, stripped of independence, and used to legitimize decades of violence. As such, legal professionals and human rights advocates consistently identified judicial reform as a foundational step toward democratic consolidation and sustainable development across the region, especially in the aftermath of the 1990s, when many states began emerging from authoritarianism with fragile, politicized judicial institutions. With international support, numerous Latin American countries embarked on ambitious justice sector reform initiatives. These efforts ranged from constitutional overhauls and the introduction of new criminal and civil codes, to structural reforms in judicial administration. Some countries pursued sweeping transformations, while others adopted more modest technical adjustments to improve existing systems.

First: Paths of Judicial Reform in Latin America

Over the past forty years, Latin America's judicial reform efforts have undergone several distinct phases. These began with legal and procedural amendments in the 1960s aimed at improving the delivery of legal services, and evolved into more structured reform strategies in the decades that followed. The most concentrated and well-funded wave of reforms began in the mid-1990s, backed by nearly one billion dollars from the World Bank, the Inter-American Development Bank, donor states, NGOs, and the UN Development Programme (UNDP). These efforts aimed to initiate sustainable reform processes lasting a decade or more, some of which are still ongoing.[139] While certain countries have made tangible strides, others are still grappling with completing their reform agendas.

Judicial reform rose to the forefront of policy discussions during the democratic openings of the early 1980s. Although legal reform initiatives were not entirely new to the region, what was novel was the near-universal and simultaneous incorporation of reform into state policies even in countries like Colombia, Costa Rica, and Venezuela, which had not experienced recent autocratic regimes.

While the region underwent what some describe as a "quiet institutional revolution," legal reform often received less attention than other elements of institutional change. Nonetheless, from the mid-1980s onward, many countries introduced significant reforms to their legal systems. The primary goal was to bolster the role of courts while improving legal services across areas such as personnel management and the implementation of alternative dispute resolution mechanisms.

139 See: Theodore Blank, Measuring Transitional Justice in Latin America, Working Paper, Centre for Security and Defence Studies, Norman Paterson School of International Affairs, Carleton University, Ottawa, Canada, September 2007, pp. 13-12, link:
https://biblioteca.cejamericas.org/bitstream/handle/253/2015/Measuring-Transitional-Justice-in-Latin-America.pdf?sequence=1&isAllowed=y

Legal scholar Mariana Magaldi de Sousa[140] categorized reforms into three types:

01 **Substantive reforms,** involving changes to the laws themselves.

02 **Institutional implementation reforms,** aimed at improving how legal systems function in practice, including courts and affiliated institutions.

03 **Structural-political reforms,** concerned with the role of the judiciary in policymaking and its capacity to serve as a check on executive power.

Among the three categories identified by de Sousa, legal reform emerged as the most widespread across Latin America. In most countries, procedural legislation, particularly in the criminal domain, was overhauled to make the justice system more accessible to broader segments of society. These changes included streamlining trial procedures and enacting laws that permitted alternative dispute resolution mechanisms as a way to reduce caseloads and improve responsiveness.

The second type of reform, though narrower in scope, was more deeply institutional. It targeted the operational capacity of courts, police forces, and associated institutions within the justice sector. Reforms in this category focused on modernizing administrative and organizational frameworks: establishing judicial councils tasked with governance and oversight, implementing training programs for judges and legal professionals, and introducing digital information systems to boost efficiency and transparency in court proceedings.

140 Mariana Magaldi de Sousa is a professor at the University of Notre Dame since 2009.

- Reforms of the third type—those affecting the structural independence of the judiciary—were limited in number but politically significant. They dealt with mechanisms of judicial appointment and career advancement, budgetary autonomy, the creation of constitutional courts, and expanding the powers of judicial review by higher courts. Although implemented selectively, these reforms aimed to insulate the judiciary from political pressure and to recalibrate the balance of power between the branches of government.

- The overarching goals across these reform paths were manifold: to curtail political interference in judicial appointments, increase judicial salaries, limit discretionary extensions of judicial terms, expand institutional budgets, and set up independent bodies responsible for appointments, promotions, and financial administration. Supreme courts, and in some cases, newly established constitutional courts, were granted broader authority to oversee legislation and executive actions.

- These reforms sought not only to adjust formal rules and procedures but to influence the incentive structures shaping judicial behavior and autonomy. However, the effectiveness of such changes has been closely tied to how political actors and the general public perceive the judiciary. In many Latin American countries, public confidence in legal institutions remains fragile, with perceptions of judicial independence varying markedly from one state to another.

- Outcomes have been uneven, particularly with respect to the first and second types of reform. In the realm of merit-based judicial appointments, Costa Rica has been held up as a success story thanks to the efficacy of its judicial council, while Ecuador, facing implementation challenges, abandoned the model altogether. The same variability is evident in salary reform: Brazil succeeded in establishing comparatively high wages for judges, whereas Ecuador failed to do so, and Nicaragua restricted wage increases to the upper echelons of the judiciary.

- Such diversity extends to the broader reform landscape. In an effort to measure progress, de Sousa developed an index comprising 26 indicators assessing judicial performance across 10 countries. Her findings revealed that Chile and Costa Rica had made the greatest strides in implementing coherent and effective reforms, while El Salvador, Guatemala, and Honduras remained significantly behind, still facing structural and political hurdles to change.[141]

- Since the mid-1980s, reforms in Latin America have generally moved toward depoliticizing judicial appointments both at the Supreme Court level and across the lower judiciary, while increasing salaries, expanding budgetary allocations for the justice sector, and establishing judicial councils. These institutional changes were accompanied by efforts to professionalize the judiciary through enhanced training programs, as well as by reforms that granted higher courts broader powers of constitutional review. In some cases, this even included the creation of entirely new constitutional courts.

- Although many of these measures remain partial, progress has been noted in the protection of human rights: courts are hearing more cases, judges are more adequately prepared and demonstrate increased seriousness toward their work, judicial decisions are being rendered with greater impartiality, and corrupt judges are being sanctioned. According to critics and reform advocates, the pillars of a completed and functioning reform process include a more independent judiciary, improved case management, better-resourced judicial institutions, and enhanced protections for civil and human rights.

- The cumulative effect of judicial reform efforts since the mid-1980s is now visible in several areas, with Chile's criminal justice system standing out as perhaps the most notable success. In the post-dictatorship context, judicial reform came to be seen across the region not merely as a technocratic goal, but as an essential component of democratic transition. This perception catalyzed broad-based demands for access to justice and legal services. Nevertheless, building sustained public consensus around long-term, credible reform policies has remained a persistent challenge in most countries.

141 See: Francis Fukuyama, The State of State Reform in Latin America, Inter-American Development Bank, Washington, DC, 2007, pp. 115–120, link: https://publications.iadb.org/publications/english/document/The-State-of-State-Reform-in-Latin-America.pdf

- The judiciary's capacity to protect human and civil rights has improved since the mid-1990s. Yet this progress has occurred alongside deepening public frustration over deteriorating security conditions. Rising crime rates, coupled with perceptions of an underperforming police and judiciary, have generated doubts about the justice system's effectiveness. In many countries, these frustrations have been compounded by recurrent economic and political crises, which have exposed just how vulnerable judicial reforms are to instability. Despite scattered gains in reinforcing judicial independence, executive encroachment remains a constant threat, especially during times of crisis. This has been particularly evident in countries such as Argentina, Ecuador, Peru, and Venezuela, where judiciaries have come under direct pressure from ruling authorities.

- Criminal justice has been the most successful domain of reform. Several countries have achieved substantial progress in dismantling outdated investigative systems that enabled authoritarian practices, such as the widespread misuse of pretrial detention. These have been replaced with more transparent and rights-respecting accusatory procedures. Still, gains in criminal law have not been matched by reforms in other legal fields such as civil, family, or labor law. Even within the criminal justice domain, remnants of older, inspection-based models persist, sustained by institutional inertia and resistance from judges, lawyers, law professors, and administrative bodies. This reluctance reflects deeper cultural attachments to traditional legal frameworks and illustrates the difficulty of achieving systemic change without parallel shifts in legal culture and political will.[142] .

142 Ibid., p. 47.

- The study entitled "The State of State Reform in Latin America" found that levels of public trust in the judiciary are relatively high in countries like Chile, Colombia, Costa Rica, and Uruguay, but significantly lower in others such as Ecuador and Paraguay. Guatemala stands out for particularly low levels of trust in its legislative body.

- Across the region, the two most frequently cited issues undermining confidence in justice system are the mechanisms for judicial appointments and the exertion of executive pressure on the judiciary to fulfill its core duties. Alongside these concerns, two additional problems are commonly noted: undue influence from powerful economic actors and pervasive corruption. While such issues are widespread, the problem of corruption appears to be especially acute in countries where institutional trust is already at its lowest.[143]

143 Adriana Ramirez Baracaldo & Theresa Kernecker, UNDP Bulletin & Ibero-American Institute, May 2011, pp. 17-18

Second:
Models of judicial reform

01 Chile

The year 1995 marked the beginning of the second phase of judicial reform in Chile, with the adoption of a "major legislative package" aimed at fully overhauling the country's criminal justice system. Under the new legislation, the old inquisitorial model, where judges conducted investigations characterized by extensive use of pretrial detention and closed proceedings based on accumulations of written documents, was replaced by a fully restructured accusatory system. In the new framework, public prosecutors are responsible for conducting investigations, grounded in the presumption of innocence, with oral and transparent hearings, a significant expansion and improvement of public defense services, the creation of three judicial panels for major criminal cases, and a comprehensive modernization of administrative procedures.
This reform package was not only backed by strong political support from both the executive and legislative branches, but was also the product of extensive consultation with judicial professionals, the business community, universities, and (most notably) law faculties and the legal profession.[144]

The reform was implemented gradually over a ten-year period (2005–1995). Bipartisan political support from both the Conservative Republican Party and the Christian Democrats, resulted in the allocation of substantial resources. The Chilean government financed the reform entirely from domestic funds, increasing the justice sector's budget fourfold. The reform process was marked by rigorous performance assessment and continuous training programs for judges, prosecutors, public defenders, and court personnel. Significant investments were also made in judicial infrastructure, including the construction of modern court facilities across the country, the building of new prisons, and the introduction of advanced technological systems. Once implemented, the new system brought about a more efficient, transparent, and fair administration of justice, with growing respect for the rights of the accused.

144 see: Judicial Reform in Latin America An Assessment, Peter De Shazo & Juan Enrique Vargas, The Center for Strategic and International Studies, Washington, D.C, 20006. P 27-29
https://biblioteca.cejamericas.org/bitstream/handle/2015/5190/JudicialReforminLatinAmericaENGLISH_CEJA.pdf?sequence=1&isAllowed=y

A third phase of reform remains ongoing, aiming to extend the same principles of reform in criminal procedure to other branches of the judiciary: family courts, juvenile courts, labor courts, and civil courts. However, attempts to reform the family courts have largely failed, delaying reforms in the juvenile and civil domains. The core ingredients that enabled the success of the criminal justice reform, careful planning, broad-based consultation and consensus, robust political backing, and adequate financial suppor, were lacking in the effort to reform family courts.

Chile's approach to reform was also distinct in its incremental rollout. Unlike many other Latin American countries, where reforms were implemented nationwide at once, Chile launched its reform in two pilot regions, one in the north and one in the south. The idea was to test the new system in controlled environments where problems could be monitored and addressed as they arose. This phased implementation gave authorities the time and flexibility needed to make adjustments before expanding the reform nationwide.

The phased approach also facilitated cross-agency collaboration, allowing prosecutors, defense attorneys, and judges to simulate and rehearse the new trial procedures together.

The reform also included the establishment of a national Public Defender's Office, with regional branches, tasked with providing legal defense to low-income individuals. To expand the capacity of the public defense system, the office issued public calls for private lawyers to take on future criminal cases.

Proposals were assessed based on clear criteria, including the number of lawyers in the firm, their qualifications and experience, administrative infrastructure, and overall professionalism. The performance of selected lawyers was subject to regular oversight through trial observation and file review. Those failing to meet the required standards could be disqualified from further assignments.[145]

145 Rafael Blanco et al., Reform to the Criminal Justice System in Chile: Evaluation and Challenges, Loyola University Chicago International Law Review, vol. 1, no. 2, 2005 p. 12,
link: https://lawecommons.luc.edu/cgi/viewcontent.cgi?article=1132&context=lucilr

02 Argentina

During the dictatorship, Argentina's judiciary was widely seen as complicit in what became known as "state terrorism." Following the return to democracy, the country embarked on judicial reform efforts inspired by the U.S. model of federal and state court structures. The first reform step involved removing judges who had collaborated with the military regime and reinstating those who had been unlawfully dismissed during the dictatorship. The second focused on addressing systemic deficiencies in the justice system, an objective firmly placed on the national agenda after the democratic transition in 1982.

Legal reformers identified three core visions that underpinned Argentina's strategy for judicial reform:

A justice-driven vision

which emphasized the need to overcome professional and ethical deficiencies in the judiciary through the establishment of stronger, more capable institutions.

An administrative-technocratic vision,

which saw the justice system's dysfunction as primarily rooted in disorganization and inadequate technological capacity.

A structural-political vision,

which called for breaking with authoritarian legacies embedded in the previous inquisitorial system.

Argentine legal scholars argued that successful reform required integrating all three visions into a unified and adaptable strategy, one that could be tested, evaluated, and revised over time. While the full realization of these reform visions has remained elusive, significant milestones were achieved. The 1994 constitutional amendments, for example, granted independence to the Office of the Attorney General and established a federal Solicitor General's Office.

Nonetheless, implementation at both the federal and provincial levels was fraught with tension between reformist forces and those seeking to preserve political influence over the judiciary. These competing interests extended across the executive branch, Congress, political parties, academia, and professional bar associations, effectively permeating all core state institutions.

Early efforts to establish a coherent national judicial reform policy faltered. Despite broad social and technical consensus in favor of comprehensive reform throughout the 1980s and 1990s, political consensus remained out of reach. In such a polarized environment, reform initiatives that could deliver "visible impact" were typically confined to smaller-scale interventions aimed at improving service delivery. As a result, progress was more pronounced in criminal law than in civil law, and more tangible at local levels than through sweeping national reform.[146]

On 1 February 2022, several thousand demonstrators took to the streets of Buenos Aires to demand judicial reform. According to public opinion polls, nearly %70 of Argentines believe the judiciary is corrupt, a sentiment unsurprising given repeated, high-profile corruption scandals. Argentina's courts have proven largely ineffective in holding corrupt political elites accountable, reportedly resolving only %1 of all corruption cases.

146 see: Judicial Reform in Latin America An Assessment, P 33-42

Given the scale of dysfunction and public mistrust, judicial reform is widely seen as a necessary corrective. A key concern is the politicization of the courts, which remain vulnerable to being weaponized for partisan ends. Several structural flaws in the judicial appointment process continue to undermine judicial independence:

01 **Executive overreach in appointments:** The executive enjoys excessive power in selecting judges, enabling presidents to appoint partisan loyalists who pursue political opponents and turn a blind eye to allies' misconduct. Loopholes also allow sitting judges to be reassigned to new positions of equal rank without Senate approval.

02 **Politicized Judicial Council:** Although judicial candidates are reviewed by a Council of Magistrates, the council is heavily populated by politicians especially from the ruling party, leading to undue political influence. Many reformers argue the council should be composed entirely of independent judges and legal professionals.

03 **Insular judicial culture:** The judiciary suffers from a closed, patronage-based culture that weakens meritocratic selection and fosters the appointment of ideologically aligned judges. This dynamic entrenches reciprocal loyalty between judges and their political sponsors.[147]

147 Argentinian Judicial Reform: A Wolf in Sheep's Clothing, GAB | The Global Anticorruption Blog, April 25, 2022 by Victoria Abut

https://globalanticorruptionblog.com/2022/04/25/argentinian-judicial-reform-a-wolf-in-sheeps-clothing/

According to Russell Wheeler, President of the Institute for Governance and a visiting scholar at the Brookings Institution, the "lack of institutionalization" in Argentina's judiciary has been the primary barrier to meaningful reform. The reform process, he argues, has been driven more by the initiative of individual judges than by any concerted executive effort that often seeks to retain influence over, rather than empower, the judicial branch.

Judge selection in Argentina remains highly subjective, with limited evidence of improvements in judicial performance or institutional output. Public trust in the judiciary remains low, further weakening efforts to attract capable and principled candidates to the bench. Structural reforms, Wheeler notes, tend to achieve little unless accompanied by serious improvements in the ethical and behavioral dimensions of the judges.[148]

148 - see: BEYOND JUDICIAL REFORM, Courts as Political Actors in Latin America, Matthew M. Taylor, Latin American Research Review, Vol. 41, No. 2, June 2006. P 27

https://web.archive.org/web/20170811135123id_/http://la-sa-4.univ.pitt.edu/LARR/prot/fulltext/vol41no2/Taylor.pdf

03 Peru

Peru's experience with judicial reform has been riddled with obstacles, foremost among them the entrenched legacy of systemic corruption that culminated with the fall of the Fujimori regime in 2002. Efforts to establish a more independent judiciary date back to the 1950s, yet for decades, these reform attempts repeatedly faltered. Successive governments consistently prioritized political agendas and the development of sectors such as education and health over judicial reform, impeding any sustained progress in consolidating the rule of law.

Following the collapse of Alberto Fujimori's authoritarian regime (2002–1990), there was broad consensus on the judiciary's institutional weakness and the urgent need for reform. However, the transition period was marked by a lack of consistent political backing for reform initiatives and poor coordination between the public sector and civil society actors. These factors, coupled with the fresh memory of executive overreach and judicial complicity under dictatorship, seriously hampered momentum. The push for reform gained greater attention in the aftermath of Fujimori's fall, peaking in 2003 with the establishment of a special commission for the comprehensive reform of justice administration. This initiative was grounded in a national plan endorsed by both government and civil society representatives. Over 170 projects were proposed, but only a small fraction were actually implemented or codified into legislation.

Despite this limited legislative output, a number of notable improvements in service provision were achieved. These included the creation of dedicated anti-corruption courts to prosecute crimes against the public administration during the Fujimori years; the monitoring of government ethics; the establishment of seven commercial courts in Lima to adjudicate business disputes; expanded use of the Constitutional Court to review the constitutionality of laws; and greater reliance on justices of the peace to mediate local, low-level conflicts.

Nonetheless, these gains have done little to restore public trust in the judiciary or resolve longstanding structural issues. The average case still takes between two and three years to reach resolution. Court dockets remain unevenly distributed and inefficiently managed. Most troubling of all, corruption continues to plague the judiciary, with widespread reports of misconduct and bribery among court personnel.[149]

149 see: Heading South But Looking North: Globalization and Law Reform In Latin America, Joseph R. Thome, Law & Society 2000 Annual Meeting, Miami, Florida, May 26-29, 2000. P 8

04 Colombia

Analysts tend to highlight two pivotal milestones that shaped Colombia's trajectory of judicial reform: the constitutional amendments carried out in two phases (1991 and 2002) within the framework of a broader national agenda.

The 1991 constitutional reforms laid the legal and institutional foundation for greater protection of civil and human rights, and marked the beginning of Colombia's contemporary judicial reform process. A Constitutional Court composed of nine justices was established to review citizens' complaints regarding unconstitutional actions by the government or specific officials. Additional responsibilities were delegated to the Office of the State Prosecutor and the National Ombudsman to monitor and ensure compliance with human rights norms. Reforms were also enacted targeting the Office of the National Prosecutor, which oversees criminal investigations and prosecutions, with explicit safeguards to prevent civilians from falling under military jurisdiction. A Supreme Judicial Council was established to bring together the various branches of the judiciary, tasked with overseeing judicial administration and ensuring the independence of the courts.[150]

These reforms were accompanied by a substantial increase in public spending on the justice sector, prompting a surge in citizen engagement with the legal system. There was a marked rise in petitions related to labor rights, access to due process, and constitutional violations. Disciplinary action against members of the judiciary also increased during this period. However, the 1991 reforms had critical shortcomings, chief among them the failure to reform the criminal investigation process. The Public Prosecutor's Office not only issued indictments but also played an active role in advancing judicial proceedings, and in some cases even defended individuals implicated in criminal offenses. This dual role produced systemic violations and widespread impunity, as many cases never reached trial.

150 See: Beyond Judicial Reform, op. cit., p. 18.

The 2002 constitutional amendments were designed to address these deficiencies by stripping prosecutors of their quasi-judicial functions and shifting the system to an adversarial model centered on public, oral trials with broader access to judicial review. A new Code of Criminal Procedure was introduced, the judicial police were restructured, and significant resources were allocated to the Public Defender's Office. The revised system was first piloted in the municipalities of Bogotá, Manizales, Armenia, and Pereira, before being rolled out nationwide in 2009. According to Alfredo Fuentes, director of the Judicial Program at the University of the Andes, the early performance of the new adversarial system was highly promising, with cases moving more efficiently through the courts and greater respect being shown for defendants' rights.[151]

Colombia also introduced an innovative legal mechanism to address criminal intent in property disputes through Law No. 1448 of 2011, known as the Victims and Land Restitution Law. This legislation distinguishes between claimants acting in good faith and those in bad faith when a property is contested. A claimant in good faith must demonstrate that they acquired the property legally, paid a fair price, and were unaware that the seller was not the legitimate owner. If these conditions are met, compensation is granted in the event the property is returned to its rightful owner. If the claimant fails to provide such proof, they are deemed to have acted in bad faith and receive no compensation upon restitution.[152]

151 see: Rule of Law in Latin America: The International Promotion of Judicial Reform, Luis Salas, Institute of Latin American Studies, London, 2012. P 26

https://www.umass.edu/legal/Benavides/Fall2005/397U/Readings%20Legal%20397U/14%20Luis%20Salas.pdf

152 Colombia: A land title is not enough: Ensuring sustainable land restitution in Colombia- November 2014

https://www.amnesty.org/en/documents/amr23/0031/2014/en/

05 Guatemala

Guatemala is frequently cited as a case study in comprehensive criminal procedure reform, grounded in international models developed through consultation and collaboration between Guatemalan legal authorities and their counterparts abroad.

Following the 1996 peace agreements between the government and the armed insurgency, political support was channeled primarily into judicial reform. This included the establishment of a new civilian police force and the removal of the military from law enforcement functions. The judicial reform process formally began in 1997. Yet opinions on its outcomes remain divided: while some view the process as largely successful, though in need of further development, others deem it a failure, pointing to surging crime rates, widespread violence, frustrations over continued impunity for serious crimes, and a judicial system seen as slow and inefficient.

Luis Ramírez, Director of the Institute for Comparative Studies in Criminal Sciences in Guatemala, argues that neither position fully captures the reality. What is needed, he suggests, is a careful analysis of reform outcomes in light of their concrete effects on citizens' lives.The reforms and peace accords triggered an enormous surge in demand for access to justice and significantly raised public expectations.

Ramírez offered several overarching conclusions that highlight persistent challenges to implementing the new judicial system and securing public confidence:

01 The dramatic rise in criminal activity, especially by youth gangs, has overwhelmed a legal system ill-equipped to cope.

02 There is a growing tension between the post-conflict aim of safeguarding defendants' rights and the perception, often exploited by political opponents of reform, that the new accusatory system fosters impunity.

03 Politicians seeking a return to authoritarian practices have manipulated public fears, framing human rights protections as leniency toward crime.

04 Elements of the old inquisitorial system remain deeply embedded in judicial practice, and a broader "cultural inertia" continues to obstruct meaningful reform.[153]

In 2005, the Supreme Court issued new administrative regulations that improved court efficiency and reduced bureaucratic burdens. Yet the most decisive factor in advancing judicial reform in Guatemala remains the presence—or absence—of political will, combined with adequate resources and a genuine commitment to meeting the public's demand for accessible justice. As a result, judicial reform in Guatemala has become an especially complex undertaking. It is unfolding in a context marked by protracted internal conflict and persistent violence. The Guatemalan experience underscores the importance of developing more effective methods for evaluating judicial reform outcomes and responding to an increasingly vocal demand for functional, credible justice systems.

153 see: Judicial Reform in Latin America: An Assessment, p. 87.

06 Venezuela

Venezuela's judicial reform process began in the mid-1990s and officially concluded by 2004. For much of its trajectory, the reform effort was closely tied to the broader "state reform" initiative, supported by substantial funding and technical assistance from both the Venezuelan government and the World Bank. However, following the rise of President Hugo Chávez in 1999, judicial reform became increasingly entangled with his constitutional and political overhaul, ultimately leading to a sharp expansion of executive influence over the judiciary.

Prior to reform, the Venezuelan judicial system was widely regarded as inefficient, severely underfunded, and riddled with corruption. It was also heavily influenced by the country's two dominant political parties. As these parties began to lose their grip in the mid-1990s, efforts were initiated to improve the system's quality and performance. Significant reliance was placed on the Justice of the Peace courts, introduced in 1994 to improve access to justice for underserved communities. In 1998, a new Code of Criminal Procedure was enacted, introducing an accusatory system characterized by oral proceedings, public trials, plea bargaining, and investigations overseen by district attorneys.

The 1999 Constitution dissolved the judicial councils that had previously overseen the appointment, training, and discipline of judges, as well as the existing Court of Justice. In their place, it established the Supreme Tribunal of Justice, which consolidated these powers. A subsequent law passed in May 2004 expanded the court to 32 judges, appointed by a simple majority vote of the National Assembly, an institution increasingly dominated by pro-Chávez forces.

According to Rogelio Pérez Perdomo, director of the Law School at the Metropolitan University in Caracas, the most consequential development in Venezuela's judiciary has been its subordination to political interests. The Supreme Tribunal, now aligned with the executive branch, has become a key vehicle for advancing the government's political agenda and undermining its critics.

While some gains have been noted such as improvements in judicial infrastructure, technological modernization, and expedited handling of cases in specific fields like labor law, the judiciary's performance in criminal prosecution remains dismal. In the face of escalating violence, including homicide, kidnapping, and armed robbery, the system has proven unable to uphold accountability, instead reflecting entrenched and systemic corruption.[154]

The Supreme Tribunal of Justice has carried out several purges of lower court judges whose rulings ran counter to the interests of state officials. Although Supreme Tribunal decisions are now made public, the workings of lower courts remain opaque. Reliable data on judicial performance is scarce, and many of the inefficiencies and corrupt practices that plagued the system prior to reform remain firmly in place, exacerbated by an unprecedented degree of political interference.

Meaningful judicial reform, as the Venezuelan case illustrates, requires more than technical adjustments. It demands both cultural and institutional transformation in the administration of justice. Such transformation must be phased and comprehensive, encompassing legal modernization, the strengthening of alternative dispute resolution mechanisms, and sustained training for judges, court personnel, lawyers, law students, and civil society. Ultimately, any lasting reform effort must center on expanding equitable access to justice while insulating the judiciary from political control.

154 Ibid., p. 112.

Chapter 8. The Rwandan Experience in Post-Conflict Judicial Reform

The ethnic composition of Rwanda has long been shaped by the Hutu and Tutsi populations, whose historic tensions have played a central role in the country's trajectory. The Hutu, the largest ethnic group in Central Africa, are found not only in Rwanda but also in Burundi, the Democratic Republic of the Congo, and Tanzania. In Rwanda, they constituted approximately %85 of the population, while the Tutsi made up %14, and the Twa—a marginalized Indigenous group—comprised around %1. The country also hosted small immigrant communities from Mali, Senegal, Guinea, India, and Pakistan.

Most Hutu identified as Christians, with Catholics comprising roughly %60 of the population, Muslims %10, and various other Christian denominations accounting for the remaining %30. The Hutu majority had aligned themselves with numerous Catholic missionary movements, many of which opposed Protestant denominations in the southern regions. This alignment sparked concern among southern Tutsi communities, who perceived the Church as a rival power encroaching upon their traditional dominance. [155]

Under both German and Belgian colonial rule, power was systematically concentrated in the hands of the Tutsi minority. They were granted control over local governance and access to senior administrative posts, an arrangement that deepened ethnic divisions.[156] However, in 1959, just three years before Rwanda gained independence, Belgium abruptly shifted its support to the Hutu majority and tolerated a wave of anti-Tutsi violence that forced nearly 400,000 Tutsis into exile. Following independence, successive Hutu-dominated regimes institutionalized discrimination against the Tutsi and perpetrated recurring massacres

155 Rasha Al-Ashry, "The Hutu Tribes Between Geographical Nature and Political Situation" [Arabic], Center for African Studies, 2022, link: https://africansc.iq/posts/details/223
156 The system of "racial classification" in Rwanda was shaped more by class than by ethnicity or genetics. In the 1934–1935 census conducted by Belgian colonial authorities, classification was primarily determined by the number of cows owned: individuals with more than ten cows were registered as Tutsis; those with fewer were classified as Hutus, typically farmers; and those without cows were designated as Twa, traditionally hunters living in forested areas (Wikipedia).

In October 1990, the Rwandan Patriotic Front (RPF),[157] composed largely of Tutsi exiles, launched a military offensive against the Hutu-led government, triggering a brutal civil war that lasted nearly four years. During this period, Hutu extremists initiated a campaign of genocide against the Tutsi population. By July 1994, more than half a million Tutsis (and thousands of Hutus who opposed the violence) had been killed in what became one of the swiftest genocides in modern history.

The 2002 Pretoria Agreement marked a turning point in Rwanda's post-conflict transition. The accord provided for the disarmament of rebel militias and their incorporation into the Democratic Forces for the Liberation of Rwanda (FDLR), which had been formed in 2000 through the unification of two branches of the Rwandan Liberation Army. Rwanda successfully implemented a Disarmament, Demobilization, and Reintegration (DDR) process in two main phases: the first spanning from 1997 to 2001, and the second from 2002 to 2007. This process involved the reintegration of five separate armed forces and was a foundational step toward rebuilding the state's institutions including the justice sector, in the wake of the atrocity.

