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ILAC Rule of Law Assessment Report:

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# Syria 2021

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International  
Legal Assistance  
Consortium

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Based on the findings of ILAC experts and local partners, this report identifies the features of the justice sectors in the different geographical areas of Syria as they have unfolded since 2017.

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## Acronyms and abbreviations

|                 |  |
|-----------------|--|
| <b>AANES</b>    | Autonomous Administration of North East Syria    |
| <b>AFLA</b>     | Aleppo Free Lawyers Association                  |
| <b>CIA</b>      | US Central Intelligence Agency                   |
| <b>COAR</b>     | Center for Operational Analysis and Research     |
| <b>COVID-19</b> | Coronavirus disease of 2019                      |
| <b>CSO</b>      | Civil Society Organisation                       |
| <b>DFNS</b>     | Democratic Federation of Northern Syria          |
| <b>DMJ</b>      | Director of Military Judiciary                   |
| <b>EASO</b>     | European Asylum Support Office                   |
| <b>ESCWA</b>    | Economic and Social Commission for Western Asia  |
| <b>ES</b>       | Turkish Military Operation ‘Euphrates Shield’    |
| <b>GCFG</b>     | Government Controlled area Focus Group interview |
| <b>HTS</b>      | Hayyet Tahrir al-Sham                            |
| <b>ICTJ</b>     | International Center for Transnational Justice   |
| <b>IDP</b>      | Internally Displaced Person                      |
| <b>IFLA</b>     | Idlib Free Lawyers Association                   |
| <b>ILAC</b>     | International Legal Assistance Consortium        |
| <b>ISIS</b>     | Islamic State in Iraq and Syria                  |
| <b>JAA</b>      | Syrian Judicial Authority Act                    |
| <b>JID</b>      | Judicial Inspection Department                   |
| <b>MOJ</b>      | Ministry of Justice                              |
| <b>NE</b>       | North East Syria                                 |

|              |   |
|--------------|---|
| <b>NEFT</b>  | North East Field Team interview                                 |
| <b>NGO</b>   | Non-Governmental Organisation                                   |
| <b>NWID</b>  | North West Idlib interview                                      |
| <b>NWTC</b>  | North West Turkish Controlled area interview                    |
| <b>OB</b>    | Turkish Military Operation ‘Olive Branch’                       |
| <b>PCC</b>   | Peace and Consensus Committee                                   |
| <b>PKK</b>   | Kurdistan Workers’ Party ( <i>Partîya Karkerên Kurdistanê</i> ) |
| <b>PS</b>    | Turkish Military Operation ‘Peace Spring’                       |
| <b>PSL</b>   | Personal Status Law   |
| <b>PYD</b>   | Democratic Union Party ( <i>Partiya Yekîtiya Demokrat</i> )     |
| <b>RA</b>    | Reconciled Area interview                                       |
| <b>SACD</b>  | Syrian Association for Citizens’ Dignity                        |
| <b>SBA</b>   | Syrian Bar Association  |
| <b>SDF</b>   | Syrian Defence Force  |
| <b>SGBV</b>  | Sexual and Gender Based Violence                                |
| <b>SIG</b>   | Syrian Interim Government                                       |
| <b>SJC</b>   | Supreme Judicial Council  |
| <b>SNA</b>   | Syrian National Army  |
| <b>UNHCR</b> | UN High Commissioner for Refugees                               |
| <b>USD</b>   | US dollars  |
| <b>YPG</b>   | People’s Protection Units ( <i>Yekîneyên Parastina Gel</i> )    |

## Executive summary

**Beginning in 2013, the International Legal Assistance Consortium (ILAC) has worked to support the rule of law in Syria. Part of that work involved conducting a rule of law assessment, published in 2017, to map the features of the justice sectors in the different areas in Syria and identify the commonalities and distinctions between those systems. Given the changes on the ground since 2017, ILAC has updated that assessment to reflect the justice institutions and mechanisms currently in place throughout the country.**

The current study will not include a detailed review of the Syrian justice system prior to or during the first several years of the conflict, since that information is contained in the 2017 report. Indeed, the reader is invited to review that report for background on many of the topics included in this report.

This assessment describes the military and political developments in Syria as they have unfolded since 2017, concentrating on the impacts that those changes have created in the justice systems in various regions in the country. The report should be viewed as a reference document describing the justice sector in Syria, intended to improve the international community's understanding of those factors hampering the Syrian people's ability to seek accountability and justice within their current society.

### **Few notable changes in the justice system, for most parts of Syria**

In a substantial part of Syria – primarily those areas controlled by the Assad government in 2016 – there has been relatively little change in the justice system. The institutions and processes used by the official Syrian courts in those areas remain largely unchanged. Courts and justice institutions generally operate in the manner described in the prior ILAC assessment. The ordinary civil and criminal courts do not meet international standards for independence and impartiality, while the Counter-Terrorism Court and the Military Field Courts continue to operate in open defiance of those principles.

One sector within the Syrian state system where small changes have materialised is the Personal Status Law concerning the rights of Syrian women, where there have been some amendments. Legislative changes have been implemented concerning marriage, custody rights and divorce, which could be regarded as improving women's rights under Syrian law. However, these amendments have taken place on the periphery, neither impacting most women nor addressing the numerous other issues facing women in Syria.

Very little progress has been made to resolve such issues as gender-based violence, social control, gender-based discrimination, forced marriage and restrictions on a woman's freedom of movement.

Similarly, revisions to the Penal Code have eased the legal burden of prosecuting 'honour killings' but, given the reticence of the Syrian authorities to bring charges for such crimes, the practical impact has been minimal. In short, little significant change has occurred in the justice sectors in those areas that have remained under government control during the last four years.

### **Where power has shifted, the justice system has been significantly affected**

A different picture is seen, however, in those areas that have come under government control since ILAC's previous report. In most of those areas – Aleppo, Daraa, Sweida and East Ghouta – the Assad government has made some effort to reinstall official state justice structures. But for various reasons, even the minimal protections occasionally provided elsewhere by the government courts are mainly absent in these areas.

In areas such as Aleppo city and East Ghouta, where control was wrested from the opposition groups by force, dominance by pro-Assad forces is complete. Yet, justice is largely absent. Instead, using both official means and raw violence, residents in these areas face numerous forms of retribution with little redress.

Violence is also prevalent in the South, where government forces and their Russian allies have moved to eliminate areas that were largely self-governing in 2016. In those areas, however, government efforts to reinstall the Syrian state courts and other justice institutions have been resisted. For example, the Syrian army managed to take control of Daraa, removing the 'House of Justice' and other forms of local self-governance described in our 2017 assessment. Yet the reconstituted government courts and other justice institutions remain largely unused by the residents, who often avoid the government system in favour of alternative forms of informal dispute resolution.

Similarly, in the adjacent governorate of Sweida, Syrian army and Russian-controlled units have reimposed Syrian government rule in a predominantly Druze area that in 2017, was largely outside of the conflict zone. Official Syrian state institutions now exist in parts of the area, but ongoing clashes between the Druze and pro-Assad forces have substantially reduced their impact. Instead, in Sweida traditional tribal justice systems have made a resurgence.

## **Northern Syria: Social justice aspirations and fragmented legal developments**

Equally dramatic, but significantly different, changes have occurred in the North. When the earlier ILAC assessment was conducted in late 2016, northern Syria was almost totally outside government control. Significant areas along the Turkish border were controlled by Kurdish forces. They had established a nascent federation of three cantons, generally known at the time as ‘Rojava’, which embraced governance based on an idealistic set of ‘social justice’ principles. Interspersed between and around these Kurdish forces were a variety of armed conservative Islamist groups (including the Islamic State in Iraq and Syria [ISIS]) and more moderate Arab forces opposed to the Assad government.

Four years later, the map of northern Syria – and the justice systems in the region – have changed dramatically. Substantial portions of that area are now occupied by Turkish troops and administered by allied Syrian opposition groups, composed largely of refugees from further south. At the same time, a single Islamist faction, known as Hayyet Tahrir al-Sham (HTS), has taken control of Idlib in the west, under the tacit protection of Turkey.

The centre of gravity for Kurdish forces has shifted east, where the Kurds allied with American and other international forces to destroy the ISIS strongholds in the Syrian desert. The Kurdish authorities accordingly now administer a geographically large, but sparsely populated, area containing significant numbers of traditional Arab tribes.

Further complicating matters, under various political arrangements, the Syrian army, its Russian allies and even American forces have joined with various of these players to create a latticework of security zones across the north of the country. The result has been a patchwork of justice systems throughout the region.

### **Idlib governorate: a justice system based on *Sharia***

On one extreme is the HTS-sponsored Salvation Government in Idlib governorate. In late 2017, HTS gained military and territorial control from its Islamist rivals, establishing the Salvation Government, and declaring that *Sharia* would be the only source of law in the region. The Salvation Government amalgamated the *Sharia* courts created by HTS and other Islamist groups to create a rudimentary justice system based on the teachings of Islam.

Because it is based on *Sharia* tenets, the Salvation Government system has few written laws or procedures. Judges in these courts are not chosen for their expertise in the law, but instead must have a familiarity with *Sharia* and a reliably ‘revolutionary background’. HTS officials and other powerful figures exert considerable power over court decisions. Although the Salvation

Government has assigned trained lawyers as consultants to the *Sharia* courts, to improve the legal reasoning of decisions, the outcome in many cases has been based on an indecipherable mixture of *Sharia*, Syrian law and corruption.

This confusion particularly disadvantages women in the area. These risks are especially acute in cases concerning gender-based violence, enforced marriage, or the determination of custody or inheritance, since women have no legal basis to contest corruption or to challenge traditional misconceptions or misinterpretations of religious norms. Coupled with the lack of women judges and lawyers in the Salvation Government system, these issues pose major problems for women's access to justice.

### **Northwest: a Syrian system under Turkish control**

Geographically adjacent to – but ideologically dissimilar from – the Salvation Government are areas controlled by a different opposition structure known as ‘the Syrian Interim Government (SIG)’. The SIG was formed by an umbrella group of anti-Assad forces, many of whose members evacuated to northern Syria or Turkey from areas to the south to escape government retribution. Significant numbers of these refugees were judges and lawyers trained in the Syrian system. Many belonged to groups that received Western assistance, and some worked for international organisations.

In 2016, these groups and individuals were part of the mixture of forces in the North. The situation changed beginning in late 2016, when Turkey initiated a series of military operations in northern Syria to clear the area of Kurdish and ISIS forces. The SIG was appointed by Turkey to administer these areas, supported with Turkish security and financial resources.

The SIG accordingly sought to recreate the Syrian legal system in the Turkish-controlled areas, without the autocratic features of the Assad government and the Ba’ath Party. The SIG does not utilise *Sharia*, but instead applies Syrian law – minus the provisions that have been politicised through their connection to the Ba’ath Party or which contradict the principles favoured by the Syrian opposition. In the same vein, the SIG courts are structured like Syrian courts, utilising judges and lawyers trained at Syrian law faculties.

Though outwardly professional, the SIG justice system remains tainted by its close association with and reliance upon Turkey. Many judges and lawyers in the SIG-administered system previously resided outside northern Syria and were formerly part of the Syrian government system. They are now supported by Turkey, and are often seen to favour their benefactor when Turkish interests are at stake. While the SIG justice system in many respects can be viewed as a major improvement on the official Syrian system, and is a vast improvement on the HTS system, it suffers from the inevitable flaws of an illegitimate structure imposed by an occupying power.

### **Northeast: The AANES justice system**

Yet another, perhaps even more distinctive, justice system in Syria operates in the areas under Kurdish control. In many respects, the current system in these areas, now known as the Autonomous Administration of North and East Syria (AANES), is a more detailed iteration of the ‘social justice system’ described in our 2017 report. Both the structure of the justice system and the nature of judicial decision-making follow several progressive principles, embodied in documents adopted by Kurdish quasi-political bodies.

Based on these principles, the Kurdish system contains several unique attributes that are intended to create gender equity and foster access to justice for women. At the same time, however, the rough correlation of ‘social justice’ with populist rule has created uncertainty regarding legal rights and judicial outcomes. These tendencies are exacerbated by the lack of legally trained personnel in the Kurdish-controlled regions.

Beyond these doctrinal issues, the significant territorial relocation of Kurdish authority, due to their military successes and failures, has created a new set of problems. The loss of Kurdish-majority areas along the Turkish border has diminished the number of adherents to the ‘social justice’ principles lying at the heart of the AANES system. At the same time, military victories in the eastern deserts have left the Kurds in control of Arab-majority regions strongly influenced by tribal traditions.

As a result, the Kurdish authorities find themselves as governors – and often jailers – of those who share neither their Kurdish heritage nor social justice inclinations. Their idealistic but undeveloped legal system, accordingly, struggles with these unanticipated roles in a dynamic political and military environment.

### **Can the legal profession play a role in Syrian conflict resolution?**

The decade-long conflict in Syria has taken a toll on the Syrian people, but has also led to the destruction and weakening of public institutions, courts and administrative systems. With a judiciary heavily controlled by the government, and operated by judges and lawyers who have been systematically targeted by all parties to the conflict, the conditions for justice actors to function independently and deliver trustworthy legal services are extremely difficult.

Although generally absent from the geopolitical discussions concerning the future of Syria, lawyers and judges have considerable influence over the choices that affect individual Syrian lives. Approaches to accountability and re-establishing the rule of law in Syria should consider possible ways to harness that influence. Syrian legal professionals have shown a willingness to engage in dialogue and contribute to a future Syria based on the rule of law.

ILAC believes in the importance of encouraging such a dialogue, both among Syrian colleagues in different parts of Syria and with the international community. The rule of law can be viewed as a technical process for governance, but together with human rights standards, it can also set forth a normative framework for sustainable development. Investment in justice institutions and its actors is necessary to lay the foundations for the rule of law and for accountable institutions in a post-conflict setting.

# 1 Introduction

**Established in 2002, ILAC is an international non-governmental organisation working to ensure equal access to justice for all. Our consortium comprises more than 50 legal organisations and experts representing over 3 million legal professionals worldwide. Working with our members, our goal is to rapidly respond to and assess the needs of the justice sector in conflict-affected and fragile countries and help strengthen the independence and resilience of justice sector institutions and the legal profession.**

In preparing this updated assessment in Syria, ILAC faced the twin challenges of an ongoing conflict and the global COVID-19 pandemic, which made in-person field interviews impossible. To meet these challenges, the ILAC team worked with local partners in each of the four relevant geographic regions in Syria. Each of these local partners was familiar with and knowledgeable about their assigned region.

The precise interview methodology employed varied from region to region, depending on security issues and political sensitivities. These concerns, coupled with the substantial pandemic restrictions in place during the research phase, precluded the direct involvement of the assessment team in most interviews and focus groups.

At the same time, the ILAC team worked closely with our local partners to make certain that important topics were pursued, and relevant data were obtained from those interviewed. While this approach lacked much of the face-to-face interaction available for our 2017 report, the skill and dedication of our local partners provided ILAC with a rich supply of accurate and incisive information.

Through our partners, we have interviewed around 150 lawyers and judges (47 women) in the different parts of Syria. No names are used in order to protect the identity of those interviewed. Their identities are known to the authors and to ILAC. The report provides a technical assessment of the justice system and interviews have deliberately sought the views of lawyers and judges who are experts on this system, rather than political representatives of the Syrian government or the other parties to the conflict.

Because of the omnibus nature of the assessment, the ILAC team also devoted substantial effort to desk research of secondary sources, both in Arabic and English. This research has allowed us to frame the data from our interviews in the broader context of the multi-faceted Syrian conflict.

The practical limitations imposed on the assessment team, especially by the pandemic, were frustrating for both ILAC and many of those eager to discuss the issues facing their home locale and country. Nonetheless, with the

outstanding assistance of our Syrian partners and the cooperation of the legal professionals they contacted, this report offers significant insights into the nature of the various justice systems currently functioning in tumult in Syria.

However, in some of the areas discussed in the report, the situation on the ground was also subject to frequent change, which could have an impact on the reliability of the information received. An otherwise accurate description of the situation one day may not necessarily reflect the developments a few days later. In a conflict setting, many of the actors also had strong motivation to put across their own perspective of the situation. ILAC has tried to manage these limitations by using secondary sources to confirm statements in the interviews. Where opinions differed among Syrians, the report tries to address this by presenting both sets of opinions.

We have tried to stay true to the terminology used by the actors in the different areas. Thus, if a body calls itself a 'court', and those who serve on its bench refer to themselves as 'judges', ILAC has stayed true to this terminology, notwithstanding the fact that these actors may not have been appointed as judges in accordance with the Syrian Constitution. ILAC does not in any way intend the use of such terminology to imply an endorsement of the work of the groups in question or of the institutions or policies they create. Rather, the decision to use the same language used by the Syrians who were interviewed was made precisely to limit ILAC's role to that of an impartial observer, dedicated to allowing all sides to be heard.

Finally, ILAC would like to express our deep gratitude to the many individuals from all parts of Syria who agreed to be interviewed for this report. Without their active contributions, this report would not have been possible. Unfortunately, we cannot include the names of those who deserve acknowledgement due to risks associated with work in relation to the Syrian conflict.

We would equally like to thank ILAC staff Ali Alkhateeb and Kathrine Jestig, as well as ILAC intern, Anna Örnéus, for their hard and dedicated work in the production of this report.

The report was made possible thanks to funding provided to ILAC by the Swedish Development Cooperation Agency (Sida).

## 2 The official Syrian justice system

**A significant part of the population of Syria remains under the control of the Assad government in Damascus. The area of government control has expanded since 2017, though the nature of this rule and the impacts on the justice system in those areas recently brought under control remain in flux.**

In our 2017 assessment report, we described in depth the history and nature of the Syrian state and its justice system prior to 2011.<sup>1</sup> All parts of the Syrian judicial system suffered from interference and control from the executive and security agencies. In particular, the exceptional court system was found to lack even rudimentary safeguards and was incapable of delivering due process.<sup>2</sup>

After the commencement of the conflict in 2011, Syrian courts and justice institutions in areas that remained under government control experienced relatively little structural or systemic change, despite several years of peaceful demonstrations and violent armed conflict.<sup>3</sup>

Our current assessment reflects the maintenance of this institutional continuity. We found little structural or systemic change in those areas that were and have remained under Syrian government control since 2017. Courts and justice institutions in those areas generally operate in the manner described in the prior ILAC assessment. They continue to fall far short of meeting international standards for independence and impartiality, particularly in the operation of the exceptional courts.<sup>4</sup>

At the same time, however, the Syrian government since 2017 has expanded its control to additional geographic areas that, at the time of ILAC's earlier report, were under the control of other forces. The situation in these areas offers insights into the nature of justice as this conflict continues.

Our discussion of the justice system in the well-established, government-controlled areas will not repeat our findings from 2017, but will briefly comment on a few recent changes in those areas. We will also focus on the situations in the justice systems in the areas brought under government control since our prior report.

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<sup>1</sup> International Legal Assistance Consortium, 'ILAC Rule of Law Assessment Report: Syria', Stockholm, April 2017, pp. 19–58 (hereinafter, 'ILAC 2017 Report').

<sup>2</sup> *Ibid*, pp. 29–48.

<sup>3</sup> *Ibid*, pp. 61–74.

<sup>4</sup> *Ibid*, p. 73.

## Changes in the official Syrian state justice system

### Separation of powers and independence of the judiciary

An over-arching concern expressed by those interviewed for our 2017 assessment report was the system's failure to recognise the principle of separation of powers, and the resulting absence of an independent Syrian judiciary. These concerns constitute a considerable impediment to people's access to justice and remained essentially unchanged in our latest round of interviews.

Current interviewees almost uniformly described the justice system in government-controlled areas as being controlled by the President, the Ba'ath Party and the Syrian security services. Though the Constitution and various laws and decrees appear to adopt some principles relating to a separation of powers, as one judge candidly stated: "The principle of separation of powers exists on paper, but in practice, it is absent".<sup>5</sup> This sentiment was echoed by another: "As a judge who works in the judiciary, I see it as nothing more than words on paper".<sup>6</sup>

This control is exercised through multiple means. At the structural level, the judiciary remains controlled by the Supreme Judicial Council (SJC), which is dominated by the executive branch. The Constitution empowers the President to personally preside over the SJC, though he was allowed to (and often did) deputise the Minister of Justice to exercise those powers.<sup>7</sup> The SJC, in turn, still effectively controls judicial appointments and discipline, and the transfer of judges. Its decisions are non-appealable. One interviewee put it succinctly: "The Minister of Justice has full control over all aspects of judges' work".<sup>8</sup>

According to at least one report, The Judiciary Law was under review, including some discussion of removing the Minister of Justice from the SJC and replacing him with the Chief Justice of the Court of Cassation. However, in the summer of 2020, the Minister of Justice confirmed that the work had been postponed due to the COVID-19 pandemic.<sup>9</sup>

One instrument used in the SJC's influence on the judiciary is the Judicial Inspection Department (JID). Historically, the JID had broad powers to monitor judges' performance, which often were used to punish or reward

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<sup>5</sup> Interview 4, Government Controlled Area (GC) Judge.

<sup>6</sup> Interview 7, GC Judge.

<sup>7</sup> Constitution of 27 February 2012, Article 132; Legislative Decree No. 24 of 14 February 1966, Article 3 (which implemented the same provisions under the Constitution of 13 March 1973); Judicial Authority Law, Law No. 98 of 15 November 1961, Article 65.

<sup>8</sup> Interview 12, GC Legal Expert.

<sup>9</sup> *Syrian Law Journal*, 'Legal Briefing – August 2020', 5 September 2020, <<http://www.syria.law/index.php/legal-briefing-august-2020/>> (hereinafter, 'SLJ Legal Briefing 2020').

members of the judiciary, undermining judicial independence. In our 2017 assessment, however, we concluded that the JID appeared to be defunct.

The most recent interviews suggested that the JID had resumed its role and was now functioning to some degree. Current interviewees perceived the JID as an instrument used by the executive to exert control over judges and the judicial system. Like many aspects of the Syrian system, the problem lies less with the written laws and regulations governing the JID, and more with the abuse of authority exercised by that entity. In any event, the Syrian government continues, through the Judicial Council, to strip judges of their positions, terminate their assignments or to transfer them, often without explaining the reasons behind the decision.<sup>10</sup>

The lack of a functioning separation of powers is also seen in the continuing pervasive influence of the Ba'ath Party.<sup>11</sup> Interviewees estimated that 90 percent of judges were members of the Ba'ath Party,<sup>12</sup> which had specific divisions for judges.<sup>13</sup> Given the nature of Party discipline in Syria, one focus group concluded that, as it had for decades: "Political life thus becomes part and parcel of the judge's life".<sup>14</sup>

At a more fundamental level, overt and indirect intimidation by the Syrian security services continues to inhibit the judiciary's independence. This lack of independence leaves judges vulnerable to pressure, whenever one party is affiliated with the government or pro-Assad armed groups. Members of one focus group discussed how "even a judge who is granted immunity and respect by the law can be summoned by security services, where he is subjected to the worst possible psychological and even physical mistreatment".<sup>15</sup>

Finally, bribery and corruption persist. As discussed below, responses on this topic showed more variability than on most, perhaps since those interviewed were reluctant to admit personal involvement in obviously improper activities. Nonetheless, though responses along the lines of "others are involved in corruption, but not me" were typical, these same responses demonstrate that corruption continues to diminish the independence of the Syrian judiciary.

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<sup>10</sup> Enab Baladi, 'Regime Dismisses Two Judges', *The Syrian Observer*, 20 January 2021, <<https://syrianobserver.com/news/63134/regime-dismisses-two-judges.html>>.

<sup>11</sup> ILAC 2017 Report, pp. 22–24. For a review of the influence of Ba'ath Party ideologies on the capacity of the justice system to uphold people's rights, see, for example, The Syrian Initiative to Combat Sexual and Gender-based Violence, 'The Realities of SGBV in Syria', February 2020, pp. 31–41 <<https://library.svriinitiative.org/the-realities-of-sgbv-in-syria/>> [accessed 31 March 2021].

<sup>12</sup> Interview 12, GC Legal Expert; Focus Group 1, Government Controlled Area Focus Group Interview (GCFG) Lawyers; Focus Group 4, GCFG Lawyers.

<sup>13</sup> Interview 3, GC Lawyer and Legal Researcher.

<sup>14</sup> Focus Group 1, GCFG Lawyers.

<sup>15</sup> Focus Group 4, GCFG Lawyers.

## **Civil and criminal courts**

The organisation and operation of the official civilian courts described in our earlier report remains essentially unchanged. Despite tremendous problems with corruption and extensive executive interference and control over the judiciary (see below), some space remains for courts to resolve noncontroversial cases based on their merits.

One piece of recent legislation is Law No. 9, passed in March 2018, which amended existing anti-cybercrime legislation to criminalise the inciting or promoting of crime through computer networks. The law also established specialised courts for criminal cases related to information and communication technology. Shortly after the law came into force, the Ministry of Justice appointed 58 judges to hear cases related to cybercrime.<sup>16</sup> Although we located no data concerning the application of this law, given the use of digital media by dissenters, further repression appears possible.

Some other changes may be on the horizon. The Minister of Justice indicated in the summer of 2020 that the Judiciary Law was being reviewed by a committee. According to that report, amendments had been proposed, including some offered by judges, but that those initiatives were postponed due to the COVID-19 pandemic.<sup>17</sup>

## **Bribery and corruption**

In 2017, the general opinion of the responses was that bribery and economic corruption in the Syrian justice system was widespread and chronic. Transparency International ranked Syria 178 out of 180 countries on its 2020 Corruption Perceptions Index.<sup>18</sup> Accusations of judicial corruption – legitimate or otherwise – persist. In December 2020, the Minister of Justice announced that several judges had been accused of transferring property ownership based on forged powers of attorneys and were being prosecuted in the SJC.<sup>19</sup>

Yet, in the interviews for this assessment, respondents tended to minimise the impacts of economic corruption in the Syrian system. For example, when asked if they had ever been confronted with attempts to corrupt the justice process, replies ranged from “No, that has not happened”,<sup>20</sup> to “Yes, but I refused the offer”.<sup>21</sup> In one focus group, the participants estimated that

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<sup>16</sup> Ministry of Foreign Affairs of the Netherlands, ‘Country of origin information report on Syria’, The Hague, May 2020, p. 56.

<sup>17</sup> SLJ Legal Briefing 2020, *supra* n. 9.

<sup>18</sup> See Transparency International, Country Data: Syria <<https://www.transparency.org/en/countries/syria>>.

<sup>19</sup> Enab Baladi, ‘Judges prosecuted for ruling property ownership transfer based on forged power of attorneys in Syria’, 3 December 2020.

<sup>20</sup> Focus Group 1, GCFG Lawyers; Focus Group 6, GCFG Lawyers.

<sup>21</sup> Focus Group 3, GCFG Lawyers; Focus Group 5, GCFG Lawyers.

around 15 percent of lawyers were faced with offers of bribery, judging from their own experience or from what they had heard from colleagues.<sup>22</sup> Perhaps a more candid response came from one lawyer, who admitted that “the first time it was difficult but then it became a matter of routine”.<sup>23</sup>

The issue came into sharper focus when the question was narrowed to offering ‘tips’ to court staff. Virtually all respondents acknowledged having “to pay some amounts of money to employees in order to allow the smooth processing of their cases”.<sup>24</sup> But many of those acknowledging the practice tended to minimise its impact on the delivery of justice.

For example, one focus group of lawyers interviewed for this report saw the practice less in ethical terms, and more as a practical hinderance for lawyers when trying to determine the cost of a case. Lawyers complained that they had to plan for the bribes needed for a case to proceed in court. However, that amount was difficult to predict, since it was dependent on the amount paid by opposing counsel, a sum that could not be known in advance.<sup>25</sup>

While a few recognised this practice as a form of corruption, more frequently the response was understated:

*A lawyer is not supposed to tip employees to perform work that they are already paid for by the State, but often lawyers are forced to do so in order to facilitate the smooth processing of their work and to avoid hurdles caused by employees.*<sup>26</sup>

Given the deteriorating financial situation, court officials appear highly susceptible to bribery. This practice often leaves individuals who lack the financial means for bribes with no recourse to justice. Yet, though a handful of the current respondents found this alarming,<sup>27</sup> others tended to downplay the problem.

### **Exceptional courts**

Our prior assessment highlighted the existence in Syria of a parallel system of exceptional courts operating outside the ordinary court structure. The exceptional courts, both the Counter-Terrorism Court and the Military Field Courts, continue to operate at present in Syria.<sup>28</sup>

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<sup>22</sup> Focus Group 2, GCFG Lawyers.

<sup>23</sup> Focus Group 6, GCFG Lawyers.

<sup>24</sup> Focus Group 5, GCFG Lawyers.

<sup>25</sup> Focus Group 3, GCFG Lawyers.

<sup>26</sup> Focus Group 2, GCFG Lawyers.

<sup>27</sup> One respondent described “enormous corruption”, Interview 12, GC Legal Expert.

<sup>28</sup> Hanny Megally and Elena Naughton, ‘Gone Without a Trace: Syria’s Detained, Abducted, and Forcibly Disappeared’, International Center for Transnational Justice (ICTJ), May 2020, p. 15 (hereinafter, ‘ICTJ 2020 Policy Paper: Gone Without a Trace’).

The exceptional courts were described in ILAC's previous assessment. Due to our inability to gain direct access to lawyers and judges inside Syria during the COVID-19 pandemic, ILAC chose in the present research to approach this topic with great caution in focus group discussions. Nevertheless, lawyers were forthright, describing the Counter-Terrorism Court as effectively operating outside the normal Syrian judicial and legal framework in essentially the same manner as outlined in our earlier assessment. Government decrees issued in recent years have slightly amended the structure of and appointment of the judges to the court,<sup>29</sup> but no significant substantive changes to the court's operations were reported by those interviewed for this report.

Official statistics were not available, but one report indicated that between March 2011 and August 2020, more than 10,000 Syrian citizens were tried in the Counter-Terrorism Court. Trial outcomes varied from death sentences to lengthy prison sentences to a few acquittals. Periodic amnesty decrees somewhat mitigated a few of these sentences.<sup>30</sup>

The number of trials, however, was a small fraction of the estimated 130,000 persons who were detained or disappeared during that time. The slow pace of trials has been attributed to the small number of judges appointed to the court. An additional factor is that trial referrals are within the discretion of the security services, so that if a detainee is not referred for trial, they simply continue indefinitely in detention.<sup>31</sup>

The court also continued to issue orders for the seizure of property of those alleged to have participated in the uprising. Such orders have been directed at medical workers, journalists and members of the Syrian Civil Defence.<sup>32</sup> Again, though official statistics were unavailable, at least 3,970 confiscations reportedly occurred through October 2020, including the seizure of property owned by various of the accuseds' spouses and children.<sup>33</sup>

A lawyer in one focus group pointed to the unfairness and high stakes at play in Counter Terrorism Court and Military Field Courts as driving forces behind corruption in those courts. The client's life was at risk and, in courts that showed no interest in fairness, bribery was often the tool that could ultimately save their life.<sup>34</sup>

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<sup>29</sup> Syrian Network for Human Rights (SNHR), 'At Least 10,767 Persons Still Face Trial in Counter-Terrorism Court, nearly 91,000 Cases Heard by the Court and 3,970 Seizures of Property', 15 October 2020, p. 8 (hereinafter, 'SNHR 2020 Report').

<sup>30</sup> ICTJ 2020 Policy Paper: Gone Without a Trace, p. 22, *supra* n. 28.

<sup>31</sup> SNHR 2020 Report, p. 14, *supra* n. 29.

<sup>32</sup> Syria Justice and Accountability Centre (SJAC), 'The State of Justice in Syria, 2020', Washington, DC, March 2020 <[https://syriaaccountability.org/wp-content/uploads/02.28\\_SJS-ENG\\_pdf\\_compressed-1.pdf](https://syriaaccountability.org/wp-content/uploads/02.28_SJS-ENG_pdf_compressed-1.pdf)>.

<sup>33</sup> SNHR 2020 Report, p. 17, *supra* n. 29.

<sup>34</sup> Focus Group 4, GCFG Lawyers.

## Lawyers and bar associations

In our 2017 assessment, we reported that the number of lawyers registered with the state-recognised Syrian Bar Association (SBA) continued to decrease year-on-year in governorates largely controlled by the government.<sup>35</sup> According to an interview given in October 2018 by its president, the number of lawyers registered with that bar decreased from 28,000 to 25,000 as a result of the dismissal of large numbers for actions “not befitting the profession of lawyers”.<sup>36</sup> However, in our interviews in late 2020, respondents consistently estimated that the number of lawyers registered with the SBA was at between 25,000 and 30,000. If correct, those estimates would mean that the membership in the official bar had remained steady or somewhat increased since 2017.

The initial activism among lawyers in government-controlled areas, often seen at the outset of the upheaval in 2011, has largely disappeared. International support for internal opposition has diminished, while Russian support for the Assad government has continued. At this point, many lawyers in government-controlled areas either have fled or apparently concluded that open defiance is pointless. ILAC is unaware of any significant protests by lawyers in these areas in the past few years. Whether due to fear of personal or professional retribution, members of the Bar in these areas appear to accept as a fact that the decades-long rule by the Ba’ath Party will continue.

Local branches of the SBA have similarly been neutered, with their activities monitored by the Party, the security apparatus and the Ministry of Justice.<sup>37</sup> The Bar’s influence is seen to vary with the area, depending on the nature of its leadership: “A bar association is as powerful as its president, and whether or not he is well connected”.<sup>38</sup>

Depending on the circumstances, however, the SBA or its branches can provide lawyers some degree of protection from other state actors.<sup>39</sup> For example, in 2020 the SBA’s president became involved in an open dispute with the Ministry of Justice over steps to be taken in courthouses to protect lawyers in response to the COVID-19 outbreak. The SBA granted collective leaves of absence to lawyers from court hearings and threatened lawsuits against the Ministry of Justice over the issue. The SJC ultimately intervened, requiring the courts to remain open but imposing precautionary measures to address the pandemic.<sup>40</sup>

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<sup>35</sup> ILAC 2017 Report, p. 71.

<sup>36</sup> Enab Baladi, ‘Head of the Bar: Finalizing the draft of the law amendment’, 4 October 2018 <<https://www.enabbaladi.net/archives/255579>> [accessed: 23 April 2021].

<sup>37</sup> Focus Group 6, GCFG Lawyers.

<sup>38</sup> Focus Group 1, GCFG Lawyers. See also, Focus Groups 3 and 5.

<sup>39</sup> Focus Group 5, GCFG Lawyers; Focus Group 6, GCFG Lawyers.

<sup>40</sup> SLJ Legal Briefing 2020, *supra* n. 9.

Though largely silenced, lawyers remain one of the few elements of Syrian society who are aware of and generally sympathetic to rule of law norms. Traditional Syrian legal education, while Party-controlled and heavily politicised, has nonetheless exposed lawyers to the basic principles underlying equitable legal systems. In our interviews, judges and lawyers understood and at least voiced acceptance of these concepts. Outside pressure, ambition and politicisation may cause them to ignore those norms, but the legally educated remain capable of recognising and potentially implementing systems that more closely fit with to the rule of law.

### **Women’s access to justice in government-controlled areas**

In the four years since our 2017 report, the Syrian government has amended at least two laws that change and arguably improve women’s access to justice in the areas controlled by Assad and his allies.

The first of these revisions to Syrian law were amendments to more than 60 articles of the Personal Status Law (PSL). As discussed in ILAC’s 2017 report, this law explicitly grants men more rights than women.<sup>41</sup> Critics argued that the law reinforced traditional gender roles, relegating women to the home.<sup>42</sup> The recent amendments to the PSL, though nominally positive, are also controversial. Some argue that the changes are mainly cosmetic, while critics on the other side claim that they violate *Sharia* traditions.<sup>43</sup> Among some notable amendments to the PSL are:<sup>44</sup>

#### *Amendments with respect to marriage:*

- Prior to the recent amendments, the legal age to marry was 18 years for men and 17 years for women, or 15 for boys and 13 for girls with the

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<sup>41</sup> George Sadek, ‘Syria: Women’s Rights in Light of new Amendments to Syrian Personal Status Law’, *Global Legal Monitor*, 9 April 2019, <<https://www.loc.gov/law/foreign-news/article/syria-womens-rights-in-light-of-new-amendments-to-syrian-personal-status-law/>> [accessed 15 February 2021].

<sup>42</sup> See, for example, Daad Moussa, “Syrian Personal Status Laws”, in Friedrich Ebert Stiftung, ‘Family Law in the Mena Region’, 2019, <<http://library.fes.de/pdf-files/bueros/beirut/15955.pdf>>.

<sup>43</sup> See, for example, *The Syrian Observer*, ‘Amendments to the Syrian Personal Status Law are Not Enough’, 12 February 2019, <<https://syrianobserver.com/features/48528/amendments-to-syrian-personal-status-law-are-not-enough.html>>; Mahmood Aghi, Osama, ‘New Amendments to Personal Status Law Offer Small Gains for Women’s Rights’, Chatham House, June 2019, <<https://syria.chathamhouse.org/research/new-amendments-to-personal-status-law-offer-small-gains-for-womens-rights>>; Enab Baladi, ‘Amendments to the Personal Status Law: Violations of Sharia or Equity for Women?’, 2 March 2019, <<https://english.enabbaladi.net/archives/2019/03/amendments-to-the-personal-status-law-violation-of-sharia-or-equity-for-women/>>.

<sup>44</sup> As mentioned in ILAC’s 2017 report, the *Sharia* courts have jurisdiction over all matters regulated by the Personal Status Law. The SPSL exempts Druze, Christians and Jewish communities from provisions of marriage and divorce, and other specific matters, why the amendments mentioned below does not necessarily relate to those communities. See ILAC 2017 Report pp. 36–37.



condition precluding polygamy, as doing so would contradict *Sharia*.<sup>51</sup> Nevertheless, the amendments do allow a female spouse to request to be exempted from sharing a home with a second wife.<sup>52</sup>

#### *Amendments regarding divorce:*

- As mentioned by ILAC in 2017, under the original law a woman could petition for a “judicial divorce” (*tafriq*), *i.e.*, a separation which is a revocable divorce, only under narrow circumstances such as insanity, lack of consummation and “harm”.<sup>53</sup> The new amendments add additional circumstances for seeking *tafriq*, such as “disease”.
- The amendments also allow either party to cancel the marriage contract before the marriage or ask for divorce after the marriage based on these grounds.<sup>54</sup>
- A woman is still only allowed to separate in the absence of her husband, such as his imprisonment.<sup>55</sup> However, according to the amendments, if a wife is left by her husband “without a reasonable cause and without a request from her”, such that she is entitled to a divorce, she is now entitled to economic compensation. This compensation was previously conditioned upon the proof of specific criteria, such as proving a risk of starvation or poverty without the compensation.<sup>56</sup>

#### *Amendments concerning custody:*

- The amendments change Syrian law as it relates to the age under which a child is subject to the custody of a guardian. Before the amendments, a guardian was required for boys under 9 years and girls under 11 years. These thresholds have been raised to 15 years of age for both sexes under the new amendments.
- Prior to the amendments to the PSL, women almost exclusively held custody rights, with the mother and maternal grandmother having the primary and secondary rights to custody of a family’s children. The amendments now give the secondary custody right to the children’s father. Children do not have a voice in the decision.<sup>57</sup> While custody is the legal obligation to care for the child, legal guardianship provides

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<sup>51</sup> *The Qur’an 4:3*, (“If you fear you might fail to give orphan women their ‘due’ rights ‘if you were to marry them’, then marry other women of your choice—two, three, or four. But if you are afraid you will fail to maintain justice, then ‘content yourselves with’ one or those ‘bondwomen’ in your possession. This way you are less likely to commit injustice.”). Translation available at: <<https://quran.com/4/3>>.

<sup>52</sup> *Ibid.*

<sup>53</sup> ILAC 2017 Report, p. 53.

<sup>54</sup> See: amended SPSL Art. 105.

<sup>55</sup> See: amended SPSL Art. 109.

<sup>56</sup> Amended SPSL Art. 117.

<sup>57</sup> SPSL Art. 139, para 1 and Art. 146 paras 1–3.

control over the child's finances, education, medical treatment and consent to marriage for children under 18. Under the new amendments, legal guardianship still rests primarily with the father and secondarily with the men in family. However, the new amendments give the mother the right to guardianship over marriage decisions if the men in the family do not suffice as a clique and the mother complies with certain conditions.<sup>58</sup>

Viewed from one perspective, these amendments can be seen as a small step forward in enhancing women's rights under Syrian law. Nevertheless, others have voiced concern that these amendments will not impact most women, nor address the numerous other issues facing women in Syria. As documented by multiple sources, the ongoing conflict has only worsened gender-based community needs, especially when overlaid on top of deep-rooted patriarchal patterns of gender-based violence, social control and gender-based stigma, structural discrimination against women, forced marriage (which has increased due to the economic hardship brought by the conflict), and restrictions on a woman's freedom of movement.<sup>59</sup>

If the various 'new' rights provided by the amendments to the PSL are to positively impact a woman, she must be aware of her rights, financially independent and have family support in combating social pressures. In the absence of such circumstances, the amendments risk reinforcing historical patterns such as the rural–urban divide and differences in socio-economic status, so that many women remain vulnerable to social pressures and patriarchal norm structures. The minor tweaks in the amendments – at best – signal a tepid effort to further women's rights, while continuing to respect these traditions.

The second positive step taken by the Syrian government was an amendment to the Penal Code in March 2020 abolishing the widely discussed Article 548, which established "honour" as a mitigating factor for gender-based killing. The article has previously been amended and replaced, but never before

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<sup>58</sup> Amended SPSL Art. 23, para 2.

<sup>59</sup> See, for example, NGO Summary Report Universal Periodic Review of the Syrian Arab Republic, 'Violations against women in Syria and the Disproportionate Impact of the Conflict on them', November 2016, <[https://www.wilpf.org/wp-content/uploads/2016/06/WILPF\\_VAW\\_HC-2016\\_WEB-ONEPAGE.pdf](https://www.wilpf.org/wp-content/uploads/2016/06/WILPF_VAW_HC-2016_WEB-ONEPAGE.pdf)>; Tamara Alrifai and Rachel Dore-Weeks, 'Here is why Syrian Women are Integral to Peace', July 2018, <<https://arabstates.unwomen.org/en/news/stories/2018/8/why-syrian-women>>; United Nations Human Rights Council (UNHRC), 'Report of the Independent International Commission of Inquiry on the Syrian Arab Republic', A/HRC/39/65, submitted to the Forty-Sixth Session, 22 February–19 March 2021, <<https://www.ohchr.org/EN/HRBodies/HRC/IICISyria/Pages/ReportoftheCommissionofInquirySyria.aspx>>; The Syrian Initiative to Combat Sexual and Gender-based Violence, 'The Realities of SGBV in Syria', 2020.

repealed.<sup>60</sup> The impact of the repeal is to formally classify “honour” as a prohibited motive for murder, and not a mitigating factor diminishing the crime.

Notwithstanding this repeal, however, historical social–cultural factors have combined to effectively allow the practice to continue, with numerous “honour” killings being documented after March 2020.<sup>61</sup> Reports from civil society also link the problem to the PSL, since women allegedly killed in the name of “honour” are in fact murdered by men to obtain an inheritance.<sup>62</sup>

As reported by ILAC in 2017, many women do not report threats and cases of gender-based violence, both out of fear of reprisal from a husband or family member and because there is no law prohibiting material rape, domestic violence or gender-based violence. Too often, the police are also untrained in or unsympathetic to such complaints.<sup>63</sup> Accordingly, Syrian civil society has continued to call for further Syrian government action to prevent this form of violence, arguing that active prosecution of these crimes is necessary to stop the practice.<sup>64</sup>

A third issue relating to women’s access to justice is the presence of females in positions of influence in the Syrian government justice system. Our recent interviews painted a somewhat muddled picture regarding changes in the status and treatment of women legal professionals in the last four years. The last available official statistics cited in our 2017 report indicated that 14 percent of judges in the regular civilian courts were female. An organisation of Syrian lawyers working in government-controlled areas estimated that the number of female judges in 2020 had risen to approximately 20 percent, or 400 out of an estimated total of 1600.<sup>65</sup> The same organisation indicated that the Higher Judicial Institute, which is responsible for supporting the judiciary in the future, had 66 members, including 38 women. These

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<sup>60</sup> Enab Baladi, ‘The Syrian People’s Council repealed Article 548 of the 1949 Syrian Penal Code known as the “mitigating circumstances excuse” for the so-called “honour killings”’, 14 March 2020, <<https://english.enabbaladi.net/archives/2020/03/new-law-abolishes-honor-killings-mitigating-excuse-in-syria/>>, [accessed 16 March 2021]; Equality Now: A Just World for Women and Girls, ‘Syria – the Penal Code’, <[https://www.equalitynow.org/syria\\_the\\_penal\\_code](https://www.equalitynow.org/syria_the_penal_code)>.

<sup>61</sup> See, for example, UNFPA & BVB AoR Whole of Syria, ‘Voices from Syria 2019’, <[https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/voices\\_from\\_syria\\_2019\\_0\\_0.pdf](https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/voices_from_syria_2019_0_0.pdf)>; Enab Baladi, ‘Honor Crimes: Customs at the Expense of Women’s Blood’, November 2018, <<https://english.enabbaladi.net/archives/2018/11/honor-crimes-customs-at-the-expense-of-womens-blood/?so=related>>.

<sup>62</sup> Akhin Ahmed, ‘Honor killings against women increase in southeast Syrian city’, *Al-Monitor The Pulse of the Middle East*, 25 November 2020, <<https://www.al-monitor.com/originals/2020/11/syria-suwayda-activists-protest-crimes-women-honor-killings.htm>> [accessed 16 March 2021].

<sup>63</sup> ILAC 2017 Report, p. 56.

<sup>64</sup> Ahmed 2020, *supra* n. 62.

<sup>65</sup> Email exchange, Local Partner and Syrian Lawyer, 19 March 2021.

estimates are consistent with our interviews, which suggested that the percentage of female judges had remained constant or in fact increased.<sup>66</sup>

Respondents also uniformly denied that gender discrimination existed in the hiring or promotion of judges. As one lawyer stated: “*I believe Syria is a pioneer in this regard among all Arab countries*”.<sup>67</sup> Yet, according to several lawyers interviewed by ILAC, the Syrian government has no written provisions or standards regarding such matters as gender diversity in the appointment of judges. Instead, there is an unwritten policy that gender representation should be taken “into account” in the appointment and promotion of judges.<sup>68</sup>

At the same time, some lawyers also pointed out the particularly vulnerable situation of women lawyers. Reports indicated that they sometimes faced harassment and abuse to pressure them into losing cases:<sup>69</sup>

*There’s something which I call “gender corruption”, where many female lawyers have had to stop practising law because of bad working conditions, referring to harassment against female lawyers or facilitating case proceedings in return for abusing the lawyer in a certain manner.*<sup>70</sup>

Although a comparatively positive step forward, the changes to the Syrian Personal Status Law seem to be cosmetic in nature, with the law having been amended without the political will to fully address longstanding and deep-rooted issues that hamper women’s rights. Given the government’s hesitance to offend socially conservative communities, whose loyalty it seeks, the likelihood of significant additional progress is minimal. This is also, in particular, so long as amendments to the law are not accompanied by a broader societal change of norms, attitudes and behaviours, both within the courts and all other levels of society. As it stands now, the new law will at best only benefit the minority of the most resourceful Syrian women, who have the support of their families to seek advantage from the rights prescribed.

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<sup>66</sup> In a report on women in the judiciary in Arab states, ESCWA stated that 17.5 percent of Syrian judges were women in 2018. ESCWA, ‘Women in the Judiciary in Arab States’, E/ESCWA/ECW/2019/2, <[https://www.unescwa.org/sites/www.unescwa.org/files/publications/files/women-judiciary-arab-states-english\\_o.pdf](https://www.unescwa.org/sites/www.unescwa.org/files/publications/files/women-judiciary-arab-states-english_o.pdf)>.

<sup>67</sup> Interview 12, GC Legal Expert.

<sup>68</sup> Interview 1, GC Retired Judge; Interview 2, GC Lawyer; Interview 3, GC Lawyer and Legal Researcher; Interview 4, GC Judge.

<sup>69</sup> Focus Group 3, GCFG Lawyer. This phenomenon of a combination of sexual abuse and corruption is sometimes referred to as ‘sextortion’. See further, International Association of Women Judges (IAWJ), ‘Stopping the Abuse of Power through Sexual Exploitation: Naming, Shaming, and Ending Sextortion’, 2012, pp. 9–11.

<sup>70</sup> Focus Group 3, GCFG Lawyers.

## Areas returned to government control after 2016

At the time of our earlier assessment, we identified four areas controlled by a variety of actors loosely referred to as ‘the opposition’: Aleppo, Daraa, Idlib and East Ghouta. Each of those areas had developed some type of justice sector outside the official system that was significantly different than the pre-conflict Syrian court and justice institutions.

In the period since our 2017 report, non-government forces have lost control of Aleppo, Daraa, East Ghouta and portions of Idlib. To a greater or lesser degree, each has been brought under some form of Syrian government control. In addition, during this period, government influence over the Sweida governorate in south-western Syria has become less stable. While the government in Damascus has sought to reimpose the pre-conflict Syrian systems in these regions, conditions on the ground have prevented a ‘return to normal’. As one recent study concluded:

*[D]espite the government’s ability to recapture the majority of Syria’s territories, the conflict significantly affected the state’s role, reach and institutional capacity in government-held areas. In areas nominally under the government’s control, its authority was reported to be dispersed, fragmented, and outsourced to multiple groups in the form of pro-regime paramilitaries, foreign powers and local militias.<sup>71</sup>*

### Aleppo

When the ILAC assessment teams visited the region in November 2016, intense fighting raged for control of central and eastern Aleppo. Not long thereafter, a ceasefire was announced to allow the evacuation of civilians and rebels. Within months, the Syrian government was nominally in control of significant portions of the area, including the city of Aleppo. But military operations by Turkey in the northern Aleppo governorate resulted in a division of that region (see below). In 2020, the government took control over some additional areas in the western Aleppo countryside, which had withstood the 2016 offensive.