157 A rebel movement dominated by exiled Tutsis in Uganda.

First: Transitional Justice Priorities in the Rwandan Experience

In Rwanda, transitional justice has centered primarily on accountability for the 1994 genocide. Institutional reform, particularly in the security and judicial sectors, was not a pressing priority in post-genocide Rwanda. This was due in part to the fact that most officials associated with the former government, police, and army had fled the country ahead of the RPF's military advance. Many individuals most deeply implicated in the genocide continued to reside abroad.

Some former officials and senior members of the pre-genocide Rwandan Armed Forces were reintegrated into public life, even over the objections of genocide survivor associations.

Beginning in 2002, accusations against these reintegrated officials and former FAR members mounted, particularly concerning complicity in the genocide and ideological incitement. This led to disappearances, flight, and arrests. In the spring of 2005, several prominent Hutu figures and former FAR leaders including the prime minister, minister of defense, governor of Ruhengeri province, and several members of parliament, were brought before Gacaca courts on genocide charges. According to the head of the Gacaca court administration, 668 officials had been accused of genocide-related crimes. Several MPs resigned, and in late 2005, General Laurent Munyakazi, a former FAR officer, was arrested on charges of genocide and witness intimidation.[158]

158 See: Lars Waldorf, Transitional Justice and DDR: The Case of Rwanda, International Center for Transitional Justice, June 2009, pp. 16–20, link:

https://www.ictj.org/sites/default/files/ICTJ-DDR-Rwanda-CaseStudy-2009-English.pdf

These developments culminated in the establishment of Gacaca courts, which are community-based people's tribunals, through the efforts of the Rwandan government, the National Unity and Reconciliation Commission, and national elites.

The rationale behind the creation of Gacaca was to accelerate genocide trials, uncover the full truth of what transpired, put an end to the culture of impunity, foster national reconciliation, strengthen social cohesion, and ease the crisis of prison overcrowding. Around 11,000 local courts were established to try lower-level suspects. Sentencing provisions were also adjusted: individuals who confessed to lesser crimes became eligible to serve half of their sentence through community service.[159]

Gacaca began as a pilot in 2002 and, following several delays, was rolled out nationwide in July 2006. It was originally envisioned as a participatory model of community justice. However, this vision proved unrealistic given the profound demographic shifts and erosion of social capital resulting from civil war, genocide, insurgency, and counterinsurgency. Low rates of participation and limited truth-telling plagued Gacaca in many jurisdictions during the pilot phase. Two core factors explain this: first, over %90 of Rwandans are subsistence farmers, whose daily survival depends on tending their fields or seeking casual labor, leaving little time for regular court attendance; second, Hutus had little incentive to participate due to fears of being labeled as perpetrators, while many Tutsi genocide survivors were reluctant to implicate Hutu neighbors in the absence of any realistic path to reparations.[160]

159 See: Maya Goldstein Bolocan, Rwandan Gacaca: An Experiment in Transitional Justice, Journal of Dispute Resolution, vol. 2004, no. 20, 2004, p. 24, link: https://scholarship.law.missouri.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1471&context=jdr

160 See: Maria Sebastian, Justice Sector Reform in Rwanda: A Space of Contention or Consensus, SIT Graduate Institute/SIT Study Abroad, Independent Study Project (ISP) Collection, 2010, pp. 50–55.

The Gacaca system was state-run and closely tied to the national prosecution apparatus. It applied codified law (not customary law) and handled serious criminal cases, in contrast to traditional Gacaca, which had dealt with minor civil disputes. The judges were no longer elders but rather relatively young, elected community members, one-third of whom were women. Between February and April 2005, an estimated 19,000 Hutus fled Rwanda amid rumors that they would be prosecuted or attacked in retaliation under Gacaca; most later returned. Still, killings of genocide survivors and retaliatory killings by survivors persisted in the years that followed.

Perhaps the most troubling feature of the Gacaca system was its criminalization of a large portion of the adult Hutu population. By the end of 2006, pretrial Gacaca proceedings had led to charges against nearly half a million individuals for violent crimes: around 77,000 of whom were designated as belonging to the "worst" category of offenders whose cases were referred to national courts. While officials acknowledged that it would be impossible to detain most of these suspects, such mass indictments risked reinforcing a notion of collective guilt among Hutus and seemed unlikely to foster meaningful reconciliation.[161]

Diogratias Kayumba, head of Rwanda's National Human Rights Commission, remarked that the Gacaca pilot phase had generally gone "very well," but conceded that witnesses had been bribed or threatened into silence. More troubling, he added, was the role of high-level politicians who instructed citizens to remain quiet in order to protect accused individuals and advance political propaganda. "Some people," he noted, "still long, by any means, to return to civil war."[162] Over its ten-year run, the Gacaca system heard 1,958,634 cases.[163] Given the overcrowding of

161 See: Lars Waldorf, Transitional Justice and DDR, op. cit., p. 21.
162 The New Humanitarian, "Rwanda: Special report on hopes for reconciliation under Gacaca court system," ReliefWeb, 4 Dec 2002, https://reliefweb.int/report/rwanda/rwanda-special-report-hopes-reconciliation-under-gacaca-court-system?gad_source=1&gclid=Cj0KCQjwltKxBhDMARIsAG8KnqXNWcNwi9g86OWRLmMknL7zuZbPgjcWJv98qj_eMPkIqKaTLLY_fKAaAhncEALw_wcB
163 Ezechiel Sentama, National Reconciliation in Rwanda: Experiences and Lessons Learnt, Middle East Directions Programme, European University Institute, 28 February 2022, link: https://e-ihuriro.rcsprwanda.org/wp-content/uploads/2023/08/National-Reconciliation-in-Rwanda-Experiences-and-Lessons-Learnt.pdf

Second: Initiatives and Challenges of Judicial Reform in Rwanda

When the Rwandan Patriotic Front (RPF) took power following the 1994 genocide, the urgency of reforming the justice system became clear, justice needed to be delivered for the atrocities that claimed nearly three-quarters of the Tutsi population. The judiciary had already been deteriorating before the outbreak of war and collapsed entirely in the years of ensuing violence. To achieve faster progress in the justice sector, the new government launched two key initiatives:

A. Local Jurisdictions

These were a form of popular justice inspired by the Gacaca model, drawing on traditional customs and pre-colonial conflict resolution practices to adjudicate most genocide-related cases. Hundreds of thousands of community judges were elected, not for their formal education, but for their perceived integrity, and were empowered to administer justice on behalf of their local communities. In theory, these courts were meant to uphold the rights of all parties through transparent procedures and broad community participation. However, changes in the protocols for gathering accusations and determining the gravity of offenses created opportunities for officials and their allies to manipulate outcomes. These courts were soon accused of serving personal and political agendas.[164]

B. Comprehensive Reform of the Traditional Justice System

At the same time, the government pursued a broader effort to modernize Rwanda's judicial institutions in line with its aspirations for commercial and financial development. A wave of new legislation introduced elements of Anglo-American legal doctrine into what had previously been a system modeled on continental European law. The judiciary was granted greater formal independence, the number of courts and judges was reduced, and educational qualifications for judicial positions were standardized.

164 See: Human Rights Watch, "Law and Reality: Progress in Judicial Reform in Rwanda," July 2008, pp. 3-4, link: https://www.hrw.org/reports/2008/rwanda0708/1.htm

Yet these reforms did not translate into accountability for crimes committed by RPF soldiers. In 2002, when the Prosecutor of the International Criminal Tribunal for Rwanda (ICTR) announced investigations into Rwandan Patriotic Army (RPA) offenses, the Rwandan government obstructed witnesses from traveling to testify. When a French judge issued arrest warrants for nine RPA officers, Rwanda severed diplomatic relations with France and ignored domestic judicial orders to arrest 40 additional soldiers.[165]

With no effective justice system capable of addressing these challenges, and despite the Gacaca courts' emphasis on reviving culturally rooted, low-cost forms of conflict resolution, the system still failed to meet the basic standards of fair trial guaranteed under international law, including the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights. Chief among the violations were:

01 The right against self-incrimination

02 The right to legal representation

These shortcomings were compounded by the inherent tensions within Gacaca itself, whose simultaneous goals:

01 truth-telling

02 punishment for genocide

03 and reconciliation

often proved contradictory in practice.

165 In June 2008, the prosecutor of the International Criminal Tribunal for Rwanda announced that Rwanda would soon prosecute four military officers accused of killing 15 civilians (13 of them clergymen) in 1994. The trial was widely viewed as a symbolic gesture in response to international pressure.

It is thus unsurprising that Gacaca fell short of the sky-high expectations placed upon it. What has been less visible, and far harder to document, is the fear and intimidation that accompanied the act of testifying. In Kigali alone, the disappearances of some twenty individuals believed to have been murdered to prevent them from testifying were under investigation, according to Jean-Paul Mugiraneza, a lawyer with the Rwandan Institute for Research and Dialogue for Peace (IRDP). He warned of high risks and the complete absence of a witness protection framework. Rwanda's only psychiatrist at the time, Dr. Nason Munyandamutsa, noted: "It's worse outside Kigali, where threats are even more common. In many areas, there are far more accused than victims."[166]

In the wake of the civil war, Rwandan society became increasingly insular and deeply traumatized. It lacked the financial resources necessary to provide psychological support, counseling, or re-education for survivors and perpetrators alike. During this period, many lived in fear amid persistent social fractures and ongoing messages of hatred. As Maxwell Nkoli, Acting Head of Investigations at the ICTR's Kigali Office, observed, "Undoing all that takes immense time and effort."[167] And yet, the years that followed were also shaped by profound political and developmental transformations that played a role in healing some of the wounds left by the war, which will be further explored in the next section.

166 TNH, Rwanda: Special report, ReliefWeb, op. cit.
167 Ibid.

Third: New Legal Foundations for Trials

The aftermath of Rwanda's civil war only intensified the need for comprehensive judicial reform. Investigations into judicial abuse became widespread, targeting judges (many of whom were impoverished and unpaid), as well as witnesses, and those responsible for gathering and documenting evidence.
Amid pervasive poverty, weak security infrastructure, low educational attainment,[168] fragile civil society, and a church deeply implicated in the genocide, the accountability mechanisms administered by Gacaca remained vulnerable to manipulation or, at best, to the partial disclosure of truth. Between 2003 and 2008, the Rwandan authorities undertook a process of technical, legal, and structural reform aimed at improving the delivery of justice. While notable in the face of serious challenges, these improvements failed to secure two critical objectives: judicial independence and the guarantee of a fair trial.

Despite Rwanda's ratification of international legal instruments such as the Genocide Convention and the Geneva Conventions, it lacked a corresponding domestic legal framework for prosecuting such crimes. Although judicial authorities acknowledged the urgent need to establish a legal basis for prosecuting genocide, the relevant domestic legislation, the 1996 Law on the Classification of Offenses, was passed only after the genocide, and not until two years after its end.[169] Thus, while Rwanda's legal landscape underwent significant change, these reforms unfolded within a political context that offered little support to judicial authority, and consequently failed to realize the justice that had been envisioned. The justice system had sustained heavy wartime losses: judges, prosecutors, staff, infrastructure, and equipment were all decimated. The government was wholly unprepared to handle the magnitude and complexity of genocide-related crimes, which would have overwhelmed even a well-functioning judiciary. Yet officials had no choice but to rebuild the system while simultaneously undertaking the monumental task of prosecuting genocide suspects.

168 In 2002, the United Nations estimated that only 66.8% of people aged 15 and over were literate.
169 Law 8/96 dated 30 August 1996, regulating the prosecution of crimes constituting genocide or crimes against humanity committed since 1 October 1990, Government of Rwanda: Official Gazette, No. 17, 1 September 1996. Although the title of the law refers only to crimes of genocide and crimes against humanity, Article 1 also refers to the Geneva Convention and its Additional Protocols of 12 August 1949, which prohibit what are generally called war crimes.
The principle of non-retroactivity is enshrined in the International Covenant on Civil and Political Rights, Article 15, and the African Charter, Article 7(2). Rwanda has ratified both treaties.

International donors provided vital financial and political support. They intervened in individual cases when they suspected miscarriages of justice and condemned extrajudicial killings of detainees by police in early 2007, a stance that likely helped curb such abuses. Given the extent of their influence, donors were well-positioned to push for further reforms, including: strengthening judicial powers through legislation, abolishing life sentences in solitary confinement, and supporting prosecutions of crimes committed by Rwandan Patriotic Army soldiers in 1994.

Other practical obstacles were equally formidable. The Ministry of Justice building had been so badly damaged that the new Minister of Justice was forced to work from a hotel room, storing official documents in boxes under his bed. Many other courthouses had been stripped of furniture and wiring. Staff at the Office of the Prosecutor struggled to find even paper and pens to record interrogations.[170]

A further complication arose around the legal principle of non-retroactivity, the prohibition against prosecuting individuals for acts not defined as crimes at the time they were committed.[171] Legislators applied Rwanda's old penal code to crimes such as murder, and introduced charges for acts of genocide that, while excluded from the international definition, were considered to have been committed "in connection with" the genocide and other crimes against humanity.

This broad interpretation neglected a key element of genocide under international law: the intent to destroy, in whole or in part, a protected group. As a result, individuals who committed crimes such as looting between April and June 1994 could be convicted of genocide, regardless of whether they were simply exploiting the chaos for personal gain or actively seeking to exterminate Tutsis.

170 International donors provided significant assistance in rebuilding the system's personnel and infrastructure, but it took time for their support to be implemented.
171 Judicial Reform in Rwanda, Rwanda Judiciary, link:
https://old.judiciary.gov.rw/fileadmin/Static_Docs/Judicial_Reform.pdf

A pivotal moment came with the passage of the Organic Law of 19 June 2004, which laid out the establishment, jurisdiction, organization, and procedures of the Gacaca courts.

These courts were mandated to prosecute and try perpetrators of genocide and other crimes against humanity committed between 1 October 1990 and 31 December 1994. In response, the Legal Reform Commission drafted thirteen laws, [172] most of which were introduced in 2004 to address critical issues such as executive interference in judicial proceedings, lack of judicial competence, corruption, and the absence of due process safeguards in arrests, detentions, and trials. While these reforms improved the efficiency and overall performance of the courts, they fell short of ensuring full judicial independence or adequately protecting the rights of defendants and litigants.

172 Decree No. 53/03 dated 27 July 2001 on the Establishment, Organization and Functioning of the Law Reform Commission. The Commission included members from the Supreme Court, the Attorney General's Office, the Faculty of Law at the National University of Rwanda, the Bar Association, and the Ministry of Justice.

Fourth: Steps Toward Judicial Independence

In January 2005, the Rwandan government restructured its national administrative system, reducing the number of provinces from 12 to 5 and districts from 100 to 30. This restructuring had unintended consequences for the judiciary, since most courts' jurisdictions were previously aligned with the old administrative boundaries. Legislators failed to account for this shift and did not redefine judicial jurisdictions accordingly. As a result, courts at the provincial and district levels were forced to suspend operations for three months. A temporary solution was implemented to enable courts to resume functioning until March 2006, when a new jurisdictional law was passed to align judicial boundaries with the updated administrative divisions.[173]

The March 2006 law revised the structure established under the 2004 judicial reform, reducing the number of courts and redefining their roles. It provided for 60 primary courts to handle less serious civil and criminal matters, and 12 higher courts tasked with more severe cases involving higher penalties or financial stakes including Category 1 genocide cases. The higher courts also included specialized chambers for cases involving minors under 18.[174]

The Supreme Court, based in Kigali and composed of 26 judges distributed across five chambers, was granted jurisdiction over major crimes such as murder, manslaughter, war crimes, treason, genocide, and crimes against humanity, excluding those committed between 1 October 1990 and 31 December 1994, which remained under the jurisdiction of Gacaca courts and other relevant authorities. Military courts retained separate and specialized jurisdiction, hearing cases involving military personnel and civilians associated with them. Rulings from the Military Court may be appealed to the Supreme Court if the sentence exceeds ten years.

173 Judicial Reform in Rwanda, op. cit.
174 Ibid.

The Supreme Court, comprising 14 judges, supervises the overall judicial system. Under its authority, a newly established Court Inspectorate was created to monitor court performance and investigate allegations of judicial misconduct.[175]

A central element of the reform was the emphasis on judicial independence, including military courts, from both the executive and legislative branches. Under the 2004 laws, the Chief Justice was empowered to appoint, discipline, and dismiss judges with the consent of the Supreme Judicial Council. This council includes judges elected by their peers, as well as the Chair of the National Human Rights Commission, law school representatives, and the Ombudsman, a national official tasked with dispute resolution and monitoring official conduct. The Chief Justice also oversees the courts' administration and budget.Legal experts praised this new institutional design for freeing the judiciary from financial and administrative oversight by the Ministry of Justice.

Similar independence was granted to the Office of the Public Prosecutor, both financially and administratively.

As part of these reforms, judicial salaries were significantly increased, by two to five times, to reduce vulnerability to corruption.

Judges were also made subject to a new judicial code of ethics, requiring regular submission of financial disclosures to the Ombudsman's Office. Another major reform involved enhancing the competence of court personnel through new educational standards and a merit-based nomination system for judicial appointments. Prior to these reforms, only %10 of judges held law degrees, with some lower court judges possessing only primary school education. The new regulations required that all judges possess a university degree in law.

In July 2004, the government dismissed nearly 500 judges and appointed 223 new ones based on performance in a competitive examination.[176]

175 See: Sam Rugege, Some Aspects of Judicial Reform in Rwanda from 2004 to 2019, Rwanda Law Journal, March 2020, link: https://rwandalawjournal.ac.rw//uploads/articles/-main/7ECA331476244C24A0A0A53DB7FB2BE21686921234169.pdf

176 Ibid.

Fifth: The Role of National Reconciliation and Comprehensive Development in Strengthening the Rule of Law

Since 2004, the most significant human rights reform in Rwanda has been the abolition of the death penalty. Rwanda became the 100th country in the world, and the first in the Great Lakes region, to abolish capital punishment.[177] Alongside this milestone, reforms to the Code of Criminal Procedure strengthened the rights of the accused by guaranteeing access to legal counsel and safeguarding against arbitrary detention. A law passed in March 2007 aimed to facilitate the transfer of cases from the International Criminal Tribunal for Rwanda (ICTR) to national courts which, under their jurisdiction, are prohibited from issuing death sentences. Rwanda formally pledged not to impose the death penalty on any defendant transferred from the ICTR. This commitment was codified in July 2007, when a national law abolished capital punishment in all circumstances and commuted the sentences of 1,365 individuals to life imprisonment.

Further progress in the 2004 Criminal Procedure Code included expanded protections for defendants. All individuals were granted the right to counsel at every stage of the legal process, including initial interrogations. Judges were authorized to compel the appearance of unlawfully detained individuals and to penalize state officials who engaged in illegal detentions. The amended Code also stipulated that all detainees must be held in official police stations, which would enhance transparency and allow families to locate relatives more easily.[178]

Pursuing justice for mass atrocities poses immense challenges for any country, and the sheer scale of the 1994 genocide in Rwanda would have tested even the most capable judicial systems. The task was made even more difficult by the killing of numerous judges, lawyers, and court staff during the genocide, along with the destruction of much of the nation's infrastructure.

177 Amnesty International, "Rwanda: Abolition of the Death Penalty," Public Statement, 27 July 2007, link: https://www.amnesty.org/en/wp-content/uploads/2021/07/afr470102007en.pdf
178 See: Sam Rugege, Some Aspects of Judicial Reform in Rwanda, op. cit., pp. 22–24.

Still, compared to other countries emerging from mass violence, Rwanda's determination to deliver justice and the progress it made in prosecuting thousands of suspected perpetrators remains noteworthy despite serious flaws, such as widespread arbitrary arrests, prosecutions lacking solid evidence, and the absence of safeguards against abusive legal action.

Although the sheer number of cases tried before gacaca courts was significant, the inconsistent standards applied to genocide trials in Rwanda's traditional courts, particularly in the immediate post-genocide years, reflected a broader disregard for due process. Instances of judicial pressure, witness intimidation, and external interference, including from government actors, were not uncommon.[179] In recent years, however, the situation has improved. Due process guarantees have gained more traction, largely due to wide-ranging legal and institutional reforms, and improved training and professional development for judicial staff.

These advances were supported by a broader agenda of national reconciliation, inclusive development, and anti-corruption, spearheaded by President Paul Kagame since taking office in 2000. His administration's strategic vision led to major gains in judicial and law enforcement reform, gradually restoring public confidence in the rule of law after the trauma of civil war.[180] Rwanda's progress has been further bolstered by political stability, targeted investment in social cohesion, and a long-term, forward-looking approach to governance. In recent years, Rwanda has emerged as one of the fastest-growing economies on the African continent. Gender equity has also been central to Rwanda's development model. New laws have granted Rwandan women explicit rights in land ownership, inheritance, employment, education, and participation in the legal and judicial professions. In this regard, Rwanda stands out as a post-conflict success story, not only for its institutional rebuilding, but for its ambitious social transformation and confident steps toward a more equitable future.

179 Ibid.
180 "African Development Experiences: Rwanda as a Model" [Arabic], Arab Democratic Center, 29 June 2024, link: https://democraticac.de/?p=98397

Part III.

Identifying Structural and Deepening Crises in Syria's Judicial System

A meaningful and methodologically sound approach to reforming Syria's judicial system cannot be developed without a deep and discerning understanding of the multifaceted roots of its structural crisis. These problems have compounded over successive decades largely devoid of any serious attempt at judicial reform. This chronic absence of reform efforts is perhaps the clearest reflection of the Baathist regime's entrenched resistance to any steps or initiatives aimed at restructuring the judiciary.

One illustrative example is the Judicial Reform Committee formed by decree of the Syrian Prime Minister on 17 May 2011, just months after the popular uprising began that year. The committee was tasked with developing a comprehensive strategy for reforming the judiciary and issued a final 40-page report in April 2012 outlining its vision for judicial reform. While the report did acknowledge problems related to judicial independence, its recommendations were limited to urging the legislative branch to avoid enacting laws that would encroach upon the judiciary's jurisdiction. It remained conspicuously silent, however, on the far more consequential issue of executive interference in judicial affairs. Nor did it engage with the guarantees and standards required to ensure judicial independence, concessions to the regime's political red lines. Ultimately, only a handful of technical or procedural proposals were implemented.[181]

181 Al-Eqtisadi, "The most important details of the report of the Judicial Reform Committee in Syria," [Arabic], 10 April 2012, link: https://shorturl.at/l6iB5

The Baathist regime's media, for its part, promoted a set of reductive slogans to frame the issue of judicial reform, focusing on combating corruption within the judiciary, improving judges' professional qualifications, and raising their salaries to reduce bribery. These narratives deliberately avoided any reference to the deeper structural dysfunctions plaguing the justice sector, keeping them safely outside the bounds of meaningful reform. Similarly, a short-sighted and experimental approach to litigation procedures prevailed, exemplified by the failed 2004 attempt to adopt a system of mutual pleadings in civil cases, which ultimately disrupted court proceedings and was later abandoned.

With the opening of political debate following the 2011 uprising, and the growing demands for comprehensive transformation of the power structure, reform of state institutions, and the redefinition of the relationship between the executive, legislative, and judicial branches based on the principle of separation of powers, interest in judicial reform deepened among rights-based and civil society organizations aligned with the opposition. Many of these groups emerged during the course of the revolution. The regime's sustained violations against the Syrian population intensified focus on legal accountability and prosecution mechanisms. These groups undertook the task of monitoring, documenting, and analyzing the myriad laws, decrees, and regulations issued by regime institutions, highlighting their lack of legality and their role in enabling or covering up human rights violations. Of particular concern were property and housing laws, legislation curtailing civil liberties, and legal instruments that facilitated the expropriation of property from displaced persons and refugees, or that drove countless Syrians into severe and systemic impoverishment at untenable levels.

In parallel, numerous local and international reports and studies have examined specific aspects of Syria's judicial crisis, including the operation of judicial systems in areas outside regime control.[182] This study has drawn from the breadth of those efforts. In particular, the findings of the focus workshop held on 24 April 2024, which brought together legal professionals, justice sector experts, and civil society actors, helped shape a more comprehensive understanding of the structural deficiencies afflicting Syria's judiciary and the profound transformations it has undergone throughout the conflict, along with the far-reaching implications these changes have had across Syrian judicial geography.

182 For more, please review the reports of the International Legal Assistance Consortium (ILAC) issued in 2017 and 2021 on the assessment of the rule of law in Syria.

Chapter 9. The Role of the Constitution, Laws, and Decrees in Undermining Judicial Independence

Numerous jurisprudential perspectives have addressed the question of judicial reform by first identifying how a given judiciary diverges from the foundational principles of the rule of law. In this view, judicial independence is not merely a procedural requirement, it is a structural guarantee of legality itself. A well-organized and adequately empowered judiciary is no longer a privilege afforded to specific nations, but a foundational requirement for any society aspiring to social and political sophistication.[183] An independent and impartial judiciary, therefore, stands as one of the most essential pillars of the rule of law.

The United Nations Economic and Social Council has affirmed that judicial independence is a prerequisite for the rule of law and a core guarantee of fair trial standards. The judiciary, in this framework, represents the balancing force capable of regulating the dynamic between the executive and legislative branches, safeguarding individual rights and fundamental freedoms.[184]

The presence of an independent judiciary is typically enshrined as a central tenet of national constitutions. Yet when the judiciary fails to uphold equality before the law, it becomes necessary to interrogate the legal and structural impediments that have led to such dysfunction. In the Syrian context, these impediments are deeply rooted in the constitutional and legislative frameworks that govern the judiciary. These frameworks, far from protecting judicial independence, have often served to undermine it. This chapter seeks to critically examine how these failures have taken shape.

183 Judge Khalil Jreij, "Judicial Oversight of Legislative Acts" [Arabic], Institute of Arab Research and Studies, 1st ed. 1971 , p. 47.

184 ECOSOC 23\2006, Basic Principles of Judicial Conduct.

Constitutions are, in principle, the foundation of democracy, rule of law, human rights, and sound governance. But poorly designed constitutions can produce institutional disorder and legal ambiguity. The presence of language that mimics democratic norms does not suffice if that language is strategically crafted to be circumvented or rendered toothless.[185] A close reading of Syrian constitutional texts, particularly those from the Baathist era, including the 2012 Constitution currently in force, reveals numerous provisions designed less to empower institutions than to entrench executive dominance. Many of these provisions are carried over from the 1973 Constitution and share the same underlying structural defects: vague formulations, built-in loopholes, and enabling language that grants the executive broad discretion to override constitutional guarantees.

These shortcomings create persistent tensions between the constitutional text and the legal system meant to implement it. The renowned jurist Abd al-Razzaq al-Sanhouri rightly observed that the failure of constitutional texts to include sufficiently detailed provisions often leads to legal ambiguity, weakens legislative compliance, and subverts the original intent of the constitution. It is essential, therefore, to distinguish between details that clarify the intent and function of constitutional provisions, and explanatory or procedural details that can be left to implementing legislation, provided such laws remain strictly bound by constitutional limits.[186] In Syria's case, this distinction has often been ignored, allowing laws and executive decrees to deviate from or hollow out constitutional commitments. As a result, the legal architecture that ought to secure judicial independence instead facilitates its erosion.

185 Geranne Lautenbach, The Rule of Law Concept, The Concept of the Rule of Law and the European Court of Human Rights, Oxford: Oxford Academic, 2014, link: https://academic.oup.com/book/6558/chapter-abstract/150499453?redirectedFrom=fulltext

186 Jurist Abdel Razzaq Al-Sanhouri, "Violation of the Constitution by Legislation and the Deviation in the Use of Legislative Authority" [Arabic], State Council, Year 3, January 1952, p. 59 ff.

First: Inadequacies of Constitutional Frameworks

To assess the extent to which the 2012 Syrian Constitution adheres to the concept of constitutional determinants, numerous examples reveal a significant gap between the constitutional text and the laws that are supposed to clarify and implement it. Perhaps the most glaring example is found in the articles concerning the judiciary. Article 132 declares: "The judiciary is independent, and the President of the Republic shall guarantee this independence, with the assistance of the Supreme Judicial Council." While Article 133 and the articles that follow mention judicial bodies such as the Supreme Judicial Council and the laws that should regulate and ensure judicial independence, they omit crucial details, most notably the composition, powers, and operating procedures of the Council itself. These are left entirely to secondary legislation. Rather than enshrining judicial independence, the law regulating the Supreme Judicial Council includes provisions that significantly undermine it, allowing the executive branch to exert undue influence. The majority of the Council's members including the President and his deputy, belong to the executive branch, as stipulated by law. This dynamic renders the Council an extension of executive power, rather than a safeguard against it.