In those areas where the government expelled opposition forces, the situation is far from stabilised.<sup>72</sup> Though no official data could be located, local lawyers interviewed by ILAC reported that the system of justice that had been operating when the area was under opposition control ceased functioning.<sup>73</sup> According to these reports, none of the judges that worked in the opposition

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<sup>71</sup> European Asylum Support Office (EASO), ‘Syria Actors: Country of Origin Report’, December 2019, quoting ‘Mosaics of Power: Fragmentation of the Syrian State Since 2011’, p. 8, Danish Institute for International Studies, 2018.

<sup>72</sup> EASO, ‘Syria Security Situation: Country of Origin Information Report’, May 2020, p. 75.

<sup>73</sup> Interview 6, Reconciled Area Interview (RA) Lawyer; Interview 5, RA Lawyer. See: ILAC 2017 Report, pp. 82–85.

system still lived or worked in that area, but none had been killed or assassinated.<sup>74</sup>

At the same time, the government has re-established official courts of all instances, including military courts and Anti-Terrorism courts in the areas of Aleppo coming under its control. These courts function like Syrian courts prior to 2011, applying Syrian law and procedure in the same manner as courts elsewhere in the country.<sup>75</sup> The judges and prosecutors assigned to these courts primarily come from Aleppo, typically with the support of influential military or political personnel, and the ‘Shabiha’ factions<sup>76</sup> operating in the area.<sup>77</sup>

According to the lawyers interviewed by ILAC, residents in the government-controlled areas of Aleppo were reluctant to go to the government courts, since they felt unsafe due to the influence of the Syrian military and the terror it practised against civilians.<sup>78</sup>

When the government took control in these portions of Aleppo, many lawyers were disbarred by the Ministry of Justice. While official data was unavailable, estimates given to ILAC were that 2,000 lawyers were disbarred in the portion of Aleppo retaken by government forces in 2016,<sup>79</sup> while 900 were disbarred in the outlying areas reclaimed in 2020.<sup>80</sup> These respondents also estimated that approximately 2,500 continued to practise in central Aleppo,<sup>81</sup> while another 650 were practising in the outlying areas.<sup>82</sup>

Those lawyers working in the re-established government courts in Aleppo function in the same way those operating in government courts elsewhere in Syria. However, one respondent alleged that a large number of these lawyers worked with ‘Shabiha’ factions, while others assisted in transferring the properties of opponents to the Assad regime to its supporters.<sup>83</sup>

In the areas of Aleppo now controlled by the government, the local branch of the official Syrian Bar Association is again operating,<sup>84</sup> headed by its

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<sup>74</sup> Interview 6, RA Lawyer; Interview 5, RA Lawyer.

<sup>75</sup> *Ibid.*

<sup>76</sup> The term ‘Shabiha’ is used frequently to refer to state-sponsored militias or pro-Assad Sunni tribes.

<sup>77</sup> Interview 6, RA Lawyer.

<sup>78</sup> *Ibid.*

<sup>79</sup> *Ibid.*

<sup>80</sup> Interview 5, RA Lawyer.

<sup>81</sup> Interview 6, RA Lawyer.

<sup>82</sup> Interview 5, RA Lawyer.

<sup>83</sup> Interview 6, RA Lawyer.

<sup>84</sup> *Ibid.*; Interview 5, RA Lawyer. Note: This branch of the official Syrian Bar should not be confused with the Free Syrian Bar Association of Aleppo, headed by Hasan Almousa. This organisation was part of the opposition and operated in Aleppo prior to government forces regaining control. It is allied with the Syrian Interim Government and continues to function in the areas of the Aleppo governorate controlled by Turkey. See: National Coalition of Syrian

president, Najdat Afash.<sup>85</sup> This organisation is admitting new members, following the usual procedures of the Syrian Bar,<sup>86</sup> although it was reported that the security forces were playing a larger role in the process.<sup>87</sup>

## **The Daraa region**

### *Military/political changes*

Daraa, located in south-western Syria near the Jordanian border, was the initial focal point of the 2011 protests. As reported in our 2017 assessment, when the government was pushed out, the official courts were abolished. Ultimately, all armed groups present in Daraa agreed to form a single unified judicial system under the umbrella of a 'House of Justice'. By early 2017, this arrangement was functioning reasonably well, developing laws, procedures and structures for the region.<sup>88</sup>

In May 2017, Russia, Iran and Turkey agreed to create four 'de-escalation zones' in Syria, including the Idlib governorate, the northern rebel-controlled parts of the Homs governorate, Eastern Ghouta and the Jordan–Syria border.<sup>89</sup> Though not a party to this agreement, former US President Trump in June 2017 shut down the American Central Intelligence Agency's (CIA) efforts to fund and assist the opposition operating in these areas.<sup>90</sup>

A month later, the United States, Russia and Jordan reached a ceasefire and 'de-escalation agreement' for south-western Syria, covering the governorates of Daraa, Sweida and Quneitra.<sup>91</sup> Soon, however, Syria and Russia began to use this framework to strengthen their presence in these regions.<sup>92</sup>

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Revolution and Opposition Forces, 'Aleppo Free Bar Association Successfully Concludes Annual Congress & Elections', 29 June 2020, <<https://en.ctlaf.org/all-news/local-news/aleppo-free-bar-association-successfully-concludes-annual-congress-elections>>.

<sup>85</sup> Interview 6, RA Lawyer; Rawaa Ghanam, 'A new book highlights media's role in spreading terrorism', *Syria Times*, 21 December 2020, <<http://www.syriatimes.sy/index.php/books/52769-a-new-book-highlights-media-s-role-in-spreading-terrorism>>.

<sup>86</sup> Interview 5, RA Lawyer.

<sup>87</sup> Interview 6, RA Lawyer.

<sup>88</sup> ILAC 2017 Report, pp. 85–90.

<sup>89</sup> Reuters, 'Russia, Iran, Turkey set up Syria de-escalation zones for at least six months: memorandum', 6 May 2017, <<https://www.reuters.com/article/us-mideast-crisis-syria-memorandum-idUSKBN1820Co>>.

<sup>90</sup> Greg Jaffe and Adam Entous, 'Trump ends covert CIA program to arm anti-Assad rebels in Syria, a move sought by Moscow', *The Washington Post*, 19 July 2017, <[https://www.washingtonpost.com/world/national-security/trump-ends-covert-cia-program-to-arm-anti-assad-rebels-in-syria-a-move-sought-by-moscow/2017/07/19/b6821a62-6beb-11e7-96ab-5f38140b38cc\\_story.html](https://www.washingtonpost.com/world/national-security/trump-ends-covert-cia-program-to-arm-anti-assad-rebels-in-syria-a-move-sought-by-moscow/2017/07/19/b6821a62-6beb-11e7-96ab-5f38140b38cc_story.html)>.

<sup>91</sup> Jeff Mason and Denis Dyomkin, 'Partial ceasefire deal reached in Syria, in Trump's first peace effort', *Reuters*, 7 July 2017, <<https://www.reuters.com/article/us-mideast-crisis-syria-ceasefire-idUSKBN19S2DG>>.

<sup>92</sup> Hanna Asaad, 'Russia Muscles in on De-escalation Zones', October 2017, Chatham House, the Royal Institute of International Affairs [accessed 22 January 2021].

Syrian government forces launched 'Operation Basalt' in June 2018, to recapture southern Syria from the opposition.<sup>93</sup> The attack caused massive displacement among the civilian population in Daraa, with an estimated 270,000 fleeing to the Jordanian border or the Golan Heights.<sup>94</sup> While the Assad regime sought total surrender and the reimposition of official Syrian government institutions, Russian intermediaries led negotiations with opposition representatives that resulted in the establishment of zones in some areas where the government's influence was weak to non-existent.

In Daraa, to avoid a 'bloodbath', the opposition agreed to negotiations with the Syrian army, under the auspices of Russian mediators. Judges from the House of Justice and local lawyers headed those negotiations for the opposition. The negotiations resulted in an agreement – guaranteed by the Russians – that provided terms for a return to Daraa and resumption of activities by Syrian government institutions.<sup>95</sup>

One provision in that agreement allowed Daraa residents to safely evacuate to Idlib in the North. Though estimates vary, somewhere between 7,000 and 15,000 men, women and children took advantage of that offer.<sup>96</sup>

These terms resulted in the creation of varying levels of government control throughout the Daraa region. In some areas, Russia helped negotiate and later supported agreements under which state institutions were allowed to return, but not the Syrian army and security services. In other areas, Russian-backed agreements allowed for a return of the regime's military and security forces, even if their control was not absolute. In territories where the Syrian army had prevailed by force, the government imposed more direct security control.<sup>97</sup>

Central to many of these initiatives were 'reconciliation agreements', which supposedly provided a method for peaceful reintegration of government control over communities. The agreements varied with locality, but generally gave residents the option of being relocated to opposition-held portions of

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<sup>93</sup> Patrick Wintour, 'Syrian forces' push into east Daraa "could spark humanitarian crisis"', *The Guardian*, 27 June 2018; Ministry of Foreign Affairs of the Netherlands, 'Country of Origin Information Report Syria: The security situation', The Hague, July 2019.

<sup>94</sup> Suleiman al-Khalidi, 'Numbers of displaced in southern Syria climbs to 270,000: U.N', *Reuters*, 2 July 2018, <<https://www.reuters.com/article/us-mideast-crisis-syria-un-displaced-idUSKBN1JS11T>>.

<sup>95</sup> Haytham Manna, 'Reconciliation Initiatives in Daraa: A Testimony for History', Geneva Centre for Security Policy, October 2020.

<sup>96</sup> 'Lessons from the Syrian State's Return to the South', Report 196, n. 21, International Crisis Group, 25 February 2019, <<https://www.crisisgroup.org/middle-east-north-africa/eastern-mediterranean/syria/196-lessons-syrian-states-return-south>>.

<sup>97</sup> Armenak Tokmajyan, 'How Southern Syria Has Been Transformed into a Regional Powder Keg', Washington: Carnegie Endowment for International Peace, 2020, p. 5; Abdullah Al-Jabassini, 'Governance in Daraa, Southern Syria: The Roles of Military and Civilian Intermediaries', European University Institute, 4 November 2019.

northern Syria or remaining and participating in the government-led reconciliation process.

These agreements also generally required all military-aged males who remained to register at a government reconciliation centre (typically within six months) and perform any remaining mandatory military service. Ostensibly a form of amnesty for previous anti-government activities, these agreements in practice did not necessarily protect signatories from further prosecution. Moreover, the agreements generally prohibited signers from publishing or sharing content insulting the government or from protesting ‘outside the confines of the law’. Other provisions required signatories to provide information on their relatives, friends and neighbours.<sup>98</sup>

Despite these agreements, the Syrian regime sought retribution. Government campaigns sought to target opposition leaders in Daraa, including former judges.<sup>99</sup> According to some reports, the government instigated widespread looting of homes, cultivated lands and public facilities. Statues of Assad were re-erected, students were prevented from sitting university exams, peaceful protests were met with gunfire, and public services remained at a very low level. At the same time, Iranian-backed militias were allowed to work in the areas, in direct contradiction to earlier agreements.<sup>100</sup> Opposition members resorted to low-level guerrilla tactics, which caused the government and its allies to respond with more arrests and assassinations.<sup>101</sup>

Faced with these challenges, some in the opposition turned to the Russians and their Fifth Corps. Certain opposition militias joined the Fifth Corps, which allowed them to operate with less government control and provide security for residents in some areas.<sup>102</sup> For example, in eastern Daraa, Russia established the Eighth Brigade as part of the Fifth Corps, under the command of a former rebel leader. This brigade was given significant leeway by the Russians to handle local security affairs, including small-scale violence against government and Iranian-backed forces.<sup>103</sup> Some reports suggested

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<sup>98</sup> SJAC, ‘Syrians Arrested, Killed Under Reconciliation Agreements’, 10 January 2019, <<https://syriaaccountability.org/updates/2019/01/10/syrians-arrested-killed-under-reconciliation-agreements/>>.

<sup>99</sup> *Ibid*; Syrian Association for Citizens’ Dignity (SACD), ‘“Reconciliation agreement” in Daraa: Insecurity, continued repression and collective punishment’, 7 October 2020, <<https://syacd.org/reconciliation-agreement-in-daraa-insecurity-continued-repression-and-collective-punishment/>> (hereinafter, ‘SACD Update on Reconciliation agreement in Daraa’); *The Syrian Observer*, ‘Assassination Attempts in Daraa’, 22 September 2020; Syria Call, ‘Syrian regime arrests former FSA Judges & Commanders of Daraa’, 5 October 2018.

<sup>100</sup> Manna, 2020, *supra* n. 95.

<sup>101</sup> *Ibid*.

<sup>102</sup> Anton Lavrov, ‘The Efficiency of the Syrian Armed Forces: An Analysis of Russian Assistance’, Carnegie Middle East Center, March 26 2020; SACD Update on Reconciliation agreement in Daraa 2020.

<sup>103</sup> Abdullah Al-Jabassini, ‘The Eighth Brigade: Striving for Supremacy in Southern Syria’, European University Institute, Geneva Centre for Security Policy, 2020; Center for

that, with Russia's tacit blessing, the brigade could be morphing into a reconstituted military force to provide stability in the region apart from the regular Syrian army.<sup>104</sup> Given this fragmented security landscape, with a variety of competing armed groups,<sup>105</sup> Daraa has become one of the most violent regions of the country.<sup>106</sup>

### *Changes in the justice system*

These developments have obviously impacted the courts and judicial structures in Daraa. The court system developed by the opposition has been abolished<sup>107</sup> and the House of Justice disbanded.<sup>108</sup> Some former judges were assassinated,<sup>109</sup> some were arrested,<sup>110</sup> while others were evacuated to opposition-held areas in the North.<sup>111</sup>

In August 2018, the Syrian Minister of Justice announced that the 'rehabilitation' of the courts in Daraa and other retaken regions was a priority, and that efforts to re-establish justice institutions in such areas were underway.<sup>112</sup> Subsequent reports suggest that these efforts have met with some limited success. For example, in August 2019, the government announced that it had rehabilitated several courts and established new courts in Daraa.<sup>113</sup> A person interviewed by ILAC reported that by 2020, all judicial institutions that had been operating before the conflict began had been reactivated, including the Nawa, Dael, Bousra Alsham and Al-Musifra judicial institutions.<sup>114</sup> According to one interviewee, six judges and prosecutors who

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Operational Analysis and Research (COAR), '5th Corps and Government forces clash in Dar'a: A step-change for Syria's most restive region as Oudeh and Russia bid for more power?', *Syria Update*, Vol. 3, No. 25, 29 June 2020, p. 2.

<sup>104</sup> COAR, 'Southern strategy: Russia is up. Is Damascus down?', *Syria Update*, Vol. 3, No. 30, 3 August 2020, p. 2.

<sup>105</sup> See 'Syria: Sweida Residents Call for Dismissing Security Official', 29 January 2021 <<https://english.aawsat.com/home/article/2772236/syria-sweida-residents-call-dismissing-security-official>>.

<sup>106</sup> EASO, 'Syria Security Situation: Country of Origin Information Report', May 2020, p. 26, *supra* n. 72.

<sup>107</sup> Interview 4, RA Lawyer.

<sup>108</sup> Interview 1, RA Lawyer; Economic and Social Commission for Western Asia (ESCWA), 'Mapping Local Governance in Syria: A Baseline Study', Beirut, September 2020.

<sup>109</sup> Interview 1, RA Lawyer; Syrian Observatory for Human Rights, 'Ex-judge in "Dar Al-Adl Courthouse" dies of his wounds in today's armed attack', 13 August 2020.

<sup>110</sup> Interview 1, RA Lawyer.

<sup>111</sup> Interview 4, RA Lawyer.

<sup>112</sup> Mohammed Manar Hdedo, Al Watan, August 2018

<<https://alwatan.sy/archives/163250>>. Note: The minister said that the court would be rehabilitated in the first instance within the reconstruction plan, stressing that just to qualify any court, work would be launched in it, given that the judicial work was of great importance. But he did not particularly mention Daraa.

<sup>113</sup> Kasim al Mkdad, 2019 <<http://www.sana.sy/?p=998202>>.

<sup>114</sup> Interview 4, RA Lawyer; Interview 1, RA Lawyer.

evacuated to the North were replaced by six from the Supreme Judicial Training Institute in Damascus.<sup>115</sup>

A military court has also been established in Daraa, reportedly with a single military judge affiliated with the military judiciary administration in Damascus. An interviewee reported that this judge investigated alleged offences and referred cases to others in the capital.<sup>116</sup>

ILAC's interviews suggest that the civilian courts now function like the pre-conflict judiciary, applying Syrian law and procedure in the same manner as courts elsewhere in Syria.<sup>117</sup> To some extent, the official courts may even be involved in a peace-making role. A report in December 2020 indicated that, acting under Russian auspices, the Syrian judiciary oversaw, and the Ministry of Justice approved, a new reconciliation agreement for Daraa city between the Daraa Central Committee and the Syrian government security committee.<sup>118</sup>

Yet these efforts are clearly hampered by the ongoing instability in the region. In part, residents do not feel safe even attending court. This is due to the general insecurity and the large number of checkpoints in the governorate, where people passing through are blackmailed or arrested.<sup>119</sup>

Published reports suggest that people are also reluctant to interact with these institutions, due to a lack of trust and fear of reprisals. This distrust was confirmed by ILAC's interviews, where respondents also attributed this reluctance to the long delays, corruption and high costs associated with attorneys' fees and bribery in the government courts.<sup>120</sup>

Residents also apparently perceive that the judiciary is being used by the government as a tool to silence dissident voices and retaliate against those affiliated with the opposition, particularly in recently recaptured areas. In Daraa, one media report suggested that criminal cases multiplied 15 times in 2018 following the reconciliation agreement.<sup>121</sup> These cases involved not only robberies, looting and murders, but included those related to property rights taken from residents or returnees.

Some lawyers interviewed by the media saw the rise in criminal cases as a positive step towards upholding the rule of law and fighting chaos and impunity. Others saw more sinister motives, accusing the government of inciting civilians in Daraa to file criminal complaints against opposition

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<sup>115</sup> *Ibid*; see also, ILAC 2017 Report, p. 39.

<sup>116</sup> Interview 4, RA Lawyer.

<sup>117</sup> *Ibid*; Interview 1, RA Lawyer.

<sup>118</sup> COAR, 'Syria Update: Weekly Political, Economic, and Security Outlook', 14 December 2020, Vol 3. No. 47, pp. 7–8.

<sup>119</sup> Interview 1, RA Lawyer.

<sup>120</sup> Interview 4, RA Lawyer.

<sup>121</sup> Mohamed Homs, Enab Baladi, September 2018

<<https://www.enabbaladi.net/archives/251950>> [accessed 23 April 2021].

figures as a means to sidestep pledges to do no harm against to those who signed reconciliation agreements.<sup>122</sup>

These issues often caused residents to avoid the re-established formal system in Daraa, and either not to resolve the problem or seek an alternative solution. A lawyer interviewed by ILAC was a member of the conflict resolution committee established in an outlying area after the return of government control to Daraa. This committee is responsible for resolving disputes among civilians in the area. He reported that not only did the local community trust this committee, civilians in other parts of Daraa who distrusted the government courts also litigated before it, particularly in ‘blood money’ cases involving compensation for killings.<sup>123</sup>

### *Impacts on lawyers*

The situation for many lawyers in Daraa is difficult. When the Syrian conflict began in 2011, Daraa’s Bar split, with opposition lawyers abandoning the SBA branch and forming a Free Lawyers’ Association.<sup>124</sup> After the government regained control in July 2018, the SBA branch was re-established in Daraa, with a government supporter and member of the Ba’ath Party serving as president.<sup>125</sup>

The settlement agreement between the Syrian government and the opposition in Daraa provided immunity for members of professional associations formed in the governorate during the war, including the Free Lawyers Association. Many Daraa lawyers accordingly attempted to re-join the local SBA branch.

<sup>126</sup>

Despite this settlement agreement, 250 to 300 lawyers in the Daraa governorate – more than one-third of the total – were disbarred for their opposition to the regime, or for not paying fees and not communicating with

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<sup>122</sup> *Ibid.*

<sup>123</sup> Interview 1, RA Lawyer; Interview 4, RA Lawyer.

<sup>124</sup> Note: The name ‘Free Lawyers Association’ has been adopted by alternative bar associations formed by opposition lawyers in areas outside government control. These various associations operate within a governorate or other geographic area as an alternative to the local branch of the SBA. Although they share the same name, not all Free Lawyers Associations share the same perspective regarding the rule of law. Some, but apparently not all, of these associations participate in an umbrella alternative to the SBA, most commonly referred to in Arabic as the ‘Central Bar Association’. See: National Coalition of Syrian Revolution and Opposition Forces, ‘Aleppo Free Bar Association Successfully Concludes Annual Congress & Elections’, 2020, *supra* n. 84.

<sup>125</sup> Interview 4, RA Lawyer.

<sup>126</sup> Syrians for Truth & Justice (STJ), ‘Syria: The Bar Association Disbarred 170 Lawyers in Daraa’, 5 November 2019; Interview with President of the Bar Association in Daraa, published in Arabic by Enab Baladi, 22 July 2018, translated and reported in Syrian Association for Citizens Dignity, SACD Update on Reconciliation Agreement in Daraa, 7 October 2020.

the SBA affiliate.<sup>127</sup> The disbarred lawyers were left with no means of making a livelihood and concerns for their security.<sup>128</sup>

Facing a public outcry, the local SBA branch (reportedly acting under Russian pressure) issued circulars in March 2019 somewhat mitigating the penalties. Under these new rules, lawyers disbarred for non-payment of fees, lack of communication or ceasing work could apply for reinstatement. There were reportedly 81 lawyers in the first category, all of whom were required to undergo background investigations by the security services. As of October 2019, 28 of these lawyers had been allowed to re-join the Daraa branch of the SBA, while the fate of the remainder was unknown.<sup>129</sup>

The remaining 169 disbarred lawyers were designated as ‘stigmatised’, that is, involved in the conflict. Though the July 2018 agreement stipulated that they should have immunity, and despite many having signed individual reconciliation agreements with similar provisions, the circulars prevented these ‘stigmatised lawyers’ from re-joining the official Bar and practising law.<sup>130</sup>

The SBA branch in the Daraa area has also admitted more than 200 new members. However, applicants must prove that they have not been involved in offences against the government and that they have met their mandatory military obligations.<sup>131</sup>

The lawyers admitted to the SBA branch are allowed to work in the re-established government courts in the same way as lawyers operating in courts elsewhere in Syria. Estimates provided to ILAC indicated that roughly 500–550 lawyers were practising in the Daraa region.<sup>132</sup> Nevertheless, given the exodus of opposition lawyers to the North and the number of official disbarments, the SBA branch in Daraa reported in 2018 that there was a shortage of practising lawyers in the area.<sup>133</sup>

At present, Daraa remains an area in flux. The relative stability from 2012 to 2018 has been replaced by conflict and competition between different political and military factions, with no clear outcome on the horizon. Until stability is restored, the justice system will remain unsettled.

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<sup>127</sup> Interview 4, RA Lawyer; Interview 7, RA Lawyer.

<sup>128</sup> *Ibid*; SACD Update on Reconciliation Agreement in Daraa, 7 October 2020.

<sup>129</sup> Interview 1 RA Lawyer; SACD Update on Reconciliation Agreement in Daraa, 7 October 2020.

<sup>130</sup> *Ibid*.

<sup>131</sup> Interview 4, RA Lawyer; Interview 1, RA Lawyer.

<sup>132</sup> *Ibid*.

<sup>133</sup> SACD Update on Reconciliation Agreement in Daraa, 7 October 2020.

## Sweida

One area not discussed separately in ILAC's 2017 report was Sweida,<sup>134</sup> a governorate in the south-western Syria, east of Daraa. Sweida is predominantly Druze: as of 2010 (the last year for which reliable census figures were available), around 90 percent of the population of the governorate was Druze, 7 percent Christian and 3 percent Sunni.<sup>135</sup>

When the Syrian uprising began in 2011, the Druze in the Sweida area showed some signs of joining the opposition. However, the opposition's Sunni-centric philosophy did not align with the community's preference for secularism, which the Druze consider as a guarantee of their safety. Though some elements within the Druze community joined the opposition, an informal agreement between President Assad and the community's spiritual leaders left the defence of the area to approximately 10,000 local pro-regime militiamen.<sup>136</sup>

Accordingly, at the time of ILAC's earlier report, Sweida was relatively peaceful. The Druze stayed largely on the sidelines. Their leaders in Sweida opposed participating in the war, keeping their sons from enlisting in the army to avoid revenge attacks.<sup>137</sup>

As discussed above, Syrian armed forces launched an offensive in the adjacent governorate of Daraa. They also launched an attack in the north-eastern part of the Sweida governorate, directed at Islamic State in Iraq and Syria (ISIS) fighters who had been evacuated to the desert as part of a deal between ISIS and the Syrian government and which concluded an anti-ISIS offensive in southern Damascus. At the same time, Russian military commanders began pressuring Druze leaders to allow young men from their community to enlist in the Syrian army.<sup>138</sup>

However, the situation changed dramatically on 25 July 2018, when ISIS-affiliated attackers from the north-eastern desert entered Sweida city.<sup>139</sup> After a series of gunfights and suicide bombings, at least 246 local residents had

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<sup>134</sup> Also variously Anglicised as 'as-Suwaydā' or 'Swaida'.

<sup>135</sup> Fabrice Balanche, 'The Druze and Assad: Strategic Bedfellows', Washington Institute for Near East Policy, 20 October 2016, <<https://www.washingtoninstitute.org/policy-analysis/druze-and-assad-strategic-bedfellows>>.

<sup>136</sup> *Ibid.*

<sup>137</sup> Sarah el Deeb, 'IS Attack Devastates Community in Southern Syria', *U.S. News & World Report*, Beirut, 26 July 2018, <<https://www.usnews.com/news/world/articles/2018-07-26/death-toll-in-devastating-is-attacks-in-syria-climbs-to-216>>.

<sup>138</sup> Mahmoud al-Lababidi, 'The Druze of Sweida: the Return of the Regime Hinges on Regional and Local Conflicts', Robert Schuman Centre for Advanced Studies, European University Institute, 29 August 2019, <[https://medirections.com/images/dox/Sweida\\_En\\_MED\\_2019\\_12.pdf](https://medirections.com/images/dox/Sweida_En_MED_2019_12.pdf)>.

<sup>139</sup> Stephen Starr, 'Rising discontent in Syria's Daraa, Sweida reflects simmering woes', *The Arab Weekly*, 16 February 2020, <<https://theArabweekly.com/rising-discontent-syrias-daraa-sweida-reflects-simmering-woes>>.

been killed with another 42 Druze kidnapped by ISIS.<sup>140</sup> Reportedly, although ISIS attacked some government checkpoints, Syrian army forces largely left ISIS alone during this attack.<sup>141</sup>

Druze and government leaders soon began assigning blame. Some government supporters claimed the attack succeeded due to incompetent local security and the fact the area was outside strict government control. Pro-Assad accounts claimed the attack happened because the Druze had declined to support the Syrian military and avoided the draft (“they did this to themselves”).<sup>142</sup>

Among the Druze, however, it seemed to be no coincidence that the Assad government, with Russia’s help, had evacuated many ISIS attackers from other areas in Syria to the eastern desert in Sweida at the same time it was pressuring the Druze to end their relative autonomy and turn over ‘deserters’ to the army.<sup>143</sup>

Regardless, in response to these attacks, the Syrian army’s 5<sup>th</sup> Corps (above) in early August 2018 began an offensive against ISIS forces in rural Sweida.<sup>144</sup> By mid-November, the government declared it was in full control of southern Syria.<sup>145</sup>

In early 2019, the government resumed its pressure on Sweida’s Druze to join its armed forces.<sup>146</sup> After years of relative calm, conflict grew between the Sweida community and the Syrian army. In June 2020, peaceful protests erupted in Sweida against the Syrian government due to the country’s deteriorating economic and security situation.<sup>147</sup> Syrian government security

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<sup>140</sup> el Deeb, ‘IS Attack Devastates Community in Southern Syria’, 2018, *supra* n. 137.

<sup>141</sup> Starr, ‘Rising discontent in Syria’s Daraa’, 2020, *supra* n. 139.

<sup>142</sup> Middle East Center for Reporting and Analysis, ‘New details of ISIS attack on Suwayda, the hundreds killed, 14 Druze women kidnapped’, 27 July 2018,

<<https://www.mideastcenter.org/post/new-details-of-isis-attack-on-suwayda-the-hundreds-killed-14-druze-women-kidnapped/>>.

<sup>143</sup> *Ibid.*

<sup>144</sup> Al Arab, 8 November 2018, <<https://alarab.co.uk/كيف-تواطأ-الأسد-وداعش-والروس-على-تنفيذ-مذبحة-السويداء>>.

<sup>145</sup> Leith Aboufadel, ‘Daesh suffers devastating defeat as Syrian Army liberates entire Al-Safa region’, Al-Masdar News, 19 November 2018,

<<https://www.almasdarnews.com/article/daesh-suffers-devastating-defeat-as-syrian-army-liberates-entire-al-safa-region/>>.

<sup>146</sup> al-Lababidi, ‘The Druze of Sweida’, 2019, *supra* n. 138.

<sup>147</sup> Harun al-Aswad, “Enough is enough”: Syria anti-government protests in Sweida swell for second day’, Middle East Eye, 8 June 2020 <<https://www.middleeasteye.net/news/syria-sweida-anti-government-protests-second-day>>.

forces arrested several protesters.<sup>148</sup> A few weeks later, dozens were killed during intense clashes between the 5th Corps and local Druze fighters.<sup>149</sup>

As of the time of writing, anger at the regime remained. In January 2021, two died in Sweida during anti-government protests fuelled by anger over 'corrupt politicians' and the worsening economic situation.<sup>150</sup>

These conditions resulted in a significant decline in trust in the integrity of the Syrian judiciary. Large numbers of Druze are wanted by the security services or for military conscription, and cannot enter the courts for fear of arrest. Accordingly, there is increasing reticence by the Druze community to utilise the Syrian legal system in Sweida.<sup>151</sup>

Because of this reluctance, the tribal justice system in the Druze community has re-emerged. The tribal judiciary has been a feature of Druze life ever since Sweida was first settled, though historically it mostly dealt with reconciliations in murder cases. Now, this process has been expanded to resolve personal and family disputes, including quarrels and theft.<sup>152</sup>

Those interviewed by ILAC highlighted the role of informal dispute resolution mechanisms, such as conciliation committees or councils in Sweida. Some were found to be organised along religious lines, while others were based on tribal relationships.<sup>153</sup> These organisations have no official sanction or legal authority. They do not follow any prescribed rules, but instead rely on customs and traditions.<sup>154</sup> Nonetheless, lawyers from Sweida described to ILAC how even serious matters, such as murder and abduction, were being handled by these informal mechanisms:

*[C]ases are dealt with on an individual level.... The party that handles the conciliation (such as the Emir/Prince and other notables) drafts a conciliation document and presents it to the court as a reference; conciliation is done by dropping personal claims, ending the dispute as if it never happened in the first place.<sup>155</sup>*

<sup>148</sup> Amnesty International, 'Syria: Peaceful protesters detained in Sweida must be released immediately', 24 June 2020, <<https://www.amnesty.org/en/latest/news/2020/06/syria-peaceful-protesters-detained-in-sweida-must-be-released-immediately/>>.

<sup>149</sup> Syrian Observation of Human Rights, 'In 24 hours: Some 115 fighters of 5th Corps and local gunmen from Sweida killed and injured', 30 September 2020, <<https://www.syriahr.com/en/186299/>>.

<sup>150</sup> Asharq al-Awsat, 'Syria: Sweida Residents Call for Dismissing Security Official', Daraa – Riad al-Zein, 29 January 2021, <<https://english.aawsat.com/home/article/2772236/syria-sweida-residents-call-dismissing-security-official>>.

<sup>151</sup> al-Lababidi, 'The Druze of Sweida', 2019, *supra* n. 138.

<sup>152</sup> *Ibid.*

<sup>153</sup> Interview 2, Interview 4, Focus Group 1, Focus Group 2, Focus Group 5; Focus Group 6.

<sup>154</sup> al-Lababidi, 'The Druze of Sweida', 2019, *supra* n. 138.

<sup>155</sup> Focus Group 4, GCFG Lawyers.

According to a report, one such committee resolved approximately 225 cases by mutual consent between June 2018 and May 2019.<sup>156</sup> One published account described how, in March 2019, a dispute between the villagers from nearby towns over grazing rights developed into an armed clash. When tribal justice authorities were asked to intervene:

*The solution was found quickly, while it would have taken years within the regime institutions. Now any dispute is resolved within this tribal judicial structure.*<sup>157</sup>

Like numerous other regions in Syria, the long-term existence of these tribal mechanisms in Sweida depends on future military and political developments. Their current popularity, however, reflects both deeply rooted traditions and the ongoing lack of legitimacy of the official institutions in communities throughout Syria, even in areas nominally under government control.

## **East Ghouta**

Another locale outside government control in 2017 was East Ghouta, an area of suburbs and new satellite towns outside of Damascus. One of the first areas to join in the anti-government protests in 2011, the enclave became a focal point of severe violence and lawlessness.

For years, the enclave was the scene of intense fighting, sieges and chemical attacks. In February 2018, the Syrian army launched another offensive, dubbed 'Operation Damascus Steel', to capture East Ghouta. By mid-April, the entire enclave had been largely destroyed and was under government military control.

As mentioned above, East Ghouta was one of the four designated 'de-escalation zones' included in the May 2017 agreement between Russia, Iran and Turkey.<sup>158</sup> This framework agreement contemplated localised negotiations for each de-escalation zone. In East Ghouta, a series of agreements was reached that allowed Syrians who refused to reconcile with the government to be moved to the rebel-held North. Beginning on 23 March and concluding on 14 April 2018, a total of 66,369 Syrians were moved from East Ghouta to opposition areas in northern Syria.<sup>159</sup>

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<sup>156</sup> al-Lababidi, 'The Druze of Sweida', 2019, *supra* n. 138.

<sup>157</sup> *Ibid.*

<sup>158</sup> Reuters, 'Russia, Iran, Turkey set up Syria de-escalation zones for at least six months: memorandum', 6 May 2017, <<https://www.reuters.com/article/us-mideast-crisis-syria-memorandum-idUSKBN182oCo>>.

<sup>159</sup> Atlantic Council, 'Breaking Ghouta', Washington, DC: Atlantic Council Digital Forensic Lab, 7 September 2018, <[https://www.atlanticcouncil.org/wp-content/uploads/2019/08/Breaking-Ghouta\\_English.pdf](https://www.atlanticcouncil.org/wp-content/uploads/2019/08/Breaking-Ghouta_English.pdf)>.

These agreements also included guarantees for the safety of those choosing to remain in their homes under government control.<sup>160</sup> Within days, however, these guarantees were breached by government forces and pro-regime militias.<sup>161</sup> After entering the city, the Syrian army and its allies began the systematic looting of residential neighbourhoods. Many of the remaining 120,000 residents were moved to detention centres, where investigation by the intelligence services, interrogation and torture were commonplace.<sup>162</sup>

The rudimentary court structure<sup>163</sup> developed in East Ghouta while it was under rebel control disappeared.<sup>164</sup> Even judges from the area who had ‘reconciled’ with the government were subject to intimidation, arrest and worse.<sup>165</sup>

According to one report, the Ministry of Justice rebuilt and reopened the judicial complex in Douma. Other courts in East Ghouta, including military courts and Anti-Terrorism courts, had reopened by the end of 2018, including in Arbin, Harasta, Babbila and Kafr Batna.<sup>166</sup> One analysis concluded that there had been an apparent focus on the restoration of institutions such as the judiciary, rather than on quality of life improvements for residents.<sup>167</sup>

Based on ILAC’s interviews, it appears that these courts generally function just as Syrian government courts did prior to 2011.<sup>168</sup> Judges and prosecutors have been assigned to these courts, although they often come from outside the area.<sup>169</sup>

While the reassertion of government control in East Ghouta has been brutal in multiple respects, one aspect of the onslaught that deserves particular attention is real property ownership. With much of the population expelled, fleeing or evacuated, property in entire neighbourhoods has been explicitly or implicitly expropriated.<sup>170</sup> After the government reoccupied the area, it cancelled all sales contracts executed during the conflict. The regime also issued a directive to ignore any changes made in terms of real estate

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<sup>160</sup> Kareem Shaheen, ‘Ceasefire Deal Agreed in Syria’s Eastern Ghouta’, *The Guardian*, 23 March 2018, <<https://www.theguardian.com/world/2018/mar/23/ceasefire-deal-agreed-in-syrias-eastern-ghouta>>.

<sup>161</sup> Reuters, ‘Air Strikes, Shelling Strain Moscow-Backed Damascus Truce’, 25 July 2017, <<https://www.reuters.com/article/us-mideast-crisis-syria-ghouta-idUSKBN1AA0JV>>.

<sup>162</sup> Gregor Jaecke and David Labude, ‘De-escalation zones in Syria’, Konrad-Adenauer-Stiftung e. V, March 2020.

<sup>163</sup> ILAC 2017 Report, pp. 100–103.

<sup>164</sup> Interview 2, RA Lawyer.

<sup>165</sup> *Ibid*; JESR, ‘Prominent Judge and His Daughter Arrested in Douma’, translated and edited by *The Syrian Observer*, 21 January 2020.

<sup>166</sup> Interview 2, RA Lawyer; Enab Baladi, ‘A year after the Syrian alienation: How has the situation in Eastern Ghouta changed?’, 21 February 2019.

<sup>167</sup> COAR, ‘Eastern Ghouta: Needs Oriented Strategic Area Profile’, July 2019, p. 24.

<sup>168</sup> Interview 2, RA Lawyer.

<sup>169</sup> *Ibid*.

<sup>170</sup> United States Department of State, Bureau of Democracy, Human Rights and Labor, ‘Syria 2019 Human Rights Report’, Washington, DC, 2020, p. 47.

ownership before April 2018. If they wished to re-register or confirm their ownership, original owners had to personally appear and be identified as owners by acknowledged witnesses who were in place before 2011. These restrictions have gravely impacted those people wanted by regime intelligence forces and new residents who were part of or affiliated with the opposition.<sup>171</sup>

Significantly, cadastral documentation issues are being handled by the Syria Trust for Development, a state-linked organisation with a poor reputation. Reports indicate that the Trust, rather than working through the courts or other legal channels, has established neighbourhood committees in each community. These committees receive limited legal training and are tasked to provide support to civilians in the area. The fairness of this process is questionable, since it is heavily dependent on the training and composition of these citizen committees.<sup>172</sup> Moreover, one lawyer interviewed by ILAC reported that the re-established government courts in East Ghouta were complicit in these activities.<sup>173</sup>

In our prior report, ILAC also discussed the establishment of civil documentation centres attached to local councils in areas outside government control. These centres established civil registries to record events such as births, marriages and deaths, and issue documentation confirming those matters. Reports indicate that since government control has been re-established, the Interior Ministry is refusing to recognise these documents.<sup>174</sup>

Equally important, the government has not prioritised the re-establishment of the civil registration system in East Ghouta. Residents are now being required to pay expensive legal fees for help in obtaining new, official documentation. Worse, they are required to obtain security clearance and make the perilous trip to Damascus to resolve such issues.<sup>175</sup>

Lawyers in East Ghouta were also substantially impacted when the government regained control in East Ghouta. The local branch of the SBA resumed operations under the presidency of Farouk Ramadan, and all lawyers who had joined the opposition were disbarred. That Bar is still admitting new members but, as in other areas regained by the government, applicants must have the approval of and demonstrate their full loyalty to the regime.<sup>176</sup>

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<sup>171</sup> Middle East Institute, 'Forgotten Lives: Life under Regime Rule in Former Opposition-Held East Ghouta', May 2019, pp. 9–10.

<sup>172</sup> COAR, 'Eastern Ghouta: Needs Oriented Strategic Area Profile', July 2019, pp. 19–20, *supra* n. 167.

<sup>173</sup> Interview 2, RA Lawyer.

<sup>174</sup> COAR, 'Eastern Ghouta', July 2019, p. 30, *supra* n. 167; COAR, 'Eastern Qalamoun: Needs Oriented Strategic Area Profile', July 2019, p. 20; COAR, 'Southwestern Dar'a: Needs Oriented Strategic Area Profile', September 2019, p. 20.

<sup>175</sup> COAR, 'Eastern Ghouta', July 2019, p. 30, *supra* n. 167; EASO, 'Country of Origin Report on Syria: Targeting of Individuals', 2020, p. 96.

<sup>176</sup> Interview 2, RA Lawyer.

One person interviewed by ILAC alleged that lawyers registered with the SBA were complicit in the government's efforts to confiscate the property of absentees and displaced persons. He also alleged that in political cases, these lawyers made no effort to provide a real defence.<sup>177</sup> At the same time, lawyers not affiliated with the security agencies were afraid to represent anyone accused in political crimes, or persons adverse to any of the pro-regime militias or any party affiliated with the regime.<sup>178</sup>

While much of East Ghouta remains in ruins from conflict, it is clear that the institutional presence is equally affected. The nominal return of government control has not yet resulted in a meaningful return to justice, or even to the civilian courts and other judicial structures that existed prior to 2011.

## Idlib

While significant portions of the Idlib governorate remain outside government control (see below), in the past four years the Syrian army has made some advances in this region. In those areas, government efforts to reopen the official state courts have met with mixed success.

For example, media reports from pro-government outlets indicated that following the recapture of some areas in eastern Idlib governorate such as Abu al-Duhur and Sinjar in 2018, a number of judges and courts personnel were deployed in the area. However, they were later removed and relocated to Hama owing to security threats.<sup>179</sup> This removal reportedly further burdened the courts to the South in Hama and put additional constraints on residents of the Idlib governorate, who were unable to access those courts and address their justice needs. In May 2019, the Ministry of Justice announced plans to reopen the court in Sinjar upon completion of repairs to the building.<sup>180</sup> The court was reportedly reopened sometime in the autumn of 2019.

These actions are part of an apparent effort by the government to re-establish state institutions in this disputed region. For example, in September 2019 the government announced that work was underway to rehabilitate Khan Shaykhun court and that most of its case files had been successfully retrieved.<sup>181</sup> A similar announcement was made in January 2020 concerning plans to reopen the Maaret An-Numan court and retrieve its case files.

Although the retaken areas lie well east of Idlib city, the heart of the governorate, the SBA is also seeking to reassert its authority over the local

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<sup>177</sup> *Ibid.*

<sup>178</sup> *Ibid.*

<sup>179</sup> Mohammed Manar Hmemo, Al Watan, February 2019 <<https://alwatan.sy/archives/186687>> [accessed 23 April 2021].

<sup>180</sup> Mohammed Manar Hmemo, Al Watan, 3 September 2019 <<https://alwatan.sy/archives/210686>> [accessed 23 April 2021].

<sup>181</sup> Al Watan, September 2019 <<https://alwatan.sy/archives/210765>> [accessed 23 April 2021].

Bar. In September 2018, the head of the association's branch in the governorate announced that more than 425 of the branch's 950 lawyers had been disbarred. According to this report, 100 of these lawyers had left the country, while another 200 were still in Idlib but had not paid their membership fees. Those not disbarred were spared because they did not participate in actions against the government.<sup>182</sup>

## **Conclusions: areas controlled by the Syrian government**

Throughout the Syrian conflict, the court system has continued to operate in government-controlled areas in much the same way as before the 2011 uprisings. The lack of effective reform means that the problems identified in ILAC's 2017 report remain today. Put succinctly, the justice system generally fails to comply with international standards of independence and impartiality.

With roughly half of the Syrian population internally displaced or in neighbouring countries, many the victims of atrocities, finding a way to build a Syrian justice system that can resolve conflicts and providing the population with recourse to justice is crucially important.

Yet most lawyers and judges interviewed for this study shared a clear sense of frustration that they were unable to effectively implement Syrian laws and judicial procedures, due to interference from the executive. These professionals highlighted the frequent trials of civilians before exceptional courts, which deprived individuals of any due process by placing them outside the ostensible protections afforded by Syrian substantive and procedural law. Such intervention reinforces the perception that even the Syrian government does not truly consider Syrian law worthy of respect.

Despite the systemic failings, many lawyers continue working in the official Syrian courts, representing clients in the pursuit of justice. Although working in a slow and flawed fashion, and upholding only those rights that do not clash with political interests, the courts were viewed by these lawyers as one of the few available vehicles for securing at least some rights for clients in Syria.

Nevertheless, understanding how and when Syrian institutions can be an asset rather than an obstacle will be important in addressing impunity and searching for effective remedies for the Syrian people. Lawyers and judges

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<sup>182</sup> Enab Baladi, 'In the Steps of Daraa, Bar Association in Idlib Governorate Disbars Half of Its Lawyers', 28 August 2018, <<https://english.enabbaladi.net/archives/2018/08/in-the-steps-of-daraa-bar-association-in-idlib-governorate-disbars-half-of-its-lawyers/>>.

possess unique knowledge concerning the inner workings of the Syrian justice system and should be part of the dialogue in any such effort.

In our 2017 report, ILAC pointed to the potential for the Syrian legal profession to act as an engine for reform within Syria. Circumstances at the time appeared to render it difficult for lawyers in government areas to be involved in any meaningful dialogue. Nevertheless, initiatives were ongoing. ILAC recommended that the situation be monitored, and resources mobilised, to allow rapid support for such initiatives should opportunities for more open engagement with the legal profession arise. A window for such engagement is now available.

The willingness of Syrian judges to participate in interviews for this project on the rule of law in Syria suggests that at least some space for dialogue exists within the Syrian judiciary concerning possible improvements. Indeed, the comments of some judges were highly critical of the justice system and its inability to deliver equitable and independent justice.

The ability to discuss rule of law issues with Syrian legal professionals represents an opportunity to engage with them regarding their role and potential contributions to improved access to justice in their country. Dialogue within the Syrian legal profession, both within government-controlled territories and between different parts of Syria, are key to identifying the main challenges to justice in Syria and potential avenues for addressing accountability issues.

Accountability remains a crucial issue for the future of Syria. In recent years, prosecutors in several countries, primarily in Europe, have relied upon universal jurisdiction and drawn on the work of Syrian and international organisations to bring a number of Syrian cases to court, obtaining several high-level convictions.

While such convictions represent significant relief for individual victims, this experience suggests that trials before foreign national courts contribute little to future processes for accountability within Syria. Insofar as future accountability efforts in Syria include legal processes, knowledge concerning the workings of the Syrian courts will be vital.

Given the Syrian courts' lack of independence in matters concerning the state, they are not presently a viable avenue for pursuing accountability issues. Nonetheless, international organisations can engage with Syrian lawyers and judges to discuss accountability issues, including what actions can be realistically pursued.

Many human rights violations end only with an active decision by the state. In our conversations, Syrian lawyers highlighted numerous problems relating to legal identity, housing, land and property, and missing persons. Such issues have long-term ramifications on the lives of people and, if left

unresolved, often contribute to destabilisation and renewed conflict. Lawyers and judges in Syria should be encouraged and supported in efforts to identify issues where sufficient room to manoeuvre exists to reach positive outcomes in individual cases, and to determine how these outcomes can be leveraged to address legitimate demands for justice by the Syrian people.

The stated aim of most parties to the Syrian conflict, including the Syrian government, is a reunited Syria. In the view of the Syrian government, reunification means the return of all areas to its control. In considering the future role of the Syrian courts in resolving the country's problems, it is instructive to examine the government's actions in areas where it has recently regained control.

Several reports from these areas indicate that Syrian state institutions have engaged in retribution against the civilian population for perceived anti-government sentiments. Such actions have led many in the local populace to conclude that these institutions cannot be relied upon for the settlement of disputes. Rather than rely on government courts, which are perceived as tools for revenge and repression, many Syrians in these areas prefer to take disputes to reconciliation mechanisms or traditional court structures out of the government's reach.

Institutional purges of those with opposition ties or sympathies have resulted in a considerable loss of competence, as numerous lawyers have been disbarred and judges fired. These purges have exacerbated trust issues, as the courts have lost competence and vacancies have been filled with replacements from other parts of Syria with little connection to local communities.

The obvious risk in many areas is that these factors could hinder the effective administration of justice for many years to come. Indeed, this process could leave Damascus and other urban areas with access to relatively competent and accessible justice institutions, while the former reconciled areas are left without. Under such circumstances, the inability to gain the population's trust may undermine the Syrian government's efforts to regain control in areas retaken from other actors.

A core task of the courts in any country is to provide a forum for the peaceful resolution of disputes. Yet to play that role, courts need the capacity to resolve disputes competently and speedily. Judges must have sufficient respect and community trust to be seen as 'honest brokers'. If courts cannot deliver justice, they cannot fulfil their role of peacefully resolving conflicts. Until the Syrian government allows its justice system to function as an independent arbiter within the system and society, resolution of the current conflict will remain elusive.

### 3 Northwest Syria

**Perhaps the area that has seen the most dynamic changes since ILAC's 2017 report is northern Syria. Military intervention by international actors, coupled with shifts in the balance of power among Syrian factions and a series of political agreements involving various of these parties, have created a mixture of zones of influence and control.**

- After the conflict began in 2011, Aleppo, the most populous city in Syria, became contested ground between a variety of armed opposition groups, and between the opposition and the Syrian government.<sup>183</sup> When ILAC visited the area in November 2016, Aleppo was the scene of intense fighting as government forces attempted to take control of the area. In December 2016, the siege of Aleppo came to an end and the Syrian government took control of the city and its environs.<sup>184</sup>
- At the time of ILAC's prior report, the Idlib region was controlled by three separate armed Islamist groups, each of which created its own system of *Sharia* courts.<sup>185</sup> By late 2017, one of those groups, Hayyet Tahrir al-Sham (HTS), had expelled the other groups and formed a 'Salvation Government' that took control of nearly all the territory in Idlib governorate.
- By 2016, the Kurdish forces and their allies had established an Interim Transitional Administration for Rojava, with local administrations in three non-adjacent areas in northern Syria known as Afrin, Kobani and Cezire.<sup>186</sup> Since that time, Turkey has undertaken a series of cross-border military operations throughout those regions, and elsewhere in northern Syria. Consequently, the Turkish military and aligned armed groups have taken direct control over large areas in northern Syria that were previously controlled by Kurdish and other anti-government forces. At the same time, Kurdish forces have allied with other actors to both resist Turkish advances and take control of areas in northern Syria previously controlled by ISIS.

These actions have resulted in significant changes to the systems of justice that were in place at the time of ILAC's earlier report. Since the city and immediate environs of Aleppo are now under the hegemony of Assad and his allies, those developments were discussed above in the section on

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<sup>183</sup> ILAC 2017 Report, pp. 82–85.

<sup>184</sup> Aron Lund, 'A Turning Point in Aleppo', Carnegie Middle East Center, 15 December 2016, <<https://carnegie-mec.org/diwan/66314>>.

<sup>185</sup> ILAC 2017 Report, pp. 91–100.

<sup>186</sup> ILAC 2017 Report, pp. 106–124.

government-controlled areas. Similarly, the changes in the areas under Kurdish control will be discussed separately below.

This section focuses on justice system changes in areas in northern Syria where Turkish influence, both direct and indirect, has played a pivotal role.

## **Idlib**

### **Current situation**

In our 2017 report, Idlib was described as a chaotic situation, the domain of a variety of armed Islamist groups. The most dominant were Jaish al-Fatha, Ahrar al-Sham and Jabhat al-Nusra, the latter now known as Hayyet Tahrir al-Sham (HTS).

Like many other parts of Syria, changing fortunes in the conflict led to significant changes on the ground in Idlib. In summer 2017, the frequency of internal disputes between HTS and other Islamic factions escalated. HTS launched several attacks, resulting in its opponents losing their strongholds and forcing them to withdraw from areas in Idlib to the Aleppo countryside.

In September 2017, HTS organised the Syrian General Conference, which led to the establishment of a founding council and, in November, the Syrian Salvation Government.<sup>187</sup> By January 2018, HTS had taken military control of almost all the territory in Idlib. Exploiting this dominance, the Salvation Government moved to take political control from the remaining opposition rivals in the governorate.<sup>188</sup>

In 2019, the Syrian government, backed by Russian airpower, mounted offensives that pushed back HTS forces in the eastern part of the Idlib governorate, killing at least 1,600 civilians and driving 1.4 million others from their homes. Turkey launched a counter-offensive in early 2020, which led Russia to negotiate a ceasefire. Turkey has since deployed some 12,000 troops along Idlib's front lines, providing security for HTS and its Salvation Government.<sup>189</sup>

### **The justice system under the Salvation Government**

Any discussion of the justice system in the Idlib governorate in Northwest Syria must begin with an acknowledgement of the weakness of the current

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<sup>187</sup> ILAC North West Partner Report, January 2021.

<sup>188</sup> Alaa Nassar *et al.*, 'HTS-backed civil authority moves against rivals in latest power grab in northwest Syria', *Syria Direct*, 13 December 2017, <<https://syriadirect.org/hts-backed-civil-authority-moves-against-rivals-in-latest-power-grab-in-northwest-syria>>.

<sup>189</sup> International Crisis Group, 'In Syria's Idlib, Washington's Chance to Reimagine Counter-terrorism', 3 February 2021, <<https://www.crisisgroup.org/middle-east-north-africa/eastern-mediterranean/syria/syrias-idlib-washingtons-chance-reimagine-counter-terrorism>>.

judicial structures. Notwithstanding the judicial institutions and processes described below, armed actors can exert their will at any time. Laws and procedures can be and are being ignored, and courts can be and are being misused.<sup>190</sup> While ILAC has sought to identify and describe the putative justice system in Idlib, such descriptions should not obscure the ongoing violence and lawlessness that remains pervasive in the area.

With that cautionary note, it is noteworthy that after HTS gained military and territorial dominance, it recognised the significance of having control over the justice system. At the Syrian General Conference in September 2017, where HTS organised the Salvation Government, it was agreed to recognise “the Islamic law as the only source of legislation”.<sup>191</sup>

Detailed public information about the current justice system in the Idlib governorate is limited. The Salvation Government appears disinterested in publicising and disseminating details on such issues.<sup>192</sup> Moreover, the power monopoly of HTS as the armed group in charge of the Salvation Government, and the serious security concerns of activists and other individuals in Idlib, further contribute to diminishing access to reliable and objective information.<sup>193</sup> Nonetheless, through ILAC interviews and secondary sources, some information was made available.

## Judicial independence

When formed, the Salvation Government consisted of 11 ministries, including a Ministry of Justice.<sup>194</sup> The latter ministry and its courts evolved from the *dor al-Qadaa* (‘judiciary abode’ or simply ‘court’) set up by Jabhat al-Nusra in 2014.<sup>195</sup> Some of those courts were established directly by the group, while others were co-opted by force from other factions.<sup>196</sup>

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<sup>190</sup> See: Statement of Spokesperson for the UN High Commissioner for Human Rights, ‘Idlib violations and abuses’, 20 November 2020, <<https://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=26524&LangID=E>> [accessed 15 March 2021]; Darwish Ali, ‘Innocent here; convict there: two separate judiciaries in northern Syria’, Enab Baladi, 13 February 2021, <<https://english.enabbaladi.net/archives/2021/02/innocent-here-convict-there-two-separate-judiciaries-in-northern-syria/>> [accessed 23 March 2021].

<sup>191</sup> Enab Baladi, ‘The Syrian General Conference Faces the Interim Government in Idlib’, 18 September 2017, <<https://english.enabbaladi.net/archives/2017/09/syrian-general-conference-faces-interim-government-idlib/>>.

<sup>192</sup> See: Ali, ‘Innocent here; convict there’, 2021, *supra* n. 190.

<sup>193</sup> ILAC North West Partner Report, January 2021, *supra* n. 187.

<sup>194</sup> Aymenn Jawad al-Tamimi, ‘Idlib and Its Environs: Narrowing Prospects for a Rebel Holdout’, The Washington Institute for Near East Policy, February 2020, <<https://www.washingtoninstitute.org/media/737>>.

<sup>195</sup> *Ibid.*

<sup>196</sup> Joanna Cook, ‘Jurisprudence Beyond the State: An Analysis of Jihadist “Justice” in Yemen, Syria and Libya’, *Studies in Conflict and Terrorism*, 10 June 2020, <<https://www.tandfonline.com/doi/full/10.1080/1057610X.2020.1776958>>.

Structurally, the Ministry of Justice is responsible for the administration of the *dor al-Qadaa*, a move that aimed to distance HTS from the courts, so increasing their legitimacy. The Salvation Government's Minister of Justice has described one aspect of the ministry's role as "working on the independence, professionalism and integrity of the judiciary".<sup>197</sup> Nonetheless, the main structure of *dor al-Qadaa*, as well as HTS's influence over it, remains the same. The courts are largely perceived as HTS courts.<sup>198</sup>

This perception is due to the obvious dominance of HTS over the institutions and the large number of its members who occupy key positions as judges in those courts.<sup>199</sup> Lawyers interviewed by ILAC described the courts as dependent on or even subordinate to the ministry.<sup>200</sup> According to another lawyer, the HTS authorities in theory pretended to protect judicial independence, but in actual practice did not.<sup>201</sup>

Another lawyer who generally gave a more positive account of the Salvation Government system disagreed with this perspective, suggesting that although there was a measure of dependency, the actual working relationship between the judiciary and executive authorities was more in the nature of coordination.<sup>202</sup> An official working within the HTS judicial system generally echoed this view, acknowledging problems with judicial independence, but describing the authorities as interlinked and interdependent.<sup>203</sup>

Yet a third perspective was that the courts in Idlib were administratively connected to the ministry, but that they retained some measure of independence in relation to individual cases. This point of view was offered by one of the lawyers who was more critical of the HTS courts, who opined that despite their subordinate role to the executive, the judiciary was nevertheless 90 percent independent.<sup>204</sup>

No written constitution or other similar document exists to ensure the separation of powers in the Salvation Government areas. Instead, lawyers described the relationship between the executive and judicial authorities as reliant primarily on general norms.<sup>205</sup>

While information was sparse and somewhat inconsistent, there is apparently a five-member Judicial Council within the Salvation Government structure.

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<sup>197</sup> Ibaa News Network, 'An interview conducted by the Ibaa Network with the Minister of Justice in the Salvation Government, Dr "Ibrahim Shasho", about the proliferation of government courts, their effectiveness and application of Islamic law, and their latest achievements', 9 September 2018, <<https://ebaa.news/press-interview/2018/09/13549/>>.

<sup>198</sup> Cook, 'Jurisprudence Beyond the State', 2020, *supra* n. 196.

<sup>199</sup> *Ibid.*

<sup>200</sup> Interview 3 North West Idlib (NWID) Lawyer; Interview 1 NWID Lawyer.

<sup>201</sup> Interview 5, NWID Lawyer.

<sup>202</sup> Interview 1, NWID Lawyer; Interview 6, NWID Lawyer.

<sup>203</sup> Interview 7, NWID Legal Expert.

<sup>204</sup> Interview 1, NWID Lawyer.

<sup>205</sup> *Ibid.*

This council evidently participates in many decisions and regulatory tasks that concern the judiciary.<sup>206</sup> For example, the council appears to have significant influence over the appointment, dismissal and promotion of judges.<sup>207</sup> The council also reviews all the decrees of the Ministry of Justice and must certify them before adoption and dissemination. However, it is also apparent that this council is dominated by the ministry, since Minister of Justice is the chair, with the remaining four members being the Attorney General and three members nominated by the Ministry of Justice and approved by the government.<sup>208</sup>

Thus, in 2018, the Salvation Government's Minister of Justice described the ministry's role as "attracting legal cadres, creating specialised courts, and working on the independence, professionalism and integrity of the judiciary".<sup>209</sup> This general description was confirmed by several interviews conducted by ILAC.<sup>210</sup>

Five lawyers interviewed for this report maintained that the HTS military sector did not interfere in the judiciary. However, two lawyers disagreed. One said that some degree of interference could not be excluded, while the other one went further and was highly critical of what he described as "tremendous influence and tensions".<sup>211</sup> This interference was ascribed to the influence of powerful HTS military Emirs, who this lawyer alleged even had the power to choose who should be Minister of Justice:<sup>212</sup>

*[T]here is tremendous influence and bickering. The influential [military] leaders impose even the appointment of the Minister of Justice himself. A powerful leader could get a killer out of prison with merely a saying that he has vouched for him.*<sup>213</sup>

The power of the military Emirs is particularly striking in criminal cases, where they apparently can procure the release of criminals, including convicted murderers, through a system called *Kafalah* or co-sponsorship.<sup>214</sup>

According to other accounts, this military influence is not without limits. An official working within the judicial system said that it would be an exaggeration to say that there was no intervention at all. However, such

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<sup>206</sup> ILAC North West Partner Report, January 2021, *supra* n. 187; Interview 7, NWID Legal Expert; Ali, 'Innocent here; convict there', 2021, *supra* n. 190.

<sup>207</sup> Interview 1, NWID Lawyer; Interview 7, NWID Legal Expert.

<sup>208</sup> *Ibid.*

<sup>209</sup> Ibaa News Network, 'An interview with the Minister of Justice in the Salvation Government, Dr "Ibrahim Shasho"', 2018, *supra* n. 197.

<sup>210</sup> ILAC North West Partner Report, December 2020; Interview 1, NWID Lawyer; Interview 7, NWID Legal Expert.

<sup>211</sup> Interview 3, NWID Lawyer; Interview 5, NWID Lawyer.

<sup>212</sup> Interview 5, NWID Lawyer.

<sup>213</sup> *Ibid.*

<sup>214</sup> *Ibid.*; Interview 3, NWID Lawyer; ILAC North West Partner Report, January 2021, *supra* n. 187.

efforts only had minor influence and did not rise to the level of major breaches, such as terminating a lawsuit or releasing a detained person.<sup>215</sup> This view was supported by a personal account from one lawyer, who described how a relative, who was a military commander, had been tried and imprisoned based on a lawsuit brought by a civilian.<sup>216</sup>

## **Applicable law**

All sources reviewed by ILAC confirmed that courts in the areas controlled by the Salvation Government considered *Sharia* as the applicable law. However, the acceptance of written law, which culminated in the decision by Ahrar al-Sham to adopt the Universal Arab Code as applicable law in Idlib in 2017, was controversial among the Islamist opposition forces. Indeed, the first Minister of Justice in the Salvation Government in 2017 had resigned from Ahrar al-Sham earlier that year in protest over the decision to adopt that written code as law.<sup>217</sup>

Consequently, there is no codified law regulating either procedure or substance in the Salvation Government areas. However, the Minister of Justice in 2018 indicated that the Salvation Government courts follow comparative Islamic jurisprudence, the Fiqh Encyclopedia and the *Journal of Judicial Rulings*.<sup>218</sup> Interviewed lawyers confirmed this description, indicating that these references had become the authorities on which lawyers relied to prepare their pleadings.<sup>219</sup> According to one of the lawyers, the *Journal of Judicial Rulings* also formed the foundation for most Arab laws, including those in Syria, suggesting an unspoken trend of gradual alignment with Syrian law.<sup>220</sup>

The Ministry of Justice had also issued a number of written, and perhaps even oral, decrees intended to clarify the law on certain topics or issues, and to regularise the application of *Sharia*.<sup>221</sup> One lawyer indicated that the ministry published all decrees on Telegram, a social media platform.<sup>222</sup>

All lawyers who were interviewed confirmed that there had been extensive work done to develop a codified procedural law, which would soon be adopted. One lawyer added that this procedural law would likely be followed

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<sup>215</sup> Interview 7, NWID Legal Expert.

<sup>216</sup> Interview 6, NWID Lawyer.

<sup>217</sup> Enab Baladi, 19 June 2017, <<https://www.enabbaladi.net/archives/156942>> [accessed 9 March 2021]; ILAC North West Partner Report, January 2021, *supra* n. 187.

<sup>218</sup> Ibaa News Network, 'An interview with the Minister of Justice in the Salvation Government, Dr "Ibrahim Shasho"', 2018, *supra* n. 197.

<sup>219</sup> Interview 3, NWID Lawyer.

<sup>220</sup> Interview 6, NWID Lawyer.

<sup>221</sup> *Ibid*; Interview 4, NWID Lawyer; Ali, 'Innocent here; convict there' 2021, *supra* n. 191; Ibaa News Network, 'An interview with the Minister of Justice in the Salvation Government, Dr "Ibrahim Shasho"', 2018, *supra* n. 197.

<sup>222</sup> Interview 6, NWID Lawyer.

by a codified personal status law,<sup>223</sup> while another mentioned that a new penal code resembling the penal code of Saudi Arabia was being prepared for adoption by the Salvation Government in the near future.<sup>224</sup> To date, ILAC has been unable to confirm either of these reports.

These developments appear in part to be a response to pressure from legal professionals to improve the functioning of the Idlib courts. All interviewed lawyers contended that the Bar was playing a crucial role in developing and codifying applicable laws. According to one lawyer, the Bar was consulted by the Judicial Council, the Ministry of Justice and the *Shura* Council before the issuing of a number of decrees and regulations, including new rules for the age of custody for boys and girls.<sup>225</sup>

Nearly all interviewees maintained that there were no unified procedural rules for civil or criminal trials. The sole exception was a senior lawyer, who maintained that several ministerial decrees which “follow the general rules applicable in all courts”, combined to form a unified procedure.<sup>226</sup>

The more typical response was that the absence of a codified procedural law had forced lawyers in civil cases to unofficially rely on the principles they knew, that is, the Syrian Civil Procedural Code. Lawyers said that judges had unofficially accepted the principles in approximately 70-75 percent of the code’s provisions, including in cases concerning civil status. Great care was taken, however, to avoid the appearance of directly relying on such Syrian laws, which have no corresponding provisions under *Sharia*.<sup>227</sup>

The same unofficial practice does not extend to criminal procedure.<sup>228</sup> All lawyers interviewed by ILAC complained about criminal proceedings, contending that both the substantive criminal law and the applicable procedures were complicated and vague. Two lawyers contended that judges in criminal cases relied on unified rules of evidence,<sup>229</sup> but this view was disputed by all other lawyers – who specifically complained of the lack of such unified rules.

Lawyers specialising in criminal cases expressed grave concerns about the absence or lack of clarity of penal provisions, which they said effectively violated the principle of no crime, no punishment without a law.<sup>230</sup> A criminal defendant interviewed by ILAC described his conviction for ‘illegal seclusion’ with a woman to whom he had offered a ride in his vehicle. Neither he nor his

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<sup>223</sup> Interview 4, NWID Lawyer.

<sup>224</sup> Interview 6, NWID Lawyer.

<sup>225</sup> Interview 1, NWID Lawyer.

<sup>226</sup> Interview 4, NWID Lawyer.

<sup>227</sup> Interview 4, NWID Lawyer; Interview 5, NWID Lawyer.

<sup>228</sup> Interview 2, NWID Lawyer.

<sup>229</sup> Interview 4, NWID Lawyer; Interview 6, NWID Lawyer.

<sup>230</sup> Interview 3, NWID Lawyer; Interview 5, NWID Lawyer.

lawyer were able to identify any basis in either law or *Sharia* for the court's decision.<sup>231</sup>

As reflected above, the impacts of non-codified *Sharia* remain a source of substantial difficulty, creating a lack of clarity and predictability in court proceedings. Part of this unpredictability is inherent in the use of unwritten *Sharia* principles. Many lawyers and all the litigants interviewed for this report complained about a lack of information concerning the specific *Sharia* norms that judges relied on and the reasons for this reliance.

For example, judicial decisions are read orally in court, with written copies given to both parties, but they are not available to the general public.<sup>232</sup> One lawyer balked at the suggestion of broader public access, believing that this would lead to chaos.<sup>233</sup> This view was supported by another lawyer, who also raised the concern that wider public access to judicial decisions would amount to an additional social punishment of convicted persons.<sup>234</sup>

However, other lawyers complained that practising lawyers needed the jurisprudence for use in other cases. One lawyer's experience was that lawyers could not access a decision until 20 days after it was announced, even when they represented one of the parties, particularly in criminal cases.<sup>235</sup>

According to two interviewees, the courts relied on the Ottoman Appeal Rules when writing judgements.<sup>236</sup> These rules require the reasoning of any judicial decision to be supported by an Islamic jurisprudence rule. Failure in this respect was grounds for appeal. Lawyers said that these rules were laid out in a decree by the Ministry of Justice from 2018, setting forth nine pages of detailed regulations for the form of judicial rulings.<sup>237</sup>

All interviewees agreed that judicial decisions were clearly presented in form and structure. The problem for many was understanding the content. For many, the concept of legal reasoning in decisions was often illusory. That is, while decisions were technically reasoned, that reasoning was typically built around general *Sharia* principles rather than specific legal provisions, due to the lack of a codified law.

One lawyer argued that some decisions seemed to follow *Sharia*, while others appeared to follow the law. Yet others followed neither *Sharia* nor the law, but appeared to simply be the personal opinion of the judge.<sup>238</sup> He explained

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<sup>231</sup> Interview 3, North West – Idlib Civilians (NWIDC) Taxi Driver.

<sup>232</sup> Interview 3, NWID Lawyer.

<sup>233</sup> Interview 4, NWID Lawyer.

<sup>234</sup> Interview 6, NWID Lawyer.

<sup>235</sup> Interview 2, NWID Lawyer.

<sup>236</sup> Interview 3, NWID Lawyer; Interview 6, NWID Lawyer.

<sup>237</sup> Interview 3, NWID Lawyer; Interview 6, NWID Lawyer. One of the lawyers described the decree as “the best decree by the Ministry of Justice”.

<sup>238</sup> Interview 5, NWID Lawyer.

that criminal cases were particularly susceptible to what he referred to as the “temperamentality” of judges:

*“Sometimes the judgment approaches the law, sometimes it diverges, and sometimes it does not comply. This differs from one judge to another [and] each judge rules according to his understanding of the case and his mood.”*<sup>239</sup>

One reason for this inconsistency is that judges and lawyers tend to have different backgrounds, and different views on the applicable law. Judges appointed by the Salvation Government typically are not legally trained and apply *Sharia* principles as they understand them. In apparent recognition of the need to equip courts with some legal expertise, the Ministry of Justice appoints a consultant for every judge; that is, a lawyer to advise the judge on procedure and the substance in their cases.<sup>240</sup>

Lawyers in Idlib – both those representing the parties and the court’s legal consultants – are legally trained practitioners who practised law before government courts in the area, before the Syrian government withdrew (see below). As a result, they tend to apply the official, written law as codified by the Syrian government, which is what they know and, in many cases, have practised for decades.

One litigant interviewed for this report pointed to confusion over what legal principles had been applied to his case. He contended that judgements often contained inherent contradictions, since two persons, the judge (with a *Sharia* background) and his consultant (with a Syrian legal background), wrote the decision using different logic. According to this supposition, the confusion resulted from the mix between religious and legal grounds, which made the reasoning hard to understand.<sup>241</sup>

## The courts

As best as we could determine, the Salvation Government has not adopted any formal, comprehensive law covering the organisation and regulation of its judiciary.<sup>242</sup> Instead, lawyers interviewed for this report indicated that the

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<sup>239</sup> *Ibid.*

<sup>240</sup> ILAC North West Partner Report, January 2021, *supra* n. 187.

<sup>241</sup> Interview 1, NWIDC, a Cleric (Sheikh) and Former Judge.

<sup>242</sup> An official within the HTS judicial system referred to a “Judicial Authority Law” from 2017 that covered all regulatory and organisational aspects of the justice system of the Salvation Government: Interview 7, NWID Lawyer. According to this report, the law was only available in hard copy and not widely circulated, and ILAC was not able to obtain a copy. Correspondence with ILAC North West Partner, January 2021. However, neither the lawyers interviewed for this report, nor any secondary sources, mentioned this law, suggesting some misunderstanding.

Ministry of Justice had issued several decrees to regulate specific aspects of the judiciary.<sup>243</sup>

While information on the current judicial system in the Idlib region was difficult to obtain or verify, in an interview in September 2018, the Salvation Government's Minister of Justice described the then-existing court structure. At the lower level were several first-instance courts "that cover areas far from city centres".<sup>244</sup> The exact number of such courts was unclear, with sources suggesting from six<sup>245</sup> to eight.<sup>246</sup> Each court consisted of different chambers for civil and criminal trials. Their location was dependent on the ability to communicate and travel where roads could not be secured.<sup>247</sup>

The ministry had also established a central criminal court in Sarmada, to handle serious crimes such as kidnapping, murder, drugs, and treason (mainly the so-called offence of 'collaboration with the regime').<sup>248</sup>

Two military courts had been set up with jurisdiction over cases where the defendant was a combatant. Similarly, an administrative court was created to handle cases where the defendant was an official authority or body, such as a ministry or a department.<sup>249</sup> According to one lawyer, it functioned exactly like the administrative court in Damascus.<sup>250</sup>

Conflicts of jurisdiction were determined by the courts themselves, either at the judge's own initiative or at the request of the parties. If penal or criminal offences were found to have been mistakenly lodged before a civil court, the judge would refer the matter to the Attorney General's office.<sup>251</sup>

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<sup>243</sup> Interview 1, NWID Lawyer. One lawyer suggested that the work of all officials was regulated in writing, both in the form of a Unified Personnel Law, and through specific written regulations within each ministry. According to this source, these rules also applied to judges and codified the relationship between the courts and the ministry. Again, ILAC found no corroboration for this report.

<sup>244</sup> Ibaa News Network, 'An interview with the Minister of Justice in the Salvation Government, Dr "Ibrahim Shasho"', 2018, *supra* n. 197.

<sup>245</sup> Interview 7, NWID Legal Expert.

<sup>246</sup> Abbas Idlibi, 7 July 2020, <<http://alsori.net/?p=3059>> (accessed 12 March 2021). In September 2018, the Minister of Justice for the Salvation Government stated that there were "about ten courts" in Idlib and its countryside, as well as in the northern and western countryside of Aleppo. See: Ibaa News Network, 'An interview with the Minister of Justice in the Salvation Government, Dr "Ibrahim Shasho"', 2018, *supra* n. 197. It is likely that some of the easternmost courts were closed after the Syrian Army's offensive in 2019, thus reducing the number of active courts.

<sup>247</sup> Interview 4, NWID Lawyer.

<sup>248</sup> Interview 1, NWID Lawyer; Interview 9 North West Turkish Controlled Areas (NWTC) Lawyer; Ibaa News Network, 'An interview with the Minister of Justice in the Salvation Government, Dr "Ibrahim Shasho"', 2018, *supra* n. 197.

<sup>249</sup> Ibaa News Network, 'An interview with the Minister of Justice in the Salvation Government, Dr "Ibrahim Shasho"', 2018, *supra* n. 197.

<sup>250</sup> Interview 3, NWID Lawyer.

<sup>251</sup> ILAC North West Partner Report, January 2021, *supra* n. 187.

Finally, the ministry created a Central Court of Appeal in Idlib city, with jurisdiction to hear appeals against decisions from all other courts.<sup>252</sup> An additional instance was added after a decision by the Ministry of Justice to establish a Court of Cassation. The ministry published regulations for the new court on 1 February 2021,<sup>253</sup> and ILAC later confirmed that the court officially started work in February.<sup>254</sup>

According to other sources, not confirmed in ILAC's interviews, HTS appeared to have two courts that were closed to the public. One set comprised internal courts, which mainly focused on solving disputes between members of HTS or between them and HTS. Their rulings and proceedings were private and remained largely unknown.

Sources also referred to security courts, which mainly focused on prosecuting HTS's opponents who are considered security threats, such as media activists or armed leaders.<sup>255</sup> According to researchers, HTS arrested such individuals either at its checkpoints or when its so-called security office raided their home. Persons arrested using the second method, in particular, were transferred to 'special security courts' and usually taken to special security prisons.<sup>256</sup> This description was corroborated by a report that the central prison in Idlib city is divided into a section run by the Ministry of Justice of the Salvation Government, and another directly run by HTS, which is subdivided into separate sections for civilian and militant detainees.<sup>257</sup>

The ordinary courts vary greatly in size, depending on the local needs, ranging from Idlib city court, which has hundreds of employees, to that in Sarmada, which has significantly fewer than one hundred.<sup>258</sup> According to most interviewees, these courts did not have the necessary equipment to handle cases promptly and securely.

Lawyers also pointed out that finding appropriate court facilities was difficult, since most of the existing courthouses were targeted by the Syrian government and its allies. In response, the HTS had tried to 'hide' the existing

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<sup>252</sup> Ibaa News Network, 'An interview with the Minister of Justice in the Salvation Government, Dr "Ibrahim Shasho"', 2018, *supra* n. 197.

<sup>253</sup> Decree – Generalization concerning the Organizing the work of the Court of Cassation, Syrian Salvation Government Ministry of Justice, signed by Minister of Justice, Anas Mansour Al-Souleiman. Note: the Decree defines the work of the court, litigation procedures and the number of members.

<sup>254</sup> Email from ILAC North West Partner 15 March 2021.

<sup>255</sup> Cook, 'Jurisprudence Beyond the State', 2020, *supra* 196.

<sup>256</sup> STJ, 'HTS Arrests 22 Civilians in Idlib for Different Reasons', 1 October 2019, <<https://stj-sy.org/en/hts-arrests-22-civilians-in-idlib-for-different-reasons/>>.

<sup>257</sup> STJ, 'Idlib: Hayat Tahrir al-Sham Arrests no less than 38 Persons', 5 February 2019, <<https://stj-sy.org/en/1168/>>.

<sup>258</sup> Interview 7, NWID Legal Expert.

court buildings to avoid being targeted, with some courts located in residential buildings for both practical and security reasons.<sup>259</sup>

Those interviewed by ILAC differed in their opinions concerning the courts' ability and willingness to ensure the safe and full participation of people in vulnerable situations. One lawyer indicated that special rooms were available for women and children, with dedicated personnel available to care for them.<sup>260</sup> However, this contention was directly contradicted by another respondent.<sup>261</sup> A different lawyer said that while there were no special chambers or facilities, special court sessions could be organised for persons with vulnerabilities.<sup>262</sup> Yet another interviewee argued that the handling of vulnerable parties was poorly organised and confirmed that children were imprisoned together with adults.<sup>263</sup>

### **Criminal law and procedure**

Based on ILAC's research, under the Salvation Government system, individuals could submit criminal complaints either to the police or directly to the Public Prosecution Office. Arrest warrants and subpoenas could be issued by the Attorney General's Office, the head prosecutor or a judge. If a suspected crime was discovered by the police or any other branch of security, they would conduct interrogations before referring the case to the Prosecution Office. Where a suspect was caught in the act, the case could be referred immediately.<sup>264</sup>

Human rights groups and media organisations continued to report that the HTS denied those arrested the opportunity to challenge the legal basis or arbitrary nature of their detention. The HTS reportedly permitted confessions obtained through torture. Perceived opponents and their families had been 'forcibly disappeared' or executed.<sup>265</sup>

According to the practice in ordinary, non-political cases described to ILAC, the Public Prosecution Office investigated and referred such cases either to the first-instance courts or the Central Criminal Court, as appropriate. When a case was presented, a judge reviewed it, summoned witnesses and reviewed other available evidence before ruling. According to lawyers, trials in absentia did occur, although procedures for this process had not been codified.<sup>266</sup> One lawyer stated that cases might sometimes resume in the absence of the

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<sup>259</sup> Interview 4, NWID Lawyer and Former Judge; Interview 6, NWID Lawyer.

<sup>260</sup> *Ibid.*

<sup>261</sup> Interview 2, NWID Lawyer.

<sup>262</sup> Interview 4, NWID Lawyer.

<sup>263</sup> Interview 7, NWID Legal Expert.

<sup>264</sup> ILAC North West Partner Report, January 2021, *supra* n. 187.

<sup>265</sup> United States Department of State, 'Syria 2019 Human Rights Report', 2019 <<https://www.justice.gov/eoir/page/file/1258956/download>>.

<sup>266</sup> Interview 2, NWID Lawyer.

accused. However, the lawyers stressed that in severe cases such as robbery and murder, the presence of the defendant was required.<sup>267</sup>

Generally, defendants are kept in custody until a final ruling, unless the judge considers a not guilty verdict highly likely, in which case the accused may be released on bail pending final judgement. If sentenced to prison, a defendant remains in custody to begin immediately serving the sentence. Time spent under arrest during the trial is counted towards the sentence, a practice that one litigant interviewed for this report personally experienced.<sup>268</sup>

Two types of punishments are utilised in criminal cases. Certain crimes are specifically described in *Sharia* texts, along with the applicable punishment. These so-called *hudud* include death by stoning for adultery, amputation for robbery when *Sharia* criteria are met, and capital punishment for some crimes including murder. When such descriptions exist, they are applied, though *hudud* cases and sentences are only decided by the Central Criminal Court.<sup>269</sup>

All other criminal acts not classified as *hudud* are treated as penal cases, where the punishment is left to the judges' discretion.<sup>270</sup> Though no statistics were available, the evidence suggested that this discretion could be exercised in a harsh manner. For example, a trial summary issued by the Salvation Government's Salqin court in February 2019 states that the defendant's punishment included three hundred lashes. Another report of sentences issued by the Ministry of Justice included compulsory labour, digging trenches to reinforce the front lines and fortify and strengthen HTS defensive positions.<sup>271</sup>

Apparently, no specialised juvenile justice system is in place, with cases involving children following the usual court procedures.<sup>272</sup> One respondent told ILAC that *Sharia* provides that children aged 13 years old or older are considered adults and should be tried under adult law.<sup>273</sup> Since no juvenile justice system is in place, most children under 13 years are also tried by the adult courts, though their punishment would be a disciplinary measure, not a judicial sentence.

Lawyers described criminal proceedings as far more expeditious than civil trials. One lawyer estimated that it took between two and three months to

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<sup>267</sup> Interview 6, NWID Lawyer.

<sup>268</sup> Interview 3, NWIDC Taxi Driver.

<sup>269</sup> ILAC North West Partner Report, January 2021, *supra* n. 187.

<sup>270</sup> *Ibid.*

<sup>271</sup> STJ, 'HTS Arrests 22 Civilians in Idlib for Different Reasons', 2019, *supra* n. 256.

<sup>272</sup> Interview 6, NWID Lawyer.

<sup>273</sup> Interview 7, NWID Legal Expert.

reach a final ruling in a criminal case.<sup>274</sup> In most cases, defendants were entitled to be represented by a lawyer or, alternatively, a relative.

Regardless of whether the accused is represented by legal counsel or a relative they are not allowed to meet with the representative. One lawyer stated that this prohibition only applied during the investigation period,<sup>275</sup> but all other interviewees confirmed that it applied throughout the proceedings. They indicated that the common practice was for the accused, while in custody, to sign a written authorisation appointing the representative (be it a relative or a legal counsel), without the two meeting face to face.

In certain sensitive cases, such as those accused of ‘collaboration with the regime’, a defendant apparently can be denied counsel. One source said that this practice was not codified, but depended on the nature of the case, and was more likely seen in cases concerning military or security matters.<sup>276</sup>

In criminal and military cases, to ensure that all judgements conform to *Sharia* principles, decisions are referred to a so-called Judgments Certification Committee. This committee reviews the decision to ensure that it complies with *Sharia*, and then either approves or returns it to the court to reconsider.<sup>277</sup>

The Salvation Government’s system does not provide any financial legal aid.<sup>278</sup> Lawyers interviewed by ILAC lawyers indicated that though pro bono services were available, they were voluntarily provided by lawyers and not based on a court’s request or order. One lawyer disagreed, stating that the court assigned a pro bono lawyer in criminal and juvenile cases if the defendant could not afford one.<sup>279</sup> Another contended that, in a very few, unique cases, the court may assign a pro bono lawyer, but this practice was not codified and the criteria were unclear.<sup>280</sup>

## **Civil trials**

As noted above, civil proceedings in the Salvation Government courts tend to follow the principles embodied in the Syrian Civil Procedural Code.

A differentiating feature of the HTS system is that civil proceedings and cases take much longer than criminal trials. One lawyer estimated that at the time of writing, there were about 7,000 cases pending in Idlib City Court alone.<sup>281</sup> Another lawyer estimated that considering the heavy workload, it took about

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<sup>274</sup> Interview 3, NWID Lawyer.

<sup>275</sup> Interview 4, NWID Lawyer.

<sup>276</sup> Interview 5, NWID Lawyer; Interview 3, NWIDC Taxi Driver.

<sup>277</sup> Interview 5, NWID Lawyer.

<sup>278</sup> ILAC North West Partner Report, January 2021, *supra* n. 187; Interview 9, NWTC Lawyer.

<sup>279</sup> Interview 4, NWID Lawyer.

<sup>280</sup> Interview 6, NWID Lawyer.

<sup>281</sup> Interview 4, NWID Lawyer.

seven months for the court to rule in a civil lawsuit,<sup>282</sup> though some moved more quickly.<sup>283</sup>

One reason for these delays is that the caseload has grown dramatically following several waves of displaced persons coming from other parts of the country. These cases were described as being particularly cumbersome, due to the frequent loss of documentation and the constant movement of the parties. In response to the latter circumstance, courts have taken to indirectly informing parties of civil proceedings, such as by posting a notice on the walls or door of their last known addresses. If the party then fails to appear, trials can be held in absentia.<sup>284</sup>

One lawyer, while acknowledging the delays, suggested that in some cases the delays were purposeful. He indicated that *Sharia* requires that in some cases, such as divorce, both sides are given an opportunity to reconsider their decision before the court rules.<sup>285</sup>

## Enforcement

When a civil court issues a decision, enforcement is the responsibility of the Enforcement Department. Interviewees said that in civil cases, the prevailing litigant submitted the original copy of the decision to the Enforcement Department. After the deadline for appeal had passed, the department then notified the other party, instructing them to execute the decision within five days. If compliance was not forthcoming, the department executed the decision by force.<sup>286</sup>

Penal and criminal judgements are subject to the Public Prosecution Office's enforcement measures. There, the execution of judgments is carried out under supervision of the Attorney General or the head prosecutor.<sup>287</sup>

According to information received by ILAC, administrative court decisions were similarly enforced. However, one lawyer stated that enforcement was a bit slower in such cases, since these decisions were reviewed by the *Shura* Council before they could be transferred to the Civil Enforcement Department.<sup>288</sup>

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<sup>282</sup> Interview 2, NWID Lawyer.

<sup>283</sup> One lawyer indicated that urgent matters such as a ramshackle building that must be evacuated or hearing a dying witness took about 48 hours: Interview 4, NWID Lawyer. Another stated that insolvency claims required about ten days for a decision: Interview 2, NWID Lawyer.

<sup>284</sup> Interview 2, NWID Lawyer; Interview 3, NWID Lawyer.

<sup>285</sup> Interview 6, NWID Lawyer.

<sup>286</sup> Interview 1, NWID Lawyer; Interview 3, NWID Lawyer.

<sup>287</sup> *Ibid.*

<sup>288</sup> Interview 1, NWID Lawyer.

## **Appeals process**

As in Syrian procedural law, judicial decisions can be challenged before the Central Court of Appeal within 15 days. The right of appeal extends to certain decisions by the Council of the Free Lawyers Association in the Idlib governorate (see below), which acts as a first-instance court in some cases relating to its members, such excessive fee complaints.<sup>289</sup>

One source stated that some first-instance decisions were not subject to appeal, including decisions in less severe criminal cases that carried a punishment of imprisonment for fewer than 30 days or a fine less than USD300. To avoid overwhelming the system with appeals in such minor cases, these decisions could only be appealed by the Attorney General, and not the defendant.<sup>290</sup>

In criminal appeals, the appellate judge receives the entire file. They should have studied it completely before the hearing. The appealing party must be present, together with their representative of legal counsel. The accused is given the right to orally defend themselves during the hearing if they wish.<sup>291</sup>

## **Relationships with other judicial systems**

The court system in areas under the control by the Salvation Government has no official relationship with any other judicial system in Syria. However, it is unavoidable that the Salvation Government courts cross paths with courts from other jurisdictions. According to the interviews conducted by ILAC, there were no clear or codified regulations to govern such interactions with other systems. However, established patterns of court practice suggested that a number of informal indicators had evolved to guide the courts in dealing with these situations.

Obviously, the lack of formal relations means that the Salvation Government courts are not obliged to consider or respect judicial orders or decisions from other areas in Syria. Instead, given ongoing conflicts with those in control of these other areas, the Salvation Government courts view the courts in all other parts of Syria through a political lens as ‘very factional’. This means these courts are considered to belong to the different armed factions in the areas where they are located.<sup>292</sup> Since the Salvation Government is quite hostile towards these armed groups, its courts tend to take a similar view of the other court systems in Syria.

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<sup>289</sup> Interview 3, NWID Lawyer; Interview 4, NWID Lawyer; Ali, ‘Innocent here; convict there’, 2021., *supra* n. 190.

<sup>290</sup> Interview 7, NWID Legal Expert; ILAC North West Partner Report, January 2021, *supra* n. 187.

<sup>291</sup> Interview 5, NWID Lawyer. While no person interviewed had any experience with this new court, it was expected to follow official procedures similar to those used in the court of appeal. Email from ILAC North West Partner, 15 March 2021.

<sup>292</sup> Interview 3, NWID Lawyer.

Two interviewees nonetheless suggested that decisions by courts in the areas administered by the Syrian Interim Government (see below) might be considered by a judge in a trial, but only as a matter of deliberation.<sup>293</sup> However, another lawyer rejected even this possibility, arguing that any court in Idlib would surely require a retrial and reconsider the whole case, since the judges in the Salvation Government courts considered decisions by those courts to be null and void.<sup>294</sup>

Similar issues arise regarding the decisions of courts in Idlib belonging to various armed factions prior to the formation of the Salvation Government. A lawyer described how a Salvation Government court had asked him to present decisions by such courts as evidence, to be added to the case file.<sup>295</sup> On the other hand, one of the litigants interviewed for this report described how they had presented a court decision from an area that was controlled by HTS slightly prior to the creation of the Salvation Government. The Court of Appeal in Idlib would not consider the decision or any of the supporting documents, and instead heard the case *de novo*.<sup>296</sup>

In a similar vein, two interviewees said that any ruling issued by a Syrian government court after 2011 would not be considered by the Salvation Government courts in Idlib.<sup>297</sup> Any Syrian government court ruling that might be admitted must be provided to the Salvation Government court with the authentic/original documentation.

If a Salvation Government court decides to consider a decision by a court from a different system, it first assesses the final judicial decision to ensure its ‘correctness’.<sup>298</sup> The notion of ‘correctness’ is interpreted in the context of its conformity with *Sharia*.<sup>299</sup> One lawyer described how in three different cases, decisions of courts from outside the Salvation Government jurisdiction were sent to a special chamber, likely the Judgments Certification Committee, for review to determine their conformity with the legal and *Sharia* principles and whether they would be enforced.<sup>300</sup>

The lack of coordination also extends to dealings with the parties to cases. In September 2018, the Salvation Government’s Minister of Justice explained that if a defendant belonged to a faction that did not recognise the Salvation Government, “there are no guarantees that it will go to our courts, as there

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<sup>293</sup> Interview 5, NWID Lawyer; Interview 7, NWID Legal Expert.

<sup>294</sup> Interview 1, NWID Lawyer.

<sup>295</sup> Interview 5, NWID Lawyer.

<sup>296</sup> Interview 2, NWIDC Contractor.

<sup>297</sup> Interview 4, NWID Lawyer; Interview 7, NWID Legal Expert. Another lawyer agreed, but gave a later cut-off date, saying that the time limit for rulings that could be relied on was as of “the liberation” of Idlib; that is, the time when the Syrian government lost control of the area: Interview 2, NWID Lawyer.

<sup>298</sup> Interview 4, NWID Lawyer.

<sup>299</sup> Interview 5, NWID Lawyer.

<sup>300</sup> Interview 6, NWID Lawyer.

are understandings that may reach the formation of a judicial committee between the parties to the conflict to settle the dispute”.<sup>301</sup> In criminal cases, in particular, the combination of relatively free movement and lack of coordination between the judicial and executive authorities in other areas means that an accused or convicted person can easily escape to another area where the charges are not recognised or the conviction is not enforced.<sup>302</sup>

## Judges

Judicial appointments to the different Salvation Government courts are made by the Ministry of Justice on the recommendation of the Judicial Council. The ministry has no formal qualifications for such appointments.<sup>303</sup> Instead, according to its Minister of Justice, judges were selected based on “specialised scientific qualification, practical competence, good conduct, and revolutionary behaviour”.<sup>304</sup>

Precisely what was meant by “specialised scientific qualification” was not clear, but it apparently referred to specific training in *Sharia*. While two interviewees contended that new judges in the Salvation Government courts must have a university degree in *Sharia* to qualify for appointment,<sup>305</sup> this contention was disputed by multiple other sources.

Instead, a lawyer stated that judges were always Muslim clerics (Sheikhs), and most of them were Shari’ (religious commanders).<sup>306</sup> According to information gathered by an ILAC partner, candidates needed only pass a 15 to 45-day *Sharia* course at a designated *Sharia* institution administered by the Ministry of Justice.<sup>307</sup>

Interviewees indicated that the Salvation Government used to operate such an institute, which produced a group of graduates who were appointed to the courts.<sup>308</sup> However, another official reported that the institute was no longer active, and had been replaced by a private (non-governmental) institute which offered certain certificates in *Sharia* that were recognised by the Ministry of Justice.<sup>309</sup> Regardless, as discussed above, there is widespread dissatisfaction with the competence of these religiously-trained, rather than legally-trained, judges.

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<sup>301</sup> Ibaa News Network, ‘An interview with the Minister of Justice in the Salvation Government, Dr “Ibrahim Shasho”’, 2018, *supra* n. 197.

<sup>302</sup> Interview 1, NWID Lawyer.

<sup>303</sup> Interview 7, NWID Legal Expert.

<sup>304</sup> Ibaa News Network, ‘An interview with the Minister of Justice in the Salvation Government, Dr “Ibrahim Shasho”’, 2018, *supra* n. 197.

<sup>305</sup> Interview 1, NWID Lawyer; Interview 7, NWID Legal Expert.

<sup>306</sup> Interview 5, NWID Lawyer.

<sup>307</sup> ILAC 2020 Internal Report on the North West.

<sup>308</sup> Interview 2, NWID Lawyer; see: Ali, ‘Innocent here; convict there’, 2021, *supra* n. 190.

<sup>309</sup> Interview 7, NWID Legal Expert.

Perhaps as important as the requirement of familiarity with *Sharia* is that a judge should have a reliably ‘revolutionary background’. The latter requirement, however, does not require the candidate to have affiliated with any specific armed faction.<sup>310</sup> Indeed, the Minister of Justice in the Salvation Government was a former member of Ahrar al-Sham.<sup>311</sup>

Newly appointed judges are not required to attend any formal training or educational programmes. However, an official interviewed for ILAC indicated that every newly appointed judge at a first-instance court must go through a six-month training period with a practising judge.<sup>312</sup>

Similarly, there does not appear to be any system for continuous legal or *Sharia* training. The same official indicated that WhatsApp groups were established for the judges, where some issues were regularly discussed. Occasionally, judges had a monthly meeting to discuss developments and exchange experiences. Once appointed, there were no formal limitations on the length of their service. Salvation Government judgeships were full-time positions, and judges were not allowed to perform any other duties or jobs.<sup>313</sup>

As noted above, the Ministry of Justice was said to appoint a legal consultant for every judge to advise him and monitor his compliance with law and procedure. Such consultants, as well as prosecutors, must have a law degree.<sup>314</sup> Consultants were sometimes appointed following consultations with the Idlib Free Bar Association.<sup>315</sup>

Once a court has been established, its funding is the responsibility of the Ministry of Finance, which allocates funding according to the size, needs and expenses of each court. Salaries are decided according to a salary scale set by the Salvation Government. When judicial salaries were recently increased, the increase was based on a recommendation by the Minister of Justice and approved by the Prime Minister.<sup>316</sup>

The Judicial Council is responsible for the evaluation of judges’ performance. This performance review is essential to a judge’s career, as it determines his eligibility for promotion from the first instance to higher courts. A personal file is kept on the performance of each judge, which is subject to review once a year.<sup>317</sup>

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<sup>310</sup> Interview 1, NWID Lawyer; Interview 4, NWID, Lawyer and Former Judge.

<sup>311</sup> Enab Baladi, ‘The resignation of the most prominent judge of “Ahrar al-Sham” in rejection of “Unified Arab Law”’, 19 June 2017 <<https://www.enabbaladi.net/archives/156942>> [accessed 9 March 2021]; ILAC North West Partner Data Report, December 2020.

<sup>312</sup> Interview 7, NWID Legal Expert.

<sup>313</sup> *Ibid.*

<sup>314</sup> *Ibid.*

<sup>315</sup> ILAC North West Partner Report, January 2021, *supra* n. 187.

<sup>316</sup> *Ibid.* Salaries were increased by between 180–400 percent, albeit from very low levels.

<sup>317</sup> ILAC North West Partner Report, January 2021, *supra* n. 187.

Information provided to ILAC indicated that disciplinary proceedings were the responsibility of the Judicial Inspection Department (JID). In case of complaints or a suspicion of improprieties, the department investigated and took any disciplinary measures it deemed necessary. The discipline could include an oral or written warning, a salary deduction, a transfer or dismissal. According to the formal procedure, any JID decision imposing discipline on a judge must be reviewed and approved by the Judicial Council before enforcement. Therefore, judges who were subject to disciplinary measures were not entitled to appeal, since the matter had already been reviewed twice.<sup>318</sup>

Yet, like many aspects of the Salvation Government's justice system, actual practice does not necessarily comply with the formal procedure. The JID is entirely under the control of the Ministry of Justice.<sup>319</sup> As one lawyer described the process:

*I have not heard that any judge has been held accountable so far. As long as the judge has connections with a certain authority, he is considered right, unless the complainant has connections that are more influential.*<sup>320</sup>

## **Corruption**

The armed conflict, together with associated hardships and security concerns, have had a considerable detrimental effect on the functioning and performance of the Salvation Government justice system, and on judges in particular. All those interviewed shared this view, generally opining that there were always individuals who exploited chaos for their own benefit and gain.

One lawyer pointed to the role of litigants in corruption. For instance, he reported that the bombardment of prisons would usually be used as cover for convicted prisoners to bribe their way out.<sup>321</sup> Speaking from personal experience, a lawyer described how final decisions in Salvation Government courts would frequently be changed, despite the fact that a party had been previously told they had won:<sup>322</sup>

*Many lawsuits ended (...) in favour of my client, but suddenly we see that the decision was made to the contrary, because of intervention or pressure on the judge or the chancellor, but mostly the cause is (...) bribery.*<sup>323</sup>

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<sup>318</sup> *Ibid.*

<sup>319</sup> Interview 1, NWID Lawyer.

<sup>320</sup> Interview 5, NWID Lawyer.

<sup>321</sup> Interview 3, NWID Lawyer.

<sup>322</sup> Interview 1, NWID Lawyer.