Other constitutional provisions, such as Article 136, assert that "the law shall determine the conditions for appointing, promoting, transferring, disciplining, and dismissing judges." However, the Judicial Authority Law (Decree 98 of 1961) neglects core constitutional safeguards, namely, the immunity of judges from arbitrary transfer and dismissal.[187]

In contrast, the 1950 Syrian Constitution offered more robust guarantees for judicial independence. Article 110 stipulated that the dismissal and transfer of judges must be decided by the Supreme Judicial Council, thus shielding judges from interference by the legislative or executive branches. Article 123 also detailed the Council's composition, clearly demarcating roles and responsibilities.[188]

187 Ibid.
188 Aref Al-Shaal, The Importance of Constitutional Determinants" [Arabic], Harmoon Center for Studies, October 2021, link: harmoon.org

Articles 140 and 141 of the 2012 Constitution, which pertain to the Supreme Constitutional Court, affirm its status as an independent judicial body and stipulate that it be composed of no fewer than seven members, including a president appointed by the President of the Republic. Although Decree No. 127 of 2022 later amended the court's composition, and Law No. 7 of 2014, which was issued to regulate the court's functions, reiterates in its first article the principle of judicial independence, many of its provisions effectively undermine that very principle. The law grants the President sweeping authority to appoint and select all members of the Supreme Constitutional Court, reducing them in practice to administrative appointees who can be replaced at will, without any clear criteria or safeguards to ensure their independence from the executive. Moreover, the law strips the court of its core power to review the constitutionality of laws and decrees, restricting its jurisdiction to cases brought either by the President or by five members of the People's Assembly.[189]

Elsewhere, the Constitution defers important issues to ordinary legislation without providing adequate constitutional direction. Article 48, for instance, vaguely states: "The law shall regulate Syrian nationality." This brevity allows lawmakers to define citizenship with virtually no constitutional constraints. In contrast, constitutions in other countries provide specific protections. The Tunisian Constitution (Article 25) prohibits stripping a citizen of their nationality.[190] The Spanish Constitution (Article 11) states that no individual born as a Spanish citizen may be deprived of their nationality. Even the Turkish Constitution (Article 66), while permitting deprivation of nationality for actions against national loyalty, guarantees the right to judicial appeal.[191]

189 Free Syrian Lawyers Association, "The Supreme Constitutional Court in Syria is one of the aspects of the Assad regime's authoritarianism" [Arabic], n.d., link: https://fsla.org/archives/1144

190 This constitution did not even consider citizenship a right of the Syrian citizen.

191 Aref Al-Shaal, "The Importance of Constitutional Determinants," op. cit.

In Syria, this legal ambiguity has had lasting consequences. The absence of clear constitutional safeguards around nationality has led to systemic injustices, such as the case of the "stateless" Kurds, many of whom were stripped of citizenship under Legislative Decree No. 93 of 1962, following the "Hasakah census". The regime did not begin to address these injustices until after the 2011 uprising.[192] Similarly, Decree No. 276 of 1969 denies Syrian mothers married to foreigners the right to pass on citizenship to their children, except in rare circumstances (e.g. if the child is born in Syria and the father is unknown). This policy has rendered many children stateless, complicating matters like property ownership subject to Law No. 11 of 2011 governing the rights of non-Syrians to own property.[193]

It is beyond the scope of this study to provide an exhaustive account of all cases that illustrate the inadequacies of constitutional safeguards in Syria. These shortcomings are not only numerous within the constitutional text itself, but are further compounded by the large volume of laws and decrees that have been deliberately designed to circumvent even the more detailed and precise constitutional provisions. The problem is not limited to laws governing the judiciary and its institutions whose role in undermining judicial independence we have already explored, but extends to a broader array of legislation and decrees regulating nearly every sector and institution of the state and society. These include laws that grant immunity to security agencies, as well as legislation on elections, the media, and political parties, each of which contains explicit violations of the constitutional principle of equality before the law.

192 Syrians for Truth and Justice (STJ), "Syria: Ten Facts About the 1962 Hasakah Exceptional Census" [Arabic], 4 October 2019, link: https://shorturl.at/7JUIO

193 Syrian Report, "Depriving children of their mother's Syrian nationality and its impact on the right to real estate ownership" [Arabic], 25 June 2024, link:https://shorturl.at/lnTJx

Equally concerning are the real estate laws issued before and after 2011, which have been the subject of numerous studies and reports highlighting their role in undermining property rights, in contravention of Article 15 of the 2012 Constitution. That article ostensibly guarantees the right to private property and conditions its expropriation on two criteria: public benefit and fair compensation.[194] However, constitutional protections of this right remain weak in the face of dozens of real estate laws and decrees, among them Expropriation Law No. 20 of 1983 and its amendments; Laws No. 15 of 2008, No. 23 of 2015, and No. 10 of 2018; Legislative Decree No. 66 of 2012; Law No. 3 of 2018.[195] Collectively, these legal instruments have served to legitimize the confiscation and expropriation of private property.

In more precise terms, the authorities have engaged in systematic efforts to strip constitutional provisions of their substance, either through decrees issued by the head of the executive branch or by subordinating the legislative branch to executive control. This has resulted in a blatant erosion of the principle of legal legitimacy.

Looking to international experiences, we find additional models of flawed constitutional design. India, for example, has experienced what legal scholars call "constitutional disarray" since its independence from British rule, as successive constitutions over eighty years have struggled to reconcile colonial-era legal frameworks with evolving political, social, and economic realities. To address this tension, India's constitution-makers introduced provisions allowing for the restriction of fundamental rights on vague grounds such as "public order," "morality," or "ethics," without defining these terms. While this ambiguity has persisted, its impact was mitigated by the relative success of India's democratic institutions and the balance of power among the branches of government. [196]

194 Abdul Hamid Al-Awak, "Constitutional Guarantees for the Right to Property and Housing" [Arabic], The Day After – HLP Working Group, February 2022, link: https://shorturl.at/Sr7Lc

195 See: The Day After's research on Housing Land and Property (HLP) rights violations.

196 Gautam Pingle, "The Constitution and contradiction," The New Indian Express, 22 Dec 2019, link: https://www.newindianexpress.com/opinions/2019/Dec/21/the-constitution-and-contradiction-2079347.html

In the Syrian case, even if laws were to be constitutionally restructured to address existing gaps, the absence of democracy and the rule of law would remain formidable barriers to achieving genuine separation of powers and, by extension, to ending infringements on judicial independence. One of the key conclusions of the judicial reform workshop held in April 2024 was the urgent need to link constitutional reform to a broader democratic transition and the institutionalization of the three branches of power. Workshop participants, including judges, legal experts, and civil society actors, emphasized the deeply interdependent relationship between legal/judicial reform on the one hand and structural reform within the executive and legislative branches on the other.[197]

In this context, it is essential to address the profound structural flaws in a number of decrees and laws that disregard constitutional principles and the foundations of legal legitimacy. One particularly striking example is the President's encroachment on the legislative branch: between 2003 and 2010, the People's Assembly enacted 373 laws, while the President issued 539 legislative decrees, effectively surpassing the legislature not only in volume but also in legislative influence. [198]

> It must also be noted that the Syrian authorities have failed to comply even with the constitutional requirements they themselves enacted. For instance, Article 154 of the 2012 Constitution states: "Legislation in force and issued prior to the adoption of this Constitution shall remain effective until amended in accordance with its provisions, provided that such amendments are made within no more than three calendar years." In practice, this article has been disregarded.[199] Chapter 4 of this study will propose mechanisms for the constitutionalization of laws and decrees, based on clear and binding constitutional parameters.

197 From the outcomes of the focus group discussion.
Dr. Hanan Hamad Amr, "Enhancing the legislative performance of the Syrian People's Assembly: A comparative study" [Arabic], doctoral thesis in law, University of Damascus, 2013.
198 Ibid., p. 402.
199 See the 2012 Constitution.

Second: Executive Interference and the Expansion of Exceptional Judicial Powers

The executive branch in Syria has successfully consolidated its grip over both the legislative and judicial authorities, reducing them to mere instruments for advancing its authoritarian objectives. It has done so, in part, through sham periodic elections with predetermined outcomes, ensuring the appointment of members to the People's Assembly (the legislative authority) who demonstrate unwavering loyalty to the regime. These members serve no meaningful legislative function beyond applauding the President and rubber-stamping any draft law submitted by the executive. Through this control over both legislative output and presidential decrees, bolstered by the pervasive influence of the security apparatus, the executive has effectively subsumed the judiciary, transforming it into one of its subordinate arms. The means through which this dominance has been exerted are numerous, the most significant of which are outlined below:

01

A. Restructuring the Supreme Judicial Council

On 14 February 1966, Legislative Decree No. 23 was issued, granting the Minister of Justice (an executive official) the authority to appoint and transfer judges, prosecutors, and legal technicians in the Government Cases Administration.[200] These appointments were to be made through selection rather than competitive examination, as stipulated in the decree:

01 In exception to the current legal provisions, especially Articles 70(e), 93 ,72, and 94 of the Judicial Authority Law, the Minister of Justice is authorized, for a period of six months, with the following powers:

- Appointment of judges and prosecutors by selection across various categories and ranks;
- Transfer of judges and prosecutors across various categories and ranks;
- Appointment of technical staff in the Government Cases Administration by selection across various categories and ranks.

02 Such appointments and transfers are to be formalized by decree upon the Minister's proposal and are not subject to any form of review or appeal."[201]

200 The name was amended to the State Litigation Department pursuant to State Litigation Administration Law No. 55 of 1977, Article 19 of which stipulates that "the phrase 'State Litigation Department' shall replace the phrase 'Government Litigation Department', and the phrase 'State Lawyers' shall replace the phrase 'technical members', wherever this is mentioned in the applicable laws and regulations."

201 The decree is published on the Syrian People's Assembly pag, link: http://www.parliament.gov.sy/arabic/index-.php?node=5576&nid=16435&First=0&Last=22&CurrentPage=0&mid=&refBack= [Accessed 29 January 2024]

This decree marked the beginning of a pattern in which judicial appointments and transfers were made on the basis of loyalty and compliance, rather than professional competence or integrity.

Control over the judiciary was further entrenched with the promulgation of the 1973 Constitution, which designated the President of the Republic (head of the executive) as chair of the Supreme Judicial Council. Article 132 of that constitution states:

"The President of the Republic shall preside over the Supreme Judicial Council. The law shall determine its composition, powers, and rules of procedure."

Under this constitutional framework and subsequent amendments to the Judicial Authority Law, the Council came to include, in addition to the President and the Minister of Justice (who acts as deputy chair), the President of the Court of Cassation, the two senior deputies to the President of the Court of Cassation, the Assistant Minister of Justice, the Public Prosecutor, and the Head of the Judicial Inspection Department. With the President, the Minister of Justice, and the Assistant Minister all hailing from the executive branch, and with the Public Prosecutor and Head of Judicial Inspection both subordinate to the Ministry of Justice[202] This means that four out of seven members of the council are from the executive authority.

This configuration remained unchanged under the 2012 Constitution, which introduced no meaningful revisions regarding judicial governance. The relevant articles (beginning with Article 132) largely replicate the provisions of the 1973 Constitution, and offered no substantive safeguards against executive encroachment on judicial independence.

202 Judicial Authority Law No. 98 of 1961.

02

B. Dominance Over the Supreme Constitutional Court

The President of the Republic, as the head of the executive branch, holds sweeping authority over the appointment and nomination of members to the Supreme Constitutional Court. The 1973 Syrian Constitution granted the President the power to appoint all members of the Court, including its President, who also takes the oath of office before the President. This framework remained largely unchanged under the 2012 Constitution. Most provisions concerning the Constitutional Court were replicated from the 1973 text, with the only notable difference being an increase in the minimum number of judges from five to seven. Although the 2012 Constitution provided slightly more detail regarding the Court's composition and responsibilities, it deferred key issues such as expanded powers and the procedures for hearing challenges and objections, to a separate piece of legislation. That legislation came in the form of Law No. 7 of 2014, which formally regulated the work of the Supreme Constitutional Court. However, it preserved the President's unchecked powers over the Court. The term of each member remains four years, renewable, while the President of the Republic serves a renewable term of seven years.

In practice, this structure ensures that the executive branch effectively controls the Constitutional Court. As a result, the Court is unable to fulfill its constitutional duties with any real independence. This dynamic has been evident throughout the Court's history. Despite the existence of numerous laws and decrees that violate both the Syrian Constitution and basic legal principles (many of which will be detailed later) the Court has never intervened to strike down legislation that grants sweeping powers and impunity to the security apparatus. These laws have shielded the security services from accountability and placed them beyond judicial scrutiny.

Since the Court's establishment under the 1973 Constitution, and up to the time of writing this report, it has issued no rulings asserting its constitutional oversight authority, except for a single decision in 2019, which annulled several articles of the draft State Council Law. That rare intervention was likely a symbolic response to mounting public pressure to activate the Court's role and end its subordination to the executive, particularly as it came just days after the conclusion of the first round of meetings of the Constitutional Committee in late October 2019.

The Court's inability to exercise constitutional review applies not only to legislation but also to its other theoretical responsibilities, such as overseeing the legitimacy of presidential elections and prosecuting the president in the event of high treason. Yet even this latter charge is problematic: the crime of high treason remains undefined in Syrian law, and no penalty has been stipulated for it. Thus, even if the Court were to find the president guilty of high treason, it would be unable to impose any punishment. This loophole is reinforced by Article 51 of the 2012 Constitution, which stipulates: "There shall be no crime and no punishment except by law."

03

C. Through the Establishment of Exceptional Courts and Committees[203]

Following the Baath Party's rise to power in Syria, a series of exceptional courts were established. In early 1965, Decree No. 6 created the Exceptional Military Court, originally designated to try military personnel only. This court remained in place for approximately three years before being abolished by Decree No. 47 (dated 28 March 1968), which established the Supreme State Security Court as its successor. Unlike its predecessor, the new court had expanded powers and was authorized to try both civilians and military personnel. It also held jurisdiction over any case referred by the martial law governor. The court's members were appointed by decision of the President of the Republic.

203 Nasrat Munla Haidar, a former judge at the Supreme Constitutional Court in Syria, states: "It is not permissible to establish exceptional judicial bodies because that would diminish the judicial authority, whose mandate to adjudicate all disputes should be complete and undiminished" (Lawyers Magazine [Arabic], issues 7, 8, and 9, 1977).

The court operated under the authority of the "Law for Combating the Aims of the Revolution" (Decree No. 6 of 1964). Its verdicts were not subject to appeal. Instead, the President had the sole authority to ratify or annul verdicts, order retrials, reduce sentences, or replace them with lesser penalties. These decisions were final and not subject to review. In effect, the President (as head of the executive) served as the court's ultimate authority, assuming the role of both appellate and cassation court, at his discretion. For over four decades, the executive exploited this court to suppress political dissent. It was eventually abolished in March 2011 in response to popular protests, through Legislative Decree No. 53. As will be seen later, it was effectively replaced by the Counter-terrorism Court. In addition to the Supreme State Security Court, Military Field Courts were created in 1968 under Decree No. 109. These courts were formed by order of the Minister of Defense (a key figure in the executive branch) and composed of a presiding judge with a minimum rank of Major and two advisors of at least Captain rank. Verdicts from these courts were final and not subject to appeal. Death sentences required ratification by the President, while all other rulings were ratified by the Minister of Defense. Either authority could reduce or alter the sentence, annul it entirely while preserving the case, or order a retrial before a different field court (Article 8).

On 1 July 1980, President Hafez al-Assad added the phrase "or in cases of internal disturbances" to Article 2 of the decree, thereby extending the court's jurisdiction to both peacetime and wartime, and expanding its scope to include civilians alongside military personnel.[204] This amendment granted extraordinary powers to the field courts, which went on to issue thousands of unjust rulings against civilians. These courts were extensively used to repress Syrian society during the 1980s and were later deployed more selectively, such as in the case of the 2003 nonviolent Daraya Youth Movement. After the 2011 uprising, referrals to these courts surged, despite the absence of clear criteria for such referrals. [205] These courts continued operating in this exceptional capacity until 3 September 2023, when they were abolished under Decree No. 32. All pending cases were transferred to the military judiciary which, as previously noted, is itself structured as an exceptional judicial system in Syria.

Then, on 26 July 2012, Law No. 22 was issued establishing the Counter-terrorism Court, as stipulated in Counter-terrorism Law No. 19 (issued on 28 June 2012). This court was created as a functional replacement for the Supreme State Security Court, intended to suppress voices of dissent following the popular protests of March 2011. The tasks, jurisdiction, formation process, and internal structure of this court were covered in detail in the first section of Chapter One of this report.

In addition to these exceptional courts, Syria also witnessed the establishment of various committees that carried out quasi-judicial functions. One example is the Dispute Resolution Committee formed under Expropriation Law No. 20 of 1983, which was granted judicial authority to examine all claims of ownership or real estate disputes within designated expropriation zones. Similarly, committees established under Decree No. 66 of 2012 and Law No. 10 of 2018, both related to the creation of new urban planning zones, also held judicial competencies. The dangers posed by these committees were discussed in both the introductory chapter and the first chapter of Part I of this study.

204 Swasia, "Judicial Massacres in Syria" [Araboc], 28 March 2014, link: http://swasia-syria.org/?p=716 [Accessed 25 January 2024]

205 "Abolishing Military Field Courts: An Approach to Formal Change" [Arabic], Omran Center for Studies, 14 September 2023, link: [Accessed 24 August 2024] https://shorturl.at/8lp6h

04

D. By Issuing Laws and Decrees that Reinforce a Culture of Impunity

The ruling authorities did not stop at establishing exceptional courts and committees to tighten their grip over the judiciary. They also enacted a series of laws and decrees that effectively tied the hands of the judiciary, barring it from prosecuting many crimes depending on the identity of the accused and their affiliation.

One notable example is Decree No. 14 of 1969, which established the State Security Administration and explicitly prohibited the prosecution of its personnel for any crimes committed while performing their assigned duties, unless a prosecution order was issued by the director. The decree's final article even prohibited its publication. Similarly, Legislative Decree No. 549 of 25 May 1969, known as the Law on the Internal Organization of the State Security Administration, granted permanent legal immunity to security officers. Article 74 stated:

"No employee of the State Security Administration—whether regular, seconded, assigned, or contracted—may be prosecuted directly before the judiciary for crimes arising from the duties of their position or committed in the course of performing them, unless they are first referred to the disciplinary board within the Administration and a prosecution order is issued by the Director."

In 2008, Legislative Decree No. 69 further entrenched impunity by amending Article 74 of the Military Penal Code and Code of Military Procedure (Law No. 60 of 1950). It extended protection to officers, non-commissioned officers, and personnel of the Internal Security Forces, the Political Security Division, and the Customs Police, shielding them from prosecution for any crimes committed "in the course of duty." Under this amendment, any prosecution required a prior decision by the General Command of the Army and Armed Forces.

Following the outbreak of popular protests in 2011, the state persisted in granting legal cover to perpetrators of abuses. To legitimize the security services' mass arrests, the regime granted its agents the status of judicial police, ostensibly for the purpose of conducting investigations under the Code of Criminal Procedure. These agents were allowed to detain individuals for up to 60 days under Legislative Decree No. 55 of 2011, which amended Article 17 of the Code. The decree added the following paragraph:

> The judicial police or those delegated to carry out their functions shall be responsible for investigating crimes stipulated in Articles 260 to 339, as well as Articles ,221 392 ,388, and 393 of the Penal Code, collecting evidence, and interrogating suspects. Detainees may be held for up to seven days, renewable by the Public Prosecutor based on the circumstances of each file, provided that the total duration does not exceed 60 days.

Despite these time limits, Syria's security agencies, especially after 2011 and amid intensifying repression and mass arrests, repeatedly violated even this extended detention window. Verified reports by local and international human rights organizations confirm that tens of thousands of individuals forcibly disappeared by state forces remain missing.[206]

These legal protections and privileges granted to security forces stand in blatant contradiction to the principles enshrined in successive Syrian constitutions (including the 2012 Constitution) which affirm equality before the law, the supremacy of law in state governance, and the right to a fair trial. Upholding these rights necessarily requires an independent and impartial judiciary, yet the very structure of the legal framework has served to erode that independence and institutionalize impunity.

206 See, for example: Paragraph 37 and following of the International Commission of Inquiry report issued in February 2022, link: https://undocs.org/en/A/HRC/49/77

05

E. By Expanding the Powers of Security Services at the Expense of the Judiciary

A series of laws and decrees have significantly expanded the powers of Syria's security services, often at the direct expense of the judiciary. One notable example is Legislative Decree No. 63 of 2012, which granted judicial police authorities, including the security branches, the right to request the imposition of precautionary asset freezes on the movable and immovable property of defendants during investigations related to crimes against state security or those listed under Counter-terrorism Law No. 19 of 2012.[207] Yet such measures, which directly impact the right to property, a fundamental human right, should, as a matter of legal principle, remain under the exclusive jurisdiction of the courts.

The judiciary has also been systematically excluded from adjudicating certain civil disputes unless prior approval is granted by the security services. For instance, Decree No. 49 of 2008 prevented civil courts from registering real estate lawsuits involving properties designated as border areas unless accompanied by a security permit. The decree further required courts to dismiss all ongoing lawsuits of this kind unless the relevant security clearance was submitted in the case file. As a result, transactions involving such properties were effectively paralyzed until Decree No. 43 of March 2011 reauthorized real estate transfers within urban zoning plans without needing security clearance, reverting to the more lenient framework of Law No. 41 prior to its 2008 amendment. Even so, properties outside those zoning areas remained subject to the strictures of Decree No. 49, leaving courts unable to register real estate lawsuits and thus denying claimants the right to annotate legal claims in the property registry. What stands out across these decrees is that the decision to grant or deny security approval is final and cannot be subject to any form of judicial appeal or review.[208]

207 The decree included the phrase "necessary precautionary measures."
208 See: Law No. 41 of 2004 and Decree No. 49 of 2008 published on the Syrian People's Assembly page at the following link: http://parliament.gov.sy/arabic/index.php?node=5588&cat=4784&%2049%20law,%202008 [Accessed 30 January 2024].

This pattern of legislation constitutes a clear encroachment on judicial independence and a blatant intrusion into the functions of the judiciary. It prevents courts from performing their constitutionally mandated role and, in requiring them to dismiss pending suits based on retroactive security restrictions, also violates the principle of non-retroactivity in law. The judiciary, in effect, became subordinate to the will of the security apparatus, rather than functioning as a check upon it.

The erosion of judicial authority has not been confined to formal laws. It has also been facilitated by executive directives. Both the Prime Minister's Office and the Ministry of Justice (core institutions of the executive) have issued administrative circulars requiring security approvals for basic civil transactions. One example is Circular No. 5454 of 4 August 2015, issued by the Prime Minister's Office to the Ministry of Local Administration, which extended the requirement for prior security clearance to include real estate sales, rental agreements, and property transfers.

In 2018, the Ministry of Justice issued Circular No. 82, requiring security approvals for all powers of attorney (domestic and foreign) related to real estate ownership and company formation or withdrawal. It followed with Circular No. 14 of 21 February 2018, mandating similar approvals prior to public auctions (except those involving public entities). A subsequent circular on 9 July 2019 expanded the requirement to include nearly every domain of civil life: buying and selling vehicles, transferring real estate under prior contracts, collecting pensions, amending company charters, accessing bank services, leasing properties, allocating cooperative housing units, drilling wells, resigning from public or private institutions, distributing inheritances, and managing commercial properties. The Ministry doubled down on this regime in Circular No. 30 of 16 September 2021, which required "security approvals" as a precondition for issuing powers of attorney on behalf of the absent or missing, which adds yet another layer of control over family and property affairs. These practices were highlighted in the September 2022 report of the UN Independent International Commission of Inquiry on Syria, which underscored how such approvals severely restrict the freedom of movement and property rights of Syrians, especially those affiliated with the opposition, and are often applied in a discriminatory manner.[209]

209 Paragraphs 27-28-29-30 of the report of the Independent International Commission of Inquiry on the Syrian Arab Republic, link: https://docs.un.org/en/A/HRC/49/77

The sweeping autonomy granted to security agencies has enabled their interference in virtually every aspect of Syria's political, economic, social, and administrative life. Through the institutionalization of the so-called "security studies and approvals" system, these agencies have assumed the power to object to all forms of civic and administrative engagement: from street vendor licenses to inheritance registration, parliamentary membership, military promotions, judicial appointments, and government formation. Securing any public job, no matter how minor or prestigious, depends on a "positive security report" confirming one's political alignment with the ruling regime. These agencies also operate through secretive rules and unwritten directives, in direct violation of the legal certainty required under any meaningful rule of law.[210]

In sum, the systematic curtailment of judicial powers, coupled with the unchecked expansion of executive and security control over core aspects of civic life, including litigation and the right to a fair trial, has severely undermined the independence of Syria's judiciary. And beyond these legal interventions, the structural design of the judiciary itself, fragmented in jurisdiction and tethered to executive oversight, has further stripped it of autonomy and impartiality. These cumulative pressures, taken together, have rendered judicial independence all but hollow.

210 Harmoon Center for Contemporary Studies, "The Rule of Law as a Foundation and Condition for Building a Modern National State" [Arabic], link: https://shorturl.at/sfYzk [Accessed 30 August 2024]

Chapter 10. The Syrian Judiciary's Incompatibility with International Standards

In today's world, as international legal frameworks regulating the justice sector continue to evolve, a clear set of normative references—including declarations, charters, and treaties—has emerged to define what is expected of national judiciaries. These instruments articulate not only institutional principles but also the ethical conduct and core values judges must embody. It is no longer tenable for a state to claim that its legal and judicial institutions uphold justice merely by signing or ratifying these documents. What matters is the actual structure and functioning of the judiciary, measured against these established standards.

Evaluating the Syrian judiciary's compliance with such international principles requires an understanding of the major judicial developments codified over recent decades in widely recognized global instruments. Among the most significant are the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, both of which enshrine the right to a fair trial and the independence of the judiciary. Other relevant frameworks include the UN Basic Principles on the Independence of the Judiciary and the various reports by Special Rapporteurs on the independence of judges, lawyers, prosecutors, and military courts. Regional and thematic frameworks have also played a key role in elaborating standards such as the Beijing Statement on judicial independence in the Asia-Pacific region, the Bangalore Principles of Judicial Conduct, and the African Principles and Guidelines on the Right to a Fair Trial and Legal Assistance.

These are complemented by the Bergen Principles on the international independence of the judiciary, the Council of Europe's recommendations on judicial autonomy, and the Latimer House Guidelines, which provide a set of best practices for maintaining the balance between parliamentary sovereignty and judicial independence within Commonwealth countries. A range of other international conventions reinforce these norms, emphasizing the need for impartial adjudication, legal certainty, and equality in access to justice.

Together, these references form the basis upon which the Syrian judicial system must be assessed not through a formalist lens, but by examining the extent to which its institutional practices and legal culture reflect or deviate from internationally recognized guarantees of judicial integrity and independence.[211]

211 See the inclusion of these declarations, covenants and charters in United Nations publications and in the reports issued by the Special Rapporteur on the principles of the independence of the judiciary.

First: The Repercussions of Syria's Loss of Judivial Independence and Impartiality:

In contrast to the broad body of international principles and rules that define the standards of judicial independence, we saw in the preceding section, on the flaws and shortcomings of the Syrian constitution and legal framework, that the violation of the judiciary's independence has been the systematic backdrop governing the reality of the Syrian judicial system. This entrenched crisis would not have eroded the foundations of the judiciary and its institutions had it not been for the profound imbalance among the three branches of government. That imbalance undermined the principle of separation of powers, resulting in the judiciary's loss of both functional and structural independence, the usurpation of its jurisdiction by the executive and legislative authorities, and the obstruction of legal proceedings, contrary to Article 10 of the Universal Declaration of Human Rights, which affirms: "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."[212]

The Syrian judiciary's loss of independence, impartiality, and integrity, contrary to the above international standards, has led to grave consequences for the right to safe and fair litigation and for the justice system as a whole. Yet all three branches of government in Syria are bound to uphold these standards as articulated in the declarations and treaties the state has ratified, particularly given that Paragraph 7 of Article 128 of the Constitution designates the state as the official body authorized to "conclude treaties and agreements in accordance with the Constitution." The same power is also granted to the People's Assembly under Article 75, and to the President of the Republic under Article 107.

212 See: Universal Declaration of Human Rights.

The Syrian judiciary has itself previously affirmed the need to implement international agreements to which Syria is a party. A 1980 ruling by the Court of Cassation upheld this principle, stating: "When the state enacts a law to join an international agreement or treaty, that agreement becomes part of national law and is implemented by domestic courts not because the state has committed to applying it, but because it has become part of national legislation." The court added: "Where there is a conflict between the international text and domestic law, the former shall prevail."[213]

One of the most critical consequences of the judiciary's lost independence is the fragmentation of Syria's judicial structure and the breach of the principle of unified jurisdiction and unified applicable law. The establishment of exceptional courts by the executive, sometimes in collaboration with the legislature, represents a blatant violation of judicial independence, an encroachment on the judiciary's exclusive jurisdiction, and a clear breach of Article 135 of the Syrian Constitution, which states: "The law shall regulate the judicial system in all its categories, types, and levels, and shall define the rules of jurisdiction for the various courts."[214] Curtailing this authority also constitutes a violation of Article 14 of the International Covenant on Civil and Political Rights and Paragraph 3 of the Basic Principles on the Independence of the Judiciary.[215]

It is worth noting here that the Human Rights Committee, in General Comment No. 32, affirmed: "Any situation in which there is no clear demarcation between the functions and powers of the judiciary and the executive, or where the executive is able to control or direct the judiciary, is inconsistent with the principle of judicial independence." The Committee has expressed concern about this in many of its concluding observations and called for a clear distinction between the powers of the judiciary and those of the executive.[216]

213 Second periodic report submitted by Syria as a State Party under Article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 16 July 2009. -https://shorturl.at/ok5K9
214 See the Syrian Constitution.
215 Syrian Expert House, Democratic Transition Plan, August 2013, link: https://shorturl.at/eRxaL
216 Report of the Special Rapporteur on the independence of judges and lawyers, Human Rights Council, Eleventh session, 24 March 2009.