<sup>323</sup> *Ibid.*

Not all interviewed agreed; however, the majority either directly or tacitly expressed concern about corruption. Yet their definitions of corruption tended to vary. For example, one lawyer described corruption as any action by a judge, lawyer or other person working in the judiciary that violated the rules and principles upon which his authority was based. According to this lawyer, such abuse was caused by the absence of written and enforced legal principles.<sup>324</sup> But other lawyers also considered judges who made wrong decisions to be a form of corruption, since such decisions corrupted the judicial process.<sup>325</sup> One such lawyer viewed decisions as corrupt even if issued due to the incompetence of the judge rather than malice.<sup>326</sup>

A significant concern was the low salaries of judges, which many interviewees felt created an environment for corruption. The need for additional income, combined with personal relationships and the effective impunity of court officials, provided the opportunity for irregular decisions.<sup>327</sup>

A former litigant interviewed for this report said that although he did not personally pay a bribe, he was absolutely convinced that his lawyer did.<sup>328</sup> He said that judges and other officials typically would not accept a direct offer of a bribe, but that bribes were often indirectly paid through lawyers and other networked persons. This person believed that bribery played a role when his sentence was reduced, even though he did not appeal. Instead, his lawyer simply petitioned for a reduced sentence, a procedure that was not authorised by any decree or decision from the Salvation Government's Ministry of Justice.

Lawyers additionally pointed to the discretion in judges' assignments, and the volatility and lack of clarity in the Salvation Government's justice system, as driving factors behind corruption.<sup>329</sup> Those interviewed discussed corruption not just in the form of direct bribery, but also in other forms of influence by litigants to pressure judges to rule in the litigants' favour. One lawyer pointed to the ties between the courts and other influential actors, especially in the military sector.<sup>330</sup>

## Lawyers

With the loss of Syrian government control in Idlib in 2011, many lawyers voluntarily or involuntarily left the SBA.<sup>331</sup> Lawyers in the Idlib governorate are now organised in a local bar association known as the Free Lawyers

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<sup>324</sup> Interview 3, NWID Lawyer.

<sup>325</sup> Interview 1, NWID Lawyer; Interview 6, NWID Lawyer.

<sup>326</sup> Interview 1, NWID Lawyer.

<sup>327</sup> *Ibid.*

<sup>328</sup> Interview 3, NWIDC Taxi Driver.

<sup>329</sup> Interview 1, NWID Lawyer.

<sup>330</sup> Interview 3, NWID Lawyer.

<sup>331</sup> See: Enab Baladi, 'In the Steps of Daraa, Bar Association in Idlib Governorate Disbars Half of Its Lawyers', 28 August 2018.

Association (hereafter, the IFLA).<sup>332</sup> The IFLA reported that it had approximately 500 members, distributed between local offices in Idlib city, Sarmada, Silkin, Atma and Jisr Al-Shoghour.<sup>333</sup>

Though not affiliated with the official Syrian Bar, the IFLA generally follows Syrian Law No. 30 of 2010, which regulates the work of the SBA. According to the lawyers interviewed, all provisions of that law related to the Syrian state had been removed, with additional changes made relating to the rights and duties of lawyers and their relationship with the courts.<sup>334</sup> However, these changes were not explained to ILAC in any detail.<sup>335</sup>

The IFLA is the only lawyers' organisation recognised by the Salvation Government, and the two have signed a memorandum of understanding to regulate and organise this relationship.<sup>336</sup> Under this agreement, only IFLA members can practice in the courts in Salvation Government areas, while SBA members cannot. However, one of the interviewed lawyers suggested that it might be possible for members of 'free' bar associations in other areas to be allowed to practice.<sup>337</sup>

Membership of the IFLA is not officially compulsory for lawyers in Idlib. However, membership is a practical necessity, since no lawyer can practice in the Salvation Government courts without it. Under the agreement with the Salvation Government, IFLA members have similar legal protections to those provided to lawyers under Syrian law. For example, a lawyer may only be interrogated in the presence of a representative of the IFLA and may not be arrested by the authorities unless caught in the middle of an illegal act.<sup>338</sup>

All lawyers interviewed for this report considered the IFLA to be an independent body. They said that it was administratively, politically and financially completely independent from the Salvation Government, the Syrian government and all other actors. The IFLA relies solely on the membership fees and fees for powers of attorney, and does not receive any external funds. The IFLA is led by a council elected by secret ballot at a plenary session in the Bar's General Assembly Conference. Seven members of the Council then meet and elect the head of the association, the treasurer and the secretary.<sup>339</sup>

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<sup>332</sup> Interview 4, NWID Lawyer; Ali, 'Innocent here; convict there', 2021, *supra* n. 190. See also footnotes 124 and 553.

<sup>333</sup> *Ibid.*

<sup>334</sup> *Ibid.*, ILAC North West Partner Report, January 2021, *supra* n. 187.

<sup>335</sup> Ali, 'Innocent here; convict there', 2021, *supra* n. 190.

<sup>336</sup> Interview 4, NWID Lawyer; ILAC North West Partner Report, January 2021, *supra* n. 187.

<sup>337</sup> Interview 1, NWID Lawyer;

<sup>338</sup> ILAC North West Partner Report, January 2021, *supra* n. 187.

<sup>339</sup> *Ibid.*; Interview 4, NWID Lawyer.

All lawyers interviewed by ILAC agreed that no particular group or faction controlled the IFLA. However, comments made to a reporter for a Syrian publication painted a different picture. According to that source, at least some lawyers in Idlib believed that the HTS intervened in the formation of the IFLA. A source from a rival association also alleged that the HTS commander in Idlib “holds reins to the IFLA”, and that the IFLA is dominated by the *Sharia* judges in the courts.<sup>340</sup>

To join the IFLA, candidates must be an Arabic Syrian with a degree in either law or *Sharia* and law from the University of Idlib (administered by the Salvation Government). Equivalent certificates from other Arab or Syrian universities can be accepted, but applicants first need to pass through an ‘equation process’, whereby the University of Idlib certifies that the certificate is equivalent to their own graduation requirements for studies in the same field.<sup>341</sup> Graduates of universities administered by the Syrian government are not admitted if they graduated after 2014 (which saw the ‘liberation’ of Idlib). According to one lawyer, the Salvation Government prohibited any graduate from the ‘regime’ universities after 2015 from acquiring any job or position within its areas.<sup>342</sup>

Further, applicants to the IFLA must be residents of the areas controlled by HTS, not older than 50 years of age, and free from diseases that prevent them from doing legal work. They must also have a proven record of good conduct, no felony or misdemeanour convictions, and cannot have been previously expelled because of lack of integrity.<sup>343</sup>

To practice law in courts in Salvation Government areas, lawyers must also have served a two-year apprenticeship with a practising lawyer handling first-instance civil cases. Lawyers wishing to practice in criminal courts must have five years of practice. Following completion of this apprenticeship, the candidate must pass a test administered by the IFLA.<sup>344</sup>

Once admitted to the IFLA, lawyers pay a membership fee. One lawyer stated that the current fee was USD50, but other lawyers spoke of higher amounts.<sup>345</sup> Members also pay IFLA fees for the issuance of powers of attorney, which are required for a lawyer to represent a client. The lawyer’s compensation is not determined by the IFLA, but is left for negotiation with the client. Fee disputes are referred to the IFLA for a resolution, although neither it nor the Salvation Government have adopted any regulations to serve as a source of reference on these issues.<sup>346</sup>

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<sup>340</sup> Ali, ‘Innocent here’, 2021, *supra* n. 190.

<sup>341</sup> Email from ILAC North West Partner, 31 March 2021.

<sup>342</sup> Interview 1, NWID Lawyer.

<sup>343</sup> *Ibid.*

<sup>344</sup> ILAC North West Partner Report, January 2021, *supra* n. 187.

<sup>345</sup> *Ibid.*; Interview 4, NWID Lawyer.

<sup>346</sup> Ali, ‘Innocent here; convict there’, 2021, *supra* n. 190.

Lawyers do not appear to have any significant opportunities for continuing legal education. One lawyer said that the IFLA organised regular seminars, and that courses on law and *Sharia* offered at the Judicial Institute were also open to lawyers.<sup>347</sup> However, no other lawyers appeared aware of these possibilities.

### **Status of women in the justice system**

While women generally lack sufficient rights and protections throughout most regions in Syria, the situation in the areas in Idlib governorate that are controlled by HTS is especially concerning. HTS rule is premised on a severe, conservative vision of Islam and *Sharia*. The lack of clarity and legal certainty discussed above, arising from the absence of written law, poses a particular risk for women in cases concerning gender-based violence, enforced marriage, or the determination of custody or inheritance, since litigants have no legal basis to contest traditional misconceptions or misinterpretations of religious norms.<sup>348</sup>

These obstacles are exacerbated by the dire economic situation facing most people living in HTS areas, which affects all residents' – but particularly women's – ability to afford a lawyer to represent them. Moreover, as described above, even when parties have legal representation, the lawyer is often equally confused about what law applies.

The problem is substantially exacerbated by the absence of women legal professionals in the Salvation Government system. There are no female judges, prosecutors or consultants working in the courts in the Salvation Government area. An official in that government explained that the absence of women in the judiciary was based on local traditions and norms, rather than being a matter of law or regulation.<sup>349</sup> A lawyer similarly assured ILAC that there was no formal decision by the HTS or Salvation Government preventing the appointment of female judges. In fact, he referred to the recent appointments of female judges in Saudi Arabia as a model.<sup>350</sup> The bottom line, however, is that no female judges have been appointed in the courts administered by the Salvation Government.

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<sup>347</sup> Interview 4, NWID Lawyer.

<sup>348</sup> For an overview of how poorly written laws and failing state institutions have impacted on the spread of sexual and gender-based violence (SGBV) in Syria over time, see further: The Syrian Initiative to Combat Sexual and Gender-based Violence, 'The Realities of SGBV in Syria', February 2020; UNFPA & BVB AoR, 'Whole of Syria: Gender-Based Violence Area of Responsibility', 2019, *supra* n. 61. This effect also has an impact on career opportunities for women in the judicial system. For example, answers from interviewees varied widely as to why there were no women judges, with some believing that this was prohibited by law and others stating that it was not. ILAC North West Partner Report, January 2021, *supra* n. 187; Interview 5, NWID Lawyer; Interview 6, NWID Lawyer.

<sup>349</sup> Interview 7, NWID Head of Prosecution in Idlib.

<sup>350</sup> Interview 6, NWID Lawyer.

Similarly, there appears to be no formal limitation or prohibition preventing female lawyers from practising in Salvation Government courts. According to one estimate, there are about 40 female lawyer members of the IFLA who practise throughout the area controlled by the Salvation Government, though the majority practise in Idlib city.<sup>351</sup>

In several interviews, male lawyers reported that women were given substantial roles within the system. For example, one lawyer stated that women lawyers were practising throughout the system, including in the criminal courts, although the latter fact was not supported in other interviews.<sup>352</sup> In fact, one lawyer who was part of the IFLA leadership reported that female lawyers were actively supervising both male and female trainees.<sup>353</sup> Three litigants interviewed for this report assured ILAC that they would never hesitate to retain a female lawyer if they knew she would be able to bring them justice.<sup>354</sup> One interviewee explained that showcasing women as active members of society was important for HTS, to improve its reputation among international actors.<sup>355</sup>

Despite these protestations, and although there are no formal legal or procedural obstacles to women in the HTS justice system, female lawyers do encounter social and practical obstacles.<sup>356</sup> For example, female lawyers were requested to wear what one lawyer referred to as “decent” clothing, though apparently they were not required to wear a *niqab*.<sup>357</sup>

Other obstacles for women lawyers are more significant. One respondent described the court in Sarmada, where only male lawyers could practise due to the difficulties of commuting to the court and associated security concerns. Additionally, criminal cases (the Central Criminal Court is in Sarmada) usually involved male defendants who, this lawyer suggested, preferred to interact with male lawyers.<sup>358</sup>

Unofficial obstacles to women practising in HTS areas may contribute to female lawyers seeking other opportunities. It is common for lawyers who live in areas under HTS control to practise either exclusively before the courts in

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<sup>351</sup> Interview 1, NWID Lawyer; Interview 4, NWID Lawyer; Interview 7, NWID Head of Prosecution in Idlib.

<sup>352</sup> Interview 4, NWID Lawyer. However, one lawyer pointed out that there were practical and cultural obstacles preventing women from taking certain cases, notably in criminal trials: Interview 1, NWID Lawyer.

<sup>353</sup> Interview 1, NWID Lawyer.

<sup>354</sup> Interview 1, NWIDC Cleric (Sheikh) and Former Judge; Interview 2, NWIDC Contractor; Interview 3, NWIDC Taxi Driver.

<sup>355</sup> Interview 9, NWTC Lawyer. Reportedly, HTS recently made efforts to moderate its public image to appear more moderate: Chloe Cornish, ‘Syrian jihadi overhauls image in effort to hang on to power’, *Financial Times*, 16 February 2021, <<https://www.ft.com/content/5ff5edb4-3e59-40bf-9176-49d77e5bcd40>>.

<sup>356</sup> ILAC North West Partner Report, January 2021, *supra* n. 187.

<sup>357</sup> Interview 4, NWID Lawyer.

<sup>358</sup> Interview 1, NWID Lawyer; Interview 9, NWTC Lawyer.

nearby Turkish-controlled areas or, when possible, to take cases in both systems. In interviews for this report, respondents indicated that female lawyers preferred practising before the courts in nearby Turkish-controlled areas.<sup>359</sup>

Some lawyers contended that many female lawyers in Idlib preferred to work in civil society or with NGOs, where opportunities and salaries were better.<sup>360</sup> One lawyer said that there was a polarisation between men and women lawyers in the HTS region, which was being driven by NGOs and civil society organisations (CSOs). According to this respondent, these organisations attracted women lawyers with better financial offers, which in turn resulted in fewer female lawyers practising in the courts.<sup>361</sup> He also complained that these women lawyers continued to benefit from the IFLA's aid and support, and suggested that the relevant regulations needed to be reconsidered.

Regardless of the cause, the low number of practising female lawyers in the Salvation Government courts limits access to justice for women litigants, who may be reluctant to fully discuss sensitive or family issues with a male lawyer. The overall impact of these factors is to substantially reduce the rights and protections available to women in the areas in Idlib governorate that are controlled by HTS.

## **Conclusions: Idlib and the HTS**

One area of agreement among those interviewed for this report about the areas under HTS control was that the consolidation of the justice system in Idlib under one system was a significant improvement in terms of access to justice in the region. This consolidation, though imperfect, has at least ended the previous multitude of competing factional courts. Nevertheless, the current system in these areas suffers from numerous weaknesses.

An obvious flaw, pervasive throughout Syria, is the disconnected relationships – both jurisdictional and substantive – between the judicial systems controlled by different groups in the various areas. With the constant displacement and movement of Syrians between areas, the legitimacy of the various judicial systems and the decisions they generate are severely diminished by the refusal of these systems to recognise decisions rendered by one another.

Second, all those interviewed, regardless of political inclination or attitude towards the HTS justice system, highlighted the importance of using codified procedural and substantive laws in that system. The confusion regarding the

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<sup>359</sup> Interview 4, NWID Lawyer; Interview 8, NWTC Lawyer; Interview 9 NWTC Lawyer; Interview 10, NWTC Lawyer.

<sup>360</sup> Interview 4 NWID Lawyer.

<sup>361</sup> *Ibid.*

applicable laws and procedures in the Salvation Government courts was clearly apparent.

The lack of any codified law, or procedural or evidentiary rules, leaves individual judges with wide discretion to decide individual cases. The absence of a shared conceptual understanding between the court and the lawyers appearing before it also greatly diminishes a litigant's opportunity to effectively argue their case. The consequence has been inconsistency in judicial decisions, resulting in a loss of predictability for litigants and lawyers.

This shortcoming is perhaps an inevitable result of the reliance on conservative interpretations of *Sharia* that the HTS apply. Given the small size and scant resources of the area that HTS controls, however, there is little possibility of them drafting and implementing the full panoply of laws and procedures needed for a full-fledged justice system.

As discussed above, Salvation Government officials appear to recognise that some clarity is needed. Ministerial decrees have been issued to assist in organising and clarifying procedural issues. Legal consultants have also been hired to support judges in preparing decisions. Yet, the result has often been an undecipherable mixture of judge-interpreted *Sharia*, overlaid by the consultant's input of secular sources such as ministry decrees or Syrian law.

While these steps have somewhat improved the situation, the information gap between the lawyers and litigants on one side, and the judges on the other, is obvious. Until some mechanism is adopted by the Salvation Government for identifying, publicising and applying specific substantive and procedural rules in its courts, the decisions of those courts will lack legitimacy within the HTS territory and with courts in other regions of Syria.

Third, the lack of written norms has substantially affected the rights of women in the Salvation Government justice system, both as litigants and legal professionals. The adoption of conservative *Sharia* theology, coupled with the unstable, ongoing conflict, have gravely impacted the rights of women and other vulnerable groups, including the large number of internally displaced women and children residing in Idlib province.

Legal professionals, though perhaps more subtly, have likewise been negatively affected. Even though nothing in writing explicitly prohibits their participation, interviewees said that the political will clearly sought to keep women out of the profession. Women are tolerated, and occasionally encouraged to practice as lawyers, but are glaringly absent from any institutional positions of consequence.

In some interviews, male lawyers complained that female colleagues were themselves to blame for the low numbers, arguing that they chose more lucrative jobs elsewhere, such as working as consultants for international

organisations. This view clearly overlooks the structural and cultural obstacles that women face within the justice system.

The Salvation Government courts also suffer due to the disparate backgrounds and lack of training among their judges. Again, this ‘problem’ is not a problem in the eyes of many HTS leaders, whose religious beliefs and political loyalties mandate that Salvation Government judges should be deeply religious and politically loyal. While these biases are not easily overcome, experiences in other Islamic systems demonstrate that training regimens can be developed to improve the performance of *Sharia* courts.

A final factor is the lack of judicial independence in the courts administered by the Salvation Government. The subordination of the courts to the executive authority, primarily the Minister of Justice, is inconsistent with the principle that the courts should serve as an independent element in a system based on the rule of law.

Until these issues are addressed, the authority of the Salvation Government courts will be diminished, both within the HTS territory and in other regions of Syria. The initial issue, of course, is whether there are elements within the HTS power structure that are willing and able to tackle these questions.

The short answer appears to be that reform is unlikely, but not impossible. As mentioned at the outset, the entire Salvation Government system can be viewed as mere ‘window dressing’. Armed actors can exert their will in the Idlib area at any time. Laws and procedures can be and are being ignored, and courts can be and are being misused.<sup>362</sup>

On the other hand, while far from the centre of power, the IFLA has been able to play a role on the margins in improving the judicial system in areas under HTS control. The Salvation Government has occasionally utilised IFLA expertise to make improvements to the functioning of the courts. At least among the limited options in the Idlib area, the IFLA has shown some receptivity to creating positive change in the justice system.

Unfortunately, as the last four years have shown, the dynamics of the ongoing conflict likely will overtake any efforts at significant justice system change in the Idlib area. For those living or working in that region, the challenge remains to nudge the current system toward improvements that will somewhat enhance the understanding and acceptance of the rule of law.

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<sup>362</sup> See: Statement of Spokesperson for the UN High Commissioner for Human Rights, ‘Idlib violations and abuses’, 20 November 2020, <<https://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=26524&LangID=E>> [accessed 15 March 2021]; Ali, ‘Innocent here; convict there’, 2021, *supra* n. 190.

## Turkish-controlled areas

Beginning in 2016 and concluding in 2019, Turkey and allied Syrian opposition groups undertook a series of military operations directed primarily at Kurdish forces in the three cantons in what was then known as the ‘Democratic Federation of Northern Syria’ (DFNS).<sup>363</sup> These Turkish military operations were:

- Operation Euphrates Shield (ES) in late 2016 and early 2017, which took control of an area in the northern Aleppo governate (along the Turkish border from Azaz in the west to the Euphrates River in the east) from Kurdish and ISIS forces operating in that area.<sup>364</sup>
- Operation Olive Branch (OB) in early 2018, which expelled Kurdish forces from the Kurdish canton of Afrin (in the Syrian governate of Aleppo) in western Syria.<sup>365</sup>
- Operation Peace Spring (PS) in 2019, to create a safe zone for the return of Syrian refugees in an area along the Turkish border in both the Raqqa and al-Hasakah governates, previously controlled by Kurdish forces, stretching roughly from Tel Abyad to Ras-al Ayn.<sup>366</sup>

As a result of these operations, Turkish military and allied armed groups took control of large areas in northern Syria, which had been previously held by Kurdish-dominated forces, along with additional territory held by ISIS or various other Syrian armed opposition forces.<sup>367</sup> At the same time, however, Kurdish forces retained some territory in the southern part of Afrin, and continued a guerrilla campaign against the Turkish forces and their allies.<sup>368</sup> The Kurds also entered into an agreement with the Syrian government and its Russian allies to jointly patrol the area between the ES and PS incursions,

<sup>363</sup> See section ‘Evolution of the AANES justice system’.

<sup>364</sup> Aaron Stein *et al.*, ‘Post Conflict Stabilization: Turkey and the End of Operation Euphrates Shield’, Atlantic Council, 13 July 2017, <<https://www.atlanticcouncil.org/blogs/syriasource/post-conflict-stabilization-turkey-and-the-end-of-operation-euphrates-shield/>>.

<sup>365</sup> United Nations Human Rights Council, ‘Report of the Independent International Commission of Inquiry on the Syrian Arab Republic’, 9 August 2018.

<sup>366</sup> Metin Gurcan, ‘Turkey’s Operation Peace Spring effectively divides Syria into five sectors’, Al-Monitor, 8 November 2019, <<https://www.al-monitor.com/originals/2019/11/turkey-syria-incursion-divided-northeastern-region-into-five.html>>.

<sup>367</sup> Branislav Stanicek, ‘Turkey’s military operation in Syria and its impact on relations with the EU’, European Parliamentary Research Service, November 2019, <<https://www.europarl.europa.eu/EPRS/EPRS-Briefing-642284-Turkeys-military-operation-Syria-FINAL.pdf>>.

<sup>368</sup> Reuters, ‘Kurds signal move to new phase of guerrilla war on Turkish forces in Afrin’, 18 March 2018, <<https://www.reuters.com/article/uk-mideast-crisis-syria-afirin-statement/kurds-signal-move-to-new-phase-of-guerrilla-war-on-turkish-forces-in-afirin-idUKKBN1GUoLB>>; Omer Ozkizilecik, ‘The global community must do more to rid Afrin of terrorists’, TRT World, 13 January 2021, <<https://www.trtworld.com/opinion/the-global-community-must-do-more-to-rid-afirin-of-terrorists-43219>>.

thus blocking Turkish forces from consolidating those territories.<sup>369</sup> To further complicate the picture, Kurdish-dominated forces, known as the Syrian Defence Force (SDF), partnered with the American military to expel ISIS. Part of the territory under their control became the PS area of operations.<sup>370</sup> Thus, although the area under Turkish control is extensive, it is both geographically fragmented and subject to threats from other forces.

Also contributing to the complexity of the situation, prior to Turkish intervention, the northern regions received an enormous influx of internally displaced persons (IDPs) from other parts of the country.<sup>371</sup> Some came on their own, while others were transported as part of arrangements made when the Syrian government took over of opposition-controlled areas, such as Aleppo,<sup>372</sup> East Ghouta<sup>373</sup> and Daraa.<sup>374</sup> This influx, combined with the relative proximity to and return of large refugee populations from Turkey, has created a population in northern Syria that is among the most diverse in the country. Given the fact that these new residents typically arrived with few resources, the region has been deeply affected by unemployment, poverty and a lack of access to education.<sup>375</sup>

Though once a destination for refugees, these areas have also become a source of refugees seeking to escape the fighting engendered by the Turkish incursions. For example, the launch of Operation Peace Spring triggered mass waves of displacement in that area, with more than 175,000 individuals displaced, including approximately 80,000 children.<sup>376</sup>

Notwithstanding these difficult conditions, all areas under Turkish control are now officially under the administrative control of the Syrian Interim

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<sup>369</sup> Asli Aydıntaşbaş, 'A new Gaza: Turkey's border policy in northern Syria', European Council on Foreign Relations, 28 May 2020,

<[https://ecfr.eu/publication/a\\_new\\_gaza\\_turkeys\\_border\\_policy\\_in\\_northern\\_syria/](https://ecfr.eu/publication/a_new_gaza_turkeys_border_policy_in_northern_syria/)>.

<sup>370</sup> *The Daily Star*, 'Daesh defeated in their Syrian capital Raqqa', 17 October 2017, <<http://www.dailystar.com.lb/News/Middle-East/2017/Oct-17/422965-us-backed-militias-take-major-raqqa-position-from-daesh-sdf.ashx>>; Jared Szuba, 'US deployment to Syria's oilfields won't halt further Turkish attacks, Kurdish official says', *Defense Post*, 23 November 2019, <<https://www.thedefensepost.com/2019/11/23/syria-us-oilfields-turkey-incursion-aldar-xelil/>>.

<sup>371</sup> UNOCHA, 'Syria: Camps & Sites Needs Assessment – Northwest Syria Sub-district Profiles & Comparative Dashboard, January–February 2020', 21 April 2020, <[https://www.impact-repository.org/document/reach/1625f5c2/REACH\\_SYR\\_Northwest-Syria-Camps-and-Sites-Needs-Assessment\\_Sub-District-Profiles\\_April2020.pdf](https://www.impact-repository.org/document/reach/1625f5c2/REACH_SYR_Northwest-Syria-Camps-and-Sites-Needs-Assessment_Sub-District-Profiles_April2020.pdf)>.

<sup>372</sup> Amnesty International, 'Authorities Must Ensure Safe Passage in Turkey for Syrians Fleeing Aleppo Attacks', 5 February 2016.

<sup>373</sup> UNHRC, 'The siege and recapture of eastern Ghouta', 20 June 2018, <[https://www.ohchr.org/A\\_HRC\\_38\\_CRP\\_3\\_EN](https://www.ohchr.org/A_HRC_38_CRP_3_EN)>.

<sup>374</sup> Egypt Independent, 'Syria rebels begin evacuating "cradle" of uprising in Daraa', 15 July 2018, <<https://egyptindependent.com/syria-rebels-begin-evacuating-cradle-uprising-daraa/>>.

<sup>375</sup> COAR, 'Northern Corridor Needs Oriented Strategic Area Profile', October 2019, p. 10.

<sup>376</sup> UNGA, 'Report of the Independent International Commission of Inquiry on the Syrian Arab Republic', HRC, 45<sup>th</sup> Session, UN Doc A/HRC/43/57, 28 January 2020, p. 8.

Government (SIG),<sup>377</sup> based in the city of Azaz in northern Syria. The SIG is an opposition-affiliated government in exile, formed by the umbrella opposition group, the National Coalition for Syrian Revolutionary and Opposition Forces, which maintains that it is the sole legitimate representative of the Syrian people.<sup>378</sup>

However, the SIG is not necessarily representative of the land that it administers. Instead, the SIG draws its leadership from opposition figures from across Syria, many of whom are refugees from areas under Syrian government control, far from the northern border. For example, in 2020 the SIG elected a president who had fled from Daraa, and two vice-presidents from the Hama and Idlib governates, neither of which are within the territory administered by the SIG.<sup>379</sup> The third vice-president is from the al-Hasakah governate, but is a member of the Kurdish National Council,<sup>380</sup> which is distinct from and has a strained relationship with the Democratic Union Party (*Partiya Yekîtiya Demokrat* or PYD), the dominant Kurdish faction in northern Syria.<sup>381</sup>

At Turkey's initiative, a number of armed non-Kurdish opposition groups in northern Syria came together in late 2017 to form the Syrian National Army (SNA) under the SIG Ministry of Defence.<sup>382</sup> After a period of consolidation, Turkey gained complete control over the SNA, which was largely composed of groups dependent on Turkish support.<sup>383</sup> However, in spite of stated ambitions to build a unified force, the constituent armed groups of the SNA have remained largely independent, with separate command structures and often competing interests. It has been widely reported that each group in practice only answers directly to the Turkish Ministry of Defence.<sup>384</sup>

Finally, the disparate political interests involved – both international and Syrian – create a complex milieu of competing narratives concerning the events and actors in these areas. The Turks and their allies view their military operations primarily as necessary efforts to eliminate Kurdish terrorists and allow for the return of Syrian refugees to northern Syria.<sup>385</sup> SIG supporters generally echo this description and argue that Turkish intervention in these

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<sup>377</sup> The SIG is also referred to as the 'Syrian Opposition Council' (SOC).

<sup>378</sup> See website at: <<https://en.etilaf.org/>>.

<sup>379</sup> See SIG website at: <<https://en.etilaf.org/presidential-body>>.

<sup>380</sup> *Ibid.*

<sup>381</sup> See: ILAC 2017 Report, pp. 110–113.

<sup>382</sup> Ömer Özkizilcik, 'Uniting the Syrian opposition', SETA Foundation, October 2019; COAR, 'Northern Corridor Needs oriented strategic area profile', 2019, *supra* n. 375.

<sup>383</sup> Engin Yüksel, 'Strategies of Turkish proxy warfare in northern Syria', Clingendael Institute, November 2019.

<sup>384</sup> COAR, 'Northern Corridor Needs Oriented Strategic Area Profile', 2019, *supra* n. 375.

<sup>385</sup> *Daily Sabah*, 'A year on, Syrians in areas liberated by Turkey's Operation Peace Spring celebrate improvements', 8 October 2020, <<https://www.dailysabah.com/politics/war-on-terror/a-year-on-syrians-in-areas-liberated-by-turkeys-operation-peace-spring-celebrate-improvements>>.

areas has allowed the SNA and SIG to establish a new Syria free from the Assad regime.<sup>386</sup>

Kurdish forces, on the other hand, see the Turkish intervention as part of a decades' long campaign of ethnic cleansing and genocide directed at the Kurdish people.<sup>387</sup> The Syrian government and its allies take yet a third viewpoint, decrying the Turkish operations as aggression against the sovereign state of Syria.<sup>388</sup>

### **Current situation**

For these reasons, although the SIG ostensibly oversees administering the areas under Turkish control, its legitimacy is tenuous. The SIG is strongest in the area encompassed by Operation Euphrates Shield in northern Aleppo governorate, the so-called 'Northern Corridor'. The area was a mixture of ethnicities before the war,<sup>389</sup> and parts such as the city of Azaz were under the control of the Arab Syrian opposition before the Turkish intervention.

The war, including the various Turkish incursions elsewhere in the North, pushed even more refugees into this area, one of the few remaining refuges inside Syria for Syrians unable or unwilling to live under the Assad regime. Given the nature of the opposition to the government, these IDPs from Damascus, Aleppo city and points south tend to be more highly educated and with more skills than the original rural population.

In the Northern Corridor, the Turkish government has shown considerable interest in expanding the commercial, political and physical infrastructure, and facilitating the entry of the Turkish private sector into the area. As a result, the area has seen a drop in unemployment and significant improvements to essential services.<sup>390</sup>

However, these improvements are accompanied by what some analysts have described as the 'Turkification' of the area. Turkish officials serve on local councils, Turkish businesses operate widely and Turkish goods flood local markets. In a border area where national identities have always been muddled, a growing number of Syrians working for Turkish service providers

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<sup>386</sup> See: Khaled al-Khateb, 'Why Syria's opposition council is opening offices in FSA-held areas', Al-Monitor, 25 July 2019, <<https://www.al-monitor.com/originals/2019/07/syria-opposition-coalition-interim-government-new-leadership.html>>

<sup>387</sup> Mazloum Abdi, 'If We Have to Choose Between Compromise and Genocide, We Will Choose Our People', *Foreign Policy*, 13 October 2019, <<https://foreignpolicy.com/2019/10/13/kurds-assad-syria-russia-putin-turkey-genocide/>>.

<sup>388</sup> SANA, 'Al-Jaafari: Syria will confront Turkish aggression, defend its sovereignty and territorial integrity', 29 February 2020, <<http://www.sana.sy/en/?p=186966>>.

<sup>389</sup> Michael Izady, 'Syria: Ethnic Composition in 2010 (summary)', 2019, <[https://gulf2000.columbia.edu/images/maps/Syria\\_Ethnic\\_summary\\_lg.png](https://gulf2000.columbia.edu/images/maps/Syria_Ethnic_summary_lg.png)>.

<sup>390</sup> COAR, 'Northern Corridor Needs Oriented Strategic Area Profile', 2019, *supra* n. 375.

also have Turkish identification cards.<sup>391</sup> As one analysis described the situation, “the Northern Corridor must be viewed as a Turkish-administered proto-state, which is now all but officially part of Turkey”.<sup>392</sup>

Because of this history, ILAC interviews in northern Syria disclosed ongoing discontent on the part of many residents with the SIG government. Many Kurds in the area saw the SIG as simply a manifestation of Turkish aggression against their community. Even among some non-Kurds in the area, however, there was substantial disapproval of the SIG.<sup>393</sup> After the 2011 uprising, the regime’s retreat created a vacuum that allowed residents in the North to establish rudimentary governing bodies such as local councils. Though imperfect, these bodies allowed a measure of self-government.

The National Coalition and SIG were not chosen by the people in the North, but instead were created from the top down by leaders of opposition groups primarily from other parts of Syria.<sup>394</sup> Worse, both bodies were based outside Syria, where they had relative security and support from Turkey and other international partners. The public in northern Syria saw these bodies as wanting to govern in their own fashion, while not sharing the daily hardships suffered by ordinary residents. The latter situation improved somewhat when the SIG recently began moving its operations to northern Syria, but issues remain.

The situation in the other Turkish-controlled areas to the east and west is considerably different. Unlike the Northern Corridor, Afrin was a predominantly Kurdish city.<sup>395</sup> Operation Olive Branch was a significant military conflict, where Kurdish fighters put up substantial resistance.<sup>396</sup> An estimated 151,000 people were displaced, the majority to SNA-controlled areas in the northern Aleppo governorate.<sup>397</sup>

After the Turkish-led forces captured Afrin in early 2018, they began implementing a resettlement policy by moving Arab refugees from southern

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<sup>391</sup> *Ibid.* See also, Ministry of Foreign Affairs of the Netherlands, ‘Country of Origin Information Report Syria: Documents’, The Hague, December 2019, pp. 43–44; Enab Baladi, ‘From Afrin to Jarabulus: A small replica of Turkey in the north’, 29 August 2018, <<https://english.enabbaladi.net/archives/2018/08/from-afrin-to-jarabulus-a-small-replica-of-turkey-in-the-north/#ixzz6q4DoK1Aw>> [accessed 18 March 2021].

<sup>392</sup> COAR, ‘Northern Corridor Needs Oriented Strategic Area Profile’, 2019, *supra* n. 375.

<sup>393</sup> al-Khateb, ‘Why Syria’s opposition council is opening offices in FSA-held areas’, 2019, *supra* n. 286.

<sup>394</sup> *Ibid.*

<sup>395</sup> Izady, ‘Syria: Ethnic Composition in 2010 (summary)’, 2019, *supra* n. 289.

<sup>396</sup> Atlantic Council, ‘Operation Olive Branch: Status update’, 13 March 2018, <<https://www.atlanticcouncil.org/blogs/syriasource/operation-olive-branch-status-update/>>.

<sup>397</sup> UNHCR, ‘Syria Factsheet (January – November 2018)’, 31 December 2018, <<https://reliefweb.int/report/syrian-arab-republic/unhcr-syria-factsheet-january-november-2018>>.

Syria into the empty homes that belonged to displaced locals.<sup>398</sup> According to one report, the influx of Arabs from other parts of Syria has changed the ethnic balance in the city.<sup>399</sup> While the SIG ostensibly administers and Turkey implements infrastructure projects in the Afrin area,<sup>400</sup> resistance to Turkish and SNA forces continues.<sup>401</sup>

The situation in the PS area to the east is even less clear. Some towns, such as Tel Abyad, are reportedly under direct Turkish rule,<sup>402</sup> while others appear to be administered by the SIG.<sup>403</sup> Lawlessness in the area continues, although the blame depends on the party describing the situation. For example, SIG leaders were reportedly “briefed on the security situation in the region and the efforts to improve security and fend off terrorist operations”.<sup>404</sup>

An alternative view is seen in the repeated reports of systematic violence and intimidation by Turkish forces and their allies throughout the PS region.<sup>405</sup> In September 2020, the Office of the United Nations High Commissioner issued a statement that “the UN Human Rights Office has noted an alarming pattern in recent months of grave violations in these areas, including in Afrin, Ras al-Ain, and Tel Abyad, where increased killings, kidnappings, unlawful transfers of people, seizures of land and properties, and forcible evictions have been documented”.<sup>406</sup>

From these circumstances, three threads are apparent. First, regardless of the nominal structures in place ostensibly demonstrating control by local Syrian authorities, the real power lies with the Turkish forces. Second, many of those non-Kurdish Syrians living in or displaced to these areas explicitly or implicitly accede to Turkish authority as a preferable alternative to life under

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<sup>398</sup> *The Guardian*, “Nothing is ours anymore”: Kurds forced out of Afrin after Turkish assault’, 7 June 2018, <<https://www.theguardian.com/world/2018/jun/07/too-many-strange-faces-kurds-fear-forced-demographic-shift-in-afrin>>.

<sup>399</sup> Aydıntaşbaş, ‘A new Gaza’, 2020, *supra* n. 369.

<sup>400</sup> *Ibid.*

<sup>401</sup> *Reuters*, ‘Bomb blast kills at least five people in northern Syrian town of Afrin’, 30 January 2021, <<https://www.reuters.com/article/us-syria-security-turkey-blast/bomb-blast-kills-at-least-five-people-in-northern-syrian-town-of-afrin-idUSKBN29ZoL7?il=0>>.

<sup>402</sup> Aydıntaşbaş, ‘A New Gaza’, 2020, *supra* n. 369.

<sup>403</sup> National Coalition of Syrian Revolution and Opposition Forces, ‘SOC’s Delegation Tours Ras al-Ayn in al-Hasaka Province’, 29 March 2021, <<https://en.etalaf.org/all-news/news/socs-delegation-tours-ras-al-ayn-in-al-hasaka-province>>.

<sup>404</sup> *Ibid.*

<sup>405</sup> Asia News, ‘Turks and jihadists in “soft” ethnic cleansing of Kurds and Christians in North East Syria’, 31 October 2019, <<http://www.asianews.it/news-en/Turks-and-jihadists-in-%E2%80%99soft%E2%80%99-ethnic-cleansing-of-Kurds-and-Christians-in-North-East-Syria-48418.html>>.

<sup>406</sup> OHCHR, ‘Syria: Violations and abuses rife in areas under Turkish-affiliated armed groups – Bachelet’, 18 September 2020, <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26258&LangID=E>>. See also, UNGA, ‘Report of the Independent International Commission of Inquiry on the Syrian Arab Republic’, HRC, 45<sup>th</sup> Session, UN Doc A/HRC/45/31, 15 September 2020.

the Assad government or extremist Islamic forces. Third, these areas are not not stable, and violence continues.<sup>407</sup>

### **The judiciary in SIG-administered areas**

The justice system established by the SIG in Turkish-controlled areas presents a paradox. The SIG justice system adopts a number of positive structural features that are not present in the official Syrian system. The judiciary is populated primarily by trained judges, prosecutors and lawyers who rebelled against the Assad regime, many of whom have worked with international organisations over the past decade. Relative to other regions in Syria, the SIG system is reasonably well-resourced with support provided by Turkish authorities.

At the same time, this ostensibly independent SIG judiciary is subject to substantial direct and indirect pressure from the Turkish forces and their allies in the region. These pressures have resulted in an implicit tolerance for corruption and abuses committed by Turkish and allied forces, while concomitantly providing harsh treatment for opponents to the Turkish/SIG administration.

The precise origin of the justice system established by the SIG is not well-defined. Lawyers and judges were unable to give a clear account of the exact circumstances surrounding the decision to establish the new system. One report indicated that because the SIG Ministry of Justice had not yet been established, unidentified legal professionals were assigned the judicial work.<sup>408</sup> When asked by ILAC how and by whom the decision to form the new judicial system was taken, respondents referred to a “judicial committee”, “council” or a symposium without identifying specific dates or participants.<sup>409</sup> The lack of detail may also stem from a reluctance on the part of interviewees to discuss anything relating to Turkish involvement in the region, something which ILAC noted on several occasions during this project.

However, the active support from Turkey clearly was decisive. When the Syrian conflict began in 2011, the Aleppo governorate became a theatre for numerous armed groups, many of them with little in common except their opposition to the Syrian government and President Assad. Initial efforts by lawyers and judges to forge an agreement on a single judicial system in the region foundered, ultimately leading to the division of judicial services between different areas based on the views of the armed groups in control.<sup>410</sup>

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<sup>407</sup> See: Khayrallah al-Hilu, ‘The Turkish Intervention in Northern Syria: One Strategy, Discrepant Policies’, European University Institute, Robert Schuman Centre for Advanced Studies, 24 January 2021, p. 8.

<sup>408</sup> Ali, ‘Innocent here; convict there’, 2021, *supra* n. 190.

<sup>409</sup> Interview 8, NWTC Lawyer; Interview 13, NWTC Judge; Interview 16, NWTC Judge.

<sup>410</sup> ILAC 2017 Report.

Some opposition lawyers and judges moved to areas controlled by more moderate armed groups, where they sought to establish courts that would operate under the leadership of trained lawyers and judges and apply written law. But according to lawyers and judges interviewed by ILAC in 2016, their attempts to re-establish a judicial system based on Syrian law in opposition areas failed due to a lack of political or financial support. According to this view, radical Islamist groups were simply better resourced, with backing from international donors who actively supported the establishment of *Sharia* tribunals wherever those groups took military control.<sup>411</sup>

In 2017, the Turkish intervention and its decision to support the formation of the SNA and SIG dramatically shifted the balance. A senior official in the SIG Ministry of Justice told ILAC that, “After 2017, everyone in liberated areas [Euphrates Shield] agreed to form judiciary according to Syrian law with the help of Turkey”.<sup>412</sup>

While generally reluctant to discuss the details of Turkish involvement, those interviewed nonetheless broadly credited Turkey with providing the necessary financial resources, stability and security for courts to operate safely and effectively. With armed opposition groups unified under one banner, and the financial and political backing from Turkey, legal professionals working in the area at the time gathered with local leaders to abolish the then-existing patchwork of rudimentary judicial institutions operating under the different factions.

In its place, they designed a new, unified justice system to function in all areas under the control of SNA forces. The new judiciary was administered by the SIG, but received funding and security protection from Turkey.

Accordingly, in January 2017, while Operation Euphrates Shield was winding down, the head of the SIG visited Azaz to speak with “officials tasked with the formation of a unified judicial council in the liberated areas”. He announced that the SIG would open several courthouses in the coming days, with the central court to be headquartered in Azaz.<sup>413</sup> This announcement was soon followed by Turkish-supported construction of court facilities throughout the area.<sup>414</sup>

However, while the SIG sought to put a ‘Syrian face’ on these activities, Turkey played a major role in creating the justice system in the areas under

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<sup>411</sup> ILAC 2017 Report.

<sup>412</sup> Interview 12, NWTG SIG MOJ Official.

<sup>413</sup> National Coalition of Syrian Revolution and Opposition Forces, ‘Abu Hatab Urges Support for Syrian Interim Government’s Projects to Serve Civilian Population’, 27 January 2017, <<https://en.etalaf.org/all-news/news/abu-hatab-urges-support-for-syrian-interim-government-s-projects-to-serve-civilian-population>>.

<sup>414</sup> Khaled al-Khateb, ‘Northern Syria takes step toward new judicial system’, Al-Monitor, 5 October 2018, <<https://www.al-monitor.com/originals/2018/10/syria-euphrates-shield-area-turkey-justice-palace-courts.html>>.

its control. One report from a SIG-friendly source later indicated that the SIG judiciary “was formed in cooperation with Turkey, because the Ministry of Justice of the Interim Government was not established yet”.<sup>415</sup> Another report produced by an ally of the Erdoğan government trumpeted these efforts, stating that, “Courts in the region have become more functional thanks to the initiatives of the Turkish Ministry of Justice since Operation Euphrates Shield”. According to this report, the then-existing *Sharia* and military courts in the Northern Corridor were abolished on 5 March 2017, and regular and penal courts were set up in their place.<sup>416</sup> A United Nations report also indicated that the decision to establish the system was announced in the presence of a committee from the Turkish Ministry of Justice in 2017.<sup>417</sup>

Several lawyers and judges interviewed for this report pointed to the substantial discontent with the SIG among the population in northern Syria, and expressed scepticism about the SIG and its capacity to effectively lead. For these reasons, several seemingly wanted to distance the justice system from association with SIG authority.<sup>418</sup> At the same time, others indicated that because legal professionals were allowed to participate in the selection of the Minister of Justice, that ministry was able to overcome some of the broader concerns with SIG legitimacy.

Regardless of these concerns, respondents reported that the SIG-administered justice system had been extended to all areas under the protection of Turkish authorities. SIG press releases refer to “the opening of many services and judicial institutions in various towns and villages”.<sup>419</sup>

Nonetheless, the remote eastern area between Tel Abyad and Ras al-Ain only came under Turkish control during Operation Peace Spring in late 2019. At the time of the ILAC interviews in late 2020 and early 2021, accurate information about these areas was difficult to obtain. Interviewees for this ILAC project were mostly based in Turkey or the Northern Corridor. When they did refer to PS areas, their responses were often generalised, for example, “The expansion [of the justice system] is continuing when new areas

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<sup>415</sup> Ali, ‘Innocent here; convict there’, 2021, *supra* n. 190.

<sup>416</sup> Murat Yeşiltaş *et al.*, ‘Operation Euphrates Shield: Implementation and Lessons Learned’, Ankara: Foundation for Political, Economic and Social Research, 2017, p. 35.

<sup>417</sup> ESCWA and the National Agenda for the Future of Syria (NAFS) Programme, ‘Policy gap analysis in the judiciary sector in Syria’, 2018, <<https://nafsprogramme.info/sites/default/files/2019-07/Judiciary.pdf>>.

<sup>418</sup> The same pattern can be seen in other areas of civil administration. For example, many local councils do not even wish to be nominally associated with the SIG, preferring to style themselves as independent authorities. See: COAR, ‘Northern Corridor Needs Oriented Strategic Area Profile’, 2019, *supra* n. 375.

<sup>419</sup> National Coalition of Syrian Revolution and Opposition Forces, ‘Coalition’s Political Committee Discusses Latest Field & Political Developments in its Regular Meeting’, 9 January 2020.

are liberated”,<sup>420</sup> or the “Peace Spring area will have same system as ES and OB areas”.<sup>421</sup>

Other reports suggest that the SIG-administered justice system, at best, is only in its formative stages in the PS area. For example, in the face of international pressure, Turkey – not SIG – established military tribunals in Tel Abyad and Ras al-Ain to investigate allegations of war crimes.<sup>422</sup> Other reports generally refer to “judicial institutions” in those areas, but also suggest that they need to “speed up” and “make progress”.<sup>423</sup>

### **Syrian law without the Syrian government**

The changes to the judicial system introduced in 2017 represented a significant victory for Syrian legal professionals in Turkish-controlled areas. With the backing of Turkey, previous compromises to staff courts with religious scholars and apply *Sharia* no longer applied. Instead, a decision was made to model the new justice system on the Syrian structures in place before 2011. As one SIG official later explained: “After 2017, we formed a judicial structure that does not contradict with international standards and that applies the Syrian law”.<sup>424</sup> According to one report, this effort culminated in a statement by 19 judges in the north towards the end of 2017, saying that “the judges under the Euphrates Shield have agreed to adopt the application of the Syrian laws (Property Laws, the Civil Law and Penal Codes), in a manner that does not violate the rulings of the Syrian Constitution for the year of 1950”.<sup>425</sup>

However, the concept of applying Syrian law remained controversial, particularly to the extent that it would include laws adopted by Damascus after the start of the conflict in 2011. Many of those latter laws, it was felt, were specifically designed and applied to punish opposition to the Assad government. As such, they were deemed unacceptable in the territories under opposition control:<sup>426</sup>

*We don't recognize any laws enacted after the revolution [after 2011].  
(...) They are politicized.*<sup>427</sup>

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<sup>420</sup> Interview 15, NWTC Military Court Prosecutor.

<sup>421</sup> Interview 1, NWTC Lawyer.

<sup>422</sup> Aydıntaşbaş, ‘A new Gaza’, 2020, *supra* n. 369.

<sup>423</sup> National Coalition of Syrian Revolution and Opposition Forces, ‘Association of Independent Syrian Kurds Tours Ras al-Ayn & Tal Abyad’, 19 January 2021, <<https://en.etilaf.org/all-news/news/association-of-independent-syrian-kurds-tours-ras-al-ayn-tal-abvad>>.

<sup>424</sup> Interview 12, NWTC SIG MOJ Official.

<sup>425</sup> Enab Baladi, ‘Legal Clinic Offers Free Consultancies to People in Northern Aleppo’, 14 April 2018, <<https://english.enabbaladi.net/archives/2018/04/legal-clinic-offers-free-consultancies-to-people-in-northern-aleppo/>>.

<sup>426</sup> *Ibid*; Interview 13, NWTC Judge.

<sup>427</sup> Interview 15, NWTC Military Court Judge; Interview 10, NWTC Lawyer.

Instead, the decision was made that the SIG-administered justice system would rely on contemporary interpretations of the Syrian Constitution and laws adopted in the aftermath of Syrian independence in the 1950s, prior to the ascent of the Ba'ath party. The choice of the 1950 Constitution was significant since, according to those interviewed by ILAC, it was “developed by experts who cared about Syria as a fair country” and it “unifies all Syrians and gives them equality”.<sup>428</sup> Later Syrian government instruments were viewed as promoting the interests of the authorities, not the people.<sup>429</sup>

According to the SIG Minister of Justice, the current judicial framework is based on the Syrian Judicial Authority Act (JAA).<sup>430</sup> The system thus seeks to emulate the structures that were in place prior to the beginning of the conflict, but with changes to address many of the grievances of opposition groups.<sup>431</sup> Interviewees strongly held the view that the return to Syrian law should not be interpreted as an attempt to re-establish the status quo, but rather an attempt to reform or reclaim the law from an oppressive regime. The vision, proponents said, was a judiciary free from political interference and mindful of people's needs:

*Of course, there is [a] difference between [the] regime and the SIG-administered areas. In the former, the judiciary is politicized and works to serve the regime and security forces and used as a tool to repress people and humiliate them. While in the latter, they abide by the Syrian law and preserve human dignity.*<sup>432</sup>

Accordingly, the SIG courts will not apply any laws which they consider to be politicised through their connection to the Ba'ath party or which they think contradict “the principles of the revolution”.<sup>433</sup> Similarly, laws adopted by the government post-2011 were rejected on the grounds that they were “politicised”.<sup>434</sup> As one lawyer described the approach:

*Syrian law will be adopted under the Constitution of 1950, after removing all the articles that violate the provisions of Islamic law or the principles and objectives of the Syrian revolution, along with the articles restricting public freedoms that the Syrian regime later on included.*<sup>435</sup>

The return to the 1950 Constitution also represented a reaction to the rejection of legal expertise and written laws, which the area had experienced during the

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<sup>428</sup> Interview 13, NWTC Judge.

<sup>429</sup> Interview 4, NWTC Lawyer.

<sup>430</sup> Ali, ‘Innocent here; convict there’, 2021, *supra* n. 191; Interview 12, NWTC SIG MOJ Official.

<sup>431</sup> Interview 7, NWTC Lawyer; Interview 8, NWTC Lawyer; Interview 13, NWTC Judge.

<sup>432</sup> Interview 2, NWTC Lawyer.

<sup>433</sup> Interview 13, NWTC Judge.

<sup>434</sup> Interview 15, NWTC Military Court Prosecutor; Interview 10, NWTC Lawyer.

<sup>435</sup> al-Khateb, ‘Northern Syria takes step toward new judicial system’, 2018, *supra* n. 414.

six years prior to the 2017 reforms. Many interviewees stressed the improvements included in the new system, which they said had “institutionalised” justice, brought back professionalism and renewed the focus on the law:<sup>436</sup>

*Before 2017, there were Sharia courts with scholars who don't know anything about law. Every [armed group] has its own court leading to contradicting decisions. We're exerting efforts to serve justice on the ground through lawyers, courts and judges.*<sup>437</sup>

While the evidence suggested that these aspirations had not been fully realised, the structures put in place in the SIG-administered justice system were a substantial victory for the Syrian legal professionals seeking to create a system rooted in historical Syrian legal thinking.

Yet this new system also faces obstacles arising from decades of violence in the North, both before and after 2011. Interviewees highlighted the intimidation within the community and fear among potential litigants that prevented many disputes from reaching the judiciary. One respondent described that, “If a matter reaches the judiciary, that would be excellent, but people get scared and don't go to courts. People need to be stronger and not give in to threats”.<sup>438</sup> The respondent went on to explain that:

*Before a case reaches [the] judiciary, there is a lot of unfairness because of armed factions and because there is a lot of reliance on mediation instead of courts, or some people waive their rights, but when things reach the court it's good. There are different judiciary instances, and they are good; at least there is a base to build on.*<sup>439</sup>

Because of this hesitancy, various conflict resolution mechanisms have been put in place to help parties settle their differences out of court. One set includes formal arbitration and mediation centres, whose “decisions need to be ratified by the judiciary to be effective”.<sup>440</sup>

As in other parts of Syria, there are also informal systems which are rooted in community traditions. Interviewees explained that these latter processes were not necessarily made in conjunction with the judicial system but in parallel, as an alternative means of dispute resolution: “Dignitaries, community leaders, religious scholars or tribal leaders sometimes intervene before the matter reaches the court to ask people to forgive and reconcile”.<sup>441</sup> One respondent went on to describe these processes:

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<sup>436</sup> Interview 8, NWTC Lawyer; Interview 11, Lawyer & Professor of Law.

<sup>437</sup> Interview 8, NWTC Lawyer. See also: al-Khateb, ‘Northern Syria takes step toward new judicial system’, 2018, *supra* n. 414.

<sup>438</sup> Interview 9, NWTC Lawyer.

<sup>439</sup> *Ibid.*

<sup>440</sup> *Ibid.*; Interview 10, NWTC Lawyer; Interview 4, NWTC Lawyer.

<sup>441</sup> Interview 3, NWTC Lawyer.

*There are social commissions that try to resolve conflicts informally before they reach the court. If they find a solution, the parties reconcile. Otherwise, they go to court. There are dignitaries. But there are no religious committees.<sup>442</sup>*

## Separation of powers

While legal professionals in the areas administered by the SIG advocate the principles of judicial independence, the evidence reflects that these principles are often threatened or ignored. Some of these threats come from within the SIG framework, while others arise from the reality that the judiciary is operating in territory controlled by a foreign power.

Looking at the formal structure, the judiciary is administered by the SIG through its Ministry of Justice. However, several interviewees maintained that the general lack of SIG leadership had also been apparent in the justice sector.<sup>443</sup> The institutional context in which the SIG court system finds itself, with no legislature and a weak executive, has further complicated the implementation of provisions on administrative independence. According to one lawyer, the SIG was a government on paper without actual “ministries”.<sup>444</sup> As noted above, a number of respondents sought to distance the court system from association with SIG authority.

To some extent, this wish has become a reality. Some of those interviewed declared that the judiciary was free from influence from civil and military forces, with judges acting independently and lawyers being organised in a Free Bar Association.<sup>445</sup> Another said that, unlike the official Syrian system, the judicial police (part of the executive) had no role in the SIG system.<sup>446</sup> As one respondent put it:

*Judiciary is the biggest and highest authority in liberated areas. ... SIG does not interfere in the judiciary.<sup>447</sup>*

Yet it was also apparent from interviews that while the Ministry of Justice was the official administrative agency for managing judges and prosecutors, in practice the true authority lay elsewhere:<sup>448</sup>

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<sup>442</sup> Interview 2, NWTC Lawyer.

<sup>443</sup> Interview 11, NWTC Lawyer & Professor of Law; Interview 16, NWTC Former Judge. See also: Ali, ‘Innocent here; convict there’, 2021, *supra* n. 190.

<sup>444</sup> *Ibid.*

<sup>445</sup> Interview 6, NWTC Lawyer; Interview 10, NWTC Lawyer.

<sup>446</sup> Interview 1, NWTC Lawyer; Interview 3, NWTC Lawyer; Interview 14, NWTC Lawyer.

<sup>447</sup> Interview 7, NWTC Lawyer.

<sup>448</sup> Interview 11, NWTC Lawyer & Professor of Law; Interview 16, NWTC Former Judge. See also: Ali, ‘Innocent here; convict there’, 2021, *supra* n. 190.

*The judiciary is not in fact fully under the Minister of Justice. The latter does not completely supervise courts which should be the case.*<sup>449</sup>

This reality makes judicial accountability in the areas under SIG administration difficult to follow. Formally, non-judicial matters such as court logistics or the hiring of judicial staff should be handled, and to some extent are handled, by the Ministry of Justice.<sup>450</sup> Yet, because the SIG is unpopular, several interviewees seemed reluctant to admit to this link. Moreover, the SIG's lack of authority and capacity has left a power vacuum. Two actors appear to have taken the lead on key administrative tasks such as judicial appointments, creating new courts and logistics: Turkey and the Court of Cassation.

The latter court appears to be widely accepted in the legal profession as the legitimate body for most sensitive decisions in the Turkish-controlled areas, based on its role as the highest court in the SIG structure. While the Court of Cassation has not completely replaced the Ministry of Justice in these matters, it seems to have assumed the ultimate executive power regarding judicial matters, with power to approve or disapprove proposed decisions by the ministry.

Perhaps this assumption of power can be explained by the Court of Cassation's links to Turkey. As one official in the Ministry of Justice explained, the Court of Cassation "was formed with help of our brothers in Turkey".<sup>451</sup> Accordingly, significant decisions on administrative matters pertaining to the judiciary are drafted by the SIG Ministry of Justice, but then circulated to the Turkish authorities and the Court of Cassation for approval.<sup>452</sup>

Turkey's role and assistance, however, appears to extend beyond approving and financing the establishment of new courts. The head of the SIG in September 2018 "stressed SIG's keenness on maintaining close coordination with the Turkish authorities as key to securing the needs to enable the work of SIG's ministries and institutions in the liberated areas".<sup>453</sup> Thus, budgeting is carried out in coordination with Turkey.<sup>454</sup> Interviewees explained that Turkey also had a hand in financing salaries and in the appointment of court employees:

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<sup>449</sup> Interview 11, NWTC Lawyer & Professor of Law.

<sup>450</sup> Interview 12, SIG MOJ Official.

<sup>451</sup> *Ibid.*

<sup>452</sup> *Ibid.*

<sup>453</sup> National Coalition of Syrian Revolution and Opposition Forces, 'Mustafa: SIG's Vision Based on Supporting Civil Administration in Liberated Areas', 2 September 2019, <<https://en.etilaf.org/all-news/news/mustafa-sig-s-vision-based-on-supporting-civil-administration-in-liberated-areas>>.

<sup>454</sup> Interview 13, NWTC Judge.

*We collaborate with Turkey to establish the courts or provide all missing staff including bailiffs, court reporters, judges. We have continued coordination and collaboration with our brothers in Turkey.*<sup>455</sup>

According to interviewees – all of whom were part of the SIG system – Turkish influence was limited to matters that concerned security and decisions with budgetary implications, notably judicial appointments.<sup>456</sup> All technical questions and matters internal to the judiciary, such as specialisation of judges, were described as being under purely Syrian control. Thus, though it was evident that Turkish influence in northern Syria was considerable, the tangible benefits coming from this involvement were met with approval from all those interviewed for this study.

The exact mechanism for exercising Turkish influence was something which many respondents were unwilling to discuss in any detail with ILAC. Interviewees referred to the Turkish “coordinator” as the person handling requests pertaining to the judiciary.<sup>457</sup> From what ILAC was able to discern, two coordinators were apparently appointed to manage Turkish support in each geographical area, one Syrian and one Turkish.

Many interviewees educated in the official Syrian system expressed regret that the SIG structure did not include a Supreme Judicial Council.<sup>458</sup> In the Syrian national system, such a council is responsible for many of the administrative tasks that are currently carried out by the Court of Cassation in the SIG-administered areas. In the words of one lawyer, the Court of Cassation in the Turkish-controlled areas now embodied the role of the Supreme Judicial Council as the highest authority in those areas.<sup>459</sup>

This arrangement has allowed the court system to be largely self-administering within the SIG system, subject of course to the omnipresent Turkish influence. However, it is debatable whether this self-administration has made the judiciary more independent, or if the lack of support from co-equal executive and legislative branches of the SIG has made it more vulnerable. The dilemma was captured in a statement by one lawyer:

*There is nothing legalized about the supervision of the executive power. Let's face it – who is doing this? Our allies, the Turks, our neighbours. Do they apply these measures in their land? Of course, not. (...) We don't have anyone to care for us.*<sup>460</sup>

<sup>455</sup> Interview 12, NWTC SIG MOJ Official. See also: al-Khateb, ‘Northern Syria takes step toward new judicial system’, 2018, *supra* n. 414.

<sup>456</sup> Interview 12, NWTC SIG MOJ Official; Interview 16, NWTC Former Judge.

<sup>457</sup> See also: al-Hilu, ‘The Turkish Intervention in Northern Syria’, 2021, p. 12, *supra* n. 407.

<sup>458</sup> Interview 12, SIG MOJ Official.

<sup>459</sup> Interview 3, NWTC Lawyer.

<sup>460</sup> Interview 11, NWTC Lawyer & Professor of Law.

According to some interviewees, there were plans to establish a Supreme Judicial Council within the SIG soon. This sentiment was echoed by the current SIG Minister of Justice, when he indicated that the SIG was at the time of writing seeking to form a judicial council.<sup>461</sup> Yet even this sentiment was tempered by the reality of Turkish involvement. In discussing the interim role of the Court of Cassation and the plans to establish a Supreme Judicial Council, one interviewee said:

*We are discussing this matter with the Turks and submitting this request to them. They respond to our requests and establish the courts that we need because as you know the SIG's capacity and financial resources are quite limited. Our brothers in Turkey help us by providing salaries for judges.*<sup>462</sup>

But these structural and financial issues are not the only impediments to establishing a system based on a separation of powers. Numerous responses reflected differing understandings of the separation of powers among those interviewed by ILAC. Respondents – all obviously members of the opposition – believed that the arrangements under the SIG were an improvement over the official Syrian government system, stating that “the problem under the regime was the interference in all powers”.<sup>463</sup>

However, such statements were often tempered by a caveat referring to the constraints of the ongoing conflict: “We’re still in a war. (...) The situation is very good given the circumstances”.<sup>464</sup> One interviewee stated: “The separation principle is applied generally, but there is a [different] reality on the ground”.<sup>465</sup>

Although legal professionals interviewed from the SIG system were hesitant, some respondents acknowledged these issues. For example, one interviewee noted the outside pressures on the judicial system related to the Kurdish minority.<sup>466</sup> And, as discussed below, the security situation in northern Syria makes the legal professionals operating in the SIG system even more reliant on Turkish forces and the SNA.

## **Security threats to the justice institutions**

As noted above, much of the Turkish-controlled territory in northern Syria has become a haven for members of the opposition from other parts of the country. Many of those refugees are lawyers and judges disbarred by the Ba’ath government and branded as ‘traitors’ or ‘terrorists’ for their

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<sup>461</sup> Ali, ‘Innocent here; convict there’, 2021, *supra* n. 190.

<sup>462</sup> Interview 12, NWTC SIG MOJ Official.

<sup>463</sup> Interview 6, NWTC Lawyer.

<sup>464</sup> Interview 7, NWTC Lawyer.

<sup>465</sup> Interview 4, NWTC Lawyer.

<sup>466</sup> Interview 9, NWTC Lawyer.

involvement in the revolution.<sup>467</sup> Most respondents credited the Turkish military presence and its contribution of resources for a stabilisation of the situation since 2017, which has allowed many legal professionals to return both to Syria and to practising their profession.<sup>468</sup>

Nonetheless, supporters of Assad view participation by legal professionals in the SIG system as an act of dissent.<sup>469</sup> Moreover, this ‘stabilisation’ resulted from the intervention of outside (Turkish) forces, which caused the expulsion or suppression of the substantial Kurdish population. Turkish ‘anti-terrorist’ actions against Kurds have also established the primacy of predominantly Arab opposition groups, predominantly led by persons from outside northern Syria.

In this context, the recreation of the official Syrian justice system in the Turkish-controlled areas, even if operated by anti-Assad professionals, is variously viewed by some either as collaborating with an occupying power or an unfair continuation of the system that they rebelled against.<sup>470</sup> As a result, lawyers and judges in the SIG-administered areas remain targets for threats, kidnappings, torture and killings.<sup>471</sup> Several interviewees described how colleagues had been targeted by threats and violence.<sup>472</sup>

Security measures accordingly have been put in place at judicial facilities throughout the SIG-administered areas.<sup>473</sup> Interviewees pointed to several steps taken to ensure the security of court premises, such as security guards and/or police officers in or around the courthouse, as well as ID checks, bag examinations, and body searches to ensure that no weapons are carried inside the court.<sup>474</sup> Opinions about the security of the courts varied, with some respondents suggesting that the security measures were insufficient to make them feel safe, while other found them to be adequate. In any case, the shared view among interviewees seemed to be that court premises were relatively safe.<sup>475</sup>

But these measures cannot protect lawyers once they leave the court compound. One lawyer explained that, although lawyers and judges were protected by security while performing their job, the threat was present “outside their work, in [the] neighbourhood”.<sup>476</sup> Most of the interviewees had

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<sup>467</sup> Interview 2, NWTC Lawyer; Interview 6, NWTC Lawyer; Interview 7, NWTC Lawyer.

<sup>468</sup> Interview 15, NWTC Military Court Prosecutor; Interview 4, NWTC Lawyer.

<sup>469</sup> Interview 16, NWTC Former Judge.

<sup>470</sup> *Ibid.*

<sup>471</sup> See: al-Hilu, ‘The Turkish Intervention in Northern Syria’, 2021, p. 8, *supra* n. 408.

<sup>472</sup> Interview 5, NWTC Lawyer; Interview 8, NWTC Lawyer; Interview 9, NWTC Lawyer; Interview 10, NWTC Lawyer; Interview 13, NWTC Judge.

<sup>473</sup> al-Khateb, ‘Northern Syria takes step toward new judicial system’, 2018, *supra* n. 414.

<sup>474</sup> Interview 3, NWTC Lawyer; Interview 4, NWTC Lawyer; Interview 9, NWTC Lawyer; Interview 10, NWTC Lawyer.

<sup>475</sup> Interview 7, NWTC Lawyer.

<sup>476</sup> Interview 11, NWTC Lawyer & Professor of Law.

known a colleague who had been targeted for assassination or kidnapping.<sup>477</sup> The threat to legal professionals therefore remains:

*Until now, nothing happened inside. There are retaliatory incidents though.*<sup>478</sup>

For some judges, the solution has been to settle in Turkey and commute to work across the border. Again, the reliance on Turkish support for the SIG is apparent. Commenting on such arrangements, one respondent stated that “Lawyers and judges are safe in the area, especially that all judges who come from Turkey are safe because they’re taken from [the] courthouse to the border crossing or some of them live in a safe compound provided with security”.<sup>479</sup>

Still, not all court officials enjoy such protection. Another stated that they had “No protection. I live in a house where a car takes me back and forth to my work. God is the only protector”.<sup>480</sup> On living with the constant threat, another respondent stated that:

*Most judges live in Turkey and travel to Syria only to perform their duties. We try personally to protect ourselves, for example, not to walk or travel alone. Most assassinations are carried out by improvised explosive devices that assassins stick to the target’s vehicle. That’s why we don’t leave our cars outside.*<sup>481</sup>

Despite the continued threat, increased stability and the ability to work in a familiar Syrian-style legal system outside the official Syrian government courts has been met with approval by those working in the SIG system. One respondent stated that “there are two wings for justice, judges and lawyers. I think the future will be bright because we have a lot of people who fled Syria but returned to [northern Syria] to practise [law]”.<sup>482</sup> This sentiment was reiterated by another, who stated:

*There is a big difference from how things were [before 2017] as 60 percent of judges currently are experienced lawyers and the rest, about 40 percent, are defected judges. In the past, judges lived in Turkey while only a few judges and lawyers were working on the ground. After 2017, with the help of Turkey and providing security for this area, it helped judges to return to Syria. Lawyers who were chosen for judiciary were not at random, but rather based on integrity, experience and revolutionary conduct.*<sup>483</sup>

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<sup>477</sup> Interview 5, NWTC Lawyer.

<sup>478</sup> Interview 8, NWTC Lawyer.

<sup>479</sup> Interview 4, NWTC Lawyer.

<sup>480</sup> Interview 15, NWTC Military Court Prosecutor.

<sup>481</sup> Interview 3, NWTC Lawyer.

<sup>482</sup> Interview 4, NWTC Lawyer.

<sup>483</sup> Interview 12, NWTC SIG MOJ Official.

## Creating law without a parliament

Turkish support has allowed for the creation of credible judicial structures staffed by trained judges and lawyers in the areas that it controls. But despite their outward normalcy, the courts in these areas continue to suffer from two major deficiencies.

First, the SIG is not a sovereign state. The SIG-administered courts face the same problem with legitimacy experienced by other non-state courts. Despite the reliance on Syrian law, the political disconnect between the Turkish-controlled areas and Damascus is effectively a disconnect with sovereignty. Unless and until the courts administered by the SIG become part of a sovereign state, those judicial bodies will remain inherently temporary in nature. Although they recognise this problem, judges in these courts argue that they are the best alternative, allowing for the continued application of Syrian law until a political agreement is reached and temporary courts are dissolved.<sup>484</sup>

Second, a true separation of powers is impossible without a functioning – preferably democratically elected – legislature.<sup>485</sup> While the General Assembly of the National Coalition carries some of the trappings of a legislative body, the SIG does not have a legislature that debates and adopts legislation to govern the territories that it administers. One lawyer considered the lack of a functioning legislative authority to be a significant weakness in the SIG system, which had contributed to its dependence on Turkey.<sup>486</sup> Yet, establishing an opposition legislature in northern Syria would risk splitting it from the rest of the country and creating two separate Syrian states, an outcome that the opposition has sought to avoid.<sup>487</sup>

Nonetheless, some believe that the creation of a legislature is a risk worth taking. One judge articulated the need for a legislative authority capable of addressing the post-revolution context:

*Both the people and we, who work in judiciary, hope to have a legislative authority that can bridge the gap in a lot of new matters that happened after the revolution. We are in dire need of new legislation or to nullify old legislation.*<sup>488</sup>

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<sup>484</sup> Interview 16, NWTC Former Judge; See also: Ali, 'Innocent here; Convict there', 2021, *supra* n. 190.

<sup>485</sup> This is true not only of non-state armed actors. See, for instance, in the case of the Palestinian Authority, where a defunct parliament was one of the key factors enabling executive takeover of a previously independent judiciary. See: ILAC, 'Be independent and do as you're told! Closing Space for Judges in Palestine', Policy Brief No. 3, October 2019, <<https://ilacnet.org/publications/closing-space-for-judges-in-palestine/>>.

<sup>486</sup> Interview 1, NWTC Lawyer.

<sup>487</sup> Interview 2, NWTC Lawyer.

<sup>488</sup> Interview 13, NWTC Judge.

In other parts of Syria, gaps in the legislative authority have been filled by the executive, legislating by decree.<sup>489</sup> Although this approach raises many problems, it provides a mechanism for handling situations not foreseen in existing Syrian legislation. However, in the North, the SIG has not managed to create a fully-fledged executive authority either.<sup>490</sup> One official interviewed by ILAC acknowledged this conundrum, stating:

*We have a legislative and constitutional vacuum. We can't get ourselves into these things because things are unstable yet.*<sup>491</sup>

In the interim, judges have addressed emerging needs for new legislation through the court system by use of judicial interpretation of existing statutes. According to one interview, this power has given the Court of Cassation, as the highest authority in the SIG-administered judicial system, a further expanded role. While it has declined to establish a formal legislative department, the Court of Cassation reportedly has acted as a *de facto* legislature by issuing circulars on particular topics to the lower courts. As under Syrian law, these rulings made by the Court of Cassation are considered jurisprudence.<sup>492</sup>

## **Court system**

As previously mentioned, the court system in SIG areas is modelled on Syrian state institutions. Interviewees indicated that, other than the removal of Ba'ath Party and security apparatus influences from within the courts, there were no structural differences between the two systems.

The courts in the SIG system thus are based on the three-instance structure of the official Syrian state courts. Under this system, the first instance is divided two parts: (i) magistrate courts for lesser crimes and civil cases; and (ii) first-instance criminal and civil courts for more serious matters. All first-instance rulings are appealable, except some minor offences in the magistrate courts, where the punishment is a small fine. Appeals are heard by a court of appeal, and its decisions can in turn be appealed to the Court of Cassation.<sup>493</sup>

These institutions follow the tenets of the Syrian Judicial Authority Act, and cases are handled in accordance with the Syrian Codes of Criminal and Civil

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<sup>489</sup> See above, section 'Idlib' and below, section 'The rule of law under the social contract' in Chapter 3 - Northeast Syria.

<sup>490</sup> Interview 12, NWTC SIG MOJ Official.

<sup>491</sup> Interview 12, NWTC SIG MOJ Official.

<sup>492</sup> Interview 16, NWTC Former Judge; Interview 2, NWTC Lawyer.

<sup>493</sup> National Coalition of Syrian Revolution and Opposition Forces, 'SIG Seeking to Rehabilitate Transport, Electricity & Judiciary Institutions in Aleppo Province', press release, 18 June 2018, <<https://en.etilaf.org/all-news/local-news/sig-seeking-to-rehabilitate-transport-electricity-judiciary-institutions-in-aleppo-province>>.

Procedure.<sup>494</sup> Cases are not assigned to any particular judge, but instead are distributed depending on the jurisdiction and type of case.<sup>495</sup>

The system in the Turkish-controlled areas is organised in appellate circuits, with judicial institutions grouped around each court of appeal. According to information provided to ILAC, there were at the time of this research three courts of appeal in the north-western areas, located in Azaz, Afrin and Raii, plus one in the east, located in Tal Abyad.<sup>496</sup> Each circuit is divided into subdistricts that contain magistrate and first-instance courts, prosecution departments, and other agencies according to available resources and population needs.<sup>497</sup>

The circuit in Azaz, seat of the SIG bureaucracy, is responsible for the easternmost subdistricts in the Northern Corridor, including Al Bab and Jarablus. In the Afrin circuit, subdistrict courts have been established in Jandairis, Sheikh Hadid, Rajo, Bulbul and Sharran.<sup>498</sup> In the east in the PS area, the Tal Abyad circuit also has a subdistrict court in Ras al-Ain with four judges. ILAC was informed that the SIG Ministry of Justice had started the process of recruiting additional judges to expand the judiciary in these eastern areas.<sup>499</sup>

The Court of Cassation is located in Raii, part of a complex called the Palace of Justice built with Turkish funding. The palace is a two-story building, with 1,000 square meters of space.<sup>500</sup> The Court of Cassation is the highest court in all appealable cases, and is divided into three chambers to hear civil, criminal and military appeals.<sup>501</sup> It hears appeals on points of law and has the power to return cases to lower courts for retrial. Under certain circumstances, the Court of Cassation can also try a case in its entirety as the final appeals instance.<sup>502</sup> The decisions of this court are considered to be binding precedent for future cases in the lower courts.<sup>503</sup>

Though careful to avoid harsh criticisms, interviewees did comment on the relative lack of courts and an insufficient number of judges, which increased the workload of judges and put additional pressure on the entire system.<sup>504</sup>

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<sup>494</sup> *Ibid*; Interview 12, NWTC SIG MOJ Official; Interview 13, NWTC Judge.

<sup>495</sup> Interview 1, NWTC Lawyer; Interview 2, NWTC Lawyer; Interview 4, NWTC Lawyer.

<sup>496</sup> Interview 1, NWTC Lawyer; Interview 10, NWTC Lawyer; Interview 13, NWTC Judge; Enab Baladi, 'From Afrin to Jarabulus', 2018, *supra* n. 391.

<sup>497</sup> Interview 12, NWTC SIG MOJ Official; Interview 13, NWTC Judge.

<sup>498</sup> Interview 12, NWTC SIG MOJ Official.

<sup>499</sup> *Ibid*; Interview 13, NWTC Judge. See also: National Coalition of Syrian Revolution and Opposition Forces, 'Association of Independent Syrian Kurds Tours Ras al-Ayn & Tal Abyad', 2021, *supra* n. 423.

<sup>500</sup> al-Khateb, 'Northern Syria takes step toward new judicial system', 2018, *supra* n. 414.

<sup>501</sup> Interview 2, NWTC Lawyer.

<sup>502</sup> Interview 13, NWTC Judge; Interview 8, NWTC Lawyer.

<sup>503</sup> Interview 11, NWTC Lawyer & Professor of Law.

<sup>504</sup> Interview 6, NWTC Lawyer.

These shortcomings, in turn, led to compromises in the criteria for appointment of judges to the new courts.

While the SIG's formal requirements for judicial appointments mirror those in place in the official Syrian courts prior to 2011, many judges fled northern Syria after 2011. Some additional judges arrived after being displaced from elsewhere in Syria, but the net result was a shortage of judges trained as required by Syrian law. The SIG has nominally established a Higher Judicial Institute to train new judges. As of this writing, however, the Ministry of Justice was still seeking donors to start the project.<sup>505</sup>

Accordingly, notwithstanding the commitment to pattern the new SIG justice system after the structures in place before 2011, these circumstances required a departure from Syrian judicial traditions. Given the paucity of trained judges, experienced lawyers were appointed as judges in many SIG-administered courts.<sup>506</sup> Despite this departure from historical practices, legal professionals in the SIG-administered areas interviewed by ILAC uniformly opined that this shift constituted a significant improvement. One respondent saw the current judiciary in the Turkish-controlled areas as representing progress relative to both the earlier years of the war and the situation under the Ba'ath government:

*There was a huge transition from the state of chaos to organisation. At the beginning of revolution, there were small steps to form courts by non-experts and non-qualified people. (...) There was a big change, and the system is now better than the 'regime's' judiciary.<sup>507</sup>*

ILAC was not able to establish the exact requirements for judicial appointments in civilian courts, other than a confirmation from the SIG Ministry of Justice that there were "no official tests but there is an interview by a committee that raises legal and professional questions".<sup>508</sup> Though 'lip service' was paid to the traditional requirements under Syrian law, a senior SIG official acknowledged the need to adapt on the current context:

*Lawyers who were chosen for judiciary were not at random, but rather based on integrity, experience and revolutionary conduct, a background check. The Judicial Authority Act is typically applied in a stable country, but we have a reality.<sup>509</sup>*

In addition to vetting an applicant's 'revolutionary' background, new judges also require approval by the Turkish authorities.<sup>510</sup> In the ILAC interviews, responses concerning the role and influence of Turkey in the selection of

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<sup>505</sup> Ali, 'Innocent here; convict there', 2021, *supra* n. 190.

<sup>506</sup> Interview 13, NWTC Judge; Interview 14, NWTC Lawyer.

<sup>507</sup> Interview 11, NWTC Lawyer & Professor of Law.

<sup>508</sup> Interview 12, NWTC SIG MOJ Official.

<sup>509</sup> *Ibid.*

<sup>510</sup> See section 'Separation of powers' above.

judges and court employees were generally ambiguous. However, as previously mentioned, Turkish and SIG sources have acknowledged the Turkish role in selecting and providing salaries for judges and court staff.<sup>511</sup> One official flatly stated that “appointing judges and deciding their salaries [is] done by the current SIG in cooperation with our Turkish partners”.<sup>512</sup>

A person with knowledge described the process as follows: If the SIG Ministry of Justice believed a new judgeship should be created, it applied for funding from Turkey. If the funding was approved, the ministry would advertise the position and solicit applications. From these applications, the minister would create a shortlist of candidates, which was then submitted to the Turkish representative for vetting. When approved, the list would be sent to the Court of Cassation to select the judge for the position.<sup>513</sup>

Interviewees argued that the purpose for Turkish vetting was solely to ensure that Turkish funding was not used to promote persons who posed a national security threat to Turkey.<sup>514</sup> Whether the vetting process is truly limited in this fashion is open to question, but the entire process exemplifies the informal, yet seemingly institutionalised, system of influence in the SIG-administered areas that has been developed and is practised by Turkey.

Similarly, judges in the SIG-administered areas have been described as being subject to Turkish training and supervision.<sup>515</sup> This supervisory role may include examining complaints against judges. One respondent outlined this process as he understood it:

*The authority is the Turkish coordinator who is a judge assigned by the Turkish MOJ. If you want to complain against any judge, one has to meet the coordinator. It's very difficult for anyone to see or meet him. He works with judges not lawyers. Therefore, presidents of bars [Bar Associations] talk to the Central Bar Association, so the latter talks to the MOJ and, the MOJ talks to the coordinator. In case there is an irrefutable evidence of judge bias, judges could be laid off. There were two such instances of judges who were laid after complaints that followed this path, but one has to follow a personal rather than a legal complaint channel.<sup>516</sup>*

However, other respondents refuted this description, contending that anyone could file a complaint against a judge in the SIG-administered areas using procedures analogous to those prescribed by Syrian law. According to these interviewees, the “Judicial Authority Act and other Syrian laws like the

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<sup>511</sup> Interview 12, NWTC SIG MOJ Official; al-Khateb, ‘Northern Syria takes step toward new judicial system’, 2018, *supra* n. 414.

<sup>512</sup> Interview 12, NWTC SIG MOJ Official.

<sup>513</sup> Interview 16, NWTC Syrian Legal Consultant; Interview 16, NWTC Former Judge.

<sup>514</sup> *Ibid.*

<sup>515</sup> Interview 8, NWTC Lawyer.

<sup>516</sup> Interview 11, NWTC Lawyer & Professor of Law.

procedural codes contain stipulations about judge recusal”.<sup>517</sup> Where there is suspected misconduct by a judge, one can file a complaint with the SIG Judicial Inspection Department, headed by a judge.<sup>518</sup> One respondent described the process as follows:

*The process goes like this – if a litigant feel[s] that there is unfairness [by the judge], he/she can submit a complaint to the JID which refers the complaint [to] the judge in question to answer for it in writing. Appeal before the appeals court and the Court of Cassation are available, as well.*<sup>519</sup>

While questions remain about the extent of Turkish influence over the SIG judicial system and individual legal professionals, there is no question that judges in that system receive pay and personal security from the Turkish authorities. Understandably, there was reluctance among some interviewees to criticise their colleagues. One legal professional went so far as to say “as a revolutionary person who is taking the position of a judge, I don’t think that they have shortcomings”.<sup>520</sup>

## **Enforcement**

Another area of consensus among those interviewed was the substantial improvement in the enforcement of judicial decisions under the SIG justice system. According to the SIG Ministry of Justice, prior to 2017, the enforcement of judicial decisions was at best haphazard: “We used the help of armed factions at the beginning of liberation when we didn’t have judicial police, so got help from armed factions to execute court decisions at that time”.<sup>521</sup>

After Turkish intervention, the Turkish authorities established a Judicial Enforcement Department, often referred to as ‘the judicial police’, which is now attached to the SIG Ministry of Justice.<sup>522</sup> This department is divided into separate civil, criminal and military branches, which are responsible for enforcement of judicial decisions within their respective fields.<sup>523</sup>

Most interviewees praised this approach, indicating that the new entity respected court rulings. Equally important, the “judicial police and police stations follow the orders of the court and the prosecution”.<sup>524</sup> However, this praise must be viewed in light of the relatively low expectations of judges and

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<sup>517</sup> Interview 12, NWTC SIG MOJ Official.

<sup>518</sup> Interview 7, NWTC Lawyer.

<sup>519</sup> Interview 13, NWTC Judge.

<sup>520</sup> Interview 9, NWTC Lawyer.

<sup>521</sup> Interview 12, SIG MOJ Official.

<sup>522</sup> Interview 8, NWTC Lawyer; Enab Baladi, ‘From Afrin to Jarabulus’, 2018, *supra* n. 391; Ali, ‘Innocent here; convict there Syria’, 2021, *supra* n. 190.

<sup>523</sup> Interview 2, NWTC Lawyer.

<sup>524</sup> Interview 3, NWTC Lawyer; Interview 4, NWTC Lawyer.

lawyers due to the volatile security situation.<sup>525</sup> As one lawyer pointed out, the lack of any central authority and the proliferation of weapons have made enforcement “a complicated matter”.<sup>526</sup>

The main challenge to enforcement of judicial decisions is the limited geographical reach of the SIG authorities. Because there is no mutual recognition of judicial decisions or cooperation with authorities in other areas, there is a persistent risk that both suspects and those convicted will simply leave for an area where the court’s orders are not respected:

*The execution of misdemeanour and infractions verdicts is done through imprisonment and fines. As for criminal charges, if a person flees to Turkey, for example, how can we possibly catch that person. (...).*<sup>527</sup>

### **Military courts**

As with the civilian courts, the various armed military factions in northern Syria prior to the Turkish intervention established separate military tribunals of various kinds in the areas they controlled. After the SIG was established, these tribunals were abolished.<sup>528</sup> In their place, a new military justice system, separate from the civilian courts, was created to try any case relating to the military or any case where a member of the military was involved.<sup>529</sup>

The military judiciary is attached to the Ministry of Defence rather than the Ministry of Justice, and follows a structure different from the judiciary at large. It is controlled by the Military Judiciary Command, established by the SIG. This command is led by the Director of Military Judiciary (DMJ), along with two deputies, investigative judges and the single military judge in each district.<sup>530</sup> There are 30 military judges, none of whom are women.<sup>531</sup>

Like other aspects of the judiciary in the north, the jurisdiction of the military judiciary tracks pre-existing Syrian law, that is, Article 51 of the Military Penal Code of 1950 and Legislative Decree No. 161. The SIG military courts also follow Syria’s civilian Code of Criminal Procedure, unless the Military Penal Code provides otherwise.<sup>532</sup> Military courts are also answerable to the

<sup>525</sup> Interview 6, NWTC Lawyer.

<sup>526</sup> Interview 2, NWTC Lawyer.

<sup>527</sup> Interview 15, NWTC Military Court Prosecutor.

<sup>528</sup> Enab Baladi, ‘From Afrin to Jarabulus’, 2018, *supra* n. 391.

<sup>529</sup> Interview 15, NWTC Military Court Prosecutor; Enab Baladi ‘From Afrin to Jarabulus’, 2018, *supra* n. 391; Ali, ‘Innocent here; convict there’, 2021, *supra* n. 190.

<sup>530</sup> Interview 15, NWTC Military Court Prosecutor.

<sup>531</sup> *Ibid.*

<sup>532</sup> *Ibid.*; Interview with the Director of the Military Judicial Department, Brigadier General Arafat Hammoud, in Ali, ‘Innocent here; convict there’, 2021, *supra* n. 190.

Court of Cassation,<sup>533</sup> though apparently there is some type of appointed ‘adviser’ at the court’s Military Criminal Chamber.<sup>534</sup>

Final decisions by the military courts are reported to military authorities for enforcement. For example, in Azaz and Tel Abyad, the decisions are reported to the military prosecutors. Convictions are implemented by the SNA-affiliated military police, which has eight branches in the countryside north of Aleppo.<sup>535</sup>

As with the civilian courts, the new military courts suffer from a lack of judges trained as required by Syrian law. Accordingly, new judges and prosecutors appointed in those courts are either defected judges or experienced lawyers.<sup>536</sup> According to a military judge interviewed for this report, there is a competitive process for military judicial appointments:

*There is a contest for those who want to apply to military judiciary. We have run three such contests so far to choose judges. We check the documents of all applicants and see who meets the criteria and we submit a proposal by the DMJ to the Minister of Defence, and the latter chooses the candidates that meet the legal and professional criteria (...).*<sup>537</sup>

The military court system appeared to be viewed by many interviewees as a necessary compromise given the realities on the ground. One lawyer described the military courts as exceptional courts within the SIG system and indicated that the region’s lawyers were trying to eliminate them.<sup>538</sup> Nevertheless, interviewees felt that establishing the rule of law in Turkish-controlled areas was an enormous task. They seemingly considered the creation of a separate military judicial system to be a practical solution. One official within the military judiciary offered a sober description of this reality:

*[B]ecause of the exceptional circumstances, there must be a military judiciary because if the cases we try in military courts go to civil judiciary, the latter will not be able to handle them. So, having a military judiciary is an urgent necessity.*<sup>539</sup>

Though most interviewees maintained that military courts were fully under the authority of the civilian Court of Cassation, one respondent acknowledged that some armed groups operated outside the system. According to this report, a few factions had private courts to try their affiliates. However, this respondent contended that these ‘courts’ did not harm the civil judiciary,

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<sup>533</sup> Interview 1, NWTC Lawyer; Ali, ‘Innocent here; convict there’, 2021, *supra* n. 190.

<sup>534</sup> Ali, ‘Innocent here; convict there’, 2021, *supra* n. 191.

<sup>535</sup> *Ibid.*

<sup>536</sup> Interview 15, NWTC Military Court Prosecutor.

<sup>537</sup> *Ibid.*

<sup>538</sup> Interview 6, NWTC Lawyer.

<sup>539</sup> Interview 15, NWTC Military Court Prosecutor.

since the coordinator, the Minister of Justice, and representatives of factions could meet to resolve any issues.<sup>540</sup>

This perspective was supported by another interviewee, who suggested that while the military lacked influence over the SIG civilian courts, it might hold sway with some military courts.<sup>541</sup> The situation likely varies with differing local circumstances. One lawyer expressed a reluctance to visit Afrin, saying that “because of armed factions’ presence, I feel like I just want to get out [of] there. Before one reaches judiciary, the case will have probably been solved by mediation or interference by armed factions”.<sup>542</sup>

## Lawyers

Following the outbreak of conflict in 2011, many lawyers in the North faced reprisals led by the Assad regime for their involvement in the opposition. Lawyers were disbarred by the SBA and listed as ‘traitors’ or ‘terrorists’.<sup>543</sup> One respondent stated that almost half of the lawyers in Aleppo were disbarred between 2013 and 2019.<sup>544</sup> Nearly all of those interviewed by ILAC verified that they had been disbarred, although one noted that it was impossible to know, since bar records could not be safely accessed.<sup>545</sup>

Furthermore, respondents reported that due to their involvement in the opposition, lawyers faced lawsuits and criminal charges.<sup>546</sup> Many had their property confiscated, expropriated or occupied by security forces.<sup>547</sup> Respondents also reported that legal professionals had been detained, with

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<sup>540</sup> Interview 11, NWTC Lawyer & Professor of Law.

<sup>541</sup> Interview 3, NWTC Lawyer.

<sup>542</sup> Interview 9, NWTC Lawyer.

<sup>543</sup> Interview 6, NWTC Lawyer; Interview 7, NWTC Lawyer.

<sup>544</sup> Interview 3, NWTC Lawyer.

<sup>545</sup> Interview 9, NWTC Lawyer.

<sup>546</sup> Interview 5, NWTC Lawyer; Union Internationale des Avocats, ‘In response to the alarming situation of Syrian lawyers, the UIA calls on the Syrian Bar to defend the legal profession’, press release, 27 September 2011, <[http://www.uianet.org/sites/default/files/UIA\\_Lawyers\\_Syria\\_EN\\_110927\\_01\\_o.pdf](http://www.uianet.org/sites/default/files/UIA_Lawyers_Syria_EN_110927_01_o.pdf)> [accessed 12 September 2017]; The Syrian Organization for Human Rights, ‘Statement’, 24 December 2011, <https://souriahouria.com/the-syrian-organization-for-human-rights-swasiyah-statement/>>, [accessed 12 September 2016].

<sup>547</sup> Interview 2, NWTC Lawyer; Interview 5, NWTC Lawyer; Hannes Baumann (ed.), ‘Reclaiming Home: The struggle for socially just housing, land, and property rights in Syria, Iraq and Libya’, p. 95, n. 390, Friedrich-Ebert-Stiftung, 2019, <[https://mena.fes.de/fileadmin/user\\_upload/pdf-files/publications/FES\\_Reclaiming\\_home\\_interior\\_BAT.pdf](https://mena.fes.de/fileadmin/user_upload/pdf-files/publications/FES_Reclaiming_home_interior_BAT.pdf)>.

some held in custody or executed.<sup>548</sup> These incidents continued after 2011, when armed Islamist groups took over large parts to the area.<sup>549</sup>

After the conflict began, opposition lawyers in the North began a variety of new professional organisations,<sup>550</sup> while they attempted to practise under the assortment of courts operated by the various armed factions in the region. In June 2014, a Free Lawyers Association was founded during a conference in Gaziantep, Turkey. Though only 75 lawyers were present, this association sought to represent 5,000 Syrian lawyers inside the country, those disbarred by the SBA, and others who had left Syria because of their anti-regime opinions.<sup>551</sup>

The Turkish intervention in the North dramatically changed the situation. The creation of separate justice systems in Idlib and the Turkish-controlled areas led to two separate local bars in those regions, both taking the name, the 'Free Lawyers Association'.<sup>552</sup> According to one report, the local bar in the SIG-administered areas in the northern Aleppo governorate (hereafter referred to as the AFLA) is composed of nearly 650 lawyers, many of whom are refugees from other parts of Syria or the city of Aleppo.<sup>553</sup>

The AFLA followed the practice adopted in the Turkish-controlled areas, and generally replicated the structures of the SBA. The AFLA thus is organised according to the principles in Syrian Law No. 30 of 2010, passed to regulate the work of the SBA.<sup>554</sup> As with other Syrian laws 'adopted' in the North, articles in this law restricting the AFLA's independence have been ignored, such as those establishing the sovereignty of the Ba'ath Party and Syrian state authorities over the association's work.<sup>555</sup> Lawyers' fees are similarly governed by the Law Profession Regulation Act and are monitored by the AFLA's council through fee claims.

AFLA membership requirements are also modelled on the SBA rules. A candidate must graduate from a recognised law school and complete a two-year apprenticeship under a qualified lawyer.<sup>556</sup> In addition to these formal requirements, the candidate must be 'of good reputation'; that is, they must

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<sup>548</sup> Interview 2, NWTC Lawyer; Interview 5, NWTC Lawyer; Union Internationale des Avocats, press release, 2011, *supra* n. 546; The Syrian Organization for Human Rights, 'Statement', 2011, *supra* n. 546.

<sup>549</sup> Amnesty International, "'Torture was my Punishment": Abductions, Torture and Summary Killings under Armed Group Rule in Aleppo and Idleb, Syria', July 2016, <<https://www.justice.gov/eoir/file/873566/download>>.

<sup>550</sup> ILAC 2017 Report, p. 69; Baumann (ed), 'Reclaiming Home', p. 95, n. 390, Friedrich-Ebert-Stiftung, 2019, *supra* n. 547.

<sup>551</sup> Ali, 'Innocent here; convict there', 2021, *supra* n. 190.

<sup>552</sup> See footnote 124 above, describing Free Lawyers Associations in Daraa.

<sup>553</sup> Ali, 'Innocent here; convict there', 2021, *supra* n. 190.

<sup>554</sup> See ILAC 2017 Report, p. 49.

<sup>555</sup> Ali, 'Innocent here; convict there', 2021, *supra* n. 190.

<sup>556</sup> Interview 5, NWTC Lawyer.

have a proven record showing that they are ‘pro-revolution’.<sup>557</sup> Thus, before being admitted, a candidate must be vetted by the Bar. If the candidate is deemed acceptable, a letter is sent to inform the SIG Ministry of Justice. According to one lawyer with knowledge of the process, the ministry had the authority to object to the admission of a new member.<sup>558</sup>

Aspiring lawyers must pay fees to the AFLA on two occasions. First, a fee of approximately USD250–280 is required at the time of application for the two-year apprenticeship. Second, after qualifying, new lawyers must pay a registration fee before they are allowed to practice.<sup>559</sup> Interviewees explained that these fees were intentionally lower than those of the SBA to encourage and enable participation. Lawyers also described significant flexibility regarding fees due to economic hardship in the area, such as postponing or dividing payments into instalments.<sup>560</sup>

Lawyers working in the Turkish-controlled areas nonetheless continue to face challenges. As one lawyer explained: “Lawyers have a better situation than under the regime, but not perfect”.<sup>561</sup> Many challenges described in the ILAC interviews focused on logistical issues or financial limitations,<sup>562</sup> with one respondent opining that “the main difficulty is the geographical distribution and lack of public transportation”.<sup>563</sup>

There appears to be no organised access to continuing legal education for AFLA lawyers. Respondents mainly pointed to informal workshops and an emphasis on individual responsibility, with one respondent stating that “through social media and legal websites, every person trains themselves”.<sup>564</sup>

A sensitive question facing many lawyers is whether to live in the Turkish-controlled areas and work in the areas under HTS control, or vice-versa. In our interviews, ILAC found that, given the relatively free movement between the two areas, it was fairly commonplace for lawyers to live in portions of Idlib under HTS control, but work exclusively before the courts in the SIG-administered areas.<sup>565</sup>

The question of simultaneous practice in the two systems, however, was somewhat more sensitive. Officially, the association in each region has exclusive access to its respective courts. There are no formal relations or coordination between the AFLA and IFLA.<sup>566</sup> In addition, many international

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<sup>557</sup> Interview 1, NWTC Lawyer; Interview 2, NWTC Lawyer; Interview 6, NWTC Lawyer; Interview 7, NWTC Lawyer; Interview 11, NWTC Lawyer & Professor of Law.

<sup>558</sup> Interview 11, NWTC Lawyer.

<sup>559</sup> Interview 1, NWTC Lawyer; Interview 5, NWTC Lawyer; Interview 6, NWTC Lawyer.

<sup>560</sup> Interview 8, NWTC Lawyer; Interview 9, NWTC Lawyer.

<sup>561</sup> Interview 2, NWTC Lawyer.

<sup>562</sup> Interview 6, NWTC Lawyer.

<sup>563</sup> Interview 3, NWTC Lawyer.

<sup>564</sup> Interview 2, NWTC Lawyer.

<sup>565</sup> See footnote 360, above.

<sup>566</sup> Enab Baladi, ‘Innocent here; convict there’, 2021, *supra* n. 190.

programmes require that lawyers participating in their activities have no interaction with Salvation Government authorities, due to anti-terrorism legislation in donor countries.

Nevertheless, it was clear from the ILAC interviews that lawyers from the Turkish-controlled areas took cases in courts under HTS control.<sup>567</sup> This practice, however, was considered irregular and was tolerated in recognition that many lawyers remained desperate to take every available case to make a living.<sup>568</sup>

*We reached a dead-end with lawyers working under HTS. We try to turn a blind eye to them because they said they wanted to make a living. A lawyer is free and if they want to work, we cannot prevent them.*<sup>569</sup>

However, some lawyers from the Turkish-controlled areas feared entering or working in courts held by HTS.<sup>570</sup> Respondents spoke of anxiety about harassment resulting from criticisms of the HTS system by those working in SIG-administered areas:<sup>571</sup>

*I don't even dare enter HTS's courts. I was threatened by them and I was almost killed.*<sup>572</sup>

Yet, despite these challenges, throughout ILAC's interviews in the SIG-administered areas, respondents expressed optimism for both the future of the legal profession and the role of legal professionals in creating the future Syrian society. Seemingly, much of this optimism was based on changes reflected in the SIG-administered system since 2017 and the perceived creation of a justice system based on written law. Given the executive and legislative vacuum discussed above, lawyers and judges have taken a prominent organisational and leadership role in establishing the new system. Not surprisingly, they take great pride in its apparent achievements. One respondent stated that:

*The organisation of courts and judicial procedures could be the core for something good in the future when the regime is toppled. There is integrity in the procedures and judiciary. People go to the courts. Even armed individuals are abiding by the court decisions, because they feel like it's the safety valve for everyone.*<sup>573</sup>

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<sup>567</sup> Interview 8, NWTC Lawyer; Interview 10, NWTC Lawyer.