The judiciary's problems, however, go beyond external encroachment by the executive. Internal erosion has also occurred, notably due to the wide-ranging powers granted to the Minister of Justice in appointing and transferring judges and public prosecutors at all levels. The frequent, unjustified transfer of judges between courts has prevented many from gaining sufficient experience, especially in courts of first instance. This has led to numerous judicial errors, requiring litigants to file appeals or cassation requests, prolonging proceedings and increasing financial burdens. The arbitrary transfer and dismissal of judges have further eroded judicial authority and undermined judicial immunity. Legislative Decree No. 95 of 2005, which dismissed 81 judges from service without explanation or the right to appeal, is a telling example.[217] The judiciary's lack of a separate budget, leaving it under the control of the executive, is another stark indicator of its compromised independence and vulnerability to manipulation.

Qualitative interviews conducted for this research revealed the real-life impact of such erosion. One former judge (M.J.), among those dismissed, stated: "I submitted a memorandum to the Minister of Justice requesting that I be referred to the judiciary to understand the grounds for my dismissal and to defend myself against this arbitrary decision that caused me grave harm, but I received no response."

Another key violation of judicial independence is the structure of military courts in Syria, which operate in effect as exceptional courts under the complete authority of the Ministry of Defense. These courts have been granted jurisdiction over cases that fall squarely within the remit of the regular judiciary, including trials of civilians. This contradicts basic principles of due process, which stipulate that military justice must be "an integral part of the ordinary judiciary."[218] On the other hand, Syrian courts have witnessed numerous instances in which the implementation of court rulings has been annulled or suspended, and there are well-documented examples of interference by the executive authority and security services in judicial proceedings.

217 Syrian Expert House, Democratic Transition Plan, op. cit.
218 See the report of the Special Rapporteur of the Sub-Commission on the Promotion and Protection of Human Rights, on the question of the administration of justice through military courts, January 2006. file:///C:/Users/Ayman%20Abu%20Hash-em/Downloads/E_CN-4_2006_58-AR%20(3).pdf

Additionally, Syrian courts have repeatedly seen judgments annulled or blocked, with well-documented examples of interference by executive authorities and security services. A striking case is that of former judge Shaza Kilo, who described the events surrounding the arrest of her late father, the dissident Michel Kilo, and his colleagues in 2006 known as the Beirut–Damascus Declaration detainees. The Public Prosecutor had charged Kilo with undermining state prestige under Articles 285 and 286 of the Penal Code, disseminating false information and slander under Article 376, and inciting sectarian strife under Article 307. Although other detainees in the same case were released, repeated requests to release Kilo were denied by the investigating judge. Eventually, a referral judge granted bail and approved Kilo's release, but the order was deliberately withheld from the prison. When Judge Kilo went to inquire with Public Prosecutor Marwan Louji, he denied knowledge of the release order, having orchestrated its disappearance. The case was subsequently referred to the Second Criminal Court in Damascus, which sentenced Kilo to three years in prison on the same charges for which he had earlier been granted release. This incident illustrates how certain judicial actors (like the Public Prosecutor) function as intermediaries between security agencies and the courts, using procedural manipulation to obstruct judicial outcomes.[219]

Such cases point to a broader pattern of open and blatant interference in politically sensitive cases. The regime has long used exceptional courts as tools of repression against its critics and opponents, especially during the 1980s conflict with the Muslim Brotherhood. In civil, criminal, and administrative cases before the regular courts, security interference often took the form of indirect pressure on judges or "soft" interventions such as personal recommendations or informal mediation, especially in cases involving security officers or government officials. Testimonies from judges who defected from the regime after 2011 confirm these practices. Former judge Hossam Al-Shahna described various forms of interference, noting that not all judges succumbed to them, and recalled how, after 2000, judges felt emboldened by modest reforms such as salary increases and a more active Judicial Inspection Authority. These reforms coincided with the regime's rhetorical shift toward openness and reform, giving judges the impression of increased autonomy, even as executive interference continued in various forms.[220]

219Testimony of former judge Shaza Kilo in the case of her father, the late political opposition figure Michel Kilo, and his companions, known as the "Damascus-Beirut Declaration" detainees case in 2006.
220 Testimony of former Judge Hussam Al-Shahna, who worked in the civil and customs courts.

Former judge Khaled Al-Helou testified to the difficulty of establishing judicial independence amid the duality between Syria's deep state which exerts control over all state and societal institutions, and the formal oversight bodies, including the judiciary, which are allowed to function only insofar as they do not conflict with regime interests. The executive retained ultimate power so long as it could transfer and dismiss judges. Judicial corruption, especially among those who saw their role as a stepping stone to political power, fueled cronyism, favoritism, and collusion with security services, ultimately undermining any prospect of justice. Al-Helou added that the regime had deliberately engineered the legal system to maintain control over the judiciary, ensuring that standards of independence and impartiality would never be realized.[221]

These practices are clear violations of the International Covenant on Civil and Political Rights, which Syria ratified in 1968 and which came into force in 1979. The Covenant stipulates that "any person whose rights or freedoms are violated shall have access to a competent judicial, administrative or legislative authority, and that the authorities shall ensure enforcement of any judgment rendered in favor of such person."[222] The more flagrant and widespread the violations of international standards become, the more the erosion of judicial independence intensifies, as is the case in Syria. The conduct of its courts contravenes the Bangalore Principles, which obligate judges to uphold integrity, independence, impartiality, propriety, diligence, and competence.[223]

In what follows, we turn to another dimension of the fallout from this breakdown: the deterioration of the Syrian judiciary's reputation and standing on the international stage.

221 Testimony of former Judge Khaled Al-Helou, who worked as a district judge and specialized in criminal and civil cases.
222 See: International Covenant on Civil and Political Rights of 1966, https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights
223 Bangalore Principles of Judicial Conduct, https://www.unodc.org/documents/ji/training/bangaloreprinciples.pdf

Second: The Loss of International Confidence in the Syrian Judiciary's Role in Accountability

With the advancement of international criminal justice through the establishment of ad hoc and special tribunals, culminating in the creation of the permanent International Criminal Court after the Rome Statute entered into force in the early 2000s, states can no longer evade or neglect their obligations to prosecute and hold perpetrators of grave international crimes accountable. National judicial systems are expected to meet these obligations under international law.

Under the rule of Hafez al-Assad and his son Bashar, Syria witnessed a sustained pattern of systematic violations against its citizens. The memory of the Hama massacre in 1982, carried out by regime forces and resulting in the deaths of tens of thousands of innocent civilians, continues to haunt Syrians. This was preceded by other atrocities, such as the Tadmur prison massacre and the massacre in the al-Mashariqa neighborhood of Aleppo in 1980, and followed by the Sednaya prison massacre in 2008. Time may have passed over these massacres, but demands for justice and redress remain unspoken, silenced under the weight of authoritarian rule.

Rather than pursuing accountability for those responsible—officers, soldiers, and officials—the Syrian judiciary in those decades remained complicit. Exceptional courts such as the Military Field Court and the Supreme State Security Court became tools of repression, issuing politically motivated verdicts in violation of the most basic standards of fair trial.[224] In this way, the judiciary failed to hold perpetrators accountable prior to 2011. Most of the crimes committed during that era remained concealed from public scrutiny, taking place before the rise of social media or widespread access to alternative sources of information, and thus rarely reached the international stage.

224 For more: Nael Gerges, "Exceptional Courts in Syria... Crimes in the Name of the Law" [Arabic], Harmoon Center, 2 August 2021, link: https://shorturl.at/EzGIG

The post-2011 period posed the greatest test for the Syrian judiciary. In response to the popular uprising, the Assad regime launched a deliberate, systematic campaign of violence and repression, unleashing mass violations on an unprecedented scale. This phase revealed something even more dangerous than sidelining the judiciary, as many judges and courts became directly implicated in committing crimes under the guise of legal procedure. As reports and leaks emerged documenting the magnitude of atrocities—most notably the Caesar files, the use of chemical weapons, and widespread torture in detention centers, clear and compelling evidence accumulated. Yet the judiciary failed to initiate a single prosecution against any individual implicated in these crimes. This complete absence of accountability sparked a shift to international venues, with several legal proceedings launched abroad, reflecting the total collapse of confidence in the Syrian judiciary's capacity or willingness to fulfill its international obligations.[225]

One of the most prominent developments was the invocation of universal jurisdiction by public prosecutors in several European countries including Germany, Sweden, the Netherlands, France, Austria, Belgium, and Hungary, against individuals accused of grave human rights violations in Syria. In recent years, dozens of cases were filed by survivors and relatives of victims. Some have led to convictions, while others remain under investigation or in trial.[226] A notable example came in November 2023, when a French investigative judge issued arrest warrants for President Bashar al-Assad, his brother Brigadier General Maher al-Assad, and officers Ghassan Abbas and Bassam al-Hassan, following a case filed by Syrian and international human rights organizations accusing them of planning and enabling war crimes. The Court of Appeals upheld the warrant on 15 May 2024, rejecting the public prosecutor's request to cancel it on the grounds of presidential immunity.[227]

225 To understand the jurisdiction of the International Criminal Court to investigate and prosecute international crimes defined by the Rome Statute of the Court in the event that the national judiciary is unable or unwilling to do so, one can refer to Article 17 of the Rome Statute: https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf
226 Alicia Medina, "Accountability Abroad: Mapping Syria-Related Cases in Foreign Courts," Syria Direct, 26 April 2023, link: https://syriadirect.org/accountability-abroad-mapping-syria-related-cases-in-foreign-courts/?lang=a
227 "French judiciary upholds arrest warrant against Syrian president" [Arabic] Asharq Al-Awsat, 26 June 2024, link: https://shorturl.at/UyeM0

With the path to the International Criminal Court effectively blocked by Syria's non-membership and the Russian veto in the UN Security Council, other mechanisms have been sought. On 8 June 2023, the Netherlands and Canada filed a case at the International Court of Justice, seeking to hold the Syrian state responsible for violating the Convention Against Torture, adopted by the UN in 1984 and ratified by Syria in 2004. On 16 November, the ICJ responded by ordering provisional measures, obliging Syria to prevent acts of torture or other cruel, inhuman, or degrading treatment or punishment, and to ensure that its officials, or any entities or individuals under its control, direction, or influence, refrain from committing such acts. [228]

These international legal proceedings have become a source of deep concern for the Syrian regime, forming a key obstacle to its attempts at political rehabilitation. In response, the regime has, over the past two years, sought to project compliance with international standards by issuing a series of decrees and laws, such as the March 2022 anti-torture law,[229] legislation on children's rights, and various amnesty decrees. However, in practice, rights violations continue unabated, and the regime's judiciary remains far from aligned with binding international standards. Nor are the judicial institutions operating in areas controlled by de facto authorities any more compliant with these standards. As previously outlined in the chapter on transformations in the Syrian judiciary during the conflict, the structure and affiliations of these courts underscore their lack of independence and impartiality.

228 Human Rights Watch, "World Court Rules Against Syria in Torture Case" 16 November 2023, link: https://www.hrw.org/news/2023/11/16/world-court-rules-against-syria-torture-case
229 "The Assad regime issues a law criminalizing torture" [Arabic], Syrian Human Rights Committee, 21 April 2022, link: https://www.shrc.org/?p=37219

Chapter 11. Widespread Corruption and Administrative Decay in Judicial Institutions

Corruption strikes at the core of justice administration, impeding the right to a fair trial and eroding public trust in the judiciary. Administrative inefficiency is no less damaging than corruption, as both pose major barriers to the judiciary's ability to fulfill its expected role. Article 11 of the United Nations Convention against Corruption, a foundational international treaty, underscores the judiciary's critical function in combating corruption. To fulfill this function effectively, the judiciary itself must be free of corruption, and its members must act with integrity. [230]

According to Transparency International's report dated 30 January 2024, Syria ranked 178th out of 180 countries on the Corruption Perceptions Index. While the ongoing war has contributed to the spread of corruption across Syrian state institutions, corruption appears to be deeply entrenched: even in 2010, Syria ranked 137th out of 180 countries on the same index. [231]

It is self-evident that the judiciary is among the institutions most affected by corruption in all its forms. Corruption may stem from structural deficiencies within the judicial system or result from external pressures that exert a direct influence on its workings. This chapter focuses on the key indicators of corruption affecting the Syrian judiciary, particularly during the pre-2011 period, since the post-2011 phase is characterized by conflict and instability and cannot be used as a reliable baseline. The following patterns and phenomena summarize the most salient aspects of corruption and administrative decay in the Syrian judicial system:

230 "Corruption, human rights and judicial independence," statement by the UN Special Rapporteur on the independence of judges and lawyers, July 2017, link: https://www.unodc.org/dohadeclaration/ar/news/2018/04/corruption--human-rights--and-judicial-independence.html [Accessed 20 April 2024]
231 All reports are published on the Transparency International website, link: https://www.transparency.org/en/cpi/2023

First: The Failure to Develop the Professional Capacity of Judges

Despite the establishment of the Judicial Institute in Syria under Decree No. 42 of 2000, and later renamed the "Higher Judicial Institute" by Law No. 23 of 2013, and despite the positive role it has played in improving the professional standards of Syrian judges compared to earlier periods, the overall professional level of judges remains below expectations. After graduating from the Institute, judges are often unable to keep up with legal developments in the Syrian judiciary, let alone in more advanced judicial systems.

The primary reason for this shortfall lies in the Ministry of Justice's neglect of judicial training and development. Judges are rarely, if ever, sent on specialized study missions to countries with advanced legal systems. Nor does the Ministry bring in external experts to update sitting judges on new developments in litigation procedures. Specialized training courses in critical areas such as fair trial standards, human rights law, and international humanitarian law are extremely rare, if not entirely absent. Moreover, no regular workshops or professional sessions are held for judges working within the same legal domain (civil, criminal, personal status, etc.) or at the same judicial level (conciliation, first instance, appellate, etc.). As a result, judges are deprived of opportunities to share experiences, discuss common challenges, develop unified approaches to recurring problems, or standardize courtroom procedures. Likewise, divergent interpretations of legal texts often go unresolved, as no mechanisms are in place to reconcile inconsistencies across courts.

New laws and decrees are frequently issued without formal notification to the judiciary, no circulars or official communications are dispatched to courts. Judges typically hear about these legal changes informally, through colleagues or lawyers who came across the updates by chance. The cumulative effect of these gaps is a diminished level of judicial competence and a weakened capacity to adjudicate cases professionally. By contrast, the more a judge is exposed to evolving legal frameworks and jurisprudence, the more his legal acumen and practical expertise grow, enabling him to rule with greater confidence, competence, and adherence to the principles of justice and the rule of law.

These conditions are further exacerbated by the lack of specialization among judges. Given the increasing complexity of legal fields, the diversity of case types, the evolution of legal theories, and the emergence of new case categories such as cybercrime, online fraud, and technology-related offenses, judges today require specialized knowledge in particular areas. Specialization equips judges with deeper expertise and thus enhances both their performance and public trust in their rulings.

Instead, it has often been the case that a judge might spend more than a decade in a criminal court, only to be suddenly transferred via a routine reshuffle by the Supreme Judicial Council, to a civil court or even directly to a civil appellate bench. Such abrupt transitions often occur without adequate time for the judge to reacquaint themselves with civil law, commercial or real estate legislation, or procedural rules applicable in civil courts. This mismatch can result in serious legal errors due to insufficient familiarity with the new judicial domain, jeopardizing the rights of litigants and undermining the quality of judicial decisions. These issues are not limited to transfers between civil and criminal courts. Similar problems arise in judicial appointments across all sectors, including Sharia courts.

Second: Insufficient Financial Resources for Judges

Salaries in Syria are generally low and do not correspond to the workload borne by employees, nor do they meet the basic living needs of their families. Judges, like other state employees, are subject to the Basic Employees Law No. 135 of 1945, which determines their monthly salaries and allowances. Although Legislative Decree No. 3 of 2002 introduced a judicial stamp fee, and its value has been raised several times since, this increase remains insufficient to meet the basic needs of judges. Moreover, the stamp's cost is effectively an added burden on litigants and, more broadly, on anyone interacting with the judiciary to process their legal affairs. In other words, the additional income granted to judges, roughly equivalent to their regular salary, comes from citizens' pockets rather than from the state budget. Some see this as a further insult to the judiciary, placing the responsibility for improving judges' material conditions squarely on the public.[232]

232 Syrian Expertise House, Democratic Transition Plan, op. cit., p. 103.

Furthermore, the state does not commit to providing housing for judges and their families. More than half of Syria's judges lack private means of transportation to reach their workplaces, and the state generally does not provide this service. Public transportation is not only financially burdensome given their modest salaries, but it can also undermine the dignity and authority of the judiciary. Judges may find themselves exposed to situations that compromise their public standing (or even their safety) especially if they encounter someone they have ruled against, who may believe themselves a victim of injustice. Undoubtedly, the judge's financial precarity and ongoing struggle to maintain a dignified standard of living, when set against the temptations inherent in their profession, create dangerous vulnerabilities. Judges routinely preside over disputes involving vast financial sums, and in some cases, are offered bribes worth tens of thousands of times their annual salary. Protecting judges from such inducements requires a salary sufficient to insulate them from need and temptation alike.

Even assuming that a judge maintains personal integrity despite these pressures, the lack of financial security may compel them to seek supplementary income to support themselves and their families. This, in turn, can undermine their professional performance and erode the overall standing of the judiciary. It is also worth noting that the law prohibits judges from engaging in any secondary employment except teaching at law faculties, so the government may exploit such circumstances to dismiss a judge under the pretext of disciplinary violation.

Notably, the judicial budget in Syria is not independent. The Supreme Judicial Council plays no role in preparing or proposing it. Instead, it remains under the control of the executive branch, specifically the Ministry of Justice.

233 Article 78 of the Judicial Authority Law No. 98 of 1961.

Third: The Number of Cases Relative to the Number of Judges:

The Basic Principles on the Independence of the Judiciary, along with various regional standards, oblige states to provide sufficient resources to enable the judiciary to carry out its functions effectively. The Human Rights Committee has noted that a shortage of human and material resources may seriously undermine judicial independence.[234]

In Syria, the judiciary suffers from an overwhelming volume of cases in proportion to the number of sitting judges. In 2012, the total number of judges was 1,505 including trainees at the Higher Judicial Institute, while the total number of employees in the courts and the wider judicial sector stood at 5,045.[235] This was at a time when Syria's population exceeded 23 million. Such a ratio is clearly inadequate given the volume of lawsuits and legal transactions processed by the courts, leading to severe case backlogs, prolonged delays in adjudication, and a general inability to allocate sufficient time and attention to each case.

The imbalance between the enormous number of legal proceedings and the limited workforce often results in delays or outright failures in the execution of judicial rulings. Court decisions may accumulate haphazardly in archives, where many go unexecuted, sometimes even lapsing due to the statute of limitations. This can result in significant losses of legal rights, including those belonging to administrative bodies and state institutions, especially in cases such as violations related to electricity or water usage, or the collection of court-imposed fees.

234 Paragraph 76 of the 2009 report of the Special Rapporteur on the independence of judges and lawyers.
235 A report by the Special Committee for Judicial Reform in Syria" [Arabic], Syrian Days, 2012: https://syriandays.com/?page=show_det&select_page=75&id=31482#google_vignette [Accessed 25 August 2024]

Fifth: Outdated Judicial Inspection Practices and the Incompetence of Inspectors

The Judicial Inspection Department is tasked with monitoring the work of trial judges, public prosecutors, and court circuits. It comprises a president, holding the rank of an appellate chamber president, and six advisors. Its mandate covers the review of judgments, rulings, and judicial procedures after cases have been resolved, as well as administrative and disciplinary issues. It is also responsible for assessing judicial independence from external influence, judges' and court staff's commitment and professional conduct, the efforts exerted by judges in resolving disputes, the initiative and follow-up of prosecutors in public cases, and the enforcement of court decisions. [237]

Ironically, while the department is charged with safeguarding the independence of the judiciary, the inspectors themselves lack that very independence. They are seconded by the Minister of Justice based on a recommendation from the Supreme Judicial Council. Functionally, they report to both the Minister of Justice and the President of the Supreme Judicial Council, who is also the President of the Republic. In effect, they are wholly subordinate to the executive branch, which appoints them and oversees their work. [238]

237 Articles 11 and 14 of the Judicial Authority Law No. 98 of 1961
238 Articles 11-12 of the Judicial Authority Law.

This brings us back to the heart of the problem: executive dominance over the judiciary. Whenever the executive authority wishes to steer the direction of a case in line with its interests, it can do so through these inspectors, who hold considerable sway over judges. Inspectors can pressure judges by threatening to refer them to the Supreme Judicial Council or initiate criminal proceedings against them over any perceived error in the course of their judicial duties. Even judges who resist such pressure are not immune: inspectors can recommend their suspension or transfer to another court, thus replacing them with more compliant judges known for loyalty and obedience. In this way, judicial inspection becomes yet another tool through which the executive branch interferes in judicial affairs and harasses the bench.[239] Such an arrangement creates fertile ground for relationships based on corruption and bribery between inspectors and judges, allowing the latter to seek "job security" through improper means.

Moreover, the Judicial Inspection Department has for decades remained a marginal institution. In many cases, judges are assigned to it as a form of veiled disciplinary action, even though this department should, in principle, be composed of the most competent and reputable judges.[240] When such a transfer is treated as a punitive measure, the inspector is likely to seek favor with the executive branch by exerting pressure on judges under inspection in hopes of remaining in post or securing a return to regular judicial work and direct interaction with litigants, especially if the inspector himself is part of the judiciary's corrupt circles.

239 A legal study explaining the jurisdiction of judicial inspection for courts and judges is published on the Free Legal Consultations section of "Laywers" website, link: [Accessed 26 August 2024 https://shorturl.at/1sBOa
240 Judicial Reform Commission Report 2012, op. cit.

The department's operational model is also entirely outdated. It has failed to adopt lessons from other countries, many of which (some less developed than Syria) have made significant strides in modernizing their oversight mechanisms. Most Arab countries now employ inspection systems that rely on up-to-date technologies, whereas Syria's inspection body remains limited to a director and a very small number of inspectors.[241]

Worse still, the inspectors' main metric of performance is the volume of judgments issued by each court relative to its case intake. In other words, they focus on quantity over quality, i.e. on the number of resolved cases rather than the depth or integrity of the deliberation. This encourages judges to prioritize simple procedural cases that are easy to dispose of, while postponing or neglecting more complex cases that require time and careful analysis. This practice has led to the chronic accumulation of certain types of cases in court archives, ignored by judge after judge.[242] The result has been a loss of litigants' rights, with many cases left to languish, so long as monthly targets for adjudicated cases are met and the inspectors' approval is secured.

241 Ibid.
242 WhatsApp communication dated 22 July 2024 with a judge still working in Syrian government areas. Name withheld for security reasons.

Chapter 12. Legal Fragmentation: The Impacts of Divergent Judicial Systems Across Syria

If the failure to reform and develop the judicial system was the greatest challenge facing Syria's judiciary before the revolution, the post-2011 fragmentation of territorial control added a deeper layer of complexity. As many regions slipped beyond the reach of the central government, they also fell outside the regime's judicial framework, resulting in a fractured justice system confined to regime-held areas. In its place emerged a patchwork of legal authorities, with different regions adopting distinct forms of judicial governance according to the political and military actors in control. This fragmentation, coupled with the destruction, looting, and dismantling of courthouses and related state institutions in numerous areas due to armed conflict, has had profound repercussions for citizens' rights and access to justice.

It is difficult to justify a situation in which identical legal cases are subject to completely different legal frameworks within the same country. Yet this is the current reality in Syria. Some regions purport to apply the Syrian legal code as it stands. Others claim adherence to Syrian laws issued before 2011 and aligned with the 1950 Constitution. Some areas apply interpretations of Islamic Sharia, others enforce laws modeled on Syrian statutes, and still others apply vaguely defined principles referred to as "social justice."

This legal patchwork is mirrored by discrepancies in the organization of courts, the appointment of judges, and the qualifications required for judicial office. In some areas, courts are nominally established under the Judicial Authority Law, despite its flaws and without full implementation. The Syrian government, for example, frequently invokes this law but simultaneously creates exceptional courts and ad hoc committees that circumvent it entirely. These bodies often operate under special legislation designed to legitimize their existence, occasionally stipulating their own procedural rules, or exempting themselves from standard legal safeguards altogether, including those governing investigation and prosecution.

Elsewhere, such as in the Autonomous Administration areas, partial adherence to the Judicial Authority Law is tempered by the view that some of its provisions are inapplicable or unattainable. In these regions, a separate law governing "social justice" has been issued, bringing with it significant structural changes, such as abolishing the Court of Cassation and granting appellate courts the power to issue final rulings. In the interim government-controlled areas, the formation of a Supreme Judicial Council is theoretically possible, but the required level of judicial independence among local appointees remains elusive. Meanwhile, other de facto authorities, such as the Salvation Government, have established parallel judicial systems based on their own interpretation of Islamic legal principles, without a unified or clearly codified judicial framework.

The core issue is not just the divergence in applicable law or judicial structure, but the complete absence of mutual recognition among these systems. Court rulings issued by judicial bodies affiliated with one authority carry no legal weight in areas controlled by another. When territorial control shifts, the new authority routinely annuls all judicial decisions issued under its predecessor. A stark example came when the Syrian regime regained control of Eastern Ghouta, it refused to acknowledge any of the prior rulings issued by opposition-affiliated courts.

This legal non-recognition also puts individuals at risk. Merely possessing a document issued by a court in an area outside regime control can be treated as a criminal offense, exposing the holder to violations of their basic rights, including harassment, detention, and interrogation at regime checkpoints. Conversely, carrying documentation issued by the Syrian government can provoke similar consequences in areas outside the regime's control.[243]

This study attempts to map the judicial landscape across the various zones of control and to examine the major consequences of this fragmentation, whether in terms of jurisdiction, applicable legal codes, or judicial appointments. It will also address the selective disregard of ruling autorities—including the Syrian regime until its collapse in December 2024—for their laws and institutions in the areas they control. The deeper implications of this disarray will be explored through the outcomes it produces, not only for litigants and institutions but for the principle of legal coherence in Syria as a whole. The most important results of this disparity can be summarized as follows:

343 OHCHR, "Syrian returnees subjected to "gross human rights violations and abuses", Paragraph 70, February 2024, link: https://www.ohchr.org/ar/press-releases/2024/02/syrian-returnees-subjected-gross-human-rights-violations-and-abuses-un

01

Difficulty in determining the competent judicial authority

In regime-controlled areas, courts had been established under the current Judicial Authority Law. These include the standard courts familiar to all, criminal, civil, and Sharia courts (for personal status cases). However, there also exist exceptional courts and ad hoc committees that encroach upon the judiciary's role and jurisdiction, a matter previously discussed in this study.

A similar situation existed in areas under the interim government, where courts have been established in a form broadly consistent with the Syrian government's model. Yet in practice, military factions are often the de facto arbiters of disputes, by virtue of their power and influence. These factions may enforce resolutions through coercion, while also establishing their own committees, such as grievance and restitution committees, that operate parallel to or instead of formal courts.

In areas controlled by the Autonomous Administration, the situation is markedly different from the Assad regime and the Interim Government. As mentioned earlier, two parallel judicial systems coexist: one affiliated with the Syrian government and the other with the autonomous administration. This creates a problem of dual jurisdiction and violates the principle of legal unity. In the territories governed by the Salvation Government, the landscape is even more opaque. The justice system is vaguely defined, and it is difficult to confirm whether distinct courts exist for civil, criminal, personal status, or security-related matters.

Such divergences fracture the litigation process and create real obstacles for litigants and legal professionals. Determining the competent body to hear a case becomes a dilemma: Should one file before ordinary courts? Exceptional ones? Committees acting in a judicial capacity? Should the case be brought before Autonomous Administration courts or those of the Syrian government, or both? Is it more effective to turn to a local military faction or security entity known to impose its own solutions, rather than risk submitting to a court that lacks credibility or enforcement power? These are the pressing questions that face claimants and their legal representatives, questions that make it increasingly difficult to identify the appropriate legal forum.

02

Difficulty in Determining the Applicable Law

It is equally difficult to identify the relevant legal framework applicable to any given dispute, due to the proliferation of overlapping laws, decrees, and circulars, many of which address the same types of cases. This is compounded by the existence of courts and committees that are exempt from adhering to basic legal procedures, or that operate without clearly defined jurisdictions or reference to any specific set of laws.

The situation becomes even more complicated when two competing legal systems operate concurrently in the same geographic area, or when they follow one another in quick succession. Many cases were initially heard by courts affiliated with one authority, only to be disrupted by a shift in military control. New authorities often dissolve the previous courts, install new judges, and apply an entirely different legal framework. As a result, the law governing a given dispute may change between the time a lawsuit is filed and the time a final ruling is issued. This fluidity creates a host of problems, chief among them the inability of stakeholders to assess whether pursuing a case is legally or strategically viable. In an environment of legal uncertainty and jurisdictional flux, initiating or continuing litigation becomes fraught with risk.

03

The Possibility of Contradictory Rulings on the Same Issue

In the absence of clearly defined legal frameworks, particularly in areas of influence that do not rely on written laws, such as those applying Islamic Sharia principles, so-called "social justice" principles, or those that exempt certain exceptional courts and committees from procedural safeguards; there is a heightened risk of inconsistent and even contradictory rulings in similar cases. This inconsistency often stems from the individual judge's subjective interpretation of the case, and may also be shaped by broader contextual factors such as their cultural, religious, environmental, or political background, even assuming they are acting in good faith. The existence of parallel judicial systems within the same region, and the mutual non-recognition between them, further exacerbates this problem. In cases where both systems claim jurisdiction, entirely contradictory rulings may be issued regarding the same dispute. Unsurprisingly, such inconsistent application of law erodes trust in the judiciary, destabilizes legal transactions, and drives individuals to seek alternative methods of dispute resolution, some of which may involve coercion or violence.