<sup>568</sup> Interview 6, NWTC Lawyer; Interview 5, NWTC Lawyer; Interview 4, NWTC Lawyer.

<sup>569</sup> Interview 4, NWTC Lawyer and Senior ABA Official.

<sup>570</sup> Interview 9, NWTC Lawyer.

<sup>571</sup> Interview 2, NWTC Lawyer; Interview 3, NWTC Lawyer.

<sup>572</sup> Interview 3, NWTC Lawyer.

<sup>573</sup> Interview 8, NWTC Lawyer.

In a similar vein, another interviewee commented:

*Previously, I stayed away from courts because I could not practise my profession, but it's now encouraging (...) There is transparency, partnership and acceptance of difference.<sup>574</sup>*

### **Status of women under the SIG justice system**

Another area of particular significance regarding the administration of justice in areas under Turkish control is the status and treatment of women. Many of the crosscurrents discussed above have impacted these issues in the justice system administered by the SIG.

Women's rights have been held by many in the opposition movement as among its core principles from the very beginning of the 'revolution'. To them, the 1950 Constitution symbolises a time in Syrian history before the Ba'ath coup when women had a more active voice in Syria's political life and their political rights were improved, culminating with them winning the right to vote in 1949.

Many interviewees argued that these principles were now visible in the legal institutions of the SIG. As increased stability allowed more legal professionals to return to the area, these professionals argued that they had sought to re-introduce protections for women's rights. Indeed, they pointed to the decision to base the SIG system on the 1950 Constitution as an embodiment of these ideals.<sup>575</sup>

In many of ILAC's interviews in northern Syria, lawyers and judges reasoned that the ideals of the rule of law, greater rights for women and pride in the legal profession were intimately connected. These ideals, they argued, drove a willingness and even eagerness to improve access to justice for women in the SIG-administered areas.<sup>576</sup> Those interviewed by ILAC in those areas emphasised that non-discrimination and even preferential treatment for women as members of a 'vulnerable group' were important procedural principles in the SIG-administered legal institutions.<sup>577</sup>

Notwithstanding these general statements, however, few offered concrete examples illustrating how these principles had been put into practice. One of the few such examples offered involved situations where witness testimony

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<sup>574</sup> Interview 6, NWTC Lawyer.

<sup>575</sup> Sanja Kelly and Julia Breslin, 'Women's Rights in the Middle East and North Africa: Progress Amid Resistance', New York, NY: Freedom House; Lanham, MD: Rowman & Littlefield, 2010.

<sup>576</sup> Interview 1, NWTC Lawyer; Interview 14, NWTC.

<sup>577</sup> Interview 2, NWTC Lawyer; Interview 4, NWTC Lawyer; Interview 6, NWTC Lawyer; Interview 7, NWTC Lawyer; Interview 8, NWTC Lawyer; Interview 9, NWTC Lawyer; Interview 10, NWTC Lawyer.

was taken from a female witness. According to one lawyer, the first such hearing could not take place without the presence of a third person, such as a lawyer, to protect the witness from undue pressure that could otherwise be used to extract false testimony.<sup>578</sup>

Many interviewees emphasised that compared to the chaotic situation of overlapping and conflicting jurisdictions of various armed groups and *Sharia* law bodies that existed before 2017, the establishment of the formal SIG justice institutions and application of Syrian law had significantly improved the status of women in the area. Nevertheless, as described in ILAC's 2017 report,<sup>579</sup> the application of Syrian law still entails concrete differences in the status of women and men, notably under the PSL.<sup>580</sup>

This same law also pinpoints a delicate dilemma for judges operating under the political constraints inherent in a reliance on Syrian codes. As discussed above, the Syrian government in 2019 amended the PSL to seemingly improve the rights of women and girls in Syria.<sup>581</sup> On the one hand, these changes appear to align with the protection of women's rights, a principle long valued by the opposition movement. Yet the application of such a post-2011 Syrian law would fly squarely in the face of the prohibition against recognising laws enacted by the Assad regime after the 2011 revolution.<sup>582</sup> In practice, it appears that the application of these amendments has effectively been left to the discretion of the judge,<sup>583</sup> meaning that these 'progressive' modifications to the PSL are not consistently applied.<sup>584</sup>

The plight of women in northern Syria can also be viewed from another perspective. Two female Syrian lawyers interviewed by ILAC described how, in portions of rural northern Syria now under SIG administration, the population had long been excluded from the privileges of political influence and economic development enjoyed by the city elites. Women in these areas often lacked the awareness of, and the resources to benefit from, the political rights theoretically granted to them by Syrian law.<sup>585</sup>

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<sup>578</sup> Interview 2, NWTC Lawyer; Interview 4, NWTC Lawyer; Interview 14, NWTC Lawyer.

<sup>579</sup> ILAC 2017 Report, p. 51.

<sup>580</sup> *Syrian Law Journal*, 'A Comprehensive Insight into Syrian Family Law', 3 March 2019, <<http://www.syria.law/index.php/comprehensive-insight-syrian-family-law/>>; ILAC 2017 Report.

<sup>581</sup> See section 'Women's access to justice in government-controlled areas' above, describing PSL amendments.

<sup>582</sup> Interview 15, NWTC Military Court Prosecutor; Interview 10, NWTC Lawyer.

<sup>583</sup> Interview 7, NWTC Lawyer; Interview 8, NWTC Lawyer; Interview 10, NWTC Lawyer; Interview 11, NWTC Lawyer & Professor of Law. Note: Some interviewees blamed Turkey for this, as they failed at imposing requirements that the amended law should be applied.

<sup>584</sup> *Ibid*; Interview 9, NWTC Lawyer.

<sup>585</sup> Interview 8, NWTC Lawyer; Interview 9, NWTC Lawyer.

Despite the current ascendancy of the SIG, these lawyers emphasised that this situation continued for many women IDPs and those in rural communities.<sup>586</sup> One lawyer described the area as home to a generation of women, men and children who were unaware of their rights.<sup>587</sup> Several lawyers interviewed by ILAC highlighted the need to create awareness of legal rights among the population in northern Syria, particularly among women.

Economic hardship, which particularly affects women, is another major constraint to access to justice for many living in areas under Turkish control.<sup>588</sup> These impacts can be seen in two ways. On the one hand, clients (particularly women) often lack the resources to pay the legal and administrative fees needed to access the courts. Yet lawyers also experience economic hardship and rely on fees to survive. According to some accounts, this has occasionally led to cases of overcharging in the SIG-administered areas.<sup>589</sup>

Social pressure also leads many lawyers to work *pro bono* to alleviate the suffering of clients.<sup>590</sup> A large portion of the population in the SIG-administered areas has come to depend on reduced price or *pro bono* services provided by lawyers, with the support of international organisations and local bar associations. Yet *pro bono* services also can negatively impact the rights of clients. For example, such programmes typically cannot ensure the right of an individual to choose their own lawyer. But in a society with deep-rooted traditions of gender-based stigmatising, especially in sensitive cases related to marriage and divorce, sensitive details about a case may be easier to share with a female counsel. The inability to choose a lawyer thus can negatively affect women, who feel safer with female lawyers in many situations.<sup>591</sup>

While the legal professionals interviewed for this report (particularly female lawyers) displayed an awareness of the challenges faced by women in the justice system, the SIG-administered system seems to provide insufficient

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<sup>586</sup> *Ibid.*

<sup>587</sup> Interview 9, NWTC Lawyer.

<sup>588</sup> Although the war has forced many women to take on the role as breadwinners for the family, they do face challenges getting into the workforce. This is also given the North traditionally being an area where women have been excluded from the workforce, let alone political influence. See: COAR, 'Northern Corridor: Needs Oriented Strategic Area Profile', 2019, p. 18, *supra* n. 375.

<sup>589</sup> Many legal professionals in the area also work for free. Interview 1, NWTC Lawyer; Interview 10, NWTC Lawyer.

<sup>590</sup> *Ibid*; Enab Baladi, 'Legal Clinic Offers Free Consultancies to People in Northern Aleppo', 2018, *supra* n. 425.

<sup>591</sup> Interview 8, NWTC Lawyer; Interview 10, NWTC Lawyer.

solutions or access to concrete tools to ensure the safe and full participation of women and others in vulnerable situations.<sup>592</sup>

### **The participation of women in the legal profession**

Related to the status and treatment of women as users of the SIG-administered justice system is the issue of the participation of professional women within that system. Long before 2011, women had been traditionally marginalised from the workforce in rural areas of the North.<sup>593</sup> The harsh policies of ISIS and other Islamist factions that roamed the region after 2011, further discouraged the relatively few female professionals for the next several years of the conflict.<sup>594</sup>

Relative to the years of control by ISIS and other Islamist factions, the present conditions are better for women to return to the profession. However, despite the area being militarily more stable and the SIG being interested (officially) in women's involvement outside the home, the established legal profession continues to struggle to find women who are willing to participate. Sources indicate that women are choosing different occupations, such as NGO or humanitarian relief work. In part, these choices may be made for financial reasons. It is also likely that women are choosing not to return to the legal profession due to lack of freedom of movement arising from the numerous check points, the fear of violence, harassment and abduction, and the fear of stigma and shaming from community members.<sup>595</sup> Whatever the reasons, their numbers remain low, with most accounts suggesting that fewer than 10 percent of those employed in the new system are female.<sup>596</sup>

In the interviews conducted by ILAC, there was an outspoken willingness and even eagerness to increase these number of female practitioners, both among legal professionals<sup>597</sup> and, according to one official, at governmental level in the SIG.<sup>598</sup> Interviewees consistently stated that salaries and formal requirements for such positions as admission to the Bar were the same regardless of gender. They also emphasised how women needed

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<sup>592</sup> Interview 2, NWTC Lawyer; Interview 4, NWTC Lawyer; Interview 7, NWTC Lawyer; Interview 8, NWTC Lawyer; Interview 9 NWTC Lawyer; Interview 10, NWTC, Lawyer.

<sup>593</sup> COAR, 'Northern Corridor: Needs Oriented Strategic Area Profile', p. 18, *supra* n. 375.

<sup>594</sup> ILAC 2017 Report, pp. 82–85.

<sup>595</sup> UNFPA & BVB AoR, 'Whole of Syria: Gender-Based Violence Area of Responsibility', 2019, p. 53, *supra* n. 60; COAR, 'Northern Corridor Needs Oriented Strategic Area Profile', 2019, p. 18, *supra* n. 375.

<sup>596</sup> Interview 7, NWTC Lawyer; Interview 10, NWTC Lawyer; Interview 14, NWTC Lawyer with experience working as a Judge.

<sup>597</sup> Interview 6, NWTC Lawyer; Interview 7, NWTC Lawyer; Interview 10, NWTC Lawyer; Interview 11, NWTC Lawyer & Professor of Law.

<sup>598</sup> Interview 12, NWTC SIG MOJ Official.

encouragement to practise as legal professionals, to join the AFLA and to run for higher-level positions within the Bar organisations.

Regarding the latter issue, respondents could only identify two women lawyers holding senior positions: the head of the legal office of the Free Women's Union in Aleppo Provincial Council and the head of the Women's Committee of the AFLA.<sup>599</sup> While only anecdotal, this information suggests that women seem to be pigeonholed into 'women's roles', that is, positions only within women's groups, rather than also being encouraged, trained and selected for leadership roles beyond those reserved for women.

Female lawyers interviewed by ILAC demonstrated an awareness of the practical as well as socio-cultural factors that created barriers for women.<sup>600</sup> Nevertheless, the respondents consistently sought to distinguish between so-called field conditions, especially physical barriers such as lack of freedom of movement for security reasons, and conditions within the legal institutions. For example, when asked about gender diversity within the legal institutions, one lawyer in the SIG-administered area replied:

*Any lawyer from any area in Syria will be able to practise once they register. The conditions on the ground have nothing to do with the bar association. Field conditions make it more difficult for women to practise.<sup>601</sup>*

Such responses suggest that many lawyers do not see the interconnections between field conditions, in particular social-cultural norms and dynamics, and the reciprocal dynamics within the SIG legal institutions. Nor do they see or contemplate steps that can be taken within those legal institutions to counter such patterns.

### **Conclusions: the Northwest – areas under Turkish control**

In 2017, at the time of ILAC's earlier report, the justice system in northwest Syria was a patchwork of different courts connected to a variety of armed opposition actors. That patchwork has largely disappeared, as Turkey and the SIG have combined to pursue a vision of implementing Syrian law without the Syrian government.

At a technical level, the post-2017 justice system in place in SIG-administered areas appears to be a significant improvement. With Turkey's military and financial support, courts in these areas are better resourced, better protected

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<sup>599</sup> Interview 9, NWTC Lawyer; Interview 13, NWTC Judge.

<sup>600</sup> ILAC's interviews did reveal a significant gender-dependent gap in awareness, with many male respondents limiting their answers to comment that women simply chose not to practice law.

<sup>601</sup> Interview 8, NWTC Lawyer.

and, broadly speaking, appear to apply the same written (Syrian) law to all litigants.

However, these apparent improvements have come at a cost. Though Syrian judges and lawyers working in the Turkish-controlled areas are generally free from interference by the Syrian government, they are not free from all interference. Instead, they must account for the presence and economic influence of a foreign power with a strong interest in these territories and in sensitive cases reaching the courts. Indeed, the Turkish-supported effort by the SIG to rebuild the administration of justice is also seen by many as an element of Turkey's effort to instigate demographic change and cement its influence in these areas.

Thus, it appears that an implicit bargain has been struck: in exchange for its tacit acceptance of Turkish policies, the SIG and its courts are allowed to behave more independently in cases where Turkish national interests are not at stake. While this conclusion cannot be verified based on this study alone, lawyers and judges working within the SIG-administered courts certainly believe that they have significantly more influence over the day-to-day administration of justice in those courts.

However, the SIG system, at best, is an interim structure until there is a political or military resolution of the issues involving northern Syria. Like it or not, the SIG-administered areas are territories occupied by a foreign power. The resources and security provided to the courts in these areas will last only so long as Turkish forces remain in control.

Prior military campaigns in this conflict have demonstrated that, in such situations, the area's justice system will be destroyed and rebuilt in a new image. While Turkey currently projects an outward determination to stay indefinitely in the area, the political/military winds could quickly change.

As signified by its name, the premise underlying the 'Syrian Interim Government' is that the ultimate resolution of the conflict will not be a return to rule by Assad or the Ba'athists, or a handover of the territory to the Kurds, but an ascension to power throughout Syria by the opposition led by the SIG. The more probable outcome will be an eventual compromise that substantially reconfigures the political landscape in Syria.

Even if Turkish domination continues, the SIG-administered justice system is faced with multiple problems. As reflected in the long struggle between Turkey and the Kurdish separatists, resistance by Kurdish forces in northern Syria will likely continue. Other minorities and factions, as well as the Syrian government, likewise may continue to violently contest the Turkish intervention. As allies of the Turks, SIG-aligned Syrian legal professionals will face continuing threats for the foreseeable future.

Moreover, the courts in Turkish-controlled areas cannot easily escape their legitimacy problem. Courts operated by non-state actors are not official Syrian courts, even if they apply the laws of Syria. The reach of the courts administered by the SIG is both geographically and temporally limited. Their decisions are not recognised in any other areas in Syria, or by the international community.

Putting aside these major obstacles, the SIG-administered judiciary and the AFLA currently wield considerable influence over the justice sector in northern Syria. Their long-term goal of creating a viable alternative to – and replacement of – the Assad government may be improbable, but if it is to have any chance of success, this embryonic system will need to appeal to a broad cross-section of Syrian society.

Such a system will need to navigate the knotty religious divides, socio-cultural norms and ethnic traditions of the Syrian society highlighted by the current conflict. Solutions to these issues will not be easily found, but one imperative will be to avoid the corruption and favouritism that have plagued many of the other judicial systems constructed across Syria.

A more organised, coherent and professionalised legal system in the SIG-administered areas also has the potential to provide significant improvement in the legal protections for women. By providing opportunities for women and other vulnerable populations to realise their existing legal rights, the justice system can deliver a degree of legal certainty for those most in need. Hopefully, this can also contribute to an increased awareness within the Syrian population, that many of their important rights are protected under Syrian law – if that law is properly applied.

## 4 Northeast Syria

**The nature and boundaries of the Kurdish-controlled areas in northern Syria have shifted dramatically since 2016. Other forces have assumed direct or *de facto* control over areas with significant Kurdish populations. Ironically, at the same time, Kurdish forces have taken control of large, albeit lesser populated, areas with a significantly higher percentage of non-Kurdish residents. These military dynamics, coupled with the evolution of the Kurdish ‘social justice’ experiment have had a significant impact on the justice systems throughout these areas.**

In its 2017 report, ILAC described the emerging justice system in areas of Syria under Kurdish control. The report described how the Syrian government, during the events of 2012, effectively surrendered certain areas in Northeast Syria to the Kurdish-controlled Democratic Union Party (*Partiya Yekîtiya Demokrat* or PYD). The PYD and its allies eventually established local administrations in three non-adjacent areas of northern Syria, collectively referred to as Rojava: Afrin, Kobani and Cezire (the al-Jazira region in al-Hasakah province).

Since the 2017 report, significant territorial changes have occurred in the Kurdish-controlled areas. In January 2018, the Turkish army began Operation Olive Branch and ultimately took effective control of the enclave at Afrin.<sup>602</sup> As discussed in an earlier section of this report, though a Kurdish-led insurgency remains active, Turkish control has effectively closed the Kurdish system of justice in this area.

In October 2019, Turkish forces and Turkish-backed armed opposition groups launched Operation Peace Spring to take control of Kobani and parts of Cezire. Turkish-led forces initially made significant territorial advances, resulting in the expulsion of Kurdish forces and the establishment of Turkish control in an area stretching roughly from Tell Abyad to Ras-alAyn.<sup>603</sup> However, the PYD entered into an agreement with the Syrian government and its Russian allies to deploy troops to the Kobani area, effectively stalling the Turkish advance in that sector. These military movements later were confirmed by ceasefire and other agreements, resulting in the *de facto* zones of control that remain today.<sup>604</sup>

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<sup>602</sup> UNHRC, ‘Report of the Independent International Commission of Inquiry on the Syrian Arab Republic’, A/HRC/39/65, 2018, *supra* n. 59.

<sup>603</sup> Gurcan, ‘Turkey’s Operation Peace Spring effectively divides Syria into five sectors’, 2019, *supra* n. 366.

<sup>604</sup> See Andrew Osborn *et al.*, ‘Russian police deploy in Syria’s Kobani, Trump calls ceasefire “permanent”’, *Reuters*, 23 October 2019; Luke Mogelson, ‘Abandoned’, *The New Yorker*, 27 April 2020.

Yet, other events have enlarged the area under Kurdish influence. Beginning in the latter part of 2017, the Kurdish-led Syrian Democratic Forces (SDF), with the support of American and coalition allies, captured Raqqa and a large amount of territory in the Raqqa and Deir ez-Zor governorates from ISIS.<sup>605</sup> However, in October 2019, in the face of the Turkey's advances across the border, the United States announced that it was withdrawing all American military forces from Syria.<sup>606</sup> After a substantial outcry in the United States and Europe, the United States later in the month said that some American forces would stay in north-eastern Syria to protect the oil fields.<sup>607</sup> American military units soon redeployed back into the area, and the SDF retained/regained control of large swaths of north-eastern Syria.<sup>608</sup>

The net result of these events since 2017 has been to reduce or eliminate Kurdish control in much of north-western and north-central Syria.<sup>609</sup> At the same time, Kurdish influence has been maintained, or even geographically expanded, in the Northeast.<sup>610</sup>

The latter events have resulted in two new problems for the Kurds. First, in the north-eastern deserts far from the centres of Kurdish ethnicity, the SDF is seen by many as an occupying force. Kurdish political and military leaders now face the prospect of administering areas largely populated by Arab tribes and other non-Kurdish residents. At the same time, they face pressure from Syrian government forces and ISIS remnants operating in the region.<sup>611</sup>

A second result of ISIS's defeat was that Kurdish-controlled forces became the *de facto* jailers/caretakers for thousands of alleged ISIS fighters, their families and sympathisers. Camps for these detainees have been established in Kurdish-controlled territory, and hold somewhere in the neighbourhood of

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<sup>605</sup> Hassan Hassan, 'A Hollow Victory over the Islamic State in Syria? The High Risk of Jihadi Revival in Deir ez-Zor's Euphrates River Valley', *CTC Sentinel*, Vol. 12, Issue 2, February 2019, <<https://ctc.usma.edu/hollow-victory-islamic-state-syria-high-risk-jihadi-revival-deir-ez-zors-euphrates-river-valley/>>.

<sup>606</sup> Mogelson, 'Abandoned', 2020, *supra* n. 604.

<sup>607</sup> Eric Schmitt and Helene Cooper, 'Hundreds of U.S. Troops Leaving, and Also Arriving in, Syria', *New York Times*, 30 October 2019.

<sup>608</sup> Kayla Koontz and Gregory Waters, 'Between the Coalition, ISIS, and Assad: Courting the Tribes of Deir ez-Zor', Middle East Institute, 3 November 2020, <<https://www.mei.edu/publications/between-coalition-isis-and-assad-courting-tribes-deir-ez-zor#pt5>>.

<sup>609</sup> See section 'Turkish-controlled areas' above.

<sup>610</sup> At the time of writing, the situation regarding Kurdish forces in Syria remained fluid. Uncertainty about the nature and duration of American support remained. Going forward, decisions made in Washington and the EU will significantly impact the areas under Kurdish control.

<sup>611</sup> Koontz and Waters, 'Between the Coalition, ISIS, and Assad', 2020, *supra* n. 608; James A. Schear *et al.*, 'Stabilizing Eastern Syria After ISIS', Rand Corporation, 2020, <[https://www.rand.org/content/dam/rand/pubs/research\\_reports/RR2500/RR2541/RAND\\_RR2541.pdf](https://www.rand.org/content/dam/rand/pubs/research_reports/RR2500/RR2541/RAND_RR2541.pdf)>.

100,000 Syrians, Iraqis and third-country nationals.<sup>612</sup> While some detainees have been repatriated, most remain in camps under the control of the SDF, with no resolution of their detention on the horizon.

## **Evolution of the AANES justice system**

When it took territorial control of areas in northern Syria in the early part of the last decade, the PYD sought to establish a system of justice based on the natural law principle that the people should agree on the regulation of the essential aspects of their coexistence. Using these principles, the PYD in January 2014 adopted “The Social Contract of the Autonomous Regions of Afrin, Jazeera, and Kobane”.<sup>613</sup>

According to the PYD, this 2014 Social Contract was not intended to assert Kurdish independence, but instead to allow “local democratic administration” within a Syrian federal framework.<sup>614</sup> Nevertheless, the areas were referred to as Rojava, a contentious term among many in Syria who perceived the term as a statement of Kurdish nationalism.<sup>615</sup> Based on the structures laid out in the 2014 Social Contract, the PYD established judicial and administrative institutions in Rojava, which were entirely separate from the pre-existing Syrian government system.

In late December 2016, after the ILAC research was completed, the PYD and its allies adopted a revised document titled the “Social Contract of the Democratic Federation of Northern Syria”.<sup>616</sup> While it continued to follow the natural law principles of the earlier document, this 2016 Social Contract introduced several significant changes to the system.<sup>617</sup>

One change in the 2016 Social Contract, adopted over the objections of some Kurdish nationalists, laid out the plan for a federal system that recognised the cultural, political and linguistic rights of all ethnic groups living in northern

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<sup>612</sup> James F. Jeffrey, ‘ISIS: Its Fighters, Prisoners and Future, Part 2: ISIS Prisoners and Families’, The Wilson Center, 22 December 2020, <<https://www.wilsoncenter.org/article/part-2-isis-prisoners-and-families>>.

<sup>613</sup> See: Rojava Information Center, ‘The Social Contract of the Autonomous Region of Afrin, Jazeera, and Kobane’, 29 January 2014, <<https://rojvainformationcenter.com/storage/2019/12/2014-Social-Contract-of-the-Autonomous-Regions-of-Afrin-Jazeera-and-Kobane.pdf>>.

<sup>614</sup> Human Rights Watch (HRW), ‘Under Kurdish Rule: Abuses in PYD-run Enclaves of Syria’, June 2014, p. 14, <[https://www.hrw.org/sites/default/files/reports/syria0614\\_kurds\\_ForUpload.pdf](https://www.hrw.org/sites/default/files/reports/syria0614_kurds_ForUpload.pdf)>.

<sup>615</sup> Hisham Arafat, “Rojava” no longer exists, “Northern Syria” adopted instead’, *Kurdistan24*, 28 December 2016, <<https://www.kurdistan24.net/en/story/10544-%27Rojava%27-no-longer-exists,-%27Northern-Syria%27-adopted-instead->>

<sup>616</sup> Hawar News Agency, ‘Second day of Northern Syria Constituent Assembly conference takes place’, 28 December 2016.

<sup>617</sup> Stefano Marinelli, ‘The 2016 Rojava Social Contract: a Democratic Experiment of Civil and Social Rights in Northern Syria’, International Law Blog, 24 October 2016, <<https://aninternationallawblog.wordpress.com/2016/10/24/the-2016-rojava-social-contract-a-democratic-experiment-of-civil-and-social-rights-in-northern-syria/>>.

Syria. “Rojava” was removed from the polity’s name, and the Kurdish-controlled areas were renamed the Democratic Federation of Northern Syria (DFNS).<sup>618</sup> This federation, in turn, was composed of geographically defined subdivisions referred to as “cantons based on democratic self-administrations”.<sup>619</sup> At that time, three cantons were recognised: Afrin, Kobani and Cezire.

This 2016 Social Contract also enshrined and expanded the progressive principles embodied in the 2014 Social Contract. These principles are outlined in the 2016 contract’s ‘mission statement’ for its justice system, including an emphasis on participatory processes and women’s rights:

*The democratic justice system solves the problems related to justice and social rights through peoples’ participation and self-organization. Justice vision is based on the moral principles of the democratic society. It aims at building a society which adopts a democratic approach and vision and ecology that believes in freedom of women and societal life and organizes itself on the basis of democratic society. Services of justice are conducted through social participation and the organization of democratically formed local units.*<sup>620</sup>

In pursuit of these goals, the 2016 Social Contract set forth six fundamental ‘Justice Principles’ to be followed by this system. The first-listed principle is ‘social justice’, which is identified as the “basis to organise and self-protect society”. According to this definition, social justice requires solving social problems “by means of dialogue, negotiation, and mutual consent”.<sup>621</sup> Each of the remaining five principles set forth similar aspirational goals.

Finally, the 2016 Social Contract described a skeletal organisational framework for the justice system within the federation, consisting of five components: judicial offices, investigation committees, reconciliation committees, justice councils and women’s justice councils.<sup>622</sup> Most of these components existed in some form within the DFNS, but more detail was

<sup>618</sup> Arafat, “‘Rojava’ no longer exists, “Northern Syria” adopted instead’, 2016, *supra* n. 615; Reuters, ‘Syrian Kurdish groups, allies say approve blueprint for federal system’, 29 December 2016, <<https://www.reuters.com/article/us-mideast-crisis-syria-kurds-idUSKBN1411BE>>.

<sup>619</sup> 2016 Social Contract, Article 7.

<sup>620</sup> 2016 Social Contract, Article 67.

<sup>621</sup> 2016 Social Contract, Article 68.1. The six Justice Principles are: “1. Social justice is considered a basis to organize and self-protect society (...); 2. Actions which harm social life and environment are considered a crime (...); 3. Punishments shall aim at rehabilitating guilty people (...); 4. (...) peoples (...) shall have the right to form justice mechanisms and develop special solution methods [to solve problems] (...); 5. (...) issues related to general interests and security of all peoples and groups, (...) are settled in justice systems which represent the whole society; 6. Special feminine organizations and equal representation of women are the basis in the field of justice and its institutional activities. (...)”.

<sup>622</sup> 2016 Social Contract, Article 69.

required to fully implement the new system. Toward that end, a group of judges was formed to draft a more detailed law regulating the justice system.

While this process was underway, a number of military actions and territorial changes occurred, as discussed above. Those changes resulted in the formation of a new set of federal geographic units, encompassing the original cantons of Afrin, Euphrates (formerly Kobani) and Jazira, as well as local civil councils in the newly controlled areas of Raqqa, Manbij, Tabqa and Deir ez-Zor.<sup>623</sup> This new entity was formally created in September 2018 and named the Autonomous Administration of North and East Syria (AANES).<sup>624</sup>

At the same time, drafting continued on a law to govern the justice system in this revised federal system. The draft was eventually presented to the General Council in North and East Syria, the legislative body for the federal structure. In December 2019, this legislative council adopted the new law entitled, The Charter of the Social Justice System of the Autonomous Administration of North and East Syria ('the Charter').<sup>625</sup>

Since 2019, efforts have been made to recast the justice system in the Kurdish-controlled territories to follow the structures and principles outlined in the Charter. At the same time, however, the military and political situation varies between the cantons and civil administrations, causing the implementation of the Charter to be uneven across the various geographic units within the AANES federal system. Moreover, as discussed below, for a variety of reasons, the principles set forth in the Charter are routinely overlooked or contravened by judges and politicians. Finally, the federal structure of the AANES continues to evolve, with additional political and battlefield developments. These will continue to impact the nature and operation of the justice systems in the areas under Kurdish control.<sup>626</sup>

Nonetheless, based on numerous interviews conducted by ILAC, the 2016 Social Contract and the Charter do provide a template for the construction of the AANES justice system. Accordingly, the structures outlined in the Charter provide a starting place for discussing that system.

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<sup>623</sup> 'Final Declaration of the Third Syrian Democratic Council Congress', 16 July 2018, <<https://rojavainformationcenter.com/storage/2019/12/2018-Final-declaration-3rd-congress-Syrian-Democratic-Council.pdf>>; Wladimir van Wilgenburg, 'New administration formed for northeastern Syria', *Kurdistan24*, 6 September 2018.

<sup>624</sup> See: 'Final declaration of the founding congress of the Autonomous Administration of North and East Syria', 6 September 2018, <<https://rojavainformationcenter.com/storage/2019/12/2018-Final-Declaration-of-founding-congress-Autonomous-Administration.pdf>>.

<sup>625</sup> SJC, Article 56.

<sup>626</sup> See: North Press Agency, 'AANES to find follow-up committee for modifying Administration Charter', 3 February 2021, <<https://npasyria.com/en/54022/>>; COAR, 'Syria Update: Self-Administration Announces Plan to Divide Deir-ez-Zor into 4 Cantons', 8 March 2021.

## The role of law under the Social Contract

Since it was founded in 2014, the legislature for the Kurdish-controlled areas, now called the Legislative Council of the Autonomous Administration of North East Syria, has passed nearly 70 laws covering a variety of topics.<sup>627</sup> Nevertheless, this body of laws is still relatively new and leaves countless situations unregulated by law.

To address this situation, the 2014 Social Contract provided that Syrian criminal and civil law applied unless it contradicted that Contract.<sup>628</sup> Moreover, in case of a conflict between an existing Syrian law and a law passed by the legislature for the Kurdish-controlled areas, the Kurdish Supreme Constitutional Court was authorised to determine which applied, based on the best interests of the Autonomous Regions.<sup>629</sup>

No similar provisions appear in the 2016 Social Contract. Nonetheless, based on interviews by ILAC, it appears that similar principles are still applied by the courts and lawyers. However, when there is a direct contradiction between the two bodies of law, AANES law prevails. Capital punishment, for example, is provided for under Syrian law but is banned under the 2016 Social Contract, and thus does not apply. For many less severe crimes, where no specific AANES laws exist, Syrian law is used as the basis for prosecution and conviction.<sup>630</sup>

In part, this continued reliance is simple expediency: courts need some law to apply in various situations, and since the judges and lawyers were trained in Syrian law, they are most knowledgeable and comfortable with those principles. Moreover, as discussed below, the government's retention of control over land registry, banking and financial systems means that citizens in the Kurdish-controlled areas must navigate between two parallel justice systems.<sup>631</sup> Pragmatism suggests that the use of legal processes and terminology based on the traditional Syrian system may improve a person's ability to function in these dual systems.

But confusion over what law to apply continues to exist. The problem apparently is exacerbated by a lack of clear, accessible written regulatory laws to which judges and lawyers can refer and discuss.<sup>632</sup> As one lawyer put it, "When legal texts are not available, we cannot criticise the judge, or litigate in a matter that the judge does not understand".<sup>633</sup> Within this confusion,

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<sup>627</sup> STJ, 'Justice in the Autonomous Administration of North East Syria: The New Autonomous Administration Judicial System Introduced in April 2017', Research Paper Commissioned by ILAC 2020 (hereinafter, 'STJ 2020 Report on Justice in the AANES').

<sup>628</sup> 2014 Social Contract, Article 88.

<sup>629</sup> 2014 Social Contract, Article 89.

<sup>630</sup> Field Team Interview 2, North East Field Team Interview (NEFT) Lawyer.

<sup>631</sup> COAR, 'Qamishli Community Capital Analysis', May 2020; COAR, 'Al-Hassakeh Community Capital Analysis', March 2020.

<sup>632</sup> Interview 2, North East Syria (NE) Lawyer.

<sup>633</sup> *Ibid.*

several actors appear to have emerged as alternative legislators, in addition to the Legislative Council. In interviews, ILAC heard examples where parties had successfully won cases in court based on 'laws' promulgated by the executive, the Women's House, and even in one instance the Hydrocarbons Corporation.<sup>634</sup>

Yet, the role and application of written law in the Kurdish-controlled areas also differs markedly from the approach embodied in traditional Syrian legislation. As ILAC described in its 2017 report, there is considerable pride among supporters of the AANES system over its progressive nature and emphasis on the principle of 'social justice'. While this principle was mentioned in the original 2014 Social Contract, it is clearly defined in the 2016 document, which lists six fundamental 'Justice Principles'. First among the principles (as mentioned above) is that "Social justice is considered a basis to organise and self-protect society". The definition continues that social justice "depends on solving social problems related to justice in the villages, neighbourhood, and district communes. It solves problems by means of dialogue, negotiation, and mutual consent".<sup>635</sup>

Under the 2016 Social Contract, all laws should be interpreted and applied through the lens of these six fundamental justice principles, most notably the principle of social justice.<sup>636</sup> For example, in the Charter, the principle of social justice is placed squarely alongside the law when Social Justice Councils are made responsible to "[s]upervise the proper *implementation of laws and principles...*" (emphasis added).<sup>637</sup> Similarly, Article 35 of the Charter defines the Court of Social Justice as "a social justice institution tasked with solving cases and settle disputes brought before it, *in accordance with the regulations and principles of social justice*" (emphasis added).<sup>638</sup>

This vision of justice places great emphasis on peoples' participation and self-organisation, and a belief that ordinary people are best placed to administer justice through the application of ethics and democratic moral principles. But such populist notions of *ad hoc* justice run counter to traditional notions of the rule of law.

Judges and lawyers have complained that the concept that society – that is, the mass citizenry – is the only legitimate implementer of justice, has served to delegitimise the legal profession. Perhaps more important, lawyers have also complained that the application of this principle has allowed judges to disregard the law in order to achieve an outcome that might seem more

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<sup>634</sup> Interview 3, NE Judge.

<sup>635</sup> 2016 Social Contract, Article 68.1

<sup>636</sup> STJ 2020 Report on Justice in the AANES, *supra* n. 628; Field Team Interview 2, NEFT Lawyer.

<sup>637</sup> 2018 Social Justice Charter, Article 19.1.

<sup>638</sup> 2018 Social Justice Charter, Article 35. The same formulation exists in Article 39 in relation to Cassation Commissions.

ethically satisfying.<sup>639</sup> One AANES judge confirmed this suspicion to ILAC, saying that in court rulings, judges could ignore the law and instead use social justice principles: “We don’t have to go back to the laws, we use the social principle”.<sup>640</sup> He went on:

*When you speak according to the law, it means that you’ll be based on that law, but we judge socially (according to social convention). As lawyers we feel lost because of this approach.*<sup>641</sup>

This irregular application of the law may have been reinforced because both AANES and Syrian law apply simultaneously and in parallel. When combined with the emphasis on ethics and the principle of social justice, there are actually three distinct sources of law. This often seems to generate uncertainty as to what law applies in any given circumstance:

*Rather, here in the Autonomous Administration depends on the judicial custom, and all judicial and legal actions are carried out through judicial norms and part of the judicial custom, and we are lost, and we do not know what laws apply within the Autonomous Administration.*<sup>642</sup>

The principles of social justice also place a greater emphasis on rehabilitation and prevention of crime. These concepts often lead AANES courts to greater leniency, especially with first time offenders, where the application of social justice principles suggests counselling or help for the accused to right their ways, instead of relying on the stricter Syrian laws to convict them.<sup>643</sup> In this regard, each court has a social support person employed, whose role it is to offer assistance in these situations.<sup>644</sup>

This approach, however, aggravates the divergence between lawyers, who frequently rely on Syrian law to fill in the gaps in AANES law when pleading their cases, and a judiciary steeped in political philosophy and the importance of social justice. Many lawyers expressed great frustration that the written law was not evenly applied,<sup>645</sup> with one arguing that whether the law was applied ultimately depended on the disposition of the judge in a particular trial.<sup>646</sup>

This difference in approach creates considerable uncertainty about the applicable law in each case. The net result, one lawyer claimed, was lawyers and judges were lost and did not know what laws were truly applicable within

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<sup>639</sup> Field Team Interview 1, NEFT Lawyer.

<sup>640</sup> Interview 46, NE Judge.

<sup>641</sup> Interview 36, NE Lawyer.

<sup>642</sup> Interview 6, NE Lawyer.

<sup>643</sup> See Carne Ross, ‘Power to the people: a Syrian experiment in democracy’, *Financial Times*, 23 October 2015, <<https://www.ft.com/content/50102294-77fd-11e5-a95a-27d368e1ddf7>>.

<sup>644</sup> Field Team Interview 2, NEFT Lawyer.

<sup>645</sup> *Ibid.*

<sup>646</sup> Interview 3, NE Judge.

the AANES. Instead, judicial, and legal actions were determined by judicial discretion or practice, regardless of what was actually written in the law.<sup>647</sup>

Lawyers in one canton described how they confronted the Legislative Council to request a clear directive concerning the need to uphold and respect AANES laws. Instead, they were told that the emphasis should be to further strengthen the ethical system to avoid unethical application of the law. According to one lawyer, this perceived tension between ethics and the law was a source of much stress, since it implied that lawyers were inherently unethical. It was also impractical, particularly since ethical structures in the area could vary from one tribe to another.<sup>648</sup> These differences, in turn, gave rise to conflicting expectations regarding what was an ethically acceptable outcome.

The tension between law and ethics can have very real consequences in individual cases. One example given by a lawyer involved a land dispute where a man was sued by his brother. The defendant had documentary evidence that he owned the property. The claimant admittedly did not own the property, but argued that the spirit of justice required a brother who owned property to give part of it to a landless brother. Rather than simply recognising the ownership documents, the court considered the fairness argument, ultimately finding in favour of the claimant and ordering that the property be divided between the brothers. The lawyer maintained that this outcome was not necessarily 'socially just', and that the judge's decision to ignore title documents undermined any predictability in the proceedings.<sup>649</sup>

Moreover, the primacy of ethics and 'social justice' also conflicts with the provision in the 2016 Social Contract that the AANES "shall abide by the international declaration of human rights and all related charters of human rights".<sup>650</sup> Indeed, it is difficult to harmonise this *ad hoc* approach to decision-making with other fundamental principles enshrined in the 2016 contract, such as the protection of minority or women's rights, or the rights of an accused, which historically have suffered when the application of the rule of law is diminished.

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<sup>647</sup> Interview 6, NE Lawyer.

<sup>648</sup> Field Team Interview 1, NEFT Lawyer.

<sup>649</sup> *Ibid.*

<sup>650</sup> 2016 Social Contract, Article 17.

### **Separation of powers or “integration of powers”?**

Another issue that complicates the establishment of a justice system in the AANES is the concept of separation of powers. The 2014 Social Contract contained an explicit provision that there should be separation of powers between the legislature, executive and judiciary.<sup>651</sup> However, though it implicitly recognised that differences might arise between the legislative, executive and judicial councils,<sup>652</sup> no provision explicitly calling for a separation of powers appeared in the 2016 Social Contract.

It is doubtful that this omission was an oversight. A central theme running through the 2016 Social Contract is that all elements of society should work together for the social good. The notion of checks and balances is nowhere to be seen. One lawyer elevated this concept to a fundamental principle of governance, referring to it as the principle of the “integration of powers”. According to this lawyer, the powers of the various branches in the AANES are separate in form, but they should complement each other in terms of content:

*Perhaps previously [it was] called separation of powers [in the past], but in the new term there is integration of powers, because the powers complement each other, and in self-management there is a separation between the powers, but it is a separation in terms of form, but in terms of content, we find that these powers complement each other.*<sup>653</sup>

Many of those interviewed for this report were not convinced, arguing that this approach was an impediment to the development of a truly independent judiciary in the AANES. These judges and lawyers cited the lack of legislation to protect judges in their work as an example of the pitfalls with this approach.<sup>654</sup>

The precarious security situation and the militarisation of the conflict in Syria has put extraordinary pressure on justice institutions, and the judges and lawyers who work in them. The absence of meaningful protective legislation, particularly given the dominance of military and executive powers, has made it difficult to establish the separation of powers necessary for independent and impartial justice.<sup>655</sup>

In our interviews, there was not unanimity on this issue. For example, a judge in Qamishli believed that AANES in fact recognised three separate authorities (executive, legislative and judicial), and that in practical terms there was a

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<sup>651</sup> 2014 Social Contract, Article 13.

<sup>652</sup> 2016 Social Contract, Article 66.

<sup>653</sup> Interview 1, NE Lawyer.

<sup>654</sup> Interview 2, NE Lawyer; Interview 8, NE Judge.

<sup>655</sup> *Ibid.*

separation of powers.<sup>656</sup> Other interviewees stated that there was separation of powers in theory, but that this was difficult to uphold in practice, as interference by the executive was sometimes necessary. This was either due to the ongoing conflict<sup>657</sup> or in order to “enhance integrity and cope with social matters”.<sup>658</sup>

In any case, the lack of a clear separation of powers can be seen in numerous areas. Some impacts are perhaps unknowing or unintended. For example, some of those interviewed ascribed the problems to the lack of experience with and experimental nature of the AANES system,<sup>659</sup> which caused confusion between the legislative, executive and judicial functions.

Others suggested that the lack of separation of powers was not accidental. According to several lawyers and judges, external pressures and influences imposed on the judiciary often undermined judicial rulings. For example, the executive and legislative branches commented publicly on and criticised judicial decisions in a way that was not constructive.<sup>660</sup> A lawyer pointed to an executive employee stopping the enforcement a judicial decision;<sup>661</sup> others reported that some judicial decisions were not implemented at all.<sup>662</sup> Numerous lawyers expressed a belief that the AANES executive could always intervene in a particular case to get its way.<sup>663</sup>

Additional examples of the lack of adherence to the separation of powers involved the executive authorities issuing their own laws. In such cases, courts would be asked to implement them, leading one observer to describe the relationship between courts and the executive as similar to that of municipalities receiving instructions to enforce executive orders, rather than a court enforcing the laws of the legislative council.<sup>664</sup> According to one account, The Hydrocarbons Corporation had even issued its own ‘law’ and succeeded in having it enforced by a court.<sup>665</sup>

The dominance of one political party in the Kurdish-controlled areas has also contributed to further conflation between the different branches of government in the AANES. Indeed, many lawyers interviewed for this report were highly critical of what they said was political interference by the PYD in the administration of justice in the Kurdish-controlled territories.<sup>666</sup>

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<sup>656</sup> Interview 18, NE Judge.

<sup>657</sup> Interview 44, NE Judge; Interview 45, NE Lawyer.

<sup>658</sup> Interview 35, NE Lawyer.

<sup>659</sup> Interview 9, NE Judge.

<sup>660</sup> Interview 11, NE Lawyer.

<sup>661</sup> Interview 21, NE Lawyer.

<sup>662</sup> Interview 2, NE Lawyer; Interview 6, NE Lawyer.

<sup>663</sup> Interview 6, NE Lawyer.

<sup>664</sup> Interview 3, NE Judge.

<sup>665</sup> *Ibid.*

<sup>666</sup> Interview 3, NE Judge.

One example, provided by a lawyer in Raqqa, illustrated how senior party officials could become involved in cases where legal principles such as property ownership generated outcomes that clashed with an individual's belief in the principle of social justice. In such cases, even if a senior judge issued a ruling upholding an individual's property rights, the losing party would often go to party officials to complain, rather than appealing through the courts. In this lawyer's experience, this strategy could give rise to lengthy and complicated proceedings, with contradictory decisions by courts and party officials.<sup>667</sup>

Sometimes, interference can be more direct, especially when courts are perceived to interfere with military or security interests. Such interference is highly sensitive, and it was difficult to get interviewees to speak openly on the subject. Nevertheless, ILAC heard specific examples involving the local internal security forces (*Asayish*), political parties and the military, including their potential collaboration with organised crime.<sup>668</sup>

One interviewee described an incident where forces from the People's Protection Units (*Yekîneyên Parastina Gel* or YPG)<sup>669</sup> entered a court and released one of its members who had committed a criminal offence. Those present, including the judges, were told not to object.<sup>670</sup> In a separate incident in Qamishli, a leader of the Kurdistan Workers Party (*Partiya Karkerên Kurdistanê* or PKK)<sup>671</sup> reacted to the arrest and sentencing of one of his men by shutting down the entire court for three days, claiming that the court belonged to the party and had no right to issue decisions against its members.<sup>672</sup>

Yet another lawyer described an incident from 2017, when a client sued a YPG official in their personal capacity over a traffic accident in which the plaintiff's car had been destroyed. After examining the case, the judges rejected the claim on the grounds that the judiciary could not issue a judgment against members of the military. On this basis, the judges instead issued a fine against the lawyer's client who had brought the case, which was upheld on appeal.<sup>673</sup>

Interviewees stated that such issues had arisen more frequently during the conflicts between the YPG and the Al Nusra Front or ISIS, when courts

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<sup>667</sup> Field Team Interview 1, NEFT Lawyer.

<sup>668</sup> Interview 3, NE Judge; Interview 2, NE Lawyer; Interview 14, NE Judge; Interview 16, Lawyer; Interview 36, Lawyer.

<sup>669</sup> A mainly Kurdish militia in Syria, primarily aligned with the PYG.

<sup>670</sup> Interview 3, NE Judge.

<sup>671</sup> A Kurdish militant political organisation and armed guerrilla movement that historically has sought to create an independent Kurdish state.

<sup>672</sup> Interview 3, NE Judge.

<sup>673</sup> Interview 14, NE Judge.

pleaded unsuccessfully with the Ministry of Defence to intervene on their behalf. These issues seemed to have become less frequent after 2019.<sup>674</sup>

ILAC has not been able to verify most of these events through other sources, but other interviewees appeared to share the concern of military overreach. Regardless of their veracity, such stories likely have a chilling effect on the willingness of judges to issue decisions that go against the will of the executive, particularly when it concerns the military.

### **Judicial offices**

One difficulty in trying to describe and analyse the social justice system under the AANES has been the sheer multitude of different, distinctive institutions that have been created at the regional and subregional levels. This feature, combined with the relative youth of the system and the fact that many practitioners within the system are either untrained in law or were trained in a different system as Syrian lawyers, resulted in descriptions of institutions that varied considerably between respondents.

This report represents ILAC's best effort to discern how the justice system is organised in reality and how it operates. Whenever interviewees used multiple or conflicting names for an institution, we have tried to use the terminology used in the Social Contract or the Charter.

There was also a stark contrast between some interviewees, who seemed keen to portray the system in a very positive light, and others (the majority) who were highly critical. The fact that most respondents disparaged the system is consistent with the interviews conducted for ILAC's previous report. This may be due in part to the fact that ILAC primarily interviewed practising lawyers and judges. These groups historically have been critical of the PYD and the efforts to build a new justice system outside the traditional framework of Syrian law.

With that background, the 2016 Social Contract listed various structural components of the justice system.<sup>675</sup> The Charter, in turn, was drafted to provide more detail regarding these components, listing eight types of entities that would comprise the social justice system.<sup>676</sup> This latter framework creates a unique justice system to carry out the progressive principles espoused in the 2016 Social Contract.

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<sup>674</sup> *Ibid*; Interview 3, NE Judge.

<sup>675</sup> 2016 Social Contract, Article 69. The names of these bodies are not consistently applied and vary in different legal texts or in interviews with lawyers and judges.

<sup>676</sup> SJC, Article 10.