One judge operating in areas under the Interim Government noted that it is commonly agreed among his peers not to recognize rulings issued by courts under the Salvation Government, except in limited matters related to personal status, such as marriage, divorce, and lineage. Civil, criminal, and financial rulings, such as those concerning dowries or alimony, are not recognized, since they are not issued on the basis of Syrian law. The same lack of recognition applies in reverse: the Autonomous Administration does not recognize rulings issued by Interim Government courts, even though the latter apply Syrian law. [244]

244 WhatsApp communication dated 17 May 2024 with a judge working in Syrian Interim Government areas. Name withheld for security reasons.

04

Lack of Judicial Competence Across many Courts

Throughout the conflict, many authorities resorted to appointing individuals with little or no legal training to oversee judicial functions. In numerous cases, those selected did not even possess a law degree. As previously noted, selection was often based on loyalty to the controlling authority rather than merit or legal expertise. This pattern is not limited to territories controlled by non-state actors. Even in areas under Syrian government control, judges lacking in competence have been appointed to preside over highly sensitive cases, while qualified and experienced judges have been sidelined or assigned to routine matters, often based on their proximity to the ruling regime or the degree of satisfaction they inspire in the security services.[245]

Moreover, sitting judges rarely undergo any specialized or continuing legal education. There is a chronic lack of training on recent legal developments, methods for interpreting and applying contemporary laws, and international legal standards relevant to judicial practice. Judges are rarely exposed to modern judicial tools, such as the use of digital technologies in legal proceedings, despite their potential to facilitate access to justice and ensure proper legal application and expedited case resolution. This deficit in qualifications results in frequent misinterpretations of core legal principles and a pervasive ignorance of international fair trial standards. The outcome is a judiciary that lacks the legitimacy and credibility required to ensure that its rulings are fair, valid, and respected.

245 WhatsApp communication dated 26 June 2024 with a judge working in Syrian Interim Government areas. Name withheld for security reasons.

TDA

05

Erosion of Public Trust in Judicial Institutions

Judicial independence requires absolute neutrality from judges, who must be free of bias or partiality when ruling on the cases before them. This independence is not a privilege granted to the judge, but a duty imposed to ensure that justice is rendered without external pressure or interference. It stems from the foundational legal principle of nemo iudex in causa sua, that "no one may act as judge in their own case."[246] and it is this very independence that earns the judiciary the trust of society.

As detailed previously, the judiciary in regime-controlled areas, and in other areas under competing authorities, lacked even the most basic standards of independence and impartiality. Judges are appointed not through transparent or impartial processes, but by executive authorities in regime-controlled areas, by armed groups in zones under de facto control, or even by foreign powers exercising dominance over parts of Syria. This alone is enough to undermine public confidence in the judiciary and deter individuals from turning to existing judicial institutions for recourse. In parallel, such a judiciary becomes vulnerable to manipulation by outlaws and war profiteers who, by exploiting their connections, use it to further their own interests. They may pursue judicial rulings to legitimize violations and crimes; for example, by targeting political opponents through fabricated convictions, forcing individuals out of their homes, or securing ownership rulings that transfer property from dissenters to regime loyalists or allies of the ruling powers.

246 United Nations Office on Drugs and Crime, Commentary on the Bangalore Principles of Judicial Conduct, September 2007, link: https://www.transparency.org.kw.au-ti.org/upload/books/127.pdf

06

Fear of Repercussions from Resorting to the Courts

Across Syria, judicial institutions, regardless of the territory in which they operate, lack sufficient independence, impartiality, and often competence. As a result, many people are reluctant to seek justice. Claimants fear that going to court might expose them to harm, either because the judicial ruling may violate legal standards and cost them their rights, or because the very act of seeking recourse could backfire, turning a right into a liability.

This fear is compounded by the possibility of being targeted by security forces. Individuals may face threats from the Syrian government's intelligence agencies or from armed formations tied to de facto authorities. Often, people are unaware of whether they are "wanted" by such entities, due to the secrecy that surrounds arrest lists and the arbitrary nature of detentions. Consequently, many choose not to pursue their claims out of fear of potential repercussions. Others avoid litigation because of the judiciary's subordination to political and security bodies, and the entrenched influence of wealthy and powerful individuals over legal proceedings. Pursuing a case against one of these influential figures may result in retaliation, not only against the claimant but also against their family members.

Additionally, the refusal of each de facto authority to recognize the rulings of courts operating in other territories renders many legal decisions functionally meaningless. In such a context, many citizens perceive the judiciary as ineffective or even dangerous to engage with, particularly amid ongoing speculation about a future political settlement that may once again reshape the legal landscape entirely.

07 Escalation of Violations and Increased Reliance on Violence to Resolve Disputes

In the absence of an independent judiciary capable of curbing violations, prosecuting perpetrators, and addressing disputes with impartiality, integrity, and courage, abuses are likely to proliferate. Without effective deterrents, impunity becomes the norm, encouraging repeat offenses. In parallel, victims who find no avenue for justice may turn to retribution by violent means when circumstances allow, undermining safety and public order across the various zones of control. This breakdown of legal accountability breeds chaos and entrenches a climate where might makes right. In contrast, an impartial and independent judiciary remains the most effective gateway for curbing criminality, promoting justice, and restoring public faith in the rule of law.

Compounding the issue is the absence of protection for judges themselves. In many cases, they face threats from security agencies and de facto authorities, including arbitrary dismissal, abduction, or even assassination. Such vulnerability transforms the judiciary into a compliant instrument in the hands of those who hold coercive power. Even when a court issues a ruling that requires enforcement by law enforcement bodies, those entities may decline to act, whether out of political calculation, fear, or collusion, with no recourse available to compel compliance. When judicial rulings lose their enforceability and no longer carry the weight of res judicata, they cease to function as binding instruments of justice.

Litigation itself is compromised by longstanding procedural flaws. These include routine manipulation of court summonses and notification records, a problem that predates the conflict. As one attorney interviewed for this study noted: "Police stations often annotate summonses claiming that the individual sought is 'in hiding,' even when that person is physically present at the station. Corruption and bribery regularly obstruct the enforcement of such summonses."[247]

247 WhatsApp communication dated 26 June 2024 with a lawyer working in Syrian regime-controlled areas. Name withheld for security reasons.

08

The Growing Role of Tribal Justice (Customary Law)

In light of the absence or dysfunction of many Syrian state institutions during the years of conflict (including the judiciary) along with the failure of local governance initiatives by de facto authorities to compensate for that vacuum, and the Syrian regime's instrumentalization of the judiciary to suppress dissent and consolidate control, alternative, non-violent mechanisms of dispute resolution that are socially accepted have emerged. Chief among them is the tribal justice system, to which many Syrians, particularly those in tribal or clan-based communities, increasingly turn to resolve conflicts and prevent their escalation.

This form of justice is governed by unwritten, widely recognized customary norms and conflict resolution methods passed down through generations. Tribal justice is administered by figures who enjoy broad legitimacy within their communities such as clan sheikhs, mukhtars, Sharia judges, respected elders, or educated community notables, whose reputations and inherited conflict-resolution expertise lend significant moral authority to their decisions. Consequently, their rulings are generally respected and accepted by the disputing parties. The selection of such arbiters is based on social standing and contextual considerations within each local community, and the choice often depends on the nature and complexity of the dispute. The "laws" applied in tribal courts consist of orally transmitted customs, often preserved in the memory of knowledgeable figures and Sharia jurists, and are supported by precedent and community consensus. The authority of tribal rulings rests on social cohesion, communal values, and the fear of shame or moral reproach, and not on formal enforcement mechanisms.[248]

248 Rami al-Munadi, "Tribal Justice in Deir ez-Zor: Local Roles in Building Community Peace," Harmoon Center for Contemporary Studies, link: https://shorturl.at/h7QUY

However, the limitations of this model are stark. Tribal justice typically deals only with interpersonal disputes, such as cases of individual murder (intentional or accidental), financial conflicts (particularly real estate), or personal encroachments on land. It plays no role in addressing violations or crimes perpetrated by regime forces, de facto authorities, or affiliated military factions. In fact, the very actors most implicated in grave violations—security officials, militia commanders, war profiteers—do not recognize any judiciary, whether governmental, local, or tribal. Moreover, tribal rulings are morally binding but lack enforceability. If a convicted party refuses to comply, there is no institutional mechanism to compel implementation. This undermines the effectiveness of tribal justice and may, in some cases, exacerbate conflict rather than resolve it. Another critical issue is the exclusion of women: tribal justice systems are overwhelmingly patriarchal. Women are typically denied any role in judicial proceedings, and disputes involving them are often handled through male family members or guardians.[249]

A lawyer working in the Interim Government areas observed that while tribal justice remains limited in scope, it does play a role in helping communities resolve disputes through informal reconciliation. Reconciliation agreements are not binding on formal courts but can facilitate the dropping of personal charges and speed up the resolution of disputes. Tribal justice, despite its limitations, may offer pragmatic value in defusing regional tensions and maintaining fragile social peace in the absence of effective state institutions.[250]

As this study has repeatedly shown, the fragmentation of judicial systems across Syria, coupled with weak judicial independence and impartiality, has profoundly eroded public trust in the justice sector. In response to this multilayered crisis, the study proposes a dual-track hypothesis. The first involves short-term efforts to reduce the legal and institutional disparities between existing judicial systems by launching harmonization initiatives. The second envisions a long-term scenario in which the judiciary is reunified within a cohesive Syrian framework, based on agreed-upon standards across regions, including unified laws, transparent criteria for judicial appointments, and safeguards to protect the right to litigation and its outcomes.

249 Ibid.
250 WhatsApp communication dated 30 May 2024 with a lawyer working in the Syrian Interim Government areas. Name withheld for security reasons.

Part IV

A Syrian Vision for Judicial Reform: Pathways and Proposals

Judicial reform is not an end in itself but rather a necessary means to achieve a higher goal: the effective realization of justice in a way that ensures prosperity, freedom, and dignity for all citizens. Achieving this goal requires the cooperation and mutual reinforcement of the three branches of government, each functioning within a framework of independence while affirming the judiciary's central role in upholding constitutional and legal provisions, guaranteeing the right to litigation, and ensuring legal equality among all citizens. In doing so, it enshrines the principles of legality and the rule of law.

The urgency of judicial reform stems from rapidly unfolding developments on the national stage, as well as from its interconnection with broader political, social, economic, and administrative reform efforts. The judiciary, as the backbone of the state, must be at the center of any genuine reform process. No reform initiative can be complete or effective without a deep, systemic transformation of the judicial sector. The success of this endeavor depends on the presence of a sound diagnostic and critical vision that could identify the root causes of dysfunction and structural shortcomings that have long marred the Syrian judiciary and exacerbated during the years of conflict.

This study has devoted the preceding chapters to tracing the complex historical trajectory of the Syrian judiciary, examining how authoritarian rule has distorted its independence, impartiality, and integrity. It has also mapped the structural deterioration that has accumulated over time and intensified during the war. In doing so, it lays the groundwork for a Syrian vision of judicial reform, one rooted in empirical analysis and oriented toward building a comprehensive strategy for the transitional phase.

This transitional period, which is already set in motion with the fall of the Assad regime on 8 December 2024 and further defined by the issuance of the constitutional declaration and the formation of a transitional government, calls for an urgent and focused approach. This part of the study outlines such an approach, emphasizing core guarantees for launching judicial reform. It draws on constitutional and legal principles that reinforce judicial independence, proposes institutional and procedural reforms to the structure of the judiciary and its auxiliary bodies, and integrates insights from successful international justice reform experiences, while critically learning from the failures of others. It also contributes to the development of a Syrian programmatic vision for involving civil society and women in judicial reform, and for charting a new path for justice in post-conflict Syria, grounded in international best practices. This vision is structured across nine thematic tracks, each offering a set of findings, recommendations, and proposals that address the needs of local and international actors engaged in judicial reform. Collectively, they provide a foundational framework for rebuilding a Syrian judicial system rooted in the rule of law and institutional legitimacy.

In line with the analytical and practical concerns explored throughout this study, this final chapter presents a roadmap for the judicial reform process that is both realistic and aspirational, and that offers a concrete starting point for the long and necessary journey toward justice in Syria.

01

Track I:

Securing Political Will and a Safe Environment for Judicial Reform

1.1 Political Change

- Understanding the strategies of key political actors and the outcomes of reform efforts during transitional periods helps illuminate how such efforts emerge from the rise of new power centers and the negotiations among political stakeholders. It is often stressed that the success of judicial and administrative reforms in post-conflict societies depends not only on institutional change but also on shifting collective values and mindsets. Within this context, judicial reform becomes a cornerstone of political transformation and democratic transition. It involves embedding the principles of the rule of law and judicial impartiality into the societal value system.[251]

- Moreover, the logic of political reform is inseparable from the effort to correct individual behavior and improve the performance of all state institutions and authorities in a parallel and coordinated fashion. While recognizing the judiciary's distinct role in that process, we must also bear in mind a long-standing principle that has guided the behavior of individuals, societies, and states alike: that politics, in all its dimensions, forms the essential foundation upon which all reform approaches must be built.[252]

251 Arab Center for the Development of the Rule of Law and Integrity, "Ideas in the Service of Justice and the Rule of Law" [Arabic], n. d., link: https://www.arabruleoflaw.org/journalsListing_ar.aspx?categoryID=1&postingID=302
252 Ibid.

1.1.1 The Syrian political deadlock:

- For years, the deadlock in Syria's political process represented one of the most formidable barriers to launching judicial reform. The longevity of Assad's authoritarian rule and its consistent rejection of any meaningful reform or change stood in stark contrast to any international framework for political transition. Key milestones such as the Geneva Communiqué of 2012, which called for a transitional governing body, were reinforced by subsequent resolutions, including Security Council Resolution (2013) 2118, and Resolution (2015) 2254, which emphasized the need to establish a "credible, inclusive and non-sectarian governance."[253]

- Between the Geneva call to review the existing constitutional and legal framework, and Resolution 2254's emphasis on drafting a new constitution and holding new elections, a roadmap for transition began to emerge. However, with the collapse of the regime on 8 December 2024 and the issuance of a constitutional declaration and the formation of a transitional government, a new political reality took shape, moving beyond the premises of Resolution 2254 which had assumed the regime's continued participation in negotiation and transition efforts—which has since become obsolete. Despite these developments, the current transitional process must still confront and dismantle the legal and judicial structures engineered by the Assad regime to consolidate authoritarian control and personalize state institutions.

253 See: United Nations Security Council Resolution 2254 on the Syrian crisis, 18 December 2015, link: https://un-docs.org/Home/Mobile?FinalSymbol=S%2FRES%2F2254(2015)&Language=E&DeviceType=Desktop&LangRequested=False

These structures, which were long used as tools of repression, must now be dismantled to lay the foundations of a state governed by law. Meanwhile, the chaos and fragmentation that accompanied the revolution and Syria's prolonged conflict have intensified the need for judicial reform, particularly in light of the disparate governance and legal systems that emerged in areas outside regime control.

For the years that preceded the collapse of the Assad regime, the stalled political process has fueled widespread disillusionment among Syrians regarding its viability. Among many rights advocates and civil society actors committed to transitioning from authoritarianism to a state governed by law, there is a prevailing sense that it is futile to discuss judicial reform while the political transition remains obstructed. Others, however, argue that it is neither realistic nor advisable to postpone legal and judicial reform until concrete political breakthroughs occur. In their view, opportunities exist, especially in areas beyond regime control, to pursue reforms that strengthen judicial independence and institutional capacity, and to embed legal culture and justice values into the Syrian public consciousness.[254] However, the regime's dramatic collapse has thrust judicial reform onto center stage as an urgent and unavoidable priority. Without it, rebuilding the state's institutions on a sound and legitimate foundation will not be possible. This new phase marks the end of the long-standing political deadlock that defined Syria under decades of Assad's authoritarian rule, which constituted one of the most formidable barriers to any meaningful judicial reform.

254 Among the discussions that took place among the participants in the focus workshop on developing ideas and proposals for judicial reform research on 6 April 2024.

- The experiences of other post-conflict countries, such as Rwanda, highlight the judiciary's crucial role in restoring public trust during political transitions. Courts played an important role in overseeing elections and affirming the legitimacy of new institutions grounded in democratic principles. However, their ability to deliver meaningful redress to victims of violations often fell short, underscoring the limits of institutional reforms alone. National reconciliation requires more than laws and judicial mechanisms, it demands concerted efforts to repair the harm done to victims and to meet the needs of violence-affected communities. [255]

- In Syria, it is inconceivable to envision a truly independent judiciary without sweeping political change that restructures state institutions around the rule of law. There are sobering examples of peace agreements in other countries that, despite ending armed conflict, rested on fragile foundations. One such example is the 1995 Dayton Agreement, which brought the Bosnian war to a close through a power-sharing arrangement among warring factions.[256] However, it failed to eliminate deep-seated ethnic tensions, and to this day remains vulnerable to collapse whenever dormant grievances resurface.

255 Sarah Kasande and Tafadzwa Christmas, "Thirty Years On, Lessons from Rwanda on Transitional Justice and Atrocity Prevention in Africa," International Center for Transitional Justice, 1 May 2024, link: https://www.ictj.org/latest-news/thirty-years-lessons-rwanda-transitional-justice-and-atrocity-prevention-africa

256 Rule of Law Tools for Post-Conflict States - Amnesties, Office of the United Nations High Commissioner for Human Rights, New York and Geneva 2009, p. 3, link: https://www.ohchr.org/sites/default/files/Documents/Publications/Amnesties_en.pdf

1.1.2

Political reform is the key to judicial reform:

In the Syrian context, the demands of political reform must be inseparably linked to those of judicial reform. Safe and equitable access to justice cannot be achieved without enshrining the principles of citizenship and the rule of law, as outlined in the Constitutional Declaration issued after the regime's collapse. The transitional phase must include concrete and credible steps toward overhauling the judiciary and its institutions.

The prospects for meaningful political transformation in Syria hinge on ensuring that the paths of peace and justice advance in tandem. An independent judiciary cannot be imagined without foundational political change aimed at building governance institutions aligned with the principles of a modern state—chief among them, the independence of the judiciary. This transitional period must also encompass the restructuring of the military and security apparatus in line with the rule of law and the organization of free and fair elections. One of the most critical challenges facing the judicial system is ensuring that all Syrians have equal access to justice. This makes it essential for the transitional period to include guarantees for the return of refugees and internally displaced persons who were forcibly uprooted, through provisions that secure a safe environment for the full exercise of their rights, including the right to litigation. Judicial reform must also reflect a commitment to removing barriers to women's access to justice and increasing their participation in the judiciary at all levels and ranks.[257]

257 Ayman Abu Hashem, "Variables of Demographic Identity and How they Affect the Social Fabric Property Rights and the Return of Refugees," The Day After, HLP Working Group, October 2021, p. 53, link: https://tda-sy.org/wp-content/uploads/2022/01/Demo-Identity-EN-Print.pdf

- Judicial reform cannot proceed meaningfully amid the country's major political transformations if the relationship between judges and political life remains governed by prohibitions, such as the one found in Article 81 of the Judicial Authority Law and its amendments, which forbids judges from expressing political opinions or engaging in political activity. This prohibition stands in direct contradiction to Article 34 of the 2012 Constitution, which states that

> *"Every citizen has the right to participate in political, economic, social, and cultural life, and the law shall regulate this."*

Similarly, Article 42, paragraph 2, affirms:

> **"Every citizen has the right to express his or her opinion freely and openly, in speech, writing, or through all forms of expression."**

- This legal contradiction reflects a deeper flaw: the state's tendency to dominate the judiciary and secure the political loyalty of judges. This is manifested in requirements such as obtaining security clearance for judicial appointments, the interference of the executive branch and security services in judicial affairs, and the pressure placed on judges to join the ruling Baath Party. Such practices represent blatant violations of the principle of judicial impartiality.

- Addressing this contradiction and redefining the relationship between judges and political life in a balanced and coherent way requires realignment with international legal standards. Article 9 of the Universal Declaration on the Independence of Justice (1983), endorsed by the UN General Assembly in 1985, affirms that "Judges shall be free to form and join associations or other organizations to represent their interests, promote their professional training, and protect their judicial independence."[258] Article 19 of the Universal Declaration of Human Rights likewise affirms that "Everyone has the right to freedom of opinion and expression." Meanwhile, the European Charter on the Statute for Judges emphasizes that judges must refrain from any action, conduct, or statement that could undermine public confidence in their impartiality or independence. Similarly, the Bangalore Principles of Judicial Conduct (often referred to through the work of the Council of Europe and the Bergen Guidelines) affirm that judges enjoy the right to freedom of expression and association during their tenure, so long as this does not compromise their official duties or undermine the impartiality and integrity of the judiciary. Judges are expected to exercise restraint when commenting on rulings, legal proposals, or disputed matters, and to uphold the dignity of their office and the credibility of the judicial institution.[259]

- Finally, it is essential to address the injustice suffered by judges, lawyers, and legal professionals who were excluded from their posts, either dismissed or forced to leave, because of their ethical or political alignment with the Syrian people's demands and aspirations. Transitional legislation must include guarantees for their return to their homes and professions and for the inclusion of their expertise in the process of judicial reform. This commitment must extend to all individuals across state institutions, unions, and professional sectors who were removed from their positions under political or security pressure.

258 Basic Principles on the Independence of the Judiciary, Human Rights Library, University of Minnesota, link: http://hrlibrary.umn.edu/arab/b050.html

259 Nasser Omran, "The Judge 's Political Opinion" [Arabic], Supreme Judicial Council of Iraq Portal, 30 June 2020, link: https://sjc.iq/view.67358/

1.2

Safe Environment

As discussed in the preceding sections, the judiciary in Syria was systematically marginalized in the aftermath of the Baath Party coup. This was accomplished through a series of laws and legal amendments that significantly increased the executive branch's dominance over the judiciary, expanded the jurisdiction of exceptional courts at the expense of the ordinary judiciary, and entrenched a culture of impunity benefiting the security apparatus that came to control every facet of life in Syria.

For the judiciary to fulfill its natural role in upholding the rule of law, it must operate within a safe environment free from chaos, insecurity, and the absence of effective law enforcement. As the new administration begins repealing numerous laws and statutes previously used by the Assad regime and its security apparatus to suppress dissent and silence political opponents such as the Revolution Protection Law, the Arab Socialist Ba'ath Party Security Law, and counter-terrorism legislation, the repeal of these unjust laws becomes essential to creating the necessary conditions for safety and justice. This process must also include the enactment of modern legislation that remedies the flaws and gaps found in many of the previous legal frameworks, including laws governing political parties, elections, and the media, as well as those that placed undue restrictions on the activities of trade unions, civil society organizations, and other non-state actors. While it is not possible to address every factor or solution that could help establish this enabling environment, the discussion will focus on those elements that most directly affect the functioning of the judiciary. These can be summarized as follows:

1.2.1 Repeal or Amend Political Parties Law No. 100 of 2011

- Although this law was enacted in response to the popular protests that swept the country and demanded an end to decades of authoritarian rule, it has done little to meaningfully alter Syria's political landscape. Control over existing and prospective political parties remains firmly in the hands of the executive branch.

- The committee mandated by the law to review party license applications is composed of the Minister of the Interior (serving as chair), a judge appointed by the President of the Court of Cassation, and three public figures chosen by the President of the Republic.[260] In other words, four out of five members (including the chair) are designated by the ruling authority. In practice, this has meant that no opposition-oriented parties have received licenses to operate. Indeed, at the time of writing this report, not a single party with a dissenting platform has been legally recognized.

- The law grants this committee broad discretion to draft its own internal regulations, without establishing clear procedural guarantees or safeguards against arbitrary rejection.[261] This lack of transparency and independence effectively stifles political life, curtails the freedom to form parties, and undermines the safe civic environment necessary for pluralism.

- Moreover, the law enshrines preferential treatment for the Arab Socialist Baath Party and the parties of the National Progressive Front, automatically recognizing them as licensed.[262] It fails to place all political entities on equal legal footing. While the law prohibits the establishment of parties based on regional, tribal, religious, sectarian, racial, gender, or color identity, it notably makes no mention of restrictions on parties formed around nationalist or linguistic identities. This legal omission is striking, given that the Baath Party explicitly defines itself as Arab nationalist.[263]

260 Ibid., Articles 7 and 8.
261 Executive Instructions for the Political Parties Law.
262 Article 35
263 Articles 1 and 3 of the General Principles of the Baath Party Constitution https://shorturl.at/rTIKG

1.2.2 Amend or Repeal Election Law No. 5 of 2014

- This law regulates presidential, parliamentary, and local elections but includes numerous provisions that curtail the judiciary's role in supervising electoral processes, reducing it at times to a mere formality. Notably, Article 30 reinstates exclusionary eligibility criteria for presidential candidates, including the requirement of continuous residence in Syria for no less than ten years prior to candidacy. This provision effectively disqualifies the vast majority of opposition figures, many of whom were forced into exile and remain unable to return due to their political positions. Article 15 also empowers governors, appointed directly by the President and key figures within the executive authority, to form polling station committees. These committees are instrumental in overseeing elections and may be used to favor the ruling regime.

- Despite being issued in 2014, after millions of Syrians had already been displaced, the law does not adequately address the voting rights of citizens outside Syria. According to Article 70 of the law's executive instructions, Syrians abroad may only vote in presidential elections and only at embassies. Even then, a number of restrictions apply: voters must be registered on the electoral roll, possess a valid passport stamped with an official exit mark from a Syrian border crossing, and face no legal impediment to voting. These requirements effectively exclude a large segment of the Syrian diaspora, particularly those who fled the country informally or fear persecution if they engage with Syrian embassies. While Law No. 8 of 2016 amended the General Elections Law to allow for the relocation of polling stations to accommodate displaced voters within Syria, it failed to address in any way the participation of Syrians residing abroad.[264]

264 The Day After (TDA), Electoral Reform and the Democratic Transition Process in Syria, op. cit., p. 37.

- Equally urgent is the repeal of Legislative Decree No. 14 of 1969 which entrenched impunity for security personnel; Decrees No. 549 of 1969 and No. 69 of 2008 which amended Article 47 of the Penal Code and the Military Code of Procedure; and the system of mandatory "security approvals," which remain a barrier to citizens' access to basic legal and civil services. These laws, decrees, and directives, previously discussed in detail in Chapter I, Section II, form part of a broader legal architecture that obstructs justice and must be dismantled.

- To conclude, it is not possible to speak of a safe and impartial environment for independent judicial work without a constitution and legal framework that enshrine the principle of equality among citizens, guarantee equal access to legal recourse, and ensure that no individual is above accountability or immune from legal scrutiny—all within a framework that upholds the requirements and standards of a fair trial. These standards categorically reject the establishment of exceptional courts in the future.[265] The decision by the new administration to abolish all exceptional laws and courts marks a significant and necessary step in the right direction.

264 Principle 5 of the Basic Principles on the Independence of the Judiciary states that "Everyone shall have the right to be tried by ordinary courts or tribunals applying established legal procedures. Tribunals which do not apply duly established legal procedures for judicial proceedings shall not be established to usurp the jurisdiction of ordinary courts or tribunals."

02

Track II:

Constitutional and Legislative Reform to Guarantee Judicial Independence

The constitution forms the apex of the legal hierarchy, lending legitimacy to all subordinate laws. For this reason, any meaningful judicial reform must begin with constitutional reform grounded in clear guarantees for fundamental rights and freedoms. Poorly constructed constitutions often give rise to flawed legislation and decrees, which in turn sow institutional confusion and instability. This remains true even when such constitutions are dressed in language that superficially resembles those of democratic systems. Since legal frameworks are built upon constitutional foundations, progress in judicial reform is inextricably linked to legislative reform that enshrines the rule of law and safeguards judicial independence.

Syrian laws and legislation, in their current form, are in urgent need of comprehensive and substantive amendments. These reforms are essential for creating a judiciary that is fully independent, impartial and capable of ensuring equal access to justice, holding perpetrators accountable, and protecting citizens' rights without discrimination. Only then can the judiciary fulfill its supervisory role over government procedures and decisions, ensuring their conformity with national legislation and constitutional principles, while aligning with international standards of justice, human rights, and integrity.[266]

As previously discussed, addressing Syria's constitutional and legal deficiencies requires work on two fronts. First, there must be general constitutional guarantees that prevent the reconstitution of authoritarian governance and its accompanying apparatuses of repression, paving the way for a modern, pluralistic, democratic state. Second, there must be specific and enforceable guarantees for judicial independence that strengthen the institutional autonomy of the judiciary, including its courts and affiliated bodies.

266 Ibrahim Muhammad Al-Qasim, "The Judicial System in Syria" [Arabic], Beit Al-Muwatin Publishing House, Damascus, 1st Edition, 2017, link: https://daleel-madani.org/sites/default/files/Resources/9_-lnzm_lqdyy_0.pdf

2.1 General Constitutional and Legislative Guarantees

- The future constitution must enshrine a set of foundational constitutional principles that are not subject to amendment. These include the principles of the rule of law, the separation and balance of powers, the protection of fundamental rights and freedoms, the organization and independence of the judiciary, and detailed, unambiguous provisions regarding referendums and constitutional amendments. It should also include guarantees for fair elections supervised by an independent body and ensure full compliance with international standards and human rights obligations. Clear and restrictive conditions must be set for declaring states of emergency and general mobilization,[297] alongside provisions preventing executive overreach into legislative powers by establishing firm jurisdictional boundaries and constitutional limits on the executive's delegated legislative authority. In addition, the neutrality and independence of the Supreme Constitutional Court must be safeguarded, enabling it to uphold the supremacy of the constitution.

- Accordingly, the upcoming constitution must avoid replicating a number of provisions found in the constitutional declaration drafted by the committee appointed by the new administration, which has drawn criticism, particularly regarding the principle of separation of powers and the independence of the judiciary. Concerns have been raised over the expanded powers granted to the President of the Republic, the absence of meaningful parliamentary oversight over the executive branch, the lack of constitutional guarantees for judicial independence, and the risk of the Constitutional Court falling under the influence of other branches of power.

267 Governance, Institution Building and Democratic Transition Axis - National Agenda for the Future of Syria Programme (ESCWA), 2016.

In this regard, Syria can draw on precedents such as Article 59 of the 1950 Constitution, which states:

> **The House of Representatives may not relinquish its legislative authority,**

and Article 43, which stipulates:
"The House of Representatives shall remain in permanent session."
These clauses were designed to prevent the executive from exploiting parliamentary recesses to issue legislative decrees, thus preserving the legislature's exclusive lawmaking powers.

The new constitution must place rights and freedoms at its foundation, in line with best practices from contemporary democratic transitions. It should move beyond symbolic declarations to provide clear, comprehensive, and enforceable protections, particularly for third-generation civil rights. This entails not only articulating these rights in substantive terms, but also establishing strong institutional and legal guarantees for their enforcement. The constitution must strictly limit the state's ability to curtail such rights, permitting restrictions only under narrowly defined and clearly justified circumstances. It must also ensure access to judicial remedies—whether through regular or exceptional legal mechanisms—while guaranteeing all individuals the full right to litigate, defend, and seek redress.[268]

268 Dr. Ibrahim Daraji, Syria Constitutional Alternatives, National Agenda for the Future of Syria Programme (ESCWA), pp. 26 and 40.

Since the category of basic laws, including those governing the judiciary, political parties, elections, local administration, and the media, is considered complementary to the constitution, it is essential that the constitution establish a dedicated mechanism for their enactment by the legislative authority. This mechanism should require a voting threshold higher than that used for ordinary legislation, mandate prior review by the constitutional court, and prohibit the executive branch from issuing legislative decrees pertaining to these laws. Notably, the 2012 Constitution, unlike many of its counterparts, did not recognize the category of basic laws nor did it set forth a special procedure for their passage. However, the internal regulations of the People's Assembly, issued on July 2017 ,30, did acknowledge this category, restricting it to laws regulating elections, political parties, the judiciary, the State Council, the Supreme Constitutional Court, and local administration. These regulations stipulated that such laws require the approval of an absolute majority of all members of parliament, whereas ordinary laws need only the approval of an absolute majority of members present, provided the session meets the quorum of at least one-third of the Assembly.[269]

In addition, the constitution must clearly regulate the laws governing the formation of political parties, associations, trade unions, and media institutions, as well as those concerning the rights to assemble, protest, and freely express opinions. Constitutional provisions must also firmly establish the primacy of international treaties and agreements over domestic law and grant the judiciary full authority to apply them when adjudicating relevant cases. Should the transitional phase lead to the drafting of a new constitution, one that attempts to address the country's legacy of constitutional and legal deficiencies, such efforts will be undermined if they are not accompanied by a genuine commitment to democracy and the rule of law. Without this, the separation of powers will remain elusive, and the judiciary will continue to be vulnerable to political interference.

None of these constitutional guarantees should be sacrificed, whether in a temporary charter or a permanent constitution. Even when peace and conflict resolution are prioritized, compromising on these foundational safeguards for the sake of expediency may carry grave consequences for Syria's future legal and judicial systems. Only a constitution that explicitly revokes prior decisions leading to forced displacement, property seizure, asset confiscation, or unjust dismissal, and that guarantees the return of refugees and displaced persons while establishing mechanisms for accountability and judicial redress, can lay the foundation for a just state governed by the rule of law.

269 "Rule of Law as a Foundation and Condition for Building a Modern Nation-State" [Arabic], Harmoon Center, 13 August 2020, link: https://shorturl.at/dtDV8

2.2 Guarantees for the Independence of the Judiciary

These are the constitutional and legislative safeguards necessary to regulate the powers of judicial bodies, ensure the independence of the judiciary, shield it from interference by the executive and legislative branches, and enable it to fulfill its mandate in delivering justice and upholding the rule of law. Chief among these guarantees are:

2.2.1 Reforming the legal framework governing the Supreme Constitutional Court

The loss of independence suffered by Syria's Supreme Constitutional Court stems from its total subordination to the executive branch, particularly the president, who holds unilateral authority to appoint its president and members. This dependency has rendered the court unable to fulfill its judicial and oversight functions. As previously discussed, addressing this issue requires that the constitution include explicit and robust safeguards to ensure the full independence of the court and its members. This should involve eliminating or amending all constitutional and legal provisions, especially those found in the 2012 constitution and Law No. 7 of 2014 regulating the court and that grant the president unchecked powers over appointments.

To further reinforce independence, appointments to the court must not be monopolized by the executive; rather, they should be shared among the executive, legislative, and judicial branches. Additionally, the term of office for justices must exceed the term of any entity responsible for their nomination or appointment. Under the 2012 constitution, justices serve four-year terms, while the president (who appoints them) serves a seven-year term, undermining their independence and subjecting them to political influence. The UN Special Rapporteur on the independence of judges and lawyers has affirmed that short judicial tenures compromise both judicial autonomy and professional development.[270]

Gender representation must also be embedded in the structure of the court, ensuring that neither gender occupies less than

30%

of the seats.[271]

270 Report of the Special Rapporteur on the independence of judges and lawyers, United Nations Document, March 2009, link: https://digitallibrary.un.org/record/652385?v=pdf

271 "Statement on behalf of the UN Special Envoy for Syria, Staffan de Mistura," 1 December 2017, link: https://www.unog-eva.org/en/news-media/statements-and-speeches/2017/12/statement-behalf-un-special-envoy-syria-staffan-de

The court's powers must be expanded to include meaningful oversight of states of emergency. Given that such declarations, triggered by war, civil unrest, or natural disasters, grant sweeping powers to the executive, including the suspension of constitutional rights, the Constitutional Court must be empowered to review both the necessity of declaring a state of emergency and the continued justification for its extension. This oversight function is essential to preventing abuse under the guise of national security.[272]

Furthermore, if the court is tasked with trying the president for high treason, the crime itself must be clearly defined in the Penal Code, including its legal elements and corresponding penalties. Without such definitions, this constitutional provision remains ineffectual, violating the principle of legality: nullum crimen, nulla poena sine lege: no crime and no punishment without a legal text.

The court must also be granted preemptive review powers over draft laws and legislative decrees to assess their compliance with the constitution and with Syria's binding international treaties. Unlike the 2012 constitution, where such reviews are advisory and non-binding, the court's determinations should be mandatory for the legislative authority. In addition, the court should be authorized to rule on appeals concerning the fairness and constitutionality of electoral districting, which directly impacts democratic representation.[273]

272 Ibrahim Draji, "The Constitutional Court in Syrian Constitutions: A Comparative Historical Legal Reading" [Arabic], July 2020, link: https://eprints.lse.ac.uk/105792/

273 The Day After, Electoral Reform and Democratic Transition in Syria, September 2022, link: https://tda-sy.org/wp-content/uploads/Electoral-ReformEN1.pdf

2.2.2 Reforming the Legal Framework Governing the Supreme Judicial Council

As previously discussed, the composition of Syria's Supreme Judicial Council suffers from structural flaws, chief among them the near-total control exerted by the executive branch, particularly the President of the Republic and the Minister of Justice.[274]

To guarantee the Council's independence, it is imperative to reform its composition through amendments to the Judicial Authority Law. The Council should be composed primarily of judges, with the President of the Court of Cassation serving as its chair. The remaining members must also be judges, either elected or appointed by the judiciary itself. Should the inclusion of non-judges be deemed necessary, such members must be elected by Parliament, not appointed by the executive. The selection of judges must follow clear and objective criteria rooted in integrity, professional qualifications, competence, and merit.[275] Also, the law must explicitly prohibit any interference by the executive or security services in judicial appointments.

To enshrine the independence of the judiciary, its structure should be embedded in the constitution itself, with the founding principles of the judiciary elevated to constitutional status.[276] The internal structure of the Council must be defined in the constitution to prevent future executive encroachment; not left to ordinary legislation. A genuine separation and balance of powers, alongside the rule of law, is essential to establishing a justice system grounded in independence, transparency, and integrity.[277]

Gender representation within the Council must also be guaranteed, with neither gender occupying less than

30%

of its composition.

274 In this regard, the African Commission considered that the body responsible for the appointment, promotion, transfer, and discipline of judges in Cameroon, which is headed by the President of the Republic and the Minister of Justice serves as Vice-President (a situation very similar to the Syrian case), violates the principle of separation of powers. (Amnesty International, Fair Trial Manual, p. 113, op. cit.)
275 2009 Report of the Special Rapporteur on the independence of judges and lawyers, op. cit.
276 Judicial Reform in Syria, an unpublished paper issued by the Transitional Justice Coordination Group.
277 2009 Report of the Special Rapporteur on the independence of judges and lawyers, op. cit.

Improving judicial performance also requires reforming the legal provisions concerning judicial inspection. Current arrangements place inspection bodies under the authority of the Minister of Justice, an unacceptable form of executive control.[278] These powers, including the appointment and delegation of inspectors, must be transferred to an independent Supreme Judicial Council. Inspections should be carried out by judges with recognized integrity, impartiality, and legal expertise. The focus of inspections should shift from quantitative metrics such as case load to qualitative assessments, and it must prioritize the substance and outcomes of adjudicated cases.

In addition, Article 67 of the Judicial Authority Law must be amended to grant the Council full authority to prepare and manage the judiciary's draft budget. Without financial independence, judicial independence cannot be realized. A useful reference in this regard is Article 130 of the State Council Law, which affirms the Council's right to an annual budget and final account, and assigns responsibility for drafting and approving it to a dedicated internal body.[279]

Finally, the law must recognize the right of judges to freely establish or join associations and professional organizations that serve to represent their interests, promote continuing legal education, and safeguard their independence.[280]

278 Articles 11 and 12 of the Judicial Authority Law.
279 A proposal submitted by Judge Hussein Al-Bakri, a former judge who worked in the Syrian State Council for more than twenty years.
290 Principle No. 9 of the Principles on the Independence of the Judiciary of 1985.

2.2.3 A Comprehensive Review of Laws and Decrees

Following the drafting of a new interim or permanent constitution, one of the principal challenges facing Syria's transitional phase is the large body of existing decrees and laws that require comprehensive review. Many of these texts are marred by serious constitutional and legal deficiencies, particularly in their disregard for principles of legality and constitutional order. This includes a clear pattern of executive overreach: between 2003 and 2010, while the People's Assembly passed 373 laws, the President of the Republic issued 539 legislative decrees, an imbalance that reflects the erosion of legislative authority in favor of executive dominance.[281]

Although Article 154 of the 2012 Constitution stipulates that all pre-constitution legislation shall remain in effect only until amended to conform to the new constitutional provisions, and that such amendments should be completed within three calendar years; this mandate was never effectively implemented. The present report's fourth chapter outlines proposals for how to re-anchor laws and decrees within a clearly defined constitutional framework.[282]

With the Constitutional Declaration, which stipulates in Article 51 that

> *the laws in force shall remain in effect unless they are amended or repealed,*

the need for a comprehensive review of the laws is thereby reaffirmed.

281 Hanan Muhammad Amr, "Enhancing the Legislative Performance of the People's Assembly," PhD Thesis in Law, Comparative Study, Damascus University, 2013, p. 402
282 See Article 154 of the Syrian Constitution.

These challenges do not obscure the additional difficulty of reunifying the judicial systems across Syrian territory, given the existing disparities and divergences between them, an issue examined in detail in the first part of this study. Certain reform steps must be taken with urgency, foremost among them the unification of applicable law throughout the country. This can be achieved by reinstating Syrian legislation issued prior to 2011, on the condition that such laws align with international human rights treaties, conventions, and charters ratified by Syria, and are consistent with the provisions of the Constitutional Declaration.

Some legal experts argued that addressing this problem, both in the present and future, requires the presence of legislative bodies in the concerned regions, tasked with ratifying essential laws and issuing new legislation as needed. Others, however, saw the granting of such legislative powers as a breach of Syrian state sovereignty, warning that it could pave the way for partition projects under various pretexts.[283] Yet the urgent question that arose even before the fall of the regime was whether these legitimate concerns could be overcome. A third perspective emerged in response, emphasizing that leaving legislative chaos unaddressed in these regions would only deepen the problem of conflicting legal references. As previously discussed, one illustrative example is the ongoing debate in the temporary zones over whether to continue applying Article 263 of the Syrian Penal Code, or to suspend it due to the injustices it has caused against many of the accused to whom it has been applied.

In the post-Assad phase, the transitional government must therefore take immediate steps to unify judicial institutions and establish clear legal parameters for reviewing decisions issued by disparate judicial bodies. It must also clarify the legal status of rights and entitlements established under previous systems.

283 Opinions of some experts in their responses to in-depth qualitative interview questions regarding how to unify judicial systems across de facto jurisdictions.

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The forthcoming Legislative Council will bear the responsibility of systematically "reconstitutionalizing" laws and decrees. This process requires the adoption of a normative legal framework for annulling texts that contravene the principle of legal legitimacy, alongside a procedural mechanism for the comprehensive review of all standing laws and decrees. To this end, a national legal review committee should be formed. It must include experts in law and the judiciary, as well as actors whose sectors are directly or indirectly affected by these legal instruments such as representatives from civil society organizations, women's rights movements, professional unions, political parties, and media, cultural, and academic institutions.

The committee will conduct a detailed review to identify laws and decrees requiring full repeal, particularly those that conflict with the aims of the transitional process. It will also propose partial amendments to laws that require reform in order to align with human rights principles. These include revisions to civil status and property registration laws that undermine the right to housing and ownership, as well as laws relating to military service, cybercrime, and Syrian nationality, especially to address prior cases of arbitrary deprivation or politically motivated naturalization as part of demographic manipulation. The review must also encompass all laws that undermine women's rights or prevent them from enjoying full, equal citizenship.

In parallel, the committee must identify laws that should remain in force, such as the criminal, civil, and commercial codes, as well as other laws essential for the continuity of state institutions and basic public life. It should also draft new legislation to govern the transitional bodies and institutions, facilitate the safe return of refugees and displaced persons, and regulate frameworks for war reparations, legal accountability, property restitution, and compensation where restitution is not possible.[284]

> Upon completing its mandate, the committee will submit its findings and recommendations to the Legislative Council, which will be responsible for enacting the required legislation accordingly.

284 Dr. Ibrahim Daraji, Constitutional Alternatives, op. cit.

03

Track III:

Restructuring the Judiciary and Overhauling the Legal System

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- Judicial reform in Syria requires an array of structural and procedural changes, some of which have been addressed in previous sections, such as reforms to the Supreme Constitutional Court and the Supreme Judicial Council. Others will be discussed in the following paragraphs, structured according to the thematic sequence and organizational logic of the report.

- Before delving into the urgent and necessary reforms to the judicial system as a whole, it is important to note that State Council Law No. 32 of 2019, which regulates administrative judicial procedures, is relatively advanced compared to other legislation governing Syria's judicial bodies. However, this advancement remained largely theoretical. In practice, the security apparatus exerted overwhelming influence over all state institutions, including the administrative judiciary.

- For instance, the administrative judiciary has failed to strike down decisions by certain governorates to auction off agricultural lands for public investment, despite the original owners' absence and inability to access their property for various reasons.[285] Such decisions fall squarely within the purview of the administrative judiciary.[286] Judge Hussein al-Bakri, a former member of the State Council, has noted that despite the legislative progress reflected in Law No. 32, the influence and interference of the executive branch in the administrative judiciary's affairs were extremely pronounced, as the administrative judiciary aligned itself with the regime's priorities and directives.[287]

- To avoid redundancy, this section will focus specifically on three areas: the necessary amendments to correct the functioning of the military judiciary, the repeal of legislation that enables exceptional courts—which were abolished since the collapse of the Assad regime—and the development of judicial work mechanisms and their role in restoring public confidence in the judiciary.

285 See, for example, the report "Syria: Regime Auctions Off Privately-Owned Pistachio Lands in Hama and Idlib" by Syrians for Truth and Justice, 12 November 2022, link: https://stj-sy.org/en/syria-regime-auctions-off-privately-owned-pistachio-lands-in-hama-and-idlib
286 Article 8 of State Council Law No. 32 of 2019.
287 From the outcomes of the focus workshop held on 24 April 2024.

3.1 Reforming the Military Judiciary and Abolishing Exceptional Courts

The existence of a military judiciary, in itself, does not inherently violate principles of judicial independence or international fair trial standards. Trying armed forces personnel before military courts for violations of military regulations is permissible under international law, so long as these courts remain independent and impartial.

The real concern arises when the jurisdiction of military courts is extended to civilians or to military personnel charged with ordinary criminal offenses,[288] as is currently the case in Syria. The military judiciary is wholly subordinate to the Minister of Defense and was designed as an exceptional judicial system, as previously discussed in this report.

The jurisdiction of Syria's military courts should therefore be restricted to trying military personnel for offenses that constitute breaches of military discipline, as defined by law. The UN Human Rights Committee, the Committee against Torture, and the Inter-American Court of Human Rights have all affirmed, using nearly identical language, that military jurisdiction must be limited to service-related offenses committed by members of the armed forces, police, intelligence services, and customs. Amnesty International has likewise stressed that violations of human rights and crimes under international law must be prosecuted before civilian courts, even when the accused are members of the military. [289] This necessitates amending the Military Penal Code and the Code of Military Procedure to align with this principle, explicitly protecting civilians from being tried in military courts, and enshrining such protections in the constitution.

288 Amnesty International, Fair Trial Manual, p. 221, op. cit.
289 Ibid., p. 223.

There is no justification for the expansive powers granted to the Minister of Defense and the Chief of Staff to initiate or dismiss prosecutions. Such authority has effectively shielded security personnel from legal accountability. The Minister of Defense should not act as a substitute for the Public Prosecutor in determining whether a case should proceed. The relevant legal provisions granting him this authority must be repealed, and the decision to prosecute should rest with the military judiciary.

Regarding the appointment of military judges, this report recommends the establishment of a joint committee composed of representatives from the Military Judiciary and the Supreme Judicial Council. This body would be tasked with appointments, and the Military Judiciary itself should be restructured as an independent legal entity, no longer affiliated with the Ministry of Defense. Disciplinary proceedings and dismissals of military judges should be handled by the Supreme Judicial Council, with at least one representative from the Military Judiciary present during sessions pertaining to such cases. [290]

As for exceptional courts and other ad hoc committees that usurped the jurisdiction of the regular judiciary, this report recommends their full abolition. As noted earlier, the new administration has taken the significant step of abolishing these bodies. All ongoing cases under their purview should be transferred, in their current procedural state, to the competent regular judiciary. The creation of such courts or quasi-judicial bodies should be constitutionally prohibited in the permanent constitution.

290 Judge Nimr al-Nimr, a former judge in the Syrian Military Prosecution, participated in formulating these recommendations.

3.2 Updating Judicial Work Mechanisms

The current state of judicial work mechanisms in Syria is untenable. It is imperative to keep pace with global technological advancements and integrate modern technologies into the judicial system. This can be achieved through the optimal use of software and automation: each court would be assigned a unique access code, and each lawyer registered with the bar association would receive a personal password granting secure access to court files, decisions, and the ability to obtain certified copies. Through this portal, lawyers could file cases, submit arguments, and upload supporting documents and evidence, thus minimizing the number of in-person visits to court buildings, reducing opportunities for extortion by court employees, and curbing the widespread corruption that plagues Syrian courts. Citizens can also be facilitated in accessing any legal claims or notices against them through an electronic portal that facilitates access to all their civil documents, including those from the courts.

Such a system would also enhance the efficiency of judges and court staff, allowing them to focus less on bureaucratic processes, such as case registration and paperwork, and more on substantive legal duties like drafting decisions, conducting interrogations, hearing witness testimony, and holding court sessions. By freeing up time and resources for judges and judicial clerks, the judiciary would be better positioned to resolve cases with greater speed and professionalism, something that would reflect positively both on litigants and the public perception of the judiciary overall.

Additionally, computers should be used during court hearings to record oral arguments and testimonies, replacing the outdated practice of relying on handwritten notes by judicial assistants. This practice often leads to errors: judges may be unable to read poorly written notes, and clerks may rephrase or reframe testimonies in ways that distort their meaning, sometimes altering the course of the case entirely. This issue is compounded by the insufficient qualifications of many clerks, who are often appointed based on secondary or even basic education, without having attended a professional training institute. To address this, the judiciary should make use of the existing Higher Judicial Institute and benefit from international models and the expertise of UN agencies experienced in this field.

The number of judges must also be increased to reflect the enormous caseloads currently before the courts. Adequate training must be provided,[291] especially in light of the anticipated new phase in Syria, during which the judiciary will face novel types of cases that were not previously litigated, whether in criminal, civil, or religious courts. We cannot ignore the volume of rulings and decisions issued during the conflict years by various types of courts—regular, military, exceptional, or ad hoc—which imposed binding obligations on litigants. Many of these rulings may lack legitimacy, having been issued under conditions of fear, coercion, and systemic corruption, especially in regime-controlled areas.

In light of this, the report recommends opening a window for legal grievance and appeal for those affected by such rulings. This window could extend for a defined period—five years, for example—from the start of the transitional phase. The rulings in question would be subject to review by specialized judicial committees formed by a reformed Supreme Judicial Council. These committees' decisions would be final and binding, in order to ensure legal certainty and end the climate of confusion and distrust that has long plagued the judiciary.

Some participants in the focus group proposed giving emergency judges the authority to review these past rulings, with the harmed party retaining the right to appeal to the relevant court. However, this report disagrees with that suggestion. While it may seem expedient, it risks overwhelming the judiciary with a flood of new cases, undermining its ability to function efficiently during the transitional period.

We further emphasize the need to reduce the number of disputes that unnecessarily burden the courts and could instead be resolved through administrative channels. This includes declaratory sale cases in which both parties are in agreement, which should be handled directly through the land registry following relevant legal amendments. Similarly, matters such as traffic, water, and electricity violations should be resolved administratively. The relevant authorities should be empowered to collect fines directly, with their records treated as enforceable instruments executable through civil enforcement departments. Only in cases where a fine is contested, for example on grounds of invalidity or forgery, should the matter be referred to the judiciary, with execution procedures suspended until a final ruling is issued. The courts can also be relieved of pressure through an active arbitration system, insofar as they do not usurp or obstruct the authority of the judiciary.

291 This was confirmed by most participants in the focus workshop held on 24 April 2024.

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Track IV:

Reforming the Bar Association and Auxiliary Legal Institutions

Judicial reform alone is not enough to restore public trust in the justice system or to ensure access to meaningful justice. A number of institutions operate in close conjunction with the judiciary, and the legitimacy of many judicial procedures and decisions hinges on the ability of these institutions to perform their duties with professionalism and integrity.

In this section, we highlight the key deficiencies affecting the institutions most closely connected to the judiciary, along with potential solutions for reform. We refer to these institutions as "auxiliary legal institutions" because they play a pivotal role in judicial proceedings. Without their proper functioning, the judiciary will remain imbalanced, even if all other standards and conditions for judicial reform are met. We focus here on those institutions whose reform is most urgent in the short term, and they include the following:

01 Bar Association

The judiciary and the legal profession are often described as the "two wings of justice." Without a functioning legal profession, or if that profession is structurally compromised, justice cannot take flight.

One of the legal profession's fundamental requirements is independence. This principle, however, was sorely lacking in Syria under Assad. The regime had treated the Bar Association not as an autonomous professional body, but as a political arm aligned with the ruling Baath Party. Law No. 30 of 2010, which governs the legal profession, explicitly states that the Bar Association's primary goal is to "contribute to mobilizing the energies of the masses to achieve the goals of the Arab nation," and mandates coordination with the relevant office of the Baath Party's regional leadership. As noted earlier in this report, the repeal of Article 8 of the Syrian Constitution, formerly enshrining the Baath Party's leadership role, proved to be purely symbolic. In practice, the Party continued to lead both state and society under the regime.

The Association's lack of independence was further entrenched by the domination of Syria's security services over the central Bar Association and its branches, particularly in relation to the appointment, or nominal "election" of union leadership. After the fall of the regime, the new administration's appointment of central and branch-level union officials sparked widespread debate. Critics viewed these appointments as 'paternalistic' interventions that undermined union autonomy, while others argued they were a necessary stopgap measure to dismantle the entrenched networks of the previous regime. In either case, what is urgently needed is the creation of an enabling environment for free and democratic elections, in order to break definitively with the Baathist tradition of rigged, performative elections, in which union leadership was handed to regime loyalists, often with the direct involvement of various security agencies.

These same dynamics fostered a climate of fear among lawyers, particularly when defending clients before exceptional courts, especially political detainees or individuals publicly opposed to the regime. In many cases, lawyers were harassed, threatened, or even framed with fabricated charges to prevent them from continuing their legal defense work.[292] Under previous conditions, lawyers operated under the constant threat of security service interference. Many feared being struck from the Bar's register simply for fulfilling their professional duty, particularly when representing victims of state abuse or those subjected to violations by the security apparatus and the ruling regime.

Even if Syria's judiciary were to attain a sufficient level of integrity, independence, competence, and impartiality, and even if its structural deficiencies were resolved, it would still be unable to function properly unless the legal profession, the second wing of justice, is likewise reformed. Chief among its flaws is the pervasive influence of the security services. Without independent legal counsel, many rights-holders are left unable to defend their claims or articulate their demands. This is the lawyer's essential role. A judge cannot, and must not, guide litigants or instruct them on how to present their case; doing so would compromise judicial neutrality, which requires the judge to maintain equal distance from all parties.

The independence of legal aid and legal representation is a principle enshrined in the United Nations Basic Principles on the Role of Lawyers, which state:

> Whereas adequate protection of the human rights and fundamental freedoms to which all persons are entitled, be they economic, social and cultural, or civil and political, requires that all persons have effective access to legal services provided by an independent legal profession…[293]

292 WhatsApp communication dated 22 August 2024 with a lawyer still working in areas controlled by the Syrian regime. Name withheld for security reasons.
293 Basic Principles on the Role of Lawyers, adopted 07 September 1990 by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, link: https://www.ohchr.org/en/instruments-mechanisms/instruments/-basic-principles-role-lawyers#:~:text=Governments%20shall%20ensure%20that%20lawyers,not%20suffer%2C%20or%20be%20threatened

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- For lawyers to fulfill their duties with integrity, independence, and impartiality, the Syrian state must protect them from unlawful interference. The UN Principles specify that governments have a duty to ensure lawyers can carry out their professional responsibilities without fear, harassment, or undue hindrance; to consult freely with clients inside and outside the country; to remain protected from legal, administrative, or economic reprisals for actions taken in accordance with recognized professional standards; and to have access to security guarantees when their safety is threatened. Lawyers must not be punished for the actions or cases of their clients, and attorney-client confidentiality must be respected at all times.[294]

- The above necessitates reforming the law currently governing the legal profession in Syria, ensuring that elections for the Bar Association and its branches are free and fair, and that they reflect the genuine will of lawyers. This would enable them to carry out their roles with full independence, guarantee their immunity, and support their essential function in securing fair trials for their clients. It is also imperative that the United Nations Basic Principles on the Role of Lawyers be explicitly incorporated as an integral part of Syria's legal profession law.

- It is also worth noting that the State Cases Administration in Syria has largely functioned as a form of disguised unemployment for some appointees. While a few have diligently performed their duties, the majority have relied on repetitive, boilerplate pleadings, recycling the same memos and arguments across cases, with only dates, court names, and opposing parties changing. The dominant view among Syrian legal professionals, including participants in the legal focus group held on 24 April 2024, is that this institution should be abolished. Instead, public institutions should be free to contract with independent lawyers, issuing them legal mandates on a case-by-case or fixed-term basis. This would strengthen the institutions' capacity to secure favorable outcomes in legitimate claims and promote a more merit-based legal culture.

294 Principle 16 of the United Nations Basic Principles on the Role of Lawyers, op. cit.

02 Law Enforcement Agencies

These include the agencies and personnel tasked with upholding the law, as defined in the Code of Conduct for Law Enforcement Officials adopted by United Nations General Assembly Resolution (1979) 169/34. The term encompasses all officials who exercise police authority, especially those vested with powers of arrest and detention, be they appointed or elected.[295] The interpretation of this definition should be as inclusive as possible, extending to members of the military and security services.[295]

In Syria, the core problem lies in the lack of professional competence among these personnel. Most receive little to no meaningful training in crime detection and investigation techniques, and instead rely on coercive practices (most notably torture) to extract confessions, regardless of the actual culpability of the accused. These primitive investigative methods routinely destroy the integrity of evidence and obscure the facts of the case. The consequences for the judiciary are severe: even a judiciary endowed with integrity and professionalism cannot operate effectively if the institutions feeding into its work, and its procedural counterparts, are dysfunctional or corrupt. According to the Code of Criminal Procedure, these officers serve as auxiliaries to the Public Prosecutor. Unless all agencies involved in judicial processes maintain a comparable standard of professionalism and probity, justice remains compromised.