## Justice Commissions, or Social Justice Courts

While the organisation of the Charter is somewhat unorthodox, perhaps the best starting point for describing the AANES justice system is with the broadly defined ‘Court of Social Justice’.<sup>677</sup> This theoretical ‘court’ is not a single court, but an umbrella descriptor for four components of the judicial system: Justice Commissions, Cassation Commissions, Prosecution Commissions and Enforcement Commissions. All these components are “tasked with solving cases and settle disputes brought before it, in accordance with the laws and principles of social justice”.<sup>678</sup>

At the outset, it is important to note the identification of these bodies as ‘commissions’. Though not specifically defined, the term ‘commission’ was obviously used to signify that these bodies would operate under the overarching ‘social justice’ norms espoused in the 2016 Social Contract. In particular, the commission structure was intended to follow the mandate of that contract that all components of the Kurdish system adopt “the co-presidency system in all political, social, administrative, and other fields” which requires “equal representation of both genders”.<sup>679</sup>

In accordance with this principle, the Charter states that the social justice system should implement a democratic co-presidency system, and mandates equal representation of men and women.<sup>680</sup> Accordingly, the various commissions within the justice system – including the courts, and prosecution and enforcement offices – are composed of a panel of three or more members, with male and female co-chairs.<sup>681</sup>

While this approach found widespread support, some of those interviewed expressed concern about the prioritisation of gender quotas over competence. They argued that the system had codified requirements to require gender representation, but did not require training and education for legal professionals/staff in the institutions that fulfilled those roles.<sup>682</sup> Still others seemed to criticise the law itself or the legitimacy of the law. Alleged heavy-handed enforcement of rules to enhance the status of women in the legal process were controversial to some, leading one lawyer to accuse the AANES of being ignorant of the law,<sup>683</sup> and others to argue that the law sided with women irrespective of the facts of the case.<sup>684</sup>

The lynchpin of the four components of the court structure described in the Charter are the Social Justice Commissions, which essentially serve as first-

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<sup>677</sup> SJC, Article 10.

<sup>678</sup> SJC, Article 35.

<sup>679</sup> 2016 Social Contract, Article 12.

<sup>680</sup> SJC, Article 11.

<sup>681</sup> SJC, Section 4, Chapter 2.

<sup>682</sup> Interview 2, NE Lawyer.

<sup>683</sup> Interview 2, NE Lawyer.

<sup>684</sup> For example, Interview 14, NE Lawyer.

instance courts in this system. These bodies have jurisdiction over and the power to decide “all civil, penal and administrative judicial matters”.<sup>685</sup> Given these traditional duties, the ‘commissions’ are frequently referred to by practitioners as ‘Social Justice Courts’ or ‘Courts of Social Justice’, notwithstanding the broader definition of the latter phrase in the Charter.

Though having many of the trappings of typical first-instance courts, the Social Justice Courts are also charged with applying the more progressive principles central to the 2016 Social Contract. That is, the Charter tasks each such court to “find ways to solve the problems and issues brought before it” and “involve the community in decision-making through platform, arbitration and jury”.<sup>686</sup>

Each Social Justice Court consists of three or five members appointed by the Justice Council (see below) in each autonomous and civil administration.<sup>687</sup> Among other requirements, judges must be at least 26 years old, hold a bachelor’s degree in law, and pass a written and oral examination conducted by the Justice Council.<sup>688</sup>

Social Justice Courts are distributed across all major population centres in the AANES. The courts vary in size, depending on the population in the geographical area that it covers. A court is made up of one or more chambers, each composed of three to seven judges from both sexes. The number of judges is always odd, and the court is led by two judges, one male and one female, who serve as co-chairs.<sup>689</sup>

Proceedings before a Social Justice Court are not open to the public, although it is common that parties to other cases await their turn inside the courtroom.<sup>690</sup> Interviewees consistently stated that cases were not published officially and could only be accessed by relevant authorities and the parties to the case.<sup>691</sup>

As mentioned above, the Charter permits Social Justice Courts to utilise jury trials as a way of involving the community in decision-making.<sup>692</sup> In the AANES, juries are analogous to those used in common law systems. The Social Justice Court appoints the members of the jury, whose role is to apply the law and make a decision based on its facts. Decisions of conviction or acquittal are made by the jury by a two-thirds majority, in writing and with reasoning. A jury’s decision is final, and the court is bound by it.<sup>693</sup>

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<sup>685</sup> SJC, Article 38.

<sup>686</sup> SJC, Article 38.

<sup>687</sup> SJC, Article 37.

<sup>688</sup> SJC, Article 46.

<sup>689</sup> Interview 3, NE Judge; Interview 9, Judge; Interview 18, Judge.

<sup>690</sup> Field Team Interview 1, NEFT Lawyer.

<sup>691</sup> Interview 1, NE Lawyer; Interview 2, NE Lawyer; Interview 11, NE Lawyer.

<sup>692</sup> SJC, Article 38.

<sup>693</sup> STJ 2020 Report on Justice in the AANES, *supra* n. 627.

Decisions of a Social Justice Court are subject to appeal before the Cassation Commission, unless the amount in dispute does not exceed 200,000 Syrian pounds (roughly USD380–400), or if the punishment does not exceed three months' imprisonment. Decisions falling below these thresholds are considered final.<sup>694</sup>

In the Social Justice Courts, there is no specialisation between courts, court chambers or individual judges. All judges hear all types of cases, utilising the same procedure. Lawyers and judges interviewed by ILAC generally found the lack of specialisation or differentiation between types of cases disruptive and a source of delay in court proceedings.<sup>695</sup> Interviewees felt that judges were forced to jump between vastly different types of cases with differing legal frameworks and practical considerations, and did not have the time to develop the expertise to expedite and improve the quality of proceedings in any of them.<sup>696</sup>

According to one account, frustrations with the slow process often drove parties to agree to return the case to the Peace and Consensus Committees (see below). They would rather seek to settle their differences there than wait for seemingly endless court proceedings.<sup>697</sup>

Another issue described by some interviewees was that Social Justice Courts could not issue judicial decisions to establish the sales and transfer of property, in view of the absence of an AANES real property register.<sup>698</sup> Similar problems arose in registering parenthood, divorce and marriage, due to the AANES's lack of a civil register.<sup>699</sup> Nonetheless, other interviewees offered examples where courts had made decisions to change the ownership of fixed property,<sup>700</sup> though the issue was further complicated by a recent decree prohibiting certain lawsuits related to real estate in the AANES.<sup>701</sup>

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<sup>694</sup> Article 51, Decree No. 2 of 2016 containing the Code of Procedures for the Social Justice System issued by the Joint Governance of the Aljazeera Region, *as quoted by* Riad Ali, "The judicial system in "Autonomous Administration" regions: a politicized judiciary and non-model courts that lack judges and jurists", STJ, 11 June 2017 (Arabic).

<sup>695</sup> Interview 11, Lawyer; Interview 16, NE Lawyer; Field Team Interview 1, NEFT Lawyer.

<sup>696</sup> Interview 6, NE Lawyer.

<sup>697</sup> Field Team Report 3, NEFT Lawyer.

<sup>698</sup> Zeinab Masri and Ninar Khalifa, 'Waiting for the legal birth: Maktumeen in Syria deprived of ownership rights', Enab Baladi, 1 April 2021, <<https://english.enabbaladi.net/archives/2021/04/waiting-for-the-legal-birth-maktumeen-in-syria-deprived-of-ownership-rights/>>.

<sup>699</sup> COAR, 'Qamishli Community Capital Analysis', 2020, *supra* n. 632; COAR, Al-Hassakeh Community Capital Analysis, 2020, *supra* n. 631.

<sup>700</sup> See for example, the case concerning a dispute over property described above in the section 'The role of law under the Social Contract'.

<sup>701</sup> The Syria Report, 'Could the Arab Belt Issue Resurface in Northeast Syria?', 17 February 2021, <<https://www.syria-report.com/could-arab-belt-issue-resurface-northeast-syria/>>.

## Cassation Commissions

Another component of the ‘Court of Social Justice’ defined in the Charter are Cassation Commissions.<sup>702</sup> These commissions are located in major population centres in each province. Based on ILAC’s interviews, it appeared that as of late 2020, Cassation Commissions were located in Raqqqa, Qamishli, Al-Hasakeh, Kobani and Al-Kasra in the Deir ez-Zor governorate.<sup>703</sup> According to two sources, a second Cassation Commission in Malikiyeh in the Jazira canton was closed by the Local Social Justice Council.<sup>704</sup>

Each Cassation Commission consists of three to five members appointed by the Local Social Justice Councils (see below).<sup>705</sup> Judges on the commissions must meet the same requirements as judges in the lower courts, in addition to meeting a minimum age requirement.<sup>706</sup>

These commissions serve as the second-instance court, with jurisdiction to examine any appealable decisions made by the Social Justice Courts.<sup>707</sup> Such decisions can be appealed by those concerned within 15 days for a nominal fee.<sup>708</sup>

The commissions’ subject matter jurisdiction is coextensive with the Social Justice Courts, and includes civil, criminal, *Sharia*, family and administrative cases.<sup>709</sup> Unlike the government’s Court of Cassation in Damascus, a Cassation Commission in the AANES system is a trial court and is not a court of law. The procedure in the Cassation Commission follows procedures similar to those of the Social Justice Courts, where parties attend the hearing, and the case is presented and tried in its entirety.<sup>710</sup>

Like traditional cassation courts, a Cassation Commission may reverse a lower court decision if it is not valid or involves a violation of the law. However, under the Charter, a Cassation Commission may also reverse a decision of a Social Justice Court if it involves a violation of “the principles of social justice”.<sup>711</sup> In the event of a reversal, the Cassation Commission returns the appealed case to the Social Justice Court. If a second appeal is filed, the Cassation Commission decides the case.<sup>712</sup>

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<sup>702</sup> SJC, Article 35.

<sup>703</sup> STJ 2020 Report on Justice in the AANES, *supra* n. 628; Interview 3, NE Judge; Interview 18, NE Judge; Field Team Report 3, NEFT Lawyer.

<sup>704</sup> Field Team Interview 3, NEFT Lawyer.

<sup>705</sup> SJC, Article 39.

<sup>706</sup> SJC, Article 46.

<sup>707</sup> STJ 2020 Report on Justice in the AANES, *supra* n. 627.

<sup>708</sup> Interview 18, NE Judge; Interview 13, NE Judge.

<sup>709</sup> Interview 18; Interview 1; Interview 3.

<sup>710</sup> Interview 3, NE Judge.

<sup>711</sup> SJC, Article 40.

<sup>712</sup> *Ibid.*

The Charter provides that the decisions of a Cassation Commission are final and not subject to any method of review.<sup>713</sup> Indeed, this is how the system was introduced by AANES officials at the time of its adoption.<sup>714</sup> Many of the lawyers interviewed by ILAC confirmed the principle that the rulings of a Cassation Commission were final and unappealable.

However, this ostensible finality is apparently not recognised in practice. Numerous other lawyers and judges indicated that Social Justice Councils (see below) have on occasion stepped in and acted as a third instance of appeal to try points of law.<sup>715</sup> Several interviewees stated that the councils could also hear appeals to a case in its entirety and issue a final decision on substance.<sup>716</sup>

Moreover, as discussed below, the decisions of Cassation Commissions can be overturned by use of a 'platform'. The use of this alternative device, though perhaps not technically a 'third instance' or an appeal, has substantially weakened the principle of finality of Cassation Commission decisions.

### Prosecution Commissions

A third element of the broadly-defined Court of Social Justice are Prosecution Commissions.<sup>717</sup> Under the Charter, the duties of these commissions are similar to most prosecution agencies, with jurisdiction to investigate and prosecute criminal cases and crimes against individuals and society, to search and investigate perpetrators of these crimes, to collect and establish evidence, and to prepare the necessary records, statements and reports.<sup>718</sup> After a criminal case has been decided by a Social Justice Court, the Prosecution Commission has the right to appeal the decision before the Cassation Commission.<sup>719</sup>

Like the courts, Prosecution Commissions are composed of three or five members of both sexes, appointed by the Local Social Justice Council.<sup>720</sup> These commissions are led by one female and one male co-chair, who are

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<sup>713</sup> Article 40.1, 2017 Social Justice Charter.

<sup>714</sup> Judge Khaled Ali, Head of the Cassation Commission in Qamishli city, quote from the Facebook page of the Council for Social Justice on Al-Jazeera, 10 February 2016 (<https://www.facebook.com/Encumenaedaletacivaki/>), as quoted by Riad Ali, 'The judicial system in "Autonomous Administration" regions', 2017, *supra* n. 694.

<sup>715</sup> Interview 1, NE Lawyer; Interview 2, Lawyer; Interview 3, NE Judge; Interview 9, Judge; Interview 13, Judge; Interview 18, NE Judge.

<sup>716</sup> Field Team Interview 1, NEFT Lawyer.

<sup>717</sup> SJC, Article 35. Somewhat confusingly, these agencies were identified as investigative committees, one of the structural components of the justice system in the 2016 Social Contract alongside the Justice Office (2016 Social Contract, Article 69). In the Charter, however, they are a part of the 'Court of Social Justice', which correlates to a Justice Office.

<sup>718</sup> SJC, Article 42.

<sup>719</sup> STJ 2020 Report on Justice in the AANES, *supra* n. 627.

<sup>720</sup> SJC, Article 41.

responsible for issuing orders such as subpoenas and have the power to assign investigations to other members of the commission.<sup>721</sup>

According to one judge, a Prosecution Commission also had a role in ensuring coordination between the work of civilian and military courts.<sup>722</sup> However, a former prosecutor stated that military courts were off limits to prosecutors.<sup>723</sup> This view was supported by statements by several sources that Prosecution Commissions had no jurisdiction over military or terrorism courts:<sup>724</sup>

*The court of terrorism prohibited representatives of the parties to stand before it and was aimed at dissenting politicians and terrorists. Even I as chief prosecutor were not allowed to simply enter the court!*<sup>725</sup>

Prosecution Commissions are present at the district and regional levels across the AANES,<sup>726</sup> and are more common than the Social Justice Courts. Although ILAC did not receive a detailed listing of all locations, the largest and most populous region (Jazira) has numerous Prosecution Commissions. We were also told of existing Prosecution Commissions in the Sireen and Ain Issa subdistricts outside Kobani, Hzeimeh, Tabaqa, Karama, Jarnieh, Hukoomieh and Raqqa city centre in the Raqqa region, and in Basira in the Deir ez-Zor region.<sup>727</sup> Often, as in the case of Basira, when a town is too small to sustain a Social Justice Court, there may still be a functioning Prosecution Commission.<sup>728</sup>

## **Enforcement Commissions**

Enforcement Commissions are the fourth component identified as part of the ‘Court of Social Justice’ in the Charter.<sup>729</sup> Under the Charter, these commissions are nominally tasked to enforce judicial decisions, as well as “instruments, agreements, executive assignments, official contracts and other documents that are enforceable by law”.<sup>730</sup>

Although the Charter makes them ostensibly separate, interviewees indicated that the Criminal Enforcement Commissions were attached to the prosecution, with authority to enforce all criminal decisions.<sup>731</sup> Described to ILAC as working in the same manner as in the Syrian state system,<sup>732</sup> these

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<sup>721</sup> Field Team Interview 3, NEFT Lawyer.

<sup>722</sup> Interview 18, NE Judge.

<sup>723</sup> Interview 3, NE Judge.

<sup>724</sup> Interview 2, NE Lawyer.

<sup>725</sup> Interview 3, NE Judge.

<sup>726</sup> Interview 1, NE Lawyer.

<sup>727</sup> Interview 9, NE Judge; Interview 16, NE Lawyer; Interview 18, NE Judge.

<sup>728</sup> Field Team Interview 5, NEFT Former Minister of Labor and Social Affairs in Al Jazira.

<sup>729</sup> SJC, Article 35.

<sup>730</sup> SJC, Article 43.

<sup>731</sup> Interview 3, NE Judge; Interview 16, NE Lawyer; Interview 18, NE Judge.

<sup>732</sup> *Ibid.*

commissions are authorised to enforce all aspects of criminal judgments, such as seizures, forced sale and forced detention. They are assisted in this by the local internal security forces, or ‘*Asayish*’, if necessary.<sup>733</sup>

There was some disagreement among the judges and lawyers interviewed by ILAC about whether enforcement of judgments in civil cases was under the jurisdiction of the same Enforcement Commission, or whether Civil Enforcement Commissions were separate entities.<sup>734</sup> It is possible this discrepancy was due to differences between different provinces.

Regardless, civil judgments are handled by Enforcement Commissions by various means. In some instances, the commission issues a warning to the person in question, obligating him or her to pay their debts.<sup>735</sup> However, according to one lawyer, the commission also used imprisonment for debt as a tool for enforcement in civil cases, under which a person could be detained to force them to obey the court’s order.<sup>736</sup>

### **Peace and Consensus Committees**

A basic principle underpinning the justice system adopted in the Kurdish-controlled areas is the concept that the resolution of disputes by means of reconciliation is much better than resorting to litigation and forced implementation. As discussed above, reconciliation committees are explicitly recognised in the 2016 Social Contract as a structural component of its social justice system.<sup>737</sup> Accordingly, one feature of the prior system retained in the Charter under the rubric of ‘Social Justice Institutions’ are the non-judicial Peace and Consensus Committees (PCCs).<sup>738</sup>

PCCs are held out by lawyers as the main procedural difference between the Syrian state and AANES justice systems.<sup>739</sup> PCCs serve as the mandatory entry point to the AANES judicial system for civil and commercial cases, a first step in the system for such cases.<sup>740</sup> Any such, a case within the jurisdiction of a Social Justice Court must pass through a PCC before it can be brought before the court.<sup>741</sup> Indeed, ILAC was told that there had been many instances where a case had gone to appeal at the highest level, only to be sent back to begin again due to its not having passed through a PCC before it was tried by the Social Justice Court.<sup>742</sup> Accordingly, even though these are not

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<sup>733</sup> Interview 1, NE Lawyer; Interview 2, NE Lawyer; Interview 3, NE Judge; Interview 16, NE Lawyer; Interview 18, NE Judge

<sup>734</sup> Interview 3, NE Judge; Interview 16, NE Lawyer; Interview 18, NE Judge.

<sup>735</sup> Interview 1, NE Lawyer; Interview 16, NE Lawyer; Interview 18, NE Judge.

<sup>736</sup> Interview 1, NE Lawyer.

<sup>737</sup> 2016 Social Contract, Article 69.

<sup>738</sup> SJC, Section 3, Chapter 2.

<sup>739</sup> Interview 1, NE Lawyer; Interview 16, NE Lawyer.

<sup>740</sup> Interview 1, NE Lawyer.

<sup>741</sup> SJC, Article 31; Interview 11, NE Lawyer.

<sup>742</sup> Field Team Interview 3, NEFT Lawyer.

official courts, the mandatory nature of PCC usage has led many lawyers to describe them as first-instance litigation.<sup>743</sup>

These committees, which were described by ILAC in 2017,<sup>744</sup> reportedly exist in every village and neighbourhood across north-eastern Syria. They consist of “democratically elected members who have experience, morals, conscience, and are accepted by society”,<sup>745</sup> who attempt to mediate between the parties in search of reconciliation.

Yet despite their quasi-judicial function, PCCs are not judicial bodies and, as such, do not include trained judges. Rather, the committees are made up of three to five persons in each neighbourhood or village with no particular training or other qualifications.<sup>746</sup> Accordingly, the competence of each committee depends on who lives in the local neighbourhood or is appointed to the PCC.

The Charter authorises the PCCs to “review complaints and disputes that occur in society and resolve them consensually, respecting conscious and ethical rules”.<sup>747</sup> Interviewees described the committees as a forum for mediation between the parties, where the aim was to achieve reconciliation to the satisfaction of both parties.<sup>748</sup>

PCCs do not have jurisdiction over most criminal cases, though they may be involved under certain circumstances.<sup>749</sup> One such situation cited by interviewees was that parties could withdraw a criminal case from the Social Justice Court and ask that it be handled through tribal dispute resolution. If, for example, the case could be resolved through a ‘blood money’ settlement, such negotiations would be handled in PCCs in most areas.<sup>750</sup>

In order to bring a case to a PCC, litigants must first register their case at a Social Justice Court and request that it be transferred to the PCC in the respondent’s place of residence.<sup>751</sup> When a PCC reaches a final outcome with the agreement of both parties, it is considered as the equivalent of a judicial decision. Failure to enforce such a decision is considered comparable to failure to enforce a court order.<sup>752</sup>

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<sup>743</sup> Interview 1, NE Lawyer; Interview 3, NE Judge; Interview 9, NE Judge; Field Team Report 1, NEFT Lawyer.

<sup>744</sup> ILAC 2017 Report, pp. 113–119.

<sup>745</sup> SJC, Article 33.

<sup>746</sup> Interview 3, NE Judge.

<sup>747</sup> SJC, Article 31.

<sup>748</sup> Interview 3, NE Judge; Interview 1, NE Lawyer.

<sup>749</sup> SJC, Article 31.

<sup>750</sup> Field Team Interview 1, NEFT Lawyer. The PCCs acting in this capacity is not to be confused with the Council of Tribal Dignitaries, discussed below. The council has a similar role and function, but is summoned to settle disputes that may lead to strife between tribes.

<sup>751</sup> Interview 18, NE Judge; Field Team Interview 1, NEFT Lawyer. This was the procedure that was described to us in Raqqa province. Accounts varied slightly between regions.

<sup>752</sup> Interview 1, NE Lawyer; Interview 3, NE Judge.

If a reconciliation is not reached, the PCC will refer the case to the Social Justice Court. But the PCC still provides its opinion on the matter, including a suggested outcome, as a form of advice to the court.<sup>753</sup> According to lawyers, these opinions were often very influential, and no court would hear any civil case unless it had already been heard by a PCC, with its findings submitted to the judge.<sup>754</sup>

This process can be problematic. Lawyers in Qamishli said that due to the substantial weight given to PCC recommendations by judges, it was common for parties in that region to appear with a lawyer or even appoint one to attend in their place.<sup>755</sup> For litigants in the Raqqa and Deir ez-Zor governorates, on the other hand, this was not an option, as lawyers were strictly forbidden from attending PCC deliberations unless they were personally related to one of the parties.<sup>756</sup>

Views on the PCC procedure were divided among lawyers and judges, and tended to correspond to their overall view of the AANES justice system.<sup>757</sup> According to one lawyer, who considered the committees to be a valuable tool to promote consensus in society, their success rate in his area was as high as 50 to 60 percent.<sup>758</sup>

The more prevalent view, however, was that PCC mediation frequently failed, and that the lack of legal training or clear guidance meant that they often caused more confusion than clarity.<sup>759</sup> The four or five members of each PCC often worked without coordination, frequently resulting in duplication or contradictions.<sup>760</sup>

Lawyers and judges argued in their interviews that many committees lacked a basic understanding of the law, or of the nature or subject matter of the cases before them.<sup>761</sup> These shortcomings could lead to serious mistakes that derailed the legal process, including hearing cases of a criminal nature that lay outside their jurisdiction:<sup>762</sup>

*PCC is simply a routine that impedes litigation. It causes delays and when eventually a report comes out of the committee, it is full of spelling mistakes, poorly written and also displays a lack of legal and*

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<sup>753</sup> Interview 3, NE Judge; Interview 18, NE Judge.

<sup>754</sup> Field Team Interview 3, NEFT Lawyer; Field Team Interview 1, NEFT Lawyer.

<sup>755</sup> Field Team Interview 3, NEFT Lawyer.

<sup>756</sup> Field Team Interview 1, NEFT Lawyer.

<sup>757</sup> See: North Press Agency, 'Lawyers split over extra-legal social reconciliation office in Syria's Raqqa', 14 September 2020, <<https://npasyria.com/en/46721/>>.

<sup>758</sup> Interview 3, NE Judge; Interview 1, NE Lawyer.

<sup>759</sup> Field Team Interview 1, NEFT Lawyer.

<sup>760</sup> *Ibid.*

<sup>761</sup> Field Team Interview 3, NEFT Lawyer; Field Team Interview 1, NEFT Lawyer.

<sup>762</sup> *Ibid.*

*social experience. It simply delays the process without contributing to solutions.*<sup>763</sup>

One example of these inadequacies, offered by lawyers, was that even where parties agreed on the facts of the case, the PCC would fail to mention this agreement in its final report. When the case was later brought before the Social Justice Court, the judge would insist on supporting witnesses and evidence for the same facts that the parties had already acknowledged before the committee.<sup>764</sup>

Most lawyers interviewed for this study were critical of the PCCs. Their citizen composition, with no participation or guidance from legally trained staff, meant that mistakes were frequent. These mistakes, in turn, had negative consequences as a case moved through the justice system, due to the importance given to PCC opinions in many courts.

In fact, most lawyers described the work of PCCs as a constant source of chaos and delay in the justice system. One lawyer went so far as to estimate that the committees caused suffering for 99 percent of litigants. According to some lawyers, the PCC process also worked to the detriment of those in a weaker social or financial position. Such parties often saw little choice but to accept the committee's proposed resolution, no matter how much they might disagree, rather than argue against the prominent community members that made up the PCC.<sup>765</sup>

Another concern, noted by a lawyer from Raqqa, was that the location of a PCC could have a significant impact on the ability of a litigant to successfully argue their case. Since there is a PCC in every village, the defendant would typically come from the same community as the committee. This lawyer explained that when a stranger came before a PCC, there was a risk that the members would favour the hometown party. This lawyer had seen frequent instances where PCCs stalled cases for several months, in order to help a defendant from their own community be smuggled out of Syria and the reach of the AANES courts.<sup>766</sup> For this reason, cases were often easier to resolve at the PCC stage when the litigants came from the community.

That said, ILAC was told of certain PCCs that had highly competent members and did a good job, processing cases and proposing solutions benefitting all involved. In areas with well-functioning committees, parties might even choose to withdraw cases that had gone up to the Social Justice Court and use

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<sup>763</sup> Field Team Interview 1, NEFT Lawyer.

<sup>764</sup> *Ibid.*

<sup>765</sup> Field Team Interview 3, NEFT Lawyer. One lawyer even described how the committee had been used against them in a form of blackmail. Certain individuals had invented scandalous claims to tarnish their reputation and used the threat of the open forum of the committee to force a settlement.

<sup>766</sup> Field Team Interview 1, NEFT Lawyer.

the PCC to speed up the process and resolve their differences.<sup>767</sup> Nonetheless, despite some positive examples, the dominant view among those ILAC interviewed was that the system's reliance on underqualified committee members meant that the rights of the parties too often were not adequately protected.

## Social justice councils

The final two basic building blocks fundamental to the justice system outlined in the 2016 Social Contract are justice and women's justice 'councils'.<sup>768</sup> Again, use of the term 'council' was not inadvertent. In the 2016 Social Contract, the 'councils' are specifically defined as follows:

*[Councils] are the societal units which represent the people, discuss, and decide its affairs, and formulate policies beginning with villages, neighbourhoods, towns, and districts. They protect society, ensure its continuity, and secure the realization of its goals, in the political, social, cultural, and economic fields. They organize society by enabling direct democracy and set rules and principles related to democratic and free life.*<sup>769</sup>

The 2016 Social Contract accordingly recognised councils in numerous spheres of society, including legislative councils,<sup>770</sup> executive councils<sup>771</sup> and justice councils.<sup>772</sup> These councils are to be democratically elected, with 60 percent of the representatives directly elected by people and 40 percent elected by "the components, groups, and social segments".<sup>773</sup>

Accordingly, the 2016 Social Contract explicitly recognised justice councils as a fourth element of the justice system in the Kurdish-controlled areas.<sup>774</sup> The Charter more particularly defined these justice councils, creating a two-tiered system of 'social justice councils', reflecting the federal approach adopted by the AANES.<sup>775</sup>

## The General Justice Council

On an organisational chart of social justice councils, at the apex would stand the "Social Justice Council of the Autonomous Administration of North and East Syria" (also known as, 'the General Justice Council'). This council functions in a manner somewhat similar to the High Judicial Council in the

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<sup>767</sup> Field Team Interview 3, NEFT Lawyer.

<sup>768</sup> 2016 Social Contract, Article 69.

<sup>769</sup> 2016 Social Contract, Article 49.

<sup>770</sup> 2016 Social Contract, Article 51.

<sup>771</sup> 2016 Social Contract, Article 61.

<sup>772</sup> 2016 Social Contract, Article 69.

<sup>773</sup> 2016 Social Contract, Article 52.

<sup>774</sup> 2016 Social Contract, Article 69.

<sup>775</sup> SJC, Section 1, Chapters 2 and 3.

Syrian state system, though its powers are significantly impacted by the federal nature of the AANES system.<sup>776</sup>

Members of the General Justice Council are drawn from the Local Justice Councils (see below) in each region in the AANES to serve two-year terms.<sup>777</sup> According to the Charter, the General Justice Council is composed of 13 members.<sup>778</sup> However, according to one account given to ILAC, the present General Justice Council includes the following members: four from the Jazira region, three from Raqqa, one from Menbij, two from Deir ez-Zor and two from Kobani (that is, 12 members).<sup>779</sup>

The requirement that members must be elected from the members of the Local Justice Councils implies that the council is made up exclusively of judges, since only those with at least three years of judicial experience can be elected to a local council.<sup>780</sup> However, it is widely known that there are strong political influences among the General Justice Council's membership. For example, ILAC was informed that one council member from the Raqqa governorate was actually the Minister of Justice for that area.<sup>781</sup>

The General Justice Council operates with two co-presidents,<sup>782</sup> and is divided in several committees, including a Judicial Inspection Committee, a Prosecution Committee and an Administrative Committee.<sup>783</sup> It has a wide mandate which, much like its membership, includes both judicial and political affairs. This mandate includes planning the work of justice institutions, including submitting a draft annual budget to the General Council of the AANES for approval, developing legal research and training for higher officials in the AANES, and overseeing the work of the Local Justice Councils. The latter function includes settling jurisdictional disputes between Local Justice Councils, as well as deciding on appeals from judicial disciplinary decisions of those councils.<sup>784</sup> As discussed below, the General Justice Council may also take a role in the appeals process from lower court decisions.

The General Justice Council also has the power, in coordination with the Local Justice Councils, to establish new courts, close courts and define a court's competence.<sup>785</sup> Its overarching authority was illustrated by recent

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<sup>776</sup> SJC, Article 14.

<sup>777</sup> SJC, Article 15.

<sup>778</sup> SJC, Article 15.

<sup>779</sup> Field Team Interview 1, NEFT Lawyer. This is not necessarily strange, as AANES institutions frequently expand as demographics change or the geographical area expands.

<sup>780</sup> SJC, Article 21.

<sup>781</sup> Field Team Interview 1, NEFT Lawyer.

<sup>782</sup> SJC, Article 15.

<sup>783</sup> Field Team Interview 1, NEFT Lawyer.

<sup>784</sup> SJC, Article 14.

<sup>785</sup> SJC, Article 14; Field Team Interview 3, NEFT Lawyer.

orders prohibiting certain lawsuits related to real estate in the AANES,<sup>786</sup> and by its imposing a ten-day lockdown on all councils, the Defence Court, and the Mesopotamia Academy due to the coronavirus pandemic.<sup>787</sup> Additionally, the General Justice Council has a political role, participating in the legislative process by submitting draft laws and expressing opinions on legislation related to the social justice system.<sup>788</sup>

### Local Justice Councils

The day-to-day work of the courts is organised and supervised by “Social Justice Councils of the Autonomous and Civil Administrations of North and East Syria” (also known as ‘Local Justice Councils’), which operate in each administrative unit in the AANES, except Deir ez-Zor.<sup>789</sup>

Local Justice Council members are elected at a general conference consisting of all members of judicial commissions and representatives of justice institutions in the administrative area.<sup>790</sup> In order to be eligible for election, candidates must have served more than three years in a justice institution, except for representatives from Peace and Consensus Committees.<sup>791</sup> Gender balance is required. For example, in November 2018, it was reported that eight women were members of the Local Justice Council in the al-Jazira region.<sup>792</sup>

Responses from judges varied concerning how rigorously these criteria were applied. While all judges agreed that most Local Justice Council members were judges, they also said that there were numerous non-judicial members. These included court administrative staff, qualified lawyers, representatives from PCCs and Women’s Houses, and, in one instance, the Minister of Justice from Raqqa.<sup>793</sup> According to one judge in Deir ez-Zor, a shortage of judges in that region led to the appointment of executive staff and older former judges in their stead.<sup>794</sup> Lawyers underscored that there was a strong executive

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<sup>786</sup> The Syria Report, ‘Could the Arab Belt Issue Resurface in Northeast Syria?’, 2021.

<sup>787</sup> North Press Agency, ‘Social justice councils in northeastern Syria suspend work during lockdown’, 12 April 2021, <<https://npasyria.com/en/57434/>>.

<sup>788</sup> SJC, Article 14.

<sup>789</sup> The precise status of the various geographical subdivisions was unclear. The Euphrates, Afrin and Jazira regions are often referred to as ‘cantons’, while the administrations in Raqqa, Manbij, Tabqa and Deir ez-Zor are referred to as well as ‘civil administrations’. These labels are fluid, both based on political influences and *de facto* changes on the battlefield.

<sup>790</sup> SJC, Article 19; Interview 13, NE Judge; Interview 18, NE Judge.

<sup>791</sup> SJC, Article 21.

<sup>792</sup> ANHR, ‘Women’s revolution is revolution of combating violence in North Syria’, 24 November 2018, <<https://hawarnews.com/en/haber/womens-revolution-is-revolution-of-combating-violence-in-north-syria-h5071.html>>.

<sup>793</sup> Interview 3, NE Judge; Interview 9, NE Judge; Interview 13, NE Judge; Interview 18, NE Judge; Field Interview 1, NEFT Lawyer. The minister from Raqqa actually sits on the General Justice Council, but since candidates to that institution must have first been elected to a local Social Justice Council, it seems reasonable to assume that this was the case.

<sup>794</sup> Interview 9, NE Judge.

branch influence through members who were previously court administrative staff, a group that often included individuals selected for their political affiliation.<sup>795</sup>

While the Local Justice Councils operate under the umbrella of the General Justice Council, their authority is significant. The Local Councils supervise the work of all justice institutions in their administrative area. In coordination with the General Justice Council, they establish and dissolve courts in their geographical areas. The Local Justice Councils manage all matters related to judges in their area, including appointments, transferal, complaints, disciplinary measures and dismissals. They are also responsible for drafting the annual justice budget for approval by the regional Legislative Council.<sup>796</sup>

The work of these councils is organised in committees. One such committee prescribed in the Charter is the Inspection Committee.<sup>797</sup> This committee has three members and is responsible for hearing any complaints lodged against judges and employees.<sup>798</sup> Only complaints concerning professional issues or problems relating to their behaviour vis-a-vis clients are eligible to be heard. The Inspection Committee investigates the attitude and behaviour of judges, not their decisions. In such cases, it hears the evidence and prepares a draft decision, including any disciplinary measures, such as a warning or dismissal. The draft decision is then subject to a vote by all the other committees of the council.<sup>799</sup>

Though not mentioned in the Charter, Local Justice Councils have apparently have assumed a role as a third instance of appeal, where parties can challenge decisions by the Cassation Commissions.<sup>800</sup> Since this activity appears to have no legal basis in the Charter, its parameters are not clearly defined. In some instances, this work is handled by an Appeals Committee or a Grievances Committee within the council.<sup>801</sup> Such committees hear appeals from final decisions issued by the Cassation Commission in their area.<sup>802</sup> Cases from Deir ez-Zor, which did not have a Local Justice Council at the time of this research, could be lodged at a Justice Council in any other region.<sup>803</sup>

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<sup>795</sup> Field Team Interview 1, NE Lawyer; Interview 20, NE Lawyer; Interview 38, NE Lawyer. Also supported by Interview 44, NE Judge, who stated that cadre had been appointed as judges in both the General and Local Justice Councils.

<sup>796</sup> SJC, Article 19.

<sup>797</sup> SJC, Article 20.

<sup>798</sup> Interview 13, NE Judge; Interview 18, NE Judge.

<sup>799</sup> Field Team Interview 1, NEFT Lawyer.

<sup>800</sup> *Ibid*; Field Team Interview 3, NEFT Lawyer.

<sup>801</sup> *Ibid*. In Raqqa, this committee was referred to as the 'Appeals Committee' and in Qamishli the term used was 'Grievances Committee'. There seemed to be no substantive difference between the two, other than the name.

<sup>802</sup> Field Team Interview 1, NEFT Lawyer.

<sup>803</sup> Field Team Interview 5, NEFT Former Minister of Labor and Social Affairs in Al Jazira.

There was a lack of clarity among those interviewed by ILAC concerning whether the decision must first be designated as appealable by a Cassation Commission, and whether this process was subject to any formal regulations. Given the apparent lack of any formal procedures, it was also unclear what circumstances might cause a Local Justice Council to hear a particular appeal.

Similarly, there was uncertainty concerning the nature and extent of the councils' authority. In some instances, described to ILAC, Local Justice Councils appeared to act as traditional cassation courts, hearing only issues involving points of law. In other instances, a council appeared to act as second-instance court, trying cases in their entirety.<sup>804</sup> These dissimilarities might have reflected different practices between Local Justice Councils, changes in those practices, or simply that a Local Council had both powers.

Further, as discussed below, information from various interviews also indicated that Local Justice Councils could utilise 'platforms' to adjudicate cases that constituted a threat to society and provoked public opinion. The existence of these alternative or informal routes to appeal decisions was a source of considerable confusion and frustration, in particular among the lawyers interviewed.

Decisions by a Local Justice Council are considered to be final and unappealable. However, ILAC heard several examples where this principle was not followed. Indeed, it appeared that certain cases could be appealed to the General Justice Council if that council had doubt concerning the reasoning or outcome of the Local Justice Council's decision.<sup>805</sup>

ILAC also received information indicating that the General Justice Council intervened primarily on behalf of individuals with good connections within the AANES. It was unclear whether such connections were necessary to obtain review by the General Justice Council, or if this was because only persons with connections were aware of the possibility. However, one hint at an answer may be seen in the process: when a person filed an appeal to the General Justice Council, it was taken directly to the cadre who sat on the council, a title used for the senior officials or party representatives.<sup>806</sup>

Despite the provisions in the Charter, there seemed to be considerable confusion and disagreement among judges and lawyers working within the AANES concerning the role and competence of the Local Justice Councils. One lawyer became very emotional when describing the Justice Council in his area, indicating that it had created unnecessary confusion and inefficiency through its lack of consistency:

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<sup>804</sup> Field Team Interview 1, NEFT Lawyer.

<sup>805</sup> Interview 35, NE Lawyer; Field Team Interview 1, NEFT Lawyer.

<sup>806</sup> Field Team Interview 1, NEFT Lawyer.

*It all starts with the Justice Council. The Council is the mother and father of justice, but it is what destroyed justice because of the overlaps and confusion.*<sup>807</sup>

## **Separate women’s justice institutions**

### **Women’s councils for social justice**

The fifth and final element of the justice system described in the 2016 Social Contract were women’s justice councils.<sup>808</sup> By this designation, the contract both symbolically and substantively emphasised the role of women within the Kurdish movement, by giving women’s justice councils co-equal status with other bodies within the AANES justice system.

As with the Social Justice Councils, the Charter more particularly defined these women’s justice councils, creating a similar two-tiered system reflecting the federal approach adopted in the AANES. The umbrella body is entitled “The Women’s Council for Social Justice of the Autonomous Administration of North and East Syria” (also known as, ‘the General Women’s Justice Council’).<sup>809</sup>

The General Women’s Justice Council is composed of 21 members representing the Local Women’s Justice Councils. The role of this General Council is generally defined as “supervis[ing] the work of all women engaged in the justice institutions of the autonomous and civil administrations”.<sup>810</sup> More specifically, its role is to coordinate between the Local Women’s Justice Councils, express opinions on decisions and laws related to women in the AANES, develop training and awareness-raising programmes for working women in all justice institutions, seek projects to allow women working in justice institutions to make additional income, and otherwise promote women’s freedom in the AANES.<sup>811</sup>

The Charter also directed that Local Women’s Justice Councils be established in each autonomous or civil administration area, with members elected in each region.<sup>812</sup> Unlike the Local Social Justice Councils, however, the Charter did not define the role and authority of the Local Women’s Justice Councils.

One unsettled area involving the Women’s Justice Councils is the recognition and application of the *Basic Principles and General Principles for Women*, also known as ‘the Women’s Laws’. The basic principles were initially prepared in 2014 by the Women’s Committee of the Autonomous

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<sup>807</sup> Field Team Interview 3, NEFT Lawyer.

<sup>808</sup> 2016 Social Contract, Article 69.

<sup>809</sup> SJC, Section 2, Chapter 2.

<sup>810</sup> SJC, Article 24.

<sup>811</sup> SJC, Article 25.

<sup>812</sup> SJC, Article 26.

Administration of Jazeera Canton of Rojava, a predecessor to the current Local Women's Council in one of the cantons in the original PYD administration.<sup>813</sup> These principles were subsequently approved by the Legislative Council of the Jazeera Canton, and later adopted by the other two cantons in Afrin and Ayn al-Arab (Kobani).<sup>814</sup>

The principles, which became known as the 'Women's Laws',<sup>815</sup> were groundbreaking, calling for "equality between women and men, in all areas of life".<sup>816</sup> Other principles were more specific, diverging sharply from *Sharia* and the PSL, such as prohibiting practices such as honour crimes, marriage without the consent of the bride and polygamy, eliminating the bride price/dowry system, and providing that men and women were entitled to an equal share of an inheritance.

According to one report, the Women's Laws had been fully applied in the cantons of Afrin, Kobane and Jazira, but had not yet been passed in the Manbij, Tabqa, Raqqa or Deir-ez-Zor regions. However, the Local Women's Justice Councils for these latter regions have been drafting principles and laws for their regions, as well as conducting extensive educational work on women's issues.<sup>817</sup>

The application of the principles that equal numbers of men and women co-chairs must be appointed to every institution has come under scrutiny. Reports have indicated that the women's quota provided for in the principles, the Charter and other laws has been unfeasible at times. In other instances, these principles have reportedly been used to legitimise the dominance of women affiliated with, or close to, the PYD. Such participation by women has been criticised as representative, with roles assigned to women based more on ideological considerations than on competence.<sup>818</sup> This critique was

<sup>813</sup> The Women's Committee of The Autonomous Administration of Jazeera Canton of Rojava, 'Basic Principles and General Principles for Women', 22 October 2014, <<https://rojavainformationcenter.com/storage/2019/12/2014-Womens-Law-Basic-Principles-and-General-Principles-for-Women.pdf>>.

<sup>814</sup> Lava Selo, 'Women's Rights in Rojava: Perceptions Believed & Realities Yet to be Achieved', Hienrich Boll Stiftung, July 2018, <[https://lb.boell.org/sites/default/files/women\\_rights\\_in\\_rojava-english-online\\_paper.pdf](https://lb.boell.org/sites/default/files/women_rights_in_rojava-english-online_paper.pdf)>.

<sup>815</sup> See: Kongra Star, 'Women's Laws in Rojava – Northern Syria', 6 April 2019, <<https://eng.kongra-star.org/2019/04/06/womens-laws-in-rojava-northern-syria/>>; Meghan Bodette, 'An Overview of AANES Women's Institutions in Manbij', 16 August 2020, <<https://mjbodette.medium.com/an-overview-of-aanes-womens-institutions-in-manbij-5089c450c24b>>.

<sup>816</sup> The Autonomous Administration of Jazeera Canton of Rojava, 'Basic Principles and General Principles for Women', Basic Principle No. 3.

<sup>817</sup> Rojava Information Center, 'Beyond the Frontlines: The building of the democratic system in North and East Syria', December 2019, p. 42, <<https://rojavainformationcenter.com/storage/2019/12/Beyond-the-frontlines-The-building-of-the-democratic-system-in-North-and-East-Syria-Report-Rojava-Information-Center-December-2019-V4.pdf>>.

<sup>818</sup> Selo, 'Women's Rights in Rojava' 2018, *supra* n. 814.

reiterated among several lawyers. They argued that the system had codified requirements of gender representation, but did not require staff training in the institutions that fulfilled a legal role. This critique was mainly prevalent among Arab lawyers.<sup>819</sup>

## Women's Houses

After the Syrian conflict began in 2012, a network of *mala jin* or 'Women's Houses' was established in cities and many smaller towns throughout north and east Syria. These Women's Houses existed to address women's issues, particularly domestic problems such as violence, marriage and divorce, and oppressive behaviours in the household.<sup>820</sup>

The Charter recognised these Women's Houses as an official part of the justice system in the AANES. There, a Women's House was defined as "a civilian and social institution that works towards educating and resolving the problems of women and the family in all areas of social life and aims to raise awareness on social justice and combat all inhuman practices against women".<sup>821</sup>

Beyond this aspirational role, the Charter gave Women's Houses a formal role in the justice system, akin to the role of the Peace and Consensus Committees in civil and commercial matters. That is, the Charter mandates that Women's Houses shall establish "Women's House Social Reconciliation Committees", with authority to resolve any women-related case brought before them. In 2017–18, the Women's Houses reported that their Reconciliation Committees received 1,313 complaints, of which approximately 1009 were solved, 74 were transferred to a Social Justice Court, and 121 were considered open.<sup>822</sup>

According to the Charter, the detail concerning the operation of the Women's Houses was to be regulated in a special law.<sup>823</sup> While that law is not identified, Women's Houses generally appear to operate in accordance with the skeletal outlines in the Charter.

In practice, like PCCs, Women's Houses function as a *de facto* first instance of litigation, where any dispute within their jurisdiction is considered by the Women's House before going to court.<sup>824</sup> Though the Charter refers only

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<sup>819</sup> Interview 2, NE Lawyer; Interview 3, NE Judge; Interview 9, NE Judge; Interview 14, NE Lawyer.

<sup>820</sup> Yasin Duman, 'Peacebuilding in a Conflict Setting: Peace and Reconciliation Committees in a *De Facto* Rojava Autonomy in Syria', *Journal of Peacebuilding & Development*, Vol. 12, No. 1, April 2017, pp. 85–90.

<sup>821</sup> SJC, Section 3, chapter 1, Article 28.

<sup>822</sup> ANHR, 'Women's revolution is revolution of combating violence in North Syria', 2018, *supra* n. 792.

<sup>823</sup> SJC, Article 29.

<sup>824</sup> Interview 13, NE Judge; Interview 18, NE Judge; Interview 35, NE Lawyer; Interview 36, NE Lawyer; Field Interview 5, NEFT Former Minister of Labor and Social Affairs in Al Jazira.

vaguely to “women-related cases”,<sup>825</sup> the Women’s Houses primarily focus on family matters<sup>826</sup> (typically *Sharia* or personal status cases), or any civil case where either the plaintiff or the defendant is a woman.<sup>827</sup>

As there are many Women’s Houses throughout north-eastern Syria, it is highly likely that their functioning varies between regions and cities. In Deir ez-Zor, for example, a religious affairs institution exists in parallel and handles disputes of the same character as the Women’s House. Reportedly, this Women’s House regularly consults with the religious institution.<sup>828</sup>

If a consensus is reached, the parties file a ‘conciliation deed’, which is then sent to the Social Justice Court for ratification. According to several lawyers interviewed by ILAC, a consensus reached at the Women’s House was most likely to be ratified in court.<sup>829</sup>

The Women’s House mandate of conflict resolution, however, exceeds that of an arbitrator or defence lawyer. As written in the Charter, the Women’s House is not only mandated to ‘resolve’ matters, but also to ‘educate’ on them, providing them with a political and even advocative role.<sup>830</sup>

Furthermore, the Women’s House also has a connection to the women’s security force, known as the women’s *Asayish*.<sup>831</sup> According to some lawyers, the Women’s Houses are mandated to investigate, interrogate and even arrest.<sup>832</sup>

According to ILAC’s interviews, criminal cases involving women were not referred to a Women’s House, but went directly to the Social Justice Court. There, representatives from the Women’s House appeared with a woman, if she was a party to the case.<sup>833</sup> Members of the Women’s House are not lawyers, but reportedly active members of civil society. However, the Charter provides that a Women’s House can designate a female representative to attend court sessions in women-related cases, to assist women in defending their rights.<sup>834</sup> According to some lawyers, Women’s House members would assume the role of a lawyer when a woman was involved in a case that went to

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<sup>825</sup> SJC, Article 29.

<sup>826</sup> Field Team Interview 4, NEFT Lawyer; Interview 11, NE Lawyer; Interview 16, NE Lawyer; Interview 18, NE Judge.

<sup>827</sup> Interview 13, NE Judge; Interview 18, NE Judge; Interview 35, Lawyer; Interview 36, NE Lawyer; Field Interview 5, NEFT Former Minister of Labor and Social Affairs in Al Jazira.

<sup>828</sup> Field Team Interview 4, NEFT Lawyer.

<sup>829</sup> Interview 13, NE Judge; Interview 20, NE Lawyer; Interview 39, NE Judge.

<sup>830</sup> Social Charter, Section 3, Chapter 1, Article 28.

<sup>831</sup> Field Team Interview 5, NEFT Former Minister of Labor and Social Affairs in Al Jazira.

<sup>832</sup> Interview 14, NE Lawyer.

<sup>833</sup> Field Team Interview 5, NEFT Former Minister of Labor and Social Affairs in Al Jazira; Interview 2, NE Lawyer. There is no mention of criminal cases in the Social Charter.

<sup>834</sup> SJC, Article 29.

court.<sup>835</sup> According to another lawyer, women could be represented in court by both a lawyer and a representative from the Women's House.<sup>836</sup>

The broad mandate of the Women's House generated some concern among lawyers interviewed by ILAC. Some criticised the ability of the Women's Houses to enforce laws, which they viewed as contrary to the rule of law and beyond the powers granted in the Charter. One lawyer expressed concern that a Women's House could – in their words - impose decisions upon the courts, or interrogate, investigate and file a lawsuit to the court.<sup>837</sup>

One person interviewed by ILAC argued that, while the Women's Houses initially garnered rather low support from the local communities, attitudes were changing as the institution became more established and well known.<sup>838</sup> According to the statistics provided by the Women's Houses, in 2017–18 they stopped 189 marriages of minors, addressed 255 polygamy cases and handled 410 cases of violence against women. In total during these years, they received 10,467 cases, of which 5,138 were resolved and were 1,096 referred to the courts.<sup>839</sup>

### **People's Defence Courts**

Though not mentioned in the 2016 Social Contract, the Charter added a short reference to “The People's Defence Court of the Autonomous Administration of North and East Syria”, within the definition of the structures comprising the social justice system.<sup>840</sup> The Charter went on to state that this court should consider terrorist crimes included in the Anti-Terrorism Law “and all criminal crimes that affect the security and safety of society”. The Anti-Terrorism Law, in turn, contained a very broad definition of what constitutes a terrorist act:

*Every action that threatens national unity and peaceful coexistence between the components in the province and the safety of society and affects public security and stability and weakens the ability of the People's Protection and Asayish Authority to defend and maintain the security of citizens and their properties and the institutions of the province, whether by armed collision with the district forces or any*

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<sup>835</sup> Riad Ali, “The judicial system in “Autonomous Administration” regions’, 2017, *supra* n. 694.

<sup>836</sup> Interview 20, NE Lawyer.

<sup>837</sup> Interview 1, NE Lawyer; Interview 2, NE Lawyer.

<sup>838</sup> Field Team Interview 5, NEFT Former Minister of Labor and Social Affairs in Al Jazira.

<sup>839</sup> ANHR, ‘Women's revolution is revolution of combating violence in North Syria’, 2018, *supra* n. 792.

<sup>840</sup> SJC, Article 10.

*form that is outside freedom of opinion and expression guaranteed by the law.*<sup>841</sup>

Beyond that skeletal statement, the Charter simply states that the court “is regulated by a special law”.<sup>842</sup> The Charter also states that the General Justice Council is authorised to monitor this court, regulate its work and appoint its members based on proposals from the Local Justice Councils.<sup>843</sup>

Despite this cursory description in the Charter, the institution and the “special law” are well known. The precursor of the People’s Defence Court predates the 2016 Social Contract. Also called the ‘Anti-Terrorism Court’, it was created based on the Anti-Terrorism Law of 2014 adopted by the Kurdish administration.<sup>844</sup> The court is located in the Nav Kori area near the city of Qamishli,<sup>845</sup> and is divided into two parts: a civil court that examines crimes considered terrorist acts under the Anti-Terrorism Law, and a military court that examines crimes committed by members of the SNA and the *Asayish*.

Numerous interviewees criticised various aspects of the People’s Defence Court. The scope of its powers is vaguely defined to cover acts that are viewed as “threatening national unity, peaceful coexistence and the safety of society”.<sup>846</sup> Many of its prosecutions have been directed at dissenting politicians and journalists,<sup>847</sup> as well as terrorists.<sup>848</sup> One report as of March 2021 stated that the court had tried 8,000 Syrian nationals.<sup>849</sup>

The operations of the People’s Defence Court are viewed as harsh and shrouded in secrecy. Moreover, under the Anti-Terrorism Law, an accused cannot be released throughout the trial period.<sup>850</sup> Trial procedures in the People’s Defence Court are ill-defined or non-existent.<sup>851</sup> One published

<sup>841</sup> ICTJ, ‘Gone Without a Trace: Syria’s Detained, Abducted, and Forcibly Disappeared’, 2020, *supra* n. 28.

<sup>842</sup> SJC, Section 4, Chapter 3.

<sup>843</sup> SJC, Article 14.

<sup>844</sup> Autonomous Administration of North and East Syria, ‘Decree No. 20’, cited in ICTJ ‘Gone Without a Trace’, May 2020, *supra* n. 28.

<sup>845</sup> STJ, ‘Northeastern Syria: Group of Teachers, One Activist Arbitrarily Detained by the Autonomous Administration’, 12 April 2021, <<https://stj-sy.org/en/group-of-teachers-one-activist-arbitrarily-detained-by-the-autonomous-administration/>>.

<sup>846</sup> See: Articles 3 and 4 of the Anti-Terrorism Law issued by Al-Jazirah County in Session No. 25 27 September 2014, as quoted in Riad Ali, ‘The judicial system in “Autonomous Administration” regions’, 2017, *supra* n. 694.

<sup>847</sup> Committee to Protect Journalists, ‘Kurdish Syrian journalist Fanar Mahmoud Tami abducted’, 29 January 2021, <<https://cpj.org/2021/01/kurdish-syrian-journalist-fanar-mahmoud-tami-abducted/>>.

<sup>848</sup> Interview 3, NE Judge.

<sup>849</sup> Rojava Information Center, ‘The Anti-Terror Trial System in NES’, 13 March 2021, <<https://rojainformationcenter.com/2021/03/the-anti-terror-trial-system-in-nes/>>.

<sup>850</sup> See: Article 5 of the Anti-Terrorism Law issued by Al-Jazirah County in Session No. 25 dated 27 September 2014, as quoted in Riad Ali, ‘The judicial system in “Autonomous Administration” regions’, 2017, *supra* n. 694.

<sup>851</sup> Interview 16, NE Lawyer; Rojava Information Center, ‘The Anti-Terror Trial System in NES’, 2021, *supra* n. 849.

interview indicated that the court assigned three judges for every trial, with an effort made for gender parity, so always two men and one woman or two women and one man. According to this source, the court employed 14 judges and eight prosecutors (among them two women), all of whom studied law at Syrian universities.<sup>852</sup> However, according to another report, judges were selected from the military ranks of the SDF and did not need to have a legal background, just a basic knowledge of reading and writing.<sup>853</sup>

According to various reports, trials are not public, and an accused is not even allowed to hire a lawyer.<sup>854</sup> One former public prosecutor interviewed by ILAC confirmed that he had been unable to enter this court, even in his official capacity.<sup>855</sup> No appeals are permitted,<sup>856</sup> though that contention was disputed in another report.<sup>857</sup>

These features led one observer to liken the People's Defence Court to the Syrian state's Counter Terrorism Court and its predecessor, the State Security Court. This former Syrian judge pointed to the similarities in these courts' reliance on ambiguous and unclear terms such as "threat of national unity, peaceful coexistence and community safety", and their broad powers of interpretation.<sup>858</sup>

## **Other bodies involved in the justice system**

While not specifically designated as part of the justice system in either the 2016 Social Contract or the Charter, other bodies are integrally involved in various aspects of rule of law issues in the Kurdish-controlled areas.

### **The Social Contract Council**

In its report in 2017, ILAC noted that the 2014 Social Contract provided for the establishment of a Supreme Constitutional Court,<sup>859</sup> although the report was inconclusive on whether such a court actually existed. In the revised 2016 Social Contract, the Supreme Constitutional Court was replaced by a 'Social Contract Council' and was assigned similar tasks.<sup>860</sup>

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<sup>852</sup> *Ibid.*

<sup>853</sup> ICTJ, 'Gone Without a Trace', 2020, *supra* n. 28. See also: HRW, 'Ensure Fair Trials of Syria ISIS Suspects', 13 February 2018, <<https://www.hrw.org/news/2018/02/13/ensure-fair-trials-syria-isis-suspects#>>.

<sup>854</sup> *Ibid*; Interview 3, NE Judge; Interview 16, NE Lawyer; Sarah El Deeb, 'Syria's Kurds put IS on trial with focus on reconciliation', AP News, 7 May 2018, <<https://apnews.com/article/d672105754434b738c8e5823233572c9>>. See: Rojava Information Center, 'The Anti-Terror Trial System in NES', 2021, *supra* n. 849.

<sup>855</sup> Interview 3, NE Judge.

<sup>856</sup> HRW, 'Ensure Fair Trials of Syria ISIS Suspects', 2018, *supra* n. 853; El Deeb, 'Syria's Kurds put IS on trial with focus on reconciliation', 2018, *supra* n. 854.

<sup>857</sup> Rojava Information Center, 'The Anti-Terror Trial System in NES', 2021, *supra* n. 849.

<sup>858</sup> Interview 3, NE Judge.

<sup>859</sup> 2014 Social Contract, Part VII.

<sup>860</sup> 2016 Social Contract, Section III, Chapter 1; 2016 Social Contract, Article 66.

The latter contract further provided that this council was to be composed of an unspecified number of judges, lawyers and 'law figures'. The manner of selection of the members and other details of the council's work was to be determined by a subsequent law.<sup>861</sup> During its work for the present report, ILAC was unable to determine if such a law had been enacted.

In interviews for the present report, numerous lawyers and judges reported that the Social Contract Council either did not exist or that it was dormant, and that there was presently no body or procedure for testing the constitutionality of legislation or executive actions.<sup>862</sup> One lawyer, keen to present a more positive view of the AANES system, claimed that the council was operating in Qamishli and was in fact working well.<sup>863</sup>

While ILAC was unable to definitively resolve this issue, reports that the Social Contract Council did not exist or was inactive seemed to ring true. In every specific instance recounted to ILAC involving consideration of a question of a constitutional nature, the body referenced was the General Justice Council, not the Social Contract Council.<sup>864</sup>

### **Council of Tribal Dignitaries**

According to information obtained in ILAC interviews, in certain criminal cases where there is a significant risk of social unrest or future animosity between families in the region, it is possible to refer a case to a 'Council of Tribal Dignitaries'. This council is made up of Sheiks or notable individuals from each of the major tribes in the Northeast Syria region. It was described to ILAC as akin to a regional senate, with the specific task of keeping the peace between families whenever violence might be threatened due to a suspected crime or offence.<sup>865</sup>

This council may consider cases where there is a high risk of vendettas between families or where there is a need to negotiate 'blood money'. The jurisdictions of this council and PCCs thus may overlap in situations where the latter become involved in criminal cases.

While there are no formal threshold requirements, the Council of Tribal Dignitaries typically becomes involved when the case is considered a serious crime or offence that constitutes a threat to the peace. The most considered

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<sup>861</sup> 2016 Social Contract, Article 65.

<sup>862</sup> Interview 1, NE Lawyer; Field Team Interview 5, NEFT Former Minister of Labor and Social Affairs in Al Jazira.

<sup>863</sup> Field Team Interview 5, NEFT Former Minister of Labor and Social Affairs in Al Jazira.

<sup>864</sup> Field Team Interview 2, NEFT Lawyer.

<sup>865</sup> *Ibid.*

situations are murders or accidental killings, where the victim and accused come from different families, as well as cases of elopement.<sup>866</sup>

Interviewees indicated that the Council of Tribal Dignitaries represented an effort by the AANES authorities to abolish customary practices under which the entire extended family of an accused would be considered to bear part of the guilt for the crime.<sup>867</sup> In some circumstances, a family would be forced to completely vacate their village to escape retribution. Even then, the family might still face blood vengeance.

The Council of Tribal Dignitaries has existed in one form or another from the beginning of self-rule in the Northeast. Originally, it was located in Qamishli, but later moved to Ain Issa. Recently, the council moved back to Qamishli for security reasons.<sup>868</sup>

According to one lawyer ILAC interviewed, the approach has been successful. In practice, the Council of Tribal Dignitaries functions on similar principles to the PCCs. It is a voluntary process where parties can seek to settle their differences outside of court. Any decision must be reached with the consensus of both the victim or the victim's family and the accused. The main difference is that criminal cases can only be settled in this council after a full criminal investigation by a Prosecution Commission.<sup>869</sup>

Those accused are not represented by a lawyer in the Council of Tribal Dignitaries. However, based on the procedure described to ILAC, a lawyer normally would be assigned during the investigation phase in the Prosecution Commission.<sup>870</sup>

The exact timing of the council's involvement depends on the will of the parties and the authorities involved. It can be involved after the criminal investigation has been completed, but before the court has made its decision, in which case it operates similarly to a PCC. A common compromise in such situations is that the aggrieved party agrees not to pursue a case in court in exchange for an admission of guilt and an agreement that time served in detention shall serve as sufficient punishment.<sup>871</sup>

Alternatively, the council may be involved after the Social Justice Court has issued a final judgement. In the latter case, parties may agree that the defendant should receive a more lenient sentence in exchange for payment of

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<sup>866</sup> Sometimes referred to as 'romantic kidnapping', although they have nothing to do with actual kidnapping, elopements are cases where there is a high risk of 'honour' killing or violence between families after a woman has married a man against the will of her family.

<sup>867</sup> Field Team Interview 2, NEFT Lawyer.

<sup>868</sup> *Ibid.*

<sup>869</sup> Field Team Interview 5, NEFT Former Minister of Labor and Social Affairs in Al Jazira.

<sup>870</sup> *Ibid.*

<sup>871</sup> Field Team Interview 2, NEFT Lawyer.

blood money. The parties then take this agreement to the Social Justice Court, which ratifies it and reduces the sentence.<sup>872</sup>

## Platforms

Another non-statutory body that can have significant impacts on the administration of justice in the Kurdish-controlled areas is a so-called ‘platform’.<sup>873</sup> Though unclear whether this process is defined by law,<sup>874</sup> a platform is essentially a citizen forum convened by a Local Justice Council.<sup>875</sup> As one author described them, platforms are “public hearings where dozens or hundreds of people participated to discuss and reflect on violations and decide together on the consequences”.<sup>876</sup>

The platform concept originated in 2015 in the Qamishli area.<sup>877</sup> The purpose of a platform is to consider and adjudicate cases brought before the council from the Social Justice Courts that constitute a threat to society and provoke public opinion.<sup>878</sup> Among the cases frequently brought before a platform are those involving judges accused of accepting bribes.<sup>879</sup>

A platform is composed of large numbers of men and women from all groups and segments of the society, as well as representatives of civil institutions in the area.<sup>880</sup> The Local Social Justice Council determines the number of attendees. At least in some instances, lawyers are allowed to attend with the accused.<sup>881</sup> Issues are discussed and decided in one session, save for exceptional cases where at the request of the platform members, the decision-making hearing can be postponed for another day. Once the case is presented,

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<sup>872</sup> *Ibid.*

<sup>873</sup> The same term is used in Arabic, بلاتفورم

<sup>874</sup> According to Riad Ali, ‘The judicial system in “Autonomous Administration” regions’, 2017, *supra* n. 695, platforms may be authorised pursuant to Chapter 2 of Decree 21 of 2015 issued by the Joint Governance of the Jazira District. Note: ILAC did not review this document.

<sup>875</sup> There was a difference of opinion among those interviewed concerning whether a platform would be convened by a Social Justice Council or a Social Justice Court. Article 38 of the Charter provides that a Social Justice Court can involve “the community in decision-making through [use of a] platform”. However, based on information from the ILAC interviews, it appeared more common that platforms were convened by a Social Justice Council reviewing a decision of a Social Justice Court. Like many aspects of the AA’s system of justice, both the use of platforms and the procedure they apply vary from region to region.

<sup>876</sup> Michael Knapp and Joost Jongerden, ‘Peace committees, platforms and the political ordering of society: Doing justice in the Federation of Northern and Eastern Syria (NES)’, *Kurdish Studies*, Vol. 8, No. 2, 4 January 2020, p. 299.

<sup>877</sup> *Ibid.*, p. 306.

<sup>878</sup> Field Team Interview 2, NEFT Lawyer.

<sup>879</sup> *Ibid.*

<sup>880</sup> Tove H. Malloy and Levente Salat, ‘Non-Territorial Autonomy and Decentralization: Ethno-Cultural Diversity Governance’, Routledge, 2020.

<sup>881</sup> Field Team Interview 1, NEFT Lawyer.

it is decided by majority vote of the audience. Decisions of a platform are final and non-appealable.<sup>882</sup>

Supporters of this process argue that it upholds the philosophy of social justice adopted in Kurdish-controlled areas, by activating society to solve its problems and manage itself based on morals and conscience.<sup>883</sup> One example described to ILAC was a case from Ras al Ain (prior to Turkish occupation). A man was accused of causing trouble, for women in particular, by stealing their handbags and gold. Rumours spread that the *Asayish* were behind the crimes, protecting him from prosecution. Eventually the man was arrested, and the Local Justice Council decided to use a platform to calm the situation.<sup>884</sup>

Others believe that procedure does not achieve justice and disregards the rule of law, by allowing decisions to be made by people who lack the legal, scientific and practical experience to decide the fate of the accused.

For example, a platform session may examine serious crimes, such as murder or embezzlement of public funds, which require the application of legal expertise to determine the guilt or innocence of an accused.<sup>885</sup> These risks are exacerbated by the fact that decisions issued in a platform session are considered final and not subject to appeal, with the process often providing no role for members of a Social Justice Court in making the decision.

One example reported to ILAC involved a lawyer who attended a meeting of the PYD, where he was relentlessly criticised one of the PYD political leaders. Later, the *Asayish* arrested him, and he was accused of tarnishing the reputation of the AANES. He was then taken before a platform, with large audience of more than 30 people, including members of the prosecution, administrative employees, PYD representatives and other members of the public.

After the accusation was read, the prosecution asked the audience what punishment should be imposed. The ensuing discussion was described as “almost like an auction house”. Someone suggested many years in prison, while another proposed sending him into exile. The accused was then given an opportunity to respond. Fearing the punishment, he apologised and said that he was at fault. Eventually, he was sentenced to one month of community service at the martyrs’ cemetery.<sup>886</sup>

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<sup>882</sup> Riad Ali, ‘The judicial system in “Autonomous Administration” regions’, 2017, *supra* n. 694; Interview 35, NE Lawyer.

<sup>883</sup> Knapp and Jongerden, ‘Peace committees, platforms and the political ordering of society’, 2020, *supra* n. 876.

<sup>884</sup> Field Team Interview 2, NEFT Lawyer.

<sup>885</sup> Field Team Interview 5, NEFT Former Minister of Labor and Social Affairs in Al Jazira; Interview with ‘Judge’ Aynor on the Ronahi channel on the Cave Seyemin programme on 11 January 2017.

<sup>886</sup> Field Team Interview 1, NEFT Lawyer.

According to one lawyer in Al-Hasakeh, the use of platforms was in decline and had even been suspended in that area due to the chaos that ensued when those attending were unfamiliar with the applicable law.<sup>887</sup> It was unclear if this was a local anomaly in al-Hasakeh, or representative of the direction as a whole for the AANES. Nevertheless, this lawyer even predicted that the platform process would be permanently abolished. If this were to happen, this would likely be welcomed within the legal profession. When asked by ILAC what they would change to improve the rule of law in their area, most lawyers in the Northeast cited abolishing the use of platforms as one of the most important reforms needed.

### **The Mesopotamia Academy for Law and Social Justice**

Another of the structures defined by the Charter as part of the social justice system is the Mesopotamia Academy for Law and Social Justice.<sup>888</sup> This institution is described in the Charter as:

*[A] scientific institution specializing in juridical sciences, law, social justice and democracy conventions. It is based on the foundations and principles of the democratic nation, training and preparation of its cadres, and development of the social justice system.*<sup>889</sup>

While the Charter provides that the academy should have branches in every autonomous and civil administration, it appeared that the AANES had not met that goal. Information provided to ILAC indicated that there was a six-month course in Qamishli for higher office or more senior positions, such as public prosecutor. The only other branch of the academy was apparently in Tel Maroush, which offered a shorter course over two months.<sup>890</sup>

The nature of these training courses sparked disagreements among those interviewed. According to some, approximately 80 percent of the training consisted of political and ideological classes taught by well-known leaders of the PYD.<sup>891</sup> These courses were based on the teachings of the PKK leader Abdullah Öcalan, whose principles of ‘democratic confederalism’ and ideas of a return to a natural society have provided the philosophical foundation for the decentralised structure of the AANES.<sup>892</sup>

<sup>887</sup> Field Team Interview 2, NEFT Lawyer.

<sup>888</sup> SJC, Article 10.

<sup>889</sup> SJC, Article 17.

<sup>890</sup> Field Team Interview 1, NEFT Lawyer.

<sup>891</sup> *Ibid.* See, for example, ANHR, ‘Khalid Issa: Kurds organized since ancient times, regimes tried to suppress them’, 6 October 2018, <<https://www.hawarnews.com/en//haber/khalid-issa-kurds-organized-since-ancient-times-regimes-tried-to-suppress-them-h4163.html>>.

<sup>892</sup> ILAC 2017 Report, p. 111. See also, Janet Biehl, ‘Two Academies in Rojava’, 2015, <[https://www.academia.edu/27799193/Revolutionary\\_Education\\_Two\\_Academies\\_in\\_Rojava\\_2015](https://www.academia.edu/27799193/Revolutionary_Education_Two_Academies_in_Rojava_2015)>; ANF News, ‘Mesopotamia Academy’s successful and innovative education system’, 29 October 2018, <<https://anfenglishmobile.com/rojava-syria/mesopotamia-academy-s-successful-and-innovative-education-system-30481>>.

The remaining 20 percent of the training were courses on legal topics provided by respected former lawyers who were members of the General Justice Council, including at least one former judge under the Syrian state system. According to one account, the legal training courses simply introduced the legal provisions from the penal and civil code one by one, and asked the students to read through them. There was no time to discuss the articles or what the laws really mean.<sup>893</sup>

The lack of time devoted to actual legal training for judges is a contentious issue among legal professionals in the AANES:

*Some judges receive courses in Qamishli. But when I gather with other lawyers, there is a common sentence: “60 days in Tel Marouf do not make a judge”.*<sup>894</sup>

According to the description given to ILAC, a part of the aim with the training was to build comradery among the students. Participants were expected to live and cook together, and to participate in physical training exercises, during their time at the academy. The training took place in a closed environment, with no communication with the outside world. Once a person enrolled, he could not leave. Participants must hand in their mobile phones and were not allowed access to them during the training, except for two hours on Fridays and a three-day break each month away from campus.<sup>895</sup>

In fact, the courses were reported to be so unpopular that one lawyer cited them as a significant contributing factor to so few qualified lawyers seeking appointments as judges. This lawyer even contended that judges who were thought to underperform or who were accused of a lack of comradery were forced to re-enrol in the judicial training programme as a form of punishment. The minimal legal training included in the programmes was also cited as a disincentive. Compared to what they had studied at the law faculty in university, the lawyers felt it pointless given what they had studied at the law faculty in university.<sup>896</sup>

## Judges

On a purely quantitative level, it appears that progress has been made in gender-representation among judges in the AANES system. For example, a November 2018 report indicated that the AANES had appointed 42 female judges in the al-Jazira region, with additional women assigned to Prosecution and Investigation Commissions spread throughout that system.<sup>897</sup>

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<sup>893</sup> Field Team Interview 1, NEFT Lawyer.

<sup>894</sup> *Ibid.*

<sup>895</sup> *Ibid.*

<sup>896</sup> *Ibid.*

<sup>897</sup> ANHR, 'Women's revolution is revolution of combating violence in North Syria', 2018, *supra* n. 792.

However, the apparent weakness in the courts in the Kurdish-controlled areas described in ILAC's previous report continues due to the lack of trained prosecutors and judges. Two important factors appeared to have contributed to this deficit. One was an apparent conviction among supporters of the system that the inclusion of non-legally trained individuals in the process was important to allow community input in decision-making, rather than permitting such decisions to be a state monopoly.<sup>898</sup> The other factor was the reluctance of qualified lawyers to join institutions created by the PYD, with many even fleeing the region for fear of political persecution.<sup>899</sup>

According to some judges interviewed for the current report, a system was now in place to ensure that appointed judges had appropriate training. The Charter requires that judges:

- Be a resident of the AANES;
- Meet the age requirements for the particular court (above);
- Hold a degree from the Mesopotamia Academy for Law and Social Justice or a bachelor's degree in law or equivalent from a university in Syria;
- Not be convicted of a felony or a heinous crime, or subject to disciplinary punishment; and
- Pass the written and oral examination conducted by the General Justice Council through the academy.<sup>900</sup>

Though not included in the Charter, some of those interviewed added that judges must also have "sufficient prior legal experience".<sup>901</sup>

Some of those interviewed felt that judges in the AANES were doing a good job:

*Truth is, our judges are kind and sociable. They have the authority to issue arrest and lawsuit warrants; the litigant parties have good guarantees, and the judges treat them with compassion.*<sup>902</sup>

However, some judges and most lawyers interviewed for this report remained concerned about a perceived lack of experienced personnel and inadequate legal training, which they viewed as two of the main problems facing the AANES today. As discussed above, the training at the Mesopotamia Academy was often derided as insufficient.

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<sup>898</sup> See 'Peacebuilding in a Conflict Setting', 2017, p. 89, *supra* n. 820.

<sup>899</sup> ILAC Syria 2017 Report, p. 216.

<sup>900</sup> SJC, Article 46.

<sup>901</sup> Interview 9, NE Judge.

<sup>902</sup> Interview 2, NE Lawyer.

In addition, ILAC was told of numerous examples where new judges had been appointed, even though they did not meet these formal criteria. For example, one judge in Deir ez-Zor acknowledged that many newly appointed judges were accepted as law graduates, even though they were only second and third year students at the Mesopotamia Academy and had not completed their studies. This judge attributed these problems to the inherent difficulty of building a new system that relied on training that took several years, when recruits were needed immediately.<sup>903</sup> Other interviewees reported that judges were appointed in Raqqa who had studied English literature or maths, instead of law.<sup>904</sup>

Lawyers disagreed, however, that there was a shortage of available, legally qualified personnel. They pointed out that many qualified lawyers lived and work in the AANES, and that the numbers appeared to be growing. During the three-month period in which ILAC conducted interviews in the Raqqa region, membership in the Raqqa Lawyers Union grew from 85 to 100. One lawyer said in February 2021 that eight judges had recently resigned from the AANES courts in Raqqa and requested to be reinstated in that union. Instead, lawyers pointed to the low wages, low status and poor working conditions of judges in the AANES as a cause for the lack interest. ILAC was told (by lawyers) that AANES judges in February 2021 earned between USD100 and 150 per month, which many considered insufficient to sustain a family.<sup>905</sup>

However, ILAC's interviews also pointed toward another factor afflicting the AANES judiciary, apart from a lack of qualified judicial candidates. One former judge echoed the sentiment expressed by many lawyers, that is, from time to time unqualified individuals were allowed to become judges, if they were affiliated with the PYD.<sup>906</sup> Many interviewees still described a process where political affiliation was more important than legal qualifications for judicial appointments.<sup>907</sup>

One judge described the situation as one where two systems existed in parallel. He reported that some judges were appointed with little consideration of their technical skills:

*In general, any ordinary person without the necessary qualifications can be nominated to become a judge by the communes (neighbourhood committees), without consideration to experience or academic qualifications.*<sup>908</sup>

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<sup>903</sup> Interview 18, NE Judge.

<sup>904</sup> Field Interview 1, NEFT Lawyer.

<sup>905</sup> *Ibid.*

<sup>906</sup> Interview 3, NE Judge.

<sup>907</sup> Selo, 'Women's Rights in Rojava', 2018, *supra* n. 814.

<sup>908</sup> Interview 3, NE Judge.

However, he also indicated that this method had recently become less widely used, as Local Justice Councils had begun to appoint some legal experts as judges. Nonetheless, he maintained that such appointments were made in parallel with the commune method:

*In general, there are no standards or requirements other than being, for example, a PKK supporter or a member of the PYD. I was nominated by the commune, a voting took place, I was accepted, and that is how I was appointed.*<sup>909</sup>

But other judges defended the current system. A judge in Kobani acknowledged that such appointments had occurred in the past, when the system was new, but said that in recent years, the qualification criteria had been strictly applied.<sup>910</sup> This and other judges maintained that the formal requirements were being fulfilled by making new judges sit through verbal and written exams, as well as take the Mesopotamia Academy training course.<sup>911</sup>

Although such different perspectives complicate an accurate evaluation, the weight of evidence indicates that the AANES system, though improving, continues to exhibit significant flaws. Whether the system will have sufficient time, resources and political will to make the necessary improvements, like so much in Syria, likely depends on the outcome of military and geopolitical developments in the next few years.

## **Criminal procedure**

One area where various tensions within the AANES system come into focus is criminal law and procedure. To some extent, criminal procedure in the AANES system is defined. Under the Charter, the Prosecution Commissions have the jurisdiction to investigate and prosecute criminal cases and crimes against individuals and society, to search and investigate perpetrators of these crimes, to collect and establish evidence, and to prepare the necessary records, statements and reports.<sup>912</sup>

However, there is no clear distinction between prosecutors and the judiciary in the AANES system.<sup>913</sup> Rather, the Prosecution Commissions are described as having a combination of the prosecutorial and investigative roles, which were separate under the Syrian state system.<sup>914</sup> Lawyers complained that this

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<sup>909</sup> *Ibid.*

<sup>910</sup> Interview 18, NE Judge.

<sup>911</sup> Interview 9, NE Judge; Interview 13, NE Judge; Interview 18, NE Judge; Interview 39, NE Judge; Interview 44, NE Judge.

<sup>912</sup> SJC, Article 42.

<sup>913</sup> Interview 9, NE Judge.

<sup>914</sup> *Ibid.*; Interview 18, NE Judge; Field Interview 3, NEFT Lawyer.

had led to a lack of clarity, and sometimes conflicting or confusing roles for the commission members.<sup>915</sup>

There also appeared to be no well-defined standards concerning how long the prosecutor had to prepare a case. A judge in Deir ez-Zor indicated that there were no formal rules to guide this process. According to a judge in Kobani, however, the Prosecution Commission had one month to issue a decision on a case.<sup>916</sup> If a suspect was held in detention, the prosecutor was required to perform his investigation within 24 hours; otherwise, the detainee must be released.<sup>917</sup> Nonetheless, if necessary, the prosecution could request a longer time for investigation from the Social Justice Court.<sup>918</sup>

According to yet a third report, the Prosecution Commission could detain the accused for a period of up to seven days. According to this account, this period could then be renewed up to 14 days and, at most, a month for certain crimes, after which time the accused would be referred to the Social Justice Court.<sup>919</sup> These varying reports suggest either a lack of any standard or, at a minimum, a lack of communication or enforcement of standards.

The Prosecution Commissions have the power to summon witnesses and suspects for interviews, using the procedures outlined in the Syrian Code of Criminal Procedure. The commissions also have the right to issue arrest warrants against the accused after interrogation, after which the matter is referred to the Social Justice Court:<sup>920</sup>

*Wiretapping should be authorised in writing by the public prosecution, but that does not happen. The security authorities would apprehend an individual based on a telephone call, which goes against the law.*<sup>921</sup>

According to one lawyer who had previously served as a minister in the Autonomous Administration, no one could be apprehended by any security body without informing the Prosecution Commission. The commission then had the power to decide over any further detention.<sup>922</sup>

However, other interviews indicated that this rule was not followed in practice.<sup>923</sup> ILAC was told of numerous examples when the exclusive

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<sup>915</sup> Field Interview 1, NEFT Lawyer.

<sup>916</sup> Interview 18, NE Judge.

<sup>917</sup> Interview 9, NE Judge.

<sup>918</sup> *Ibid.*

<sup>919</sup> STJ 2020 Report on Justice in the AANES, *supra* n. 627.

<sup>920</sup> Interview 3, NE Judge.

<sup>921</sup> Interview 2, NE Lawyer. However, other sources told ILAC that there was no wiretapping at all, due to lack of control over communication services; Interview 3, NE Judge; Interview 18, NE Judge.

<sup>922</sup> Interview 1, NE Lawyer.

<sup>923</sup> Interview 2, NE Lawyer; Interview, NE Judge.

authority of the Prosecution Commissions to issue arrest warrants, decide on detention, or initiate other actions was not respected by the security forces:<sup>924</sup>

*The security forces, the Asayesh, and the anti-crime bureau kidnap people and interrogate for an indeterminate period of time. They are not held accountable. [...] [T]he judiciary does not conduct a thorough investigation, it sides with the security authorities out of fear.*<sup>925</sup>

Similarly, according to one lawyer, in some instances the Prosecution Commission was excluded from preparation of the case file and interrogation report, activities over which it should have exclusive jurisdiction.<sup>926</sup>

The commission's co-chairs are responsible to issue orders such as subpoenas and have the power to distribute investigations to other judges who are part of the commission.<sup>927</sup> A summons or a subpoena is drafted and forwarded to the police, the internal security forces or specialised bailiffs to serve to the person in question. If they do not comply and present themselves before the court, they can be seized by force by the internal security forces.<sup>928</sup>

However, in order to avoid confrontation with Syrian government authorities, subpoenas for persons located in areas under the government control were not enforced. Instead, the court contented itself with disseminating the names of wanted persons at checkpoints.<sup>929</sup>

## Lawyers and the Bar

### The Lawyers Union

Lawyers in north-eastern Syria are split into two separate groups, depending on whether they represent clients in the AANES system or those before the Syrian government courts that have remained in operation in security zones retained by the Syrian authorities in Al-Hasakeh and Qamishli.

Any lawyer wanting to work in AANES courts and commissions is required to join the Lawyers Union of the Autonomous Administration for North and East Syria ('the Lawyers Union'). This union was established in 2013. As ILAC noted in its 2017 report, most lawyers in the Kurdish-controlled areas were reluctant to join what at the time was perceived to be an entirely PYD controlled entity.<sup>930</sup>

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<sup>924</sup> *Ibid*; Interview 16, NE Lawyer.

<sup>925</sup> Interview 2, NE Lawyer.

<sup>926</sup> Interview 16, NE Lawyer.

<sup>927</sup> Field Interview 3, NEFT Lawyer.

<sup>928</sup> Interview 1, NE Lawyer; Interview 13, NE Judge; Interview 16, NE Lawyer; Interview 18, NE Judge.

<sup>929</sup> Interview 3, NE Judge.

<sup>930</sup> ILAC Syria 2017 Report, p. 120.

This history was confirmed in interviews for this report. One senior lawyer reported that in the beginning, the union struggled to enrol lawyers. At that time, any person – legally trained or not – who wanted to be a part of building the new system could enrol and become a member.<sup>931</sup>

With time, the membership of the union gradually changed, as practising lawyers began to join and insist on more stringent membership requirements. A major demand from these lawyers was that all members be required to have a law degree. This debate took several years, but eventually the legally trained lawyers prevailed. Another major debate was to increase the pre-admission apprenticeship required of prospective lawyers from one year (the original Lawyers Union requirement) to two years (the requirement under Syrian law). Eventually, this change was adopted.<sup>932</sup>

The union is broken down into a number of local bars, including the Jazira Union, the Euphrates Union, the Raqqa Union, the Manbij Union, the Shahba' Union and the Deir ez-Zor Union. As the number of members has grown, the organisational structure has become more complex. In the larger AANES-administered areas such as Raqqa and Jazira, the union is divided into smaller branches in each major town. In Manbij, where Kurdish control is tenuous,<sup>933</sup> there is only a single union for all lawyers.<sup>934</sup>

According to lawyers interviewed for this report, all such unions have internal regulations, prepared by lawyers who are experienced and knowledgeable in administrative and legal affairs. Each local union reports to the Legislative Council in its area, which approves the rules of procedure for the respective unions.<sup>935</sup>

All local unions in the AANES have apparently adopted similar regulations, which lawyers say are comparable to those used by the SBA, with only a few deviations. Among the differences highlighted to ILAC were provisions for independence of the unions from the executive branch, and a specific provision waiving the citizenship requirement to allow Syrian Kurds who have been denied nationality to join the union.<sup>936</sup>

Official statistics concerning the number of lawyers enrolled in the Lawyers Union were unavailable. Membership estimates ranged from 200 to 500, with lawyers from larger regions tending to offer a higher estimate. When asked for estimates for their home areas:

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<sup>931</sup> Field Team Interview 2, NEFT Lawyer.

<sup>932</sup> Interview 1, NE Lawyer; Interview 35, NE Lawyer; Interview 36, NE Lawyer.

<sup>933</sup> In 2019, in order to block further Turkish advances, the Syrian army was deployed as a buffer between Turkish forces and the AANES,

<sup>934</sup> Interview 11, NE Lawyer; Interview 13, NE Judge; Interview 35, NE Lawyer; Interview 36, NE Lawyer.

<sup>935</sup> Interview 11, NE Lawyer; Interview 16, NE Lawyer; Interview 35, NE Lawyer; Interview 36, NE Lawyer.

<sup>936</sup> Field Team Interview 2, NEFT Lawyer.

- In Kobani, the estimate was that there were between 50 and 80 lawyers, five of whom were women.<sup>937</sup>
- In Raqqa, the estimated membership seemed to increase over the course of this study, from between 70 and 85 in late 2020 to an estimated 100 in February 2021, three of whom were women.<sup>938</sup>
- In Manbij, there reportedly were 40 practising lawyers, including one woman.<sup>939</sup>
- In Jazira region, the number of lawyers was said to be higher than 300.<sup>940</sup>

These totals did not include Deir ez-Zor, where roughly 75 to 100 lawyers had been banned by the AANES from joining or opening a local union (see below). Most lived in rural areas far from the only Social Justice Court and would struggle to practise, even if they were allowed to join. A smaller group of about 25 lawyers in Deir ez-Zor had begun talks to persuade the AANES to allow them to open a local union branch and begin to represent clients.<sup>941</sup>

When asked what percentage of lawyers in the union were women, estimates ranged from 10 to 30 percent.<sup>942</sup> Again, lawyers from larger regions offered higher numbers. This discrepancy might reflect the emphasis on the inclusion of women by the authorities in larger Jazira towns like Qamishli and Al-Hasakeh, which had been under Kurdish control since the beginning of the conflict. The overall numbers also reflected the lack of women lawyers in much of north-eastern Syria before the war:

*In general, the profession of lawyer used to be viewed as a men's profession. But progress, modernity, and the spread of legal knowledge spurred many of our female colleagues to register in the unions and branches. To be honest, a big number of them have proven their merits.<sup>943</sup>*

<sup>937</sup> Interview 1, NE Lawyer; Interview 16, NE Lawyer. The higher number of 80 includes 20 apprentice lawyers, which may explain the discrepancy between the reports.

<sup>938</sup> Interview 2, NE Lawyer; Field Team Interview 1, NEFT Lawyer. The numbers included approximately 20 apprentice lawyers. In Raqqa, there were reportedly also two women judges, although neither had studied law before their appointment to the bench.

<sup>939</sup> Interview 35, NE Lawyer. The report was that 3 percent out of the 40 were women. The low number of qualified women lawyers in Manbij was probably the reason why the Manbij branch of the Lawyers Union was reported to have two men as presidents, making it the only commission in any AANES authority without a woman co-president that ILAC came across during this study.

<sup>940</sup> Interview 11, NE Lawyer.

<sup>941</sup> Field Team Interview 5, NEFT Former Minister of Labor and Social Affairs in Al Jazira.

<sup>942</sup> Interview 1, NE Lawyer; Interview 2, NE Lawyer; Interview 11, NE Lawyer; Interview 16, NE Lawyer; Interview 36, NE Lawyer.

<sup>943</sup> Interview 11, NE Lawyer.

## **Independence of the Lawyers Union**

The Lawyers Union is organised along the familiar pattern adopted for other AANES institutions. Five members of the union, both men and women, are elected by its members to lead the union's work. The two candidates receiving the most votes co-preside.<sup>944</sup> There seemed to be widespread agreement among lawyers that these elections tended to function in a free and transparent manner.

However, many lawyers complained of political interference in the union's work in other ways. The most contentious issue with many lawyers was the inclusion of the union under the AANES's Civil Society Organisations Directorate. This directorate was described as tool for the authorities to maintain control over civil society organisations in the area. Some lawyers complained that the directorate was used to interfere in the decisions of and appointments by the union.<sup>945</sup> Lawyers also said that the Lawyers Union was under the umbrella of the General Social Justice Council, although ILAC was not able to establish the exact nature of this relationship.<sup>946</sup> Two lawyers stated outright that a political cadre controlled the union.<sup>947</sup>

Other lawyers had a more positive attitude and described the relationship to the authorities as one of cooperation and mutual support between independent entities:<sup>948</sup>

*Lawyers in the Autonomous Administration have absolute freedom to defend their client in any way they deem appropriate. Lawyers are not subjected to pressure or constraints, except by the security and intelligence authorities.*<sup>949</sup>

Many lawyers reported feeling able to freely represent clients without fear of punishment or mistreatment.<sup>950</sup> However, one pointed to intimidation by the security and intelligence authorities, while another said that threats from litigants were commonplace, without identifying the source of the threats.<sup>951</sup>

Some lawyers complained of poor treatment by the judges and other court staff, extending to all parties to the trials.<sup>952</sup> One lawyer attributed the mistreatment to a lack of knowledge among court employees concerning how to treat citizens and lawyers, and suggested the need for professional courses on these issues.<sup>953</sup>

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<sup>944</sup> Interview 35, NE Lawyer.

<sup>945</sup> Interview 2, NE Lawyer; Interview 11, NE Lawyer; Interview 16, NE Lawyer.

<sup>946</sup> Interview 1, NE Lawyer.

<sup>947</sup> Interview 36, NE Lawyer; Interview 38, NE Lawyer.

<sup>948</sup> Interview 11, NE Lawyer; Interview 35, NE Lawyer.

<sup>949</sup> Interview 2, NE Lawyer.

<sup>950</sup> *Ibid*; Interview 1, NE Lawyer; Interview 16, NE Lawyer; Interview 35, NE Lawyer.

<sup>951</sup> Interview 2, NE Lawyer; Interview 11, NE Lawyer.

<sup>952</sup> Interview 2, NE Lawyer; Interview 36, NE Lawyer.

<sup>953</sup> Interview 2, NE Lawyer.

In general, lawyers believed that judges did not easily accept the role of lawyers in the justice system. Often, this would result in blanket bans for lawyers from attending certain proceedings, such as the prohibition on lawyers from attending PCCs in Raqqa.<sup>954</sup> Lawyers in that region believed that if they could attend committee hearings in the same way as their colleagues could in Qamishli, they might be able to help the process by explaining the legal aspects of the disputes.<sup>955</sup>

Lawyers suggested that this distrust stemmed from the view among non-lawyers that lawyers benefited financially from not resolving a case. Accordingly, requests by lawyers to attend had been rejected by PCCs, who apparently suspected them of trying to instigate, rather than solve, problems in order to gain more fees.<sup>956</sup>

In Deir ez-Zor, this distrust had been taken one step further. Lawyers there had been completely prohibited from forming a Lawyer's Union or even attending court hearings where they were not themselves a party. No reason for this decision was given by the local authorities at the time. One lawyer blamed the situation on the lack of experience of the officials, and a fear that lawyers might publicly humiliate them or use their knowledge to gain unjust advantage.<sup>957</sup>

### **The Lawyers Union or the SBA?**

Another aspect of bar membership in north-eastern Syria is the division between lawyers practising in the Syrian state and the AANES courts. The continued presence of Syrian institutions in Al-Hasakeh and Qamishli<sup>958</sup> has enabled local branches of the Syrian Bar Association (SBA) to also continue operating in those locations.<sup>959</sup> Theoretically, lawyers should be able to join both the SBA and the Lawyers Union, and move freely between the two systems. The membership requirements are virtually identical and, with few exceptions, members of one would easily qualify for the other.

However, for political reasons, the SBA has taken a strict stance against any participation in the AANES courts by its members. The president of the SBA branch in Al-Hasakeh circulated letters stating that those courts were illegal, illegitimate institutions working against the state of Syria. As enemies of the

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<sup>954</sup> Field Team Interview 1, NEFT Lawyer.

<sup>955</sup> *Ibid.*

<sup>956</sup> *Ibid.*

<sup>957</sup> Field Team Interview 4, NEFT Lawyer.

<sup>958</sup> The AANES controls Al-Hasakah governorate, while the Syrian government controls the international airport and neighbourhoods inside the cities of al-Hasaka and Qamishli, as well as about 40 villages in the southern and eastern countryside of Qamishli where courts are located. See: Shafaq News, 'Asayish would never point their weapons toward civilians', 3 February 2021, <<https://shafaq.com/en/World/Asayish-co-chair-in-AANES-to-Shafaq-News-Asayish-would-never-point-their-weapons-towards-civilians>>.

<sup>959</sup> Field Team Interview 2, NEFT Lawyer.

state, the AANES courts must be boycotted, and any lawyer who worked there would be expelled from the SBA. This threat led to an exchange with the Lawyers Union, which threatened that if the SBA took any steps against the union or its members, it would use its links to the AANES authorities to retaliate. Perhaps due to the practical fact that Syrian state influence in Al-Hasakeh is limited to a small area encompassed by the two security zones it controls, the SBA thus far has not taken any steps beyond threats.<sup>960</sup>

However, lawyers report that the SBA in Al-Hasakeh kept lists of lawyers who worked in the AANES. The threats of punishment have led many members of the Lawyers Union to avoid travel to government areas or interaction with government institutions, out of fear of arrest or harassment.<sup>961</sup>

Ironically, these threats may provide an incentive for lawyers to seek work as judges or administrators within the AANES institutions, rather than engage in an independent legal practice. Although employment within the AANES violates SBA regulations, it also provides a measure of protection. Lawyers liken the arrangement between the AANES and the Syrian government to a truce where both sides refrain from actions against the other. Therefore, even if judges are not explicitly exempt from threats of disbarment by the SBA, they enjoy a measure of protection due to their position within the AANES, which their lawyer-colleagues lack.<sup>962</sup>

For lawyers choosing between the two organisations, there are many factors to consider. Some lawyers see the Lawyers Union as temporary, and fear later punishment if they join. Others see the SBA as part of the status quo that Syria needs to end and feel a sense of duty to support the union. However, due to the tensions between the two entities, the choice is often not much of a choice at all. All lawyers feel some pressure to join the union on the basis of simple survival. If they do not join, they cannot work in the AANES courts, where the majority of cases are handled. Handling litigation is how lawyers provide for their families.<sup>963</sup>

A Kurdish lawyer living in Al-Hasakeh described how expectations and pressures on lawyers nonetheless varied. The hostility to the AANES by government entities was a powerful deterrent to his non-Kurdish colleagues. This deterrence arose less from specific threats, and more from the future implications of joining the Lawyers Union. Most non-Kurdish lawyers feared for their jobs and careers, but also for their children and their future or ability to study. This implicit, unspoken threat from the Syrian government made them stay in the official Syrian state system.<sup>964</sup>

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<sup>960</sup> *Ibid.*

<sup>961</sup> Field Team Interview 3, NEFT Lawyer.

<sup>962</sup> Field Team Interview 2, NEFT Lawyer.

<sup>963</sup> *Ibid.*

<sup>964</sup> *Ibid.*

Kurdish lawyers experienced a more subtle pressure. The AANES tolerates the SBA and its members and does not punish lawyers for working in government courts. For this report, ILAC was not able to ascertain how many active SBA members remained in the areas administered by the AANES. However, ILAC was able to speak with several lawyers in this group, who stated that they were able to move freely and represent clients in Syrian government courts without reprisal from the AANES:

*On the other hand, to be fair and totally impartial, I as a lawyer who is registered to work in the state court, I am not under any pressure by the Autonomous Administration for being a member of the Syrian Bar Association.<sup>965</sup>*

Unofficially, however, Kurdish lawyers were encouraged to switch Bars, since the SBA's benefactor, the Syrian government, did not control the territory in which they resided. Between the lines, the expectation was that Kurdish lawyers would support the Kurdish-led administration and its cause and enrol in the Lawyers Union.<sup>966</sup>

Other factors also contributed to differences in composition between those who remained in the SBA and those who joined the union. Older and more experienced lawyers were reluctant to jeopardise their established practices by sacrificing their membership in the SBA. Younger lawyers, on the other hand, saw opportunity and opted to a greater extent to join the union.<sup>967</sup> These tendencies have contributed to the comparatively lower number of experienced lawyers working within the union.

Another factor, which is specific to the AANES areas, is the situation of Kurdish Syrians who have been deprived of their citizenship. Among them are lawyers who graduated from university 25 years ago, but who have not been allowed to practice. Under AANES rules, they are exempt from the citizenship requirement for membership and have been able to join the Lawyers Union. However, one Kurdish lawyer not from this group admitted that decades without practice have meant their knowledge of the law has either faded or has become obsolete.<sup>968</sup>

## **Specific challenges in AANES areas**

### **Geographic differences**

As reflected at various points above, the exact nature and practice of justice institutions varies significantly between the different regions under the AANES control. To some extent, this can be explained by the highly

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<sup>965</sup> Field Team Interview 3, NEFT Lawyer.

<sup>966</sup> Field Team Interview 2, NEFT Lawyer.

<sup>967</sup> *Ibid.*

<sup>968</sup> *Ibid.*

decentralised nature of the AANES and the emphasis on bottom-up solutions to seek democratic support from the people living in each jurisdiction.

However, interviewees also emphasised other reasons for these differences. The AANES system is still fairly new and has been developed with scarce resources in a region ravaged by war and extremism during most of its existence. One immediate consequence is that the system is more stable and arguably more efficient in areas in al-Jazira that have suffered less destruction from war and terrorism. Better-resourced areas have also been under PYD influence for a longer time, allowing them to establish and refine institutions and garner popular support.

Thus, more time and resources have been available for establishing courts in Qamishli compared to areas in Raqqa and Deir ez-Zor, which first suffered under ISIS and were then exposed to the battles that led to its defeat. As a result, many central functions operating in Qamishli are still being established in Raqqa and may be completely absent from Deir ez-Zor.

But another impediment to establishing the 'social justice' system across the AANES is that it is a Kurdish-inspired concept. Particularly in the more traditional Arab-majority southern and eastern areas recovered from ISIS, such notions are unfamiliar. In these areas, public trust in a Kurdish-dominated political system is low and establishing a bottom-up system that is willing to walk in step with Kurdish political doctrine and ambitions is more difficult.<sup>969</sup>

For these reasons, judicial institutions are not equally strong in every region in Northeast Syria. These weaknesses are particularly acute in the areas in the Raqqa and Deir ez-Zor governorates, where the SDF expelled ISIS. Both are Arab-majority regions where Kurdish forces, at a minimum, are distrusted.<sup>970</sup> Unlike the heavily Kurdish areas of Afrin, Euphrates (formerly Kobani) and Jazira, which were or are cantons or autonomous administrations under the AANES structure