295 Code of Conduct for Law Enforcement Officials, adopted 17 December 1979 by General Assembly resolution 34/169, link: https://www.ohchr.org/en/instruments-mechanisms/instruments/code-conduct-law-enforcement-officials
296 Issue 18 of Mawarid magazine, published by Amnesty International, entitled "Police and Human Rights" [Arabic], 17 April 2012, link: https://www.amnesty.org/ar/documents/POL32/004/2012/ar/

- Beyond issues of competence, many law enforcement officials deliberately manipulate case facts to serve personal interests, with little regard for public welfare. Like other state institutions, law enforcement suffers from entrenched corruption. What further emboldens such behavior is the widespread perception—and in many cases, legal reality—that these officials are shielded from accountability. Legislative provisions that grant them immunity from prosecution reinforce a culture of impunity, as discussed earlier in this report. It also bears emphasizing that these same institutions have been implicated in war crimes and crimes against humanity since the outset of the Syrian conflict. This report does not attempt to address those grave violations in full, but extensive documentation is available through United Nations bodies and both international and local human rights organizations.

- Given this reality, restructuring these institutions is essential. Those implicated in rights violations must be removed, and comprehensive, specialized training must be introduced that prioritizes respect for human rights and fundamental freedoms, and that adheres strictly to the UN Code of Conduct for Law Enforcement Officials. Lessons can be drawn from countries that have reformed their law enforcement sectors following internal conflict or authoritarian collapse. Just as critical is the need to improve the financial conditions of law enforcement personnel, in order to curb the incentive for bribery and corruption.

- The need to establish governance over the security services in Syria is both immediate and imperative. Their function must be limited strictly to information gathering and analysis, and to providing relevant data either to policymakers or, where appropriate, to the Public Prosecution. The investigative and arrest powers currently granted to them must be revoked, along with their authority to block travel or require "security approvals" for individuals seeking to engage in lawful activity. The legal immunities they enjoy, both as institutions and as individuals, must be eliminated. All detention centers under their control, whether officially acknowledged or secret, must be closed, and all detainees referred to the competent judiciary. These reforms are the essential first steps toward rebuilding a human rights-respecting environment and establishing the rule of law. Without them, any talk of legal order in Syria remains an exercise in futility.[297]

297 The Rule of Law as a Foundation and Condition for Building a Modern National State" [Arabic], Harmoon Center for Contemporary Studies, link: [Accessed 30 August 2024] https://shorturl.at/FcBTp

03 Forensic Medicine

The institution of forensic medicine,[298] whether referred to as

court medicine | **legal medicine** | **forensic pathology** | **criminal medicine**

plays an essential role in the administration of justice, particularly in the field of criminal law. It is the body authorized to determine the cause of death, and in some cases, identify the instrument used in committing the crime. These determinations are crucial for establishing whether a death occurred naturally or was the result of foul play. In many cases, forensic expertise can also assist in identifying the perpetrator. The criminal judiciary is deeply reliant on such findings, as they involve technical and scientific matters beyond the reach of a judge's expertise, even if the judge is expected to be broadly familiar with them. For this reason, any serious attempt to reform the judiciary must include a parallel effort to reform and develop the forensic medicine system in Syria.

When this institution lacks competence or integrity, it can result in grave miscarriages of justice, denying victims their rights and allowing perpetrators to go free. Forensic medicine in Syria has long suffered from neglect, both before and after 2011. Frequently, doctors who are not formally trained in forensic medicine are assigned to carry out these tasks due to a severe shortage of qualified specialists.[299] The forensic medicine department was only introduced to Syrian medical faculties in 1996, and interest in the field has remained low due to limited financial incentives. As of 2023, the total number of practicing forensic doctors across Syria did not exceed 118. This shortage is compounded by a lack of technical capacity and equipment necessary for proper forensic investigation. [300] Therefore, reforming the forensic medicine sector requires increased financial resources to improve staff salaries and provide it with the necessary technical and laboratory equipment.

298 In Syria, it is called the General Authority of Forensic Medicine, pursuant to Law No. 17 of 2014.
299 This is despite the fact that the General Authority for Forensic Medicine Law defines a forensic doctor as "a doctor who has a specialization in forensic medicine, forensic dentistry, or forensic toxicology, and is registered with the Ministry of Health and accredited by the Authority."
300 Lubna Shaker, "Forensic Medicine, the Pen of Medical Justice Threatened with Extinction" [Arabic], published on the "E-Syria" blog website, 30 November 2023, link [Accessed 16 July 2024]: https://shorturl.at/9x9D6

- Moreover, beyond these structural deficiencies, some forensic doctors, whether due to lack of skill or as a result of widespread corruption in public institutions, exploit their roles by manipulating medical reports. This is particularly evident in cases involving intentional harm or physical assault. In such cases, the forensic doctor determines the length of work incapacitation, which directly affects how the crime is classified as a misdemeanor or felony. Corruption often influences these classifications, swaying outcomes in favor of one party or another. In addition, the lack of necessary tools and equipment severely hampers the ability of forensic doctors to carry out their duties effectively. Traditional, outdated methods remain the norm. Even when modern laboratory equipment is available, its use is often avoided due to high operational costs.

- Given all this, it is imperative that the state dedicate greater attention and resources to this institution. Forensic doctors should be appointed exclusively from qualified professionals with proven integrity, competence, and independence. And because the institution serves as a critical partner to the judiciary, it should either fall under the authority of the Supreme Judicial Council or operate as an independent body, rather than remaining subordinate to the executive branch. According to Article 2 of the Syrian Law on the General Authority for Forensic Medicine, the institution reports to the Prime Minister's office. Even its internal bylaws are issued by the Prime Minister, based on proposals from the Authority's Board of Directors (Article 9).

- The 2016 Minnesota Protocol on the Investigation of Potentially Unlawful Death emphasizes that forensic doctors participating in such investigations bear a responsibility to the cause of justice. In order to fulfill this role, their work must be conducted independently and impartially. Similarly, the International Code of Medical Ethics issued by the World Medical Association states: "A physician shall dedicate himself to providing competent medical service in full professional and moral independence, with compassion and respect for human dignity." For these principles to be realized, the state must establish conditions that allow forensic doctors to operate free from interference or intimidation, including protection from retaliation in politically sensitive cases.[301]

301 Minnesota Protocol on the Investigation of Potentially Wrongful Death, 2016, link: https://www.ohchr.org/sites/default/-files/Documents/Publications/MinnesotaProtocol.pdf [Accessed 22 August 2024].

04 Bailiffs' Department

The Bailiffs' Department plays a pivotal role in the work of the judiciary, as the progress of a case often hinges on the proper and timely notification of the opposing party. The more accurate and prompt the notification, the more likely the proceedings will move in the right direction, ensuring that justice is served. Conversely, if notification is delayed or flawed, it can prolong litigation, jeopardize rights, and sometimes result in their complete loss.

Consider, for instance, cases where notifications are issued before 8:00 a.m. or after 6:00 p.m., or on weekends and official holidays, without a justified necessity or written permission from the court.[302] Or cases where the notification record fails to include crucial details such as the date and time of service, the name and address of the applicant or their representative, or the name of the court issuing the order. These omissions, listed under Article 21 of the Code of Civil Procedure, can lead to serious procedural flaws. If the court overlooks such defects whether out of negligence, overload, or deliberate disregard, especially amid the severe imbalance between the enormous volume of cases and the limited number of judges, the lawsuit may proceed nonetheless, putting the notified party's rights at risk. Alternatively, if the court does catch the error, the party must be re-notified, causing additional delay. In either case, delayed justice can be as harmful as denied justice.

Continued reliance on outdated, manual notification methods only worsens the judiciary's burden, causing case backlogs and further delays. The Code of Civil Procedure outlines highly detailed and often cumbersome procedures for serving notice, including cases where the intended recipient is absent, refuses service, or resides abroad or in an unknown location. These complexities, ranging from notification by public posting to notification of legal entities, require updated, innovative approaches that reflect the technological advancements shaping all sectors of life, including the justice system and its supporting institutions.

302 Article 20 of the Code of Civil Procedure No. 1 of 2016.

- Compounding these challenges is the limited number of personnel assigned to deliver notifications, especially relative to the overwhelming number of summonses, notices, and enforcement orders. Most bailiffs operate without sufficient training in proper notification procedures. Instead, they rely on informal instructions from colleagues or supervisors who themselves often lack professional training, having acquired their knowledge through trial and error over years of service. This leads to systemic errors. In some cases, parties to a lawsuit exploit the vulnerability of these undertrained staff, offering bribes to forge delivery records or using their influence to intimidate them into manipulating outcomes. This is particularly concerning in rural areas where no civilian bailiffs are present, and local police stations or military police take on notification duties, as permitted under Article 19 of the Code. This arrangement ties the integrity of the notification process to the broader problems of corruption and malpractice in law enforcement, which this report has addressed elsewhere.

- To address these issues, the laws governing notification procedures must be revised to make them more flexible and compatible with technological progress. Courts should be permitted to notify litigants via SMS or email. If a party's phone number or email address is recorded in the case file, the court should be allowed to use those methods. A party who later claims not to have received notice due to a change in contact details would be held responsible for failing to update the court accordingly. This would reduce dependence on slow, error-prone procedures and significantly cut down on human error. It is also possible to create an electronic portal that facilitates access to information about pending court cases.

- Training is also essential. Those responsible for notification must receive both theoretical and practical instruction in proper procedures, including how to handle various situations and how to engage with the public in a way that upholds their dignity and reinforces trust in the judiciary. Increasing the number of bailiffs and providing similar training for police officers who serve in that capacity is also necessary.[304] The Higher Institute of the Judiciary can be a key institution in delivering these training programs.

- Lastly, improving the salaries and benefits of these personnel is critical to protecting them from the temptations of bribery and corruption. Offering fair compensation would serve not only their wellbeing, but also the credibility and effectiveness of the entire judicial process.

304 Report of the Syrian Judicial Reform Committee for 2012, Syrian Days, link: https://syriandays.com/?page=show_det&select_page=75&id=31482

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Track V:

Oversight and Supervisory Roles of the Judiciary

The right to participate in public life is a fundamental human right, as enshrined in the 1948 Universal Declaration of Human Rights and Article 25 of the 1966 International Covenant on Civil and Political Rights.[305] This right is embodied in the holding of regular, fair, and impartial elections. For such elections to take place, and for their outcomes to reflect genuine political participation, peaceful power transitions, and inclusive governance, several foundational pillars must be in place. These include a constitution that represents all segments of society, inclusive electoral laws that avoid exclusion or marginalization, a clear break from the legacy of one-party or one-man rule, and the reform of any legislation that hinders the integrity of the electoral process.

To guarantee the full realization of Article 25 of the Covenant, proactive measures must be taken to safeguard freedom of expression and promote this right in the context of political and electoral participation. The right to freedom of opinion and expression is fundamentally linked to the right to participate in government through free and fair elections.[306]

305 Article 25 of the International Covenant on Civil and Political Rights states that "Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; (c) To have access, on general terms of equality, to public service in his country." The text of Article 21 of the Universal Declaration of Human Rights echoes a very similar perspective.

306 Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, twenty-sixth session of the Human Rights Council, July 2014, link:
https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F26%2F30&-Language=E&DeviceType=Desktop&LangRequested=False

Since electoral processes are not merely technical or procedural matters, though such aspects are important, they are, at their core, deeply political and rooted in a society's historical culture of participation. Thus, reforming or amending electoral laws alone is not enough. Issues such as the organization of electoral districts in line with administrative divisions, the adoption of an electoral system suited to the country's context, the genuine implementation of the principle of separation of powers and institutional cooperation, the independence of the judiciary, and the impartial role of law enforcement throughout the electoral process must all be addressed. Equally important is fostering the constructive involvement of media and civil society.

Because this report centers on judicial reform, the following section will focus specifically on the judiciary's role in supervising and monitoring elections, what the Syrian judiciary's current mandate entails, where its shortcomings lie, and what steps are necessary to strengthen its ability to carry out this responsibility effectively. Broader electoral considerations, such as electoral system design, political pluralism, or administrative reform, will not be addressed here, both due to the limited scope of this report and because they have already been explored in detail in a prior report by The Day After titled "Electoral Reform and Democratic Transition in Syria." [307]

307 TDA, Electoral Reform, op. cit.

5.1 The Role of the Syrian Judiciary in Elections

Despite the absence of even the most basic standards of impartiality, independence, and integrity in the Syrian judiciary—issues addressed in detail throughout this report—Syrian legislation has not granted the judiciary full authority to oversee the electoral process. Instead, it has assigned it marginal roles that fail to fulfill the necessary functions of genuine oversight. These roles appear to have been carefully designed to fit the political needs of the ruling regime.

In presidential elections, according to Election Law No. 5 of 2014, the Speaker of the People's Assembly is the one who calls for the vote. Nomination applications are submitted to the Supreme Constitutional Court, which reviews them to verify that each candidate meets the legal requirements. A candidate must secure written support from at least thirty-five members of the People's Assembly, and each member may endorse only one candidate. Given that the Assembly consists of 250 members, the maximum number of candidates is seven, even in the best-case scenario. The Supreme Constitutional Court is also tasked with reviewing appeals related to the presidential elections, with its decisions being final. It additionally oversees the work of the Supreme Judicial Committee in managing the electoral process. If no candidate secures an absolute majority, the President of the Supreme Constitutional Court announces a runoff between the two candidates with the highest number of votes. The winner of the runoff is declared President.[308] Final results are publicly announced by the Speaker of the People's Assembly.[309]

It is worth noting that the Speaker (not the judiciary) is the one who both initiates the election and announces its outcome. Meanwhile, the role of the Supreme Constitutional Court remains largely symbolic, especially considering that its members are appointed by the President of the Republic, who holds sweeping powers at the time the Constitution is enacted. The Supreme Judicial Committee, for its part, appears to have no meaningful role in these elections; its responsibilities regarding presidential elections are not specified by law. Furthermore, the executive regulations of the General Elections Law, issued by the Prime Minister's Office, do not clarify the matter, instead merely repeating what the law already states.

308 Articles 10-79 of General Elections Law No. 5 of 2014.
309 Articles 85, 86, and 89 of the 2012 Syrian Constitution.

- For elections to the People's Assembly (Parliament) and local administrative councils, the Supreme Judicial Elections Committee is entrusted with full supervision. It is tasked with taking all necessary measures to guarantee the freedom, fairness, and integrity of the process. It appoints members of the subcommittees and nomination committees, determines their locations, supervises their work, oversees the vote count, and announces the final results of the parliamentary elections. In contrast, for local council elections, it is the subcommittees, not the Supreme Judicial Committee, that announce the final results.[310]

- The Supreme Constitutional Court handles appeals concerning the validity of parliamentary elections. Administrative courts are tasked with appeals against the appointment decrees of local administrative council members, governorate councils and councils in provincial capitals. Appeals related to other local councils are handled by the relevant administrative courts.[311]

- On paper, Syria's electoral laws may give the impression that the judiciary plays a substantive role in supervising and monitoring elections at all levels. However, anyone familiar with the judiciary's structure and its deeply rooted deficiencies (as detailed in this report) knows that these roles are largely ceremonial. The Supreme Judicial Elections Committee is appointed by the Supreme Judicial Council, which in turn is completely subordinate to the executive branch. The Constitutional Court, tasked with ruling on electoral appeals, is formed by the President. Even the administrative judiciary's role in reviewing challenges to the appointment of local council members remains largely formal. Electoral integrity cannot be reduced to post-election appeals alone; it must encompass the entire process, from preparation to polling to vote counting and the announcement of results. Without the judiciary having the final, independent word at every stage, it is impossible to ascertain the genuine will of the voters.

310 Article 80 of Election Law No. 5 of 2014
311 Articles 83-84 of Election Law No. 5 of 2014.

5.2 Steps Required to Activate This Role

In modern political systems, the judiciary serves as the safeguard of political life and plays a central role in electoral processes due to its presumed independence, impartiality, and integrity. Judicial oversight of administrative and electoral committees, as well as its role in adjudicating electoral disputes and violations throughout the election cycle, offers a genuine guarantee for the protection of citizens' electoral rights from abuse and infringement. The judiciary is thus responsible for safeguarding all parties involved in the electoral process, reinforcing the democratic dimension of electoral participation, and ensuring that elections are free, fair, and transparent, thereby underpinning the legitimacy of democratic representation.[312]

For the Syrian judiciary to assume the responsibilities expected of it in a post-conflict phase and following the end of authoritarian rule, and to contribute meaningfully to elections that uphold neutrality, integrity, and transparency, a set of essential reforms must be enacted. Only then can future elections meet the standards of electoral justice as set out in the International Covenant on Civil and Political Rights, which was ratified by the Syrian Arab Republic and became part of the Constitutional Declaration for the Transitional Period. These reforms must include (not replace) broader legislative and institutional changes across all levels of governance.

Chief among the necessary steps is the establishment of an independent and impartial body to manage electoral processes, one that operates under fair laws in alignment with international standards. This body must reflect gender parity and ensure the equitable representation of all sectors of society in its composition. Its members should be selected through a participatory process involving the widest possible range of stakeholders, particularly civil society organizations and professional unions. The Supreme Judicial Council, once freed from executive control, should play a significant role in this selection process. Members of the electoral commission must also be guaranteed immunity while carrying out their official duties, though they should remain legally accountable through just and transparent mechanisms in cases of misconduct or abuse.[313]

312 Jawad Al-Daraji, The Role of Judicial, Administrative, and Political Bodies in the Electoral Process in Algeria, Master's Thesis in Law, Specialization in Constitutional Law, Faculty of Law and Political Science, University of Hadj Kheder, Batna, academic year 2014-2015, p. 31.
313 The Day After, Electoral Reform, op. cit.

The judiciary must be entrusted with a more robust role in overseeing the electoral process. The Supreme Constitutional Court should be made responsible for presidential elections from the announcement of the nomination period through to the final declaration of results. Decisions issued by the Independent Electoral Commission should be subject to judicial review by the Constitutional Court, whose rulings would be final. This court should also adjudicate appeals concerning the results of parliamentary elections.

Meanwhile, the administrative judiciary should be tasked with reviewing challenges to decisions issued by the Independent Electoral Commission during both parliamentary and local administrative elections, including appeals related to their outcomes. It should also have jurisdiction over challenges to preliminary decisions, such as decrees announcing the date of elections, the format of the ballot paper, or the appointment of electoral committees across all types of elections, including presidential ones. As these matters fall squarely within its mandate, administrative courts are best suited to review such executive decisions. Entrusting them with this responsibility would foster specialization, deepen institutional expertise, and build a coherent body of jurisprudence over time, ultimately providing stronger safeguards for the rights of voters, candidates, and all electoral stakeholders. It would also help accelerate the resolution of electoral disputes.

314 Ibid.

06

Track VI:

Drawing Lessons from International Judicial Reform Models

Syria's experience under decades of authoritarian rule bears significant resemblance to that of many other societies that endured the abuses of dictatorial regimes: arbitrary detention, repression, assassination, and the broader erosion of public life. Yet Syria also presents unique challenges, particularly the complexity and diversity of its social fabric, which has often played into the hands of the ruling authorities more than it has supported the popular uprising that began in 2011. While several countries with similarly entrenched authoritarian structures have succeeded in breaking from autocratic and dynastic rule and launching broad institutional reform (including in the judiciary) Syria remains in a state of suspension, awaiting either a political transition or regime change. Only then can the groundwork be laid for comprehensive structural reforms across the institutions of the Syrian state, the judiciary among them.

In any discussion of judicial reform, whether in terms of institutions, mandates, or systemic structures, it is vital to engage with the experiences of countries that have undergone similar transitions, while also remaining attentive to Syria's own legal and social particularities. This includes, for instance, the incorporation of Islamic law in some branches of legislation, such as personal status law and its legal implications.

The experience of several Latin American countries, long ruled by military dictatorships and plagued by enforced disappearances, institutional decay, and systemic judicial corruption, offers instructive parallels to the Syrian case. These international experiences were examined in detail in a previous chapter. Here, we focus specifically on key points of convergence and divergence with Syria's path. Chile stands out as a notable example of meaningful judicial reform. The country implemented a new criminal procedure system under an entirely revised legal framework. Among its reforms were the abolition of extended pretrial detention and the strengthening of the presumption of innocence, which is an important departure from practices that had kept individuals imprisoned for years while "under investigation."[315] These reforms were made possible through a broader modernization of administrative procedures, combined with the active involvement of legal academia, the bar association, the judiciary, and, critically, strong political backing.

315 See: De Shazo & Vargas, Judicial Reform in Latin America, op. cit.

It is worth noting that judicial reform is among the most complex forms of institutional reform, as it often confronts entrenched legal, political, and social obstacles. Chile's reform process unfolded gradually over a decade, encompassing two distinct phases of implementation. Some of the key lessons from Chile that could inform future judicial reform efforts in Syria include:

- Full governmental funding of the reform process
- A significant increase in the state budget allocation to the justice sector
- Comprehensive and ongoing training for judges, prosecutors, public attorneys, and judicial staff
- The establishment of more efficient, transparent, and equitable judicial administration, with greater emphasis on protecting the rights of defendants
- The modernization of judicial infrastructure, including the construction of new courts across Syrian cities and the development of detention facilities that comply with human rights standards
- Legal and academic support to improve the performance of the judiciary, based on robust systems of evaluation and outcome measurement

Another example worth studying is Venezuela, where judicial reform was integrated into a broader "state reform" agenda. This effort benefited from substantial financial support and technical assistance provided jointly by the government and the World Bank.[316]

While Argentina's experience exposed the problem of a judiciary lacking institutional grounding, the core obstacle to modernization lay in the entrenched culture of favoritism within the judicial body. This undermined merit-based appointments, politicized the selection process, and fostered clientelist relationships between judges and the political figures who appointed them.

Peru's reform trajectory, which gained momentum following the fall of the Fujimori regime and culminated in 2003 with the creation of a special commission for comprehensive justice reform, offers a useful example of the impact that government–civil society collaboration can have. Their joint efforts contributed to improving legal services, including the establishment of anti-corruption courts to investigate crimes committed under the previous regime, mechanisms for monitoring government ethics, the creation of seven commercial courts in Lima to resolve business disputes, and more effective use of the Constitutional Court to interpret the constitutionality of legislation.

Colombia's 1991 reforms, meanwhile, foregrounded the need to strengthen the legal and institutional basis for protecting human and civil rights. These reforms emphasized the independence of the Constitutional Court in hearing complaints brought by citizens against unconstitutional actions by the state or its officials, while assigning expanded responsibilities to the State Prosecutor's Office and the National Public Defender to monitor human rights violations. Notably, Colombia drew a firm line in rejecting the jurisdiction of military courts over civilians under any circumstances.

316 Ibid.

- Guatemala's efforts to reform its judiciary were not immune to the broader turbulence of internal conflict and high levels of violence. The country's experience underscores the difficulty of measuring meaningful progress in justice reform amid societal instability and mounting public demand for legal services.

- Venezuela offers a cautionary tale of the risks posed when judicial reform fails to insulate the courts from political agendas. The Supreme Court became a tool in the hands of the executive, reinforcing the ruling party's agenda while sidelining opposition voices. Although the reform process did bring certain improvements such as enhanced infrastructure and accelerated case resolution in labor law, it failed to address the entrenched deficiencies in criminal investigative procedures, resulting in a steady erosion of public trust in the judiciary.

- In Rwanda, the post-conflict process placed judicial accountability at the center of national recovery. The early years of the Kagame government were marked by institutional failures, as the country grappled with the aftermath of a civil war that had torn apart its ethnic and social fabric. This bears some resemblance to the Syrian context, particularly in the regime's decades-long efforts to entrench regional and sectarian divisions, culminating in the mobilization of minorities—especially the Alawite community to which Bashar al-Assad belongs—against the popular uprising of 2011.

- Nevertheless, Rwanda's gradual expansion of the Gacaca courts and their role in local reconciliation between opposing groups, however imperfect, offers important procedural and legal lessons. In Syria, however, the entrenched sectarian fractures that have deepened since 2011 require more than political settlements. What is needed is a foundational process of societal reconciliation, rooted in durable principles rather than elite bargains. This task falls heavily on civil society actors, grassroots organizations, political parties, and community leaders across all sectors, who must work to lay the groundwork for reestablishing trust between individuals and the state, especially through credible and accessible judicial institutions.

Rwanda's broader strategy under President Paul Kagame, which combined national reconciliation, anti-corruption efforts, and long-term development planning since 2000, has been instrumental in rebuilding the justice system and restoring public confidence in the rule of law. This was supported by political stability, investments in social capital, and strategic foresight, making Rwanda one of the fastest-growing economies in Africa in recent years.[317] The country also made notable strides in women's empowerment, enacting legal reforms that secured women's rights to land, inheritance, education, employment, and participation in the legal and judicial professions. Rwanda today stands as a leading post-conflict success story, emerging from the devastation of war and advancing rapidly, and resolutely, toward a more inclusive and institutionalized future.

Given the political complexity of the Syrian context, particularly the dual crisis of refugees abroad and internally displaced persons, any reform program must be supported by international organizations with a demonstrated record in strengthening the rule of law and structuring judicial systems. Chief among these is the World Bank, which has developed a clear methodology for legal reform and implementation strategies, especially concerning the judiciary's role in social life and economic development. As a core actor among multilateral institutions, the World Bank plays a leading role in promoting judicial reform, developing programs that include "law drafting, judicial performance measurement, and alternative dispute resolution mechanisms."[318]

317 " African development experiences: Rwanda as a model" - Arab Democratic Center, op. cit.
318 See: Joseph R. Thome, Heading South But Looking North: Globalization and Law Reform In Latin America, Law & Society 2000 Annual Meeting, Miami, Florida, 26–29 May 2000.

Judicial reform is also a key component of United Nations development programming. The United Nations Development Programme (UNDP) often collaborates with national justice sectors in countries that have signed on to legal and judicial reform frameworks. These programs typically focus on strengthening judicial institutions in areas such as combating drug-related crime and enhancing women's access to justice. As a pillar of this process, the judiciary is expected to foster an enabling legal environment that supports trade, investment, and financial development. According to the World Bank's experience in Latin America, inefficient judicial systems characterized by case backlogs, limited access to justice, lack of transparency, and weak public trust, pose major barriers to these developmental goals.

Sustainable economic development, then, was increasingly viewed as endangered by the absence of the rule of law. Legal reform has become a prerequisite for economic advancement: independent and dependable judicial systems are essential for integration into the global economy. This entails a responsibility to align domestic laws with international standards and to offer sufficient assurances to foreign investors and traders that legal protections will be upheld accordingly.[319]

After a series of challenging reform efforts, the World Bank came to acknowledge the limitations of externally imposed judicial reforms. As a result, it now emphasizes the importance of preliminary diagnostic studies and the adoption of context-specific benchmarks for reform, tailored to the institutional realities of each country. One instructive example is Ecuador's reform experience. In April 1995, the World Bank approved a US$10.7 million loan for a judicial reform project, framed within the country's broader modernization agenda. A comprehensive judicial reform strategy was completed that same year and updated in 2000 in consultation with key stakeholders (including development agencies) in order to establish a long-term agenda, define priorities, and ensure donor coordination.

319 See: Muna B. Ndulo & Roger Duthie, The Role of Judicial Reform in Development and Transitional Justice, International Center for Transitional Justice (ICTJ), July 2009

The judicial reform project, completed in 2002, was integrated into the national strategy and comprised four main components:

01

Case management systems and information support for primary courts in three major cities.

02

The introduction of alternative dispute resolution mechanisms.

03

A pilot training and legal reform initiative known as the Law and Justice Program, which included a dedicated fund for law and justice, modernization of property registration, a professional development program, a case study on legal education, and legal aid projects for poor women.

04

Institutional restructuring and infrastructure development for the courts.[320]

320 See: Gordon Barron, The World Bank & Rule of Law Reforms, Development Studies Institute, London School of Economics and Political Science, 2005, pp. 177–180, link: https://www.files.ethz.ch/isn/137920/WP70.pdf

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Referring to the World Bank's policies does not imply full adoption of its concepts or frameworks, but rather a selective engagement with its experience in relevant contexts—and a careful consideration of how applicable such models may be to the Syrian case. Every reform agenda, whether led by states or institutions, pursues objectives that may align with the interests of society and the state, or in some cases, conflict with them. Nonetheless, the judiciary remains the cornerstone of any legal reform program. Some of the most vital institutional reforms that can function as a direct embodiment of transitional justice, and those applicable to the judicial system in particular, include:

Vetting: A process of screening and removing individuals implicated in human rights violations from public institutions. Theoretically, vetting is both a transitional justice mechanism and a development tool. It must be coupled with allocating adequate resources to ensure the judiciary can properly perform its functions. This aligns with the core principles of the Beijing Declaration, which explicitly warns that

> **executive powers influencing judicial resources must not be used to intimidate or pressure specific judges.**[321]

321 Report of the Special Rapporteur on the independence of judges and lawyers, op. cit., p. 12.

Transitional justice mechanisms can support judicial reform efforts by reinforcing the rule of law, improving governance, and building trust between citizens and the state, ultimately increasing levels of social capital.

Truth commissions can play a role in judicial reform by assessing the judiciary's complicity in past abuses, identifying complicit personnel, and offering:

01 Recommendations for enhancing judicial independence and efficiency.

02 Deeper public understanding of the rule of law.

03 Increased public trust in judicial institutions.

The experience of European countries also offers instructive models, particularly regarding judicial councils, which function as intermediaries between the judiciary and executive to safeguard judicial independence in specific domains. These councils vary widely in structure and mandate across the European Union. In countries like France and Italy, they serve as administrative bodies that oversee judicial appointments and disciplinary action. In others such as Sweden and Denmark, they are actively involved in court budgeting, management, infrastructure, judicial training, and digitization.[322]

A comparative study examining the institutional development of the judiciary in 39 post-communist and Latin American countries concluded that a key prerequisite for meaningful judicial reform in transitional contexts is the degree of institutionalization achieved by the judiciary.[323] Courts cannot meaningfully contribute to democratic transformation unless they attain a certain threshold of organizational structure and autonomy. Only under these conditions do judicial institutions become strategic actors within the political system, and potentially tools through which political elites safeguard their own interests.

According to the aforementioned study, courts can only undergo meaningful institutionalization if political and legal conditions allow them to develop in a stable and predictable manner. Judicial effectiveness depends on such stability. This includes an internal political environment that is not deeply fragmented, free of intense ethnic divisions, and supported by a coherent and functioning state apparatus. These conditions were largely absent in the historical and political experience of the former Yugoslav republics.[324] When the authoritarian, ethnically driven regimes in Serbia and Croatia collapsed, none of the necessary dimensions for proper judicial institutionalization had been fully realized.[325]

322Violet Othman & Sandra Elena, "Judicial Councils International Best Practices" [Arabic], n. d., link: https://www.arabruleoflaw.org/files/the_rule_of_law_research_and_studies_book.pdf
323 See: Cristina Dallara, Judicial Reforms in Transition, University of Bologna, Institute for Research on Judicial Systems, Bologna, 2007, p. 18.
324 The case of the former Yugoslavia demonstrates that political instability has consistently undermined the institutionalization of the judiciary. This has hampered the functioning of the courts and led to the emergence of hybrid, ethnically authoritarian judicial systems, resulting in a form of ethno-political justice.
235 See: Gordon barron The World Bank & Rule of Law Reforms, op. cit.

In post-totalitarian countries like Syria, where the judiciary remains deeply politicized and subordinated to executive power, it is reasonable to expect that judicial systems will continue to suffer from low levels of professionalism, rigidity, and resistance to reform. Yet even in the aftermath of authoritarianism, judicial systems may preserve aspects of earlier technical and professional standards in their decision-making processes. During a transitional period, traditional modes of judicial appointment and internal professional socialization often coexist with newly introduced political dynamics. It is for this reason that democratizing these inherited technical and professional standards becomes essential to enabling the judiciary to function according to democratic norms.

Reform, in any case, cannot rely on legal change alone. It demands a broader cultural and structural transformation in the conception and practice of justice. For countries like Syria, where legal and judicial reform is an urgent imperative, the path forward must involve a phased, comprehensive program. This should include modernizing court infrastructure, updating legislation, and establishing alternative mechanisms for dispute resolution. It must also involve sustained training for judges, court personnel, and lawyers, the active inclusion of students, civil society, and women in legal reform efforts, and the digitization of court registries and administrative systems. Together, these measures would lay the foundation for improved access to justice and a strengthened rule of law.

07

Track VII:

Expanding the Judiciary's Role in the Transitional Period

In the future Syrian context following the fall of the authoritarian regime, the judiciary's role cannot remain confined to its traditional duties; handling civil, criminal, Sharia, and administrative cases. While such functions form the foundation of judicial authority in ordinary circumstances, and have been detailed in earlier parts of this report, the transitional phase in a post-conflict country like Syria demands that the national judiciary take on new, unconventional roles. These roles must align with the imperatives of transitional justice, ensure redress for victims, and address exceptional issues such as violations of property rights and other legacies of prolonged conflict and division.

7.1 The Important of the Judiciary in Consolidating Transitional Justice

The United Nations defines transitional justice as encompassing all the processes and tools a society uses to confront a legacy of large-scale past abuses, with the aim of securing accountability, establishing justice, and fostering reconciliation. These processes span both judicial and non-judicial domains and may include trials, reparations, truth-seeking efforts, institutional reforms, memorialization, the repeal of unjust laws, and the review of legislation that restricts rights and freedoms.[326]

In a complementary definition, the International Center for Transitional Justice refers to transitional justice as a set of judicial and non-judicial measures applied by various countries to address the aftermath of gross human rights violations, including criminal prosecutions, investigative commissions, reparation programs, and institutional reform. Crucially, the Center emphasizes that victims must remain central to the transitional justice process.[327]

326 The rule of law and transitional justice in conflict and post-conflict societies : report of the Secretary-General, August 2004, para. 8, p. 6, link: https://digitallibrary.un.org/record/527647?ln=en&v=pdf
327 "What is Transitional Justice?" International Center for Transitional Justice (ICTJ), n. d., link: https://www.ictj.org/what-transitional-justice

Accordingly, the Syrian judiciary will serve as a key actor in the implementation of transitional justice through specialized judicial committees. These committees, composed of legal experts, representatives from human rights organizations, and other professionals, will work in coordination with various bodies as part of a transitional justice framework designed to uncover the truth. The fact-finding and judicial committees will be entrusted with a number of critical tasks, including:

- Opening investigations into gross and systematic human rights violations committed by the regime or other actors.
- Prosecuting those directly responsible, as well as those who orchestrated such crimes, particularly individuals with command responsibility for war crimes or crimes against humanity.
- Documenting patterns of violations and recommending amendments to or repeals of legislation that has enabled impunity.
- Issuing analytical reports that examine the root causes of systematic abuses and proposing constitutional and legal safeguards to prevent their recurrence.
- Participating in national reconciliation initiatives by ensuring accountability, establishing the truth, and securing both moral and material reparations for victims.

> While subjecting truth commissions to an independent judicial authority is a necessary condition, it is not sufficient on its own. These bodies must be established through a sovereign decision endorsed by popular approval, provided with a clear mandate, and granted sufficient authority to operate independently. Moreover, victims must play a meaningful role in shaping the mechanisms of these commissions in order to strengthen their legitimacy in the eyes of society.

7.2 The Importance of the Judiciary in Addressing Property Violations and Restitution of Housing

Protecting property rights and ensuring the return of properties to their rightful owners—or offering compensation for damages suffered—is a central pillar of transitional justice. A just peace or genuine national reconciliation cannot be achieved without resolving this complex and sensitive issue. The years of war in Syria have revealed an unprecedented scale of property rights violations: systematic or indiscriminate destruction of residential neighborhoods, exceptional legislation such as Law No. 10 of 2018 legalizing state seizure of property, politicized rulings by the Counter-terrorism Court aimed at eliminating political opponents, and direct expropriation by de facto authorities and armed groups. Added to this are issues related to inheritance, especially with the large number of missing persons, and many civil incidents that are not officially recorded.

In addressing this issue, the judiciary faces a twofold challenge: the sheer volume and complexity of the cases and their diverse origins, and the institutional and functional shortcomings of the existing judicial system, particularly its subordination to the executive branch, its lack of independence, and the deep erosion of public trust. To respond effectively, it is recommended that Syria establish specialized judicial committees, independent from the conventional judiciary, tasked exclusively with housing and property restitution. These committees should be composed of:

Qualified judges with expertise in real estate law	Technical experts in property valuation, cadastral surveying, and urban planning	Representatives from the Bar Association and civil society organizations with experience in legal documentation and proof of ownership

These committees would be responsible for:

- Receiving complaints from victims and documenting allegations of property seizure, demolition, or forced or fraudulent transfers
- Adjudicating property disputes and issuing binding rulings for restitution or compensation
- Reviewing measures carried out under exceptional laws and assessing their legality according to international human rights standards
- Proposing legislative reforms to repeal property-related laws that entrenched rights violations and to prevent recurrence

In this regard, valuable lessons may be drawn from the experience of Bosnia and Herzegovina, particularly Annex 7 of the Dayton Peace Agreement of 1995, which established a legal foundation for the return of refugees and displaced persons and the recovery of their property—or fair compensation when restitution proved impossible. This annex obliged all parties to foster political, social, and economic conditions that facilitate return and reintegration, without discrimination.

A Real Property Claims Commission composed of nine members was established to resolve disputes over property seized or reassigned during the conflict. It was granted sweeping authority, including access to records and site visits. Its rulings were final, binding, and enforceable across the country.[328]

Despite the significance of this experience, it was hindered by several legal and practical shortcomings. Chief among them was the lack of judicial competence standards for committee members: the agreement merely required "moral reputation," overlooking the essential principles of integrity, professional competence, and legal qualification, as outlined in the United Nations Basic Principles on the Independence of the Judiciary. Additionally, the provision allowing for the appointment of non-citizen members raised concerns about the committee's ability to grasp the local context and its credibility among those affected.

Drawing from this experience, it is recommended that, in the Syrian context, independent real estate committees be established to adjudicate claims for restitution or compensation related to housing and property.

328 For more, see: The Day After (TDA), The Property Issue and its Implications for Ownership Rights in Syria, June 2019, link: https://tda-sy.org/wp-content/uploads/2020/04/Property-Issue-and-its-Implications.pdf

To ensure their effectiveness and legitimacy, the following safeguards should be observed:

Members must possess legal competence, expertise in real estate matters, and demonstrated integrity.

The committees should be constituted under a dedicated legal framework and operate within a nationally coordinated plan, developed in cooperation with the UN High Commissioner for Refugees and relevant Syrian and international human rights organizations.

Their decisions must be subject to appeal before the regular judiciary to guarantee the right to judicial recourse.

08

Track VIII:

The Role of Civil Society in Judicial Reform

The role of civil society in the judicial reform process is essential in any transitional phase in a society that has suffered from judicial corruption and the ravages of war, as is the case in Syria. Legislative reforms related to the judiciary are not sufficient without parallel and supportive efforts from various social forces—foremost among them civil society organizations. These actors are crucial in "protecting" the judiciary and ensuring its neutrality and independence.

While the functions of civil society have undergone notable transformations, its most important contributions remain closely tied to three core dimensions: monitoring the performance of government institutions, raising public awareness, and delivering services. These functions do not position civil society as a substitute for the state or a parallel authority under normal circumstances. Rather, civil society complements state institutions. However, in exceptional circumstances when the state is absent or its institutions are paralyzed, civil society's roles expand and its areas of engagement diversify significantly.

Within this framework, we can distinguish between two main forms of civil society engagement. The first is organized civil society, embodied in associations and formal institutions.[329] The second is unorganized civil society, which emerges from spontaneous, often grassroots, gatherings. This distinction is important especially in light of numerous studies that have demonstrated that civil society today is no longer dominated solely by NGOs. It now includes a broader array of actors—both structured and informal—that go beyond conventional classifications, offering new ways of thinking and acting.[330]

In states ruled by dictatorships for decades, deliberate policies were pursued to weaken the judiciary and render it subservient to authoritarian rule. The dominant approach to judicial reform in many transitional contexts has often focused narrowly on replacing individuals occupying top judicial posts, rather than instituting a coherent and systematic reform policy. This has proven insufficient. In fact, independent courts and the ability to access judicial review are among the most vital institutional and procedural requirements for the rule of law.

329 Civil Society and its Role in Reform, Proceedings of the Regional Symposium on Civil Society in Arab Countries and its Role in Reform, Edited by Mamdouh Salem, Alexandria, June 2004, p. 50.
330 Barbara Grabowska-Moroz & Olga Śniadach, "The Role of Civil Society in Protecting Judicial Independence in Times of Rule of Law Backsliding in Poland," Utrecht Law Review, vol. 17, no. 2, p. 56–69, link: https://-doi.org/10.36633/ulr.673

As more governments engage in reform efforts to strengthen their judicial and legal systems, the importance of civil society's role in these processes continues to grow. Civil society plays a pivotal role not only in officially sanctioned reform programs but also in independent initiatives. Its contributions to judicial reform are interwoven with its capacity to facilitate access to justice without the traditional constraints of legal standing or direct interest. Moreover, civil society actors support vulnerable groups and individuals who would otherwise be unable to access justice,[331] and they do so while advocating for the guarantees of fair trials in accordance with international treaties and human rights standards.

Civil society organizations actively respond to organized threats against judicial independence and the negative repercussions that a rollback of the rule of law imposes on civic space. This underscores that their role goes beyond defending the rule of law (particularly judicial independence) to also include confronting the retreat of civil engagement from its responsibilities in processes of reform and transformation. In this light, resisting efforts to undermine the judiciary requires coordinated action among civil society organizations and the formation of alliances that enhance their effectiveness, such as the creation of "Citizens' Observatories for Democracy." Even so, many civil society organizations have centered their critique of judicial reform on the right to a fair trial, which is an essential instrument in the practice of strategic litigation undertaken by many of these groups.

An informed and engaged civil society becomes particularly vital in contexts marked by long-standing authoritarian control. In such environments as the Syrian case exemplifies, regimes have often engineered, licensed, financed, subdued, and controlled what could be described as "interest groups." The mechanisms used have favored co-optation, repression, exploitation, and dominance, rather than negotiation or compromise.[332] Therefore, any genuine increase in the role of civil society, whether through formal organizations or informal collectives, as a social and developmental force in the post-dictatorship era necessitates a redefinition of the complex relationships between the state and civil society.

331 Summary of the Lawyers' Discussion Panel: Defining Concepts and Principles of Judicial Reform, Arab Center for the Development of the Rule of Law and Integrity, link: https://www.arabruleoflaw.org/Files/PDF/Judiciary/Arabic/P1/F-GLawyersAnalysisP1S1A_AR.pdf

332 We specifically mention here the Polish experience in the process of the role of civil society in the process of maintaining the rule of law in the civil space. See: Grabowska-Moroz & Śniadach, "The Role of Civil Society," op. cit.

As Ernesto Canales observes, civil society plays a fundamental and distinct role in generating reform "from the private to the public," or "from the bottom up" in contrast to top-down reforms often led by governing elites. Given that civil society and NGOs are now recognized as structural forces in reshaping the relationship between the public and the state, particularly in relation to the judiciary, it is clear that one of civil society's key tasks in Syria's future will be to help restructure the relationship between citizens and state institutions. This role intersects with the formulation, discussion, and implementation of reform, and depends on collaboration with local community leaders and academic actors. One of the most valuable lessons learned from civil society's engagement in judicial reform is the shift from reactive to proactive intervention. This enables reform momentum to emerge even when authorities are not themselves initiating change. For this reason, civil society organizations are urged to adopt more anticipatory, forward-leaning roles, especially in moments when reform processes remain incomplete or are still underway. [333]

The significance of civil society also lies in its ability to respond to shortcomings within reform processes, when possible. This includes creating space and opportunities for NGOs to promote legal awareness and strengthen the public's ability to engage with judicial reform mechanisms. Change cannot be meaningful if the broader public lacks sufficient understanding of the issues at stake. It is essential for the population to grasp not only the existence of a problem, but also its precise contours. This calls for a broad-based social campaign aimed at articulating the meaning of judicial reform and making it accessible to the general public.

In Syria, over the course of the conflict, civil society organizations have built significant expertise in human rights, conflict resolution, peacebuilding, advocacy, grassroots mobilization, and other areas that are indispensable to any process of legal and judicial reform.

333 See: Maria Bakolias, Legal and Judicial Development: The Role of Civil Society in the Reform Process, Fordham International Law Journal, vol. 24, no. 6, 2000, link: https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1778&context=ilj

Syrian civil society can play several critical roles in the context of judicial reform:

Advocacy and lobbying:

This includes campaigning for judicial independence, pushing for constitutional amendments, calling for the repeal or revision of laws that undermine the judiciary's integrity, and promoting new legislation that protects judicial independence, upholds gender sensitivity, and prevents all forms of discrimination.

Documentation and accountability:

Civil society can act as a watchdog for the integrity of trials, documenting human rights violations and corruption cases. These organizations are central to the success of transitional justice initiatives in Syria by raising legal awareness, facilitating court procedures, and documenting crimes, violations and abuses.[334] They can also monitor the course of transitional justice, support and advise truth-seeking commissions, encourage victims to give testimony, represent victims' cases, and file legal actions against perpetrators.

Training and capacity building:

Civil society organizations can contribute by organizing training programs for judges, lawyers, and court staff, with an emphasis on international law and human rights standards. These efforts can be strengthened through partnerships with international organizations that provide necessary resources and expertise.

Awareness and education:

Public campaigns, workshops, and community outreach programs can help promote a culture of respect for the judiciary and for the principles of justice.[335]

334 Transitional Justice in Syria: Between Reality's Challenges and Future Aspirations" [Arabic], Pro-Justice website , 11 July 2018, link: https://shor-turl.at/d7Yvd

335 From the in-depth qualitative interviews with Professor Muhannad Sharabati, a researcher and human rights activist in Syrian civil society issues.

It is important to note that government political agendas directly shape how civil society organizations engage with judicial reform. This influence tends to follow two trajectories: one involves restricting civil society's role in monitoring and evaluating judicial reform processes, while the other limits civil society's access to funding,[336] which is a primary tool used by authorities to curtail its influence. In parallel with these constraints, governments may encourage the emergence of a "new civil society" operating under legislation that aligns with their institutional reform agendas, including judicial reform, yet offering no critique, development, or independent oversight.

Overcoming the structural and political challenges facing civil society requires meaningful access to judicial review. The ability to respond to the shrinking civic space depends on the adoption of binding legal decisions that allow for the review and reversal of arbitrary political actions, even those rooted in discretionary authority. The rule of law requires a legal and political framework where the right to a fair trial is upheld, courts are independent, and judicial review mechanisms are accessible.

The vision for a future Syrian state must include a participatory society and strong public institutions. A robust civil society must play an active role in advancing development—an effort that necessarily entails respect for rights and transparency in its own operations. Throughout the Syrian uprising, civil society organizations played crucial roles—from rights education and legal awareness to supporting accountability efforts, monitoring and documenting human rights violations, and providing critical services during wartime and emergencies.

Looking ahead, civil society will shoulder significant responsibilities in advancing legal and judicial reform during the transitional period. To meet this challenge effectively, it must overcome the structural weaknesses and internal fragmentation that have hindered the institutionalization of its networks. It must also enhance coordination through broader coalitional frameworks that deepen its embeddedness in local communities and shift demands for judicial reform out of elite circles and into the realm of urgent public concern. Thus, by leveraging the expertise and experience accumulated over the past decade, Syrian civil society can become a key force in driving democratic transition.

336 "The Effects of Foreign Funding on Civil Society Organizations in Egypt and Tunisia" [Arabic], Arab Democratic Center, 25 February 2016, link: https://democraticac.de/?p=28261

09

Track IX:

Women's Participation in Judicial Reform

The independence, impartiality, and integrity of the judiciary reflect the composition and structure of society itself. Ideally, the judiciary should be seen as a legitimate institution capable of delivering equal justice under the law. In this regard, judicial diversity and the full and equal participation of women in the judiciary are essential. Women appearing before courts—whether as defendants or as civil litigants—are entitled to full equality before the law, to non-discrimination in the administration of justice, and to access a fully independent and impartial tribunal. These fundamental rights cannot be realized if the judicial profession excludes women, whether by law or in practice.

The inclusion of women as judges improves judicial reasoning, enhances the protection of women's human rights, and yields better outcomes for women in the justice sector. A more diverse judiciary—one that reflects the society it serves—is better equipped to respond to the wide array of social and personal experiences that come before it. By contrast, the absence of full and equal representation of women negatively affects the quality of judicial decision-making, particularly in cases involving women's rights.

Globally, the full participation of women in the judiciary remains incomplete. Underrepresentation is still prominent across many jurisdictions. While global data shows that women account for just over %25 of judges worldwide, this proportion drops below %10 in many countries and regions.[337] Moreover, women are still underrepresented in high-ranking judicial positions and leadership roles. In appellate courts, for instance, their presence remains particularly limited. Many female judges tend to be concentrated in family or juvenile courts, while being excluded from criminal jurisdictions or from religious and customary courts.[338]

International law and standards call on states to take concrete measures to address these disparities—both legal and practical—that hinder women's access to and participation in the judiciary. These obligations are rooted in broader international principles of judicial independence, as well as in legal frameworks that guarantee women's human rights on the basis of equality and non-discrimination. Several international instruments addressing gender equality explicitly affirm women's right to equal participation in public life, including equal access to and representation within judicial institutions.

337 See: Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference, 111th Session, 2023.
338 There is no information on the Syrian Ministry of Justice website or any other official government website about the number of women serving as judges.

Article 7 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) obliges states to "take all appropriate measures to eliminate discrimination against women in the political and public life of the country." To this end, it requires states to guarantee women's right "to participate in the formulation and implementation of government policy and to hold public office."[339] This article goes beyond simply removing legal obstacles to women's judicial participation; it also requires practical and structural interventions, including temporary special measures, to ensure that women fully enjoy the right to hold judicial office. The CEDAW Committee has emphasized that while eliminating legal barriers is critical, it is not sufficient. What matters most is closing the gap between legal guarantees and lived realities, i.e. between the formal right to participate and the actual extent of women's participation.

The Beijing Declaration and Platform for Action, adopted at the Fourth World Conference on Women in 1995, also addresses this issue. It calls on states to guarantee women the same rights as men to serve as judges, lawyers, and court officials. It further encourages states to set targets to achieve gender balance in the judiciary and to implement the necessary measures to significantly increase women's representation with the goal of achieving equality.[340] A number of persistent barriers continue to obstruct women's full and equal participation in the judiciary. The most important of these include:[341]

339 See: Convention on the Elimination of All Forms of Discrimination against Women, Article 7; International Covenant on Civil and Political Rights, Article 25; Human Rights Committee, General Comment No. 25, The right to participate in public affairs, voting rights and the right of equal access to public service (Article 25) December 1996.
340 See: Beijing Declaration and Platform for Action, a Plan of Action for the Empowerment of Women.
341 See: Women and the Judiciary, Geneva Forum Series no. 1, https://www.icj.org/1st-icj-geneva-forum-of-judges-and-lawyers-accountable-national-security-policies-the-role-of-judges-and-legal-practitioners/

01 Recruitment and Appointment Processes

While diversity in judicial recruitment and appointment systems may be acceptable, these processes must uphold the independence and impartiality of the judiciary, protect against political or other forms of interference, and prioritize diversity and gender equality in terms of composition, standards, and procedures. Ensuring sustainable equality requires appointing women judges through more transparent and merit-based methods, such as competitive examinations, rather than merely announcing vacancies and recommending pre-selected candidates.

For this reason, many advocate for the adoption of quota systems as a temporary measure to promote the appointment and advancement of women in the judiciary.

A notable example is the 2014 Tunisian Constitution, which, for the first time in the country's history, devoted a standalone article (Article 46) to women's rights. It stipulates that: "The State is committed to protecting women's acquired rights and to supporting and developing them. It guarantees equal opportunities for men and women to assume responsibilities in all domains. The State seeks to achieve gender parity in elected councils and shall take the necessary measures to eliminate violence against women."[342] A field study on Women's Professional Participation in the Judiciary in Tunisia found that, as of 2016, women made up %42 of all judges in the country, while female lawyers accounted for around %45 of the legal profession.[343] The study reflects a noticeable increase in women's entry into the judicial field quantitatively, but their presence in decision-making roles and senior judicial positions remains below expectations.

342 "Women's Rights in the Constitution of the Tunisian Republic" [Arabic], Arab Women's Center for Research and Training, 27 January 2014, link: https://wrcati.cawtar.org/index-.php?a=d&law=327
343 "Study: Women's presence in the judiciary rises to 42%" [Arabic], Tunisian Radio Portal, 21 July 2017, link: https://shorturl.at/OVpQZ

02 Opposition, Gender Roles, and Stereotypes

Deep-rooted stereotypes, social norms, and prescribed gender roles often act as barriers to women's full and equal participation in the judiciary. In many contexts, these obstacles are reinforced by strong resistance to women's involvement in judicial work. This resistance can stem, for instance, from religious interpretations concerning women's roles in society or in legal institutions. In some cases, conservative religious beliefs are used by authorities as a pretext to limit women's participation in public life, including the judiciary. These patterns are tied to entrenched gendered assumptions about women's roles in society, most notably the view that women are primarily responsible for child-rearing. Such assumptions perpetuate the belief that women cannot sustain a professional judicial career once they become mothers, thereby discouraging or limiting their professional advancement.

03 Preconceived Notions and Discrimination

Female judges are often subjected to greater scrutiny than their male counterparts. Their competence is frequently questioned, and they are regularly perceived as biased, particularly in cases related to women's rights. This persistent skepticism reinforces gender-based prejudices within the judiciary and undermines the legitimacy of women's judicial authority.

04 Lack of Training and Awareness

Given the need for both men and women to accumulate experience in judicial work, it is essential to establish dedicated training programs to prepare female judges. Equally important are public awareness campaigns that challenge entrenched biases and misconceptions surrounding women's roles in the judiciary. Ensuring women's equal access to judicial careers and their equitable representation is not solely the responsibility of women themselves; men must also play a constructive role in supporting gender inclusion in the legal field. Increasing judicial diversity strengthens the judiciary's ability to understand and respond to a wide range of social experiences and contexts. This, in turn, enhances the justice sector's responsiveness to the needs of women and other marginalized groups.

Promoting full participation of women in the judiciary also has broader implications for advancing gender equality:

- The appointment of women to judicial positions—especially at senior levels—can help break down gender stereotypes and shift perceptions about the roles deemed appropriate for women and men.

- The visibility of women in judicial authority can pave the way for greater female representation in other spheres of decision-making, including the legislative and executive branches of government.

- A growing presence of female judges can inspire more women to pursue justice and assert their rights through the legal system.

341 See: IGAD Strategy on Women's Participation and Representation in Decision Making https://www.academia.edu/2542469/IGAD_Strategy_on_W

In many contexts, female judicial officers have demonstrated a strong commitment to upholding gender equality and protecting women's rights. This is often reflected in rulings related to gender-based violence, family law, divorce, and labor rights.

Civil society has played a vital role in supporting women's integration into the judiciary. In Kenya, for example, women's representation in the judiciary ranks among the highest in Africa. By 2012, women made up 40 of the country's 104 judges; in 2013, the number rose to 187 out of 424, and women in Kenya hold several high-ranking judicial positions.

This progress is largely attributed to sustained civil society advocacy, which helped secure explicit legal and political commitments to gender equality. Kenya's 2010 Constitution introduced a pioneering provision stipulating that "no more than two-thirds of the members of elective or appointive bodies, including the judiciary, shall be of the same gender." This affirmative measure was intended to address historical discrimination. The Constitution also mandates that at least three of the eleven members of the Judicial Service Commission must be women, and that the Commission's functions including nominating judicial candidates, must be guided by the principle of gender equality.[344]

According to a report by UN Women,[345] since the onset of the Syrian conflict, Syrian women and grassroots women's initiatives have been deeply involved in service provision and conflict resolution. They have led local ceasefire negotiations, engaged in mediation and dispute resolution, coordinated humanitarian and relief efforts, managed educational systems, participated in local governance, and developed innovative means of supporting their families and communities. These contributions are especially noteworthy given the structural limitations placed on women's public participation.

344 See: Costantinos Berhutesfa Costantinos, IGAD Strategy on Women's Participation and Representation in Decision Making, https://www.academia.edu/25424 69/IGAD_Strategy_on_W.

345 Hanan Tabbara & Garrett Rubin, Women on the Frontlines of Conflict Resolution: Community Voices from Syria, Iraq and Yemen, UN Women, June 2018, link: https://arabstates.unwomen.org/e n/digital-library/publications/2018/8 /women-on-the-frontlines-of-conflic t-resolution

Research from the Council on Foreign Relations indicates that peace processes that include women are %64 less likely to fail and %35 more likely to endure over time.

These findings underscore the importance of including women in Syria's future judicial reform processes. Women have already played active roles in legal-adjacent fields, particularly in cases of enforced disappearance and missing persons. Their engagement in victims' associations, civil society organizations, and legal advocacy groups positions them to contribute meaningfully to transitional justice. Their inclusion in key positions within the judiciary is not only a matter of fairness; it is a strategic imperative for successful institutional reform and durable peacebuilding.

Likewise, empowering female lawyers and legal professionals is essential to diversifying and strengthening Syria's justice mechanisms. This includes increasing women's leadership in investigations and accountability procedures, and ensuring their equal representation. Feminist legal organizations have emphasized the need for such efforts to align with transformative justice principles and support strategic litigation.[346]

While the right to equality and non-discrimination forms the legal basis for women's inclusion in the judiciary, the need for full participation extends beyond rights alone. It is also essential to building a democratic state founded on equality, rule of law, and inclusive citizenship.

346 Marianna Karkoutli is a founding member and legal investigator at Huquqyat, an organization for women human rights defenders. She shares her experience in empowering women to access justice and strengthening the role of female lawyers in investigations and accountability proceedings.

Finally,

shortly before the completion of this research plan, a major and dramatic development took place: the fall of the Syrian regime following a military operation led by Hayat Tahrir al-Sham (HTS) and rebel factions. One of the tasks undertaken by the new administration, which assumed responsibility for managing public affairs during this transitional phase, was the reorganization of the judiciary. The consolidation of the rule of law in the new state will hinge on a comprehensive reform of the judiciary in all the dimensions addressed throughout this study. This calls for continued research to monitor how the new administration engages with the judiciary, and to assess the impact of its forthcoming decisions and measures on the judiciary's roles, functions, and powers.

We also hope that this study will serve as a useful resource for all those concerned with and actively engaged in reforming the Syrian judiciary, whether in its conventional or expanded roles, in ways that meet the aspirations of Syrians from all backgrounds and communities to establish a state grounded in citizenship, the rule of law, and justice.

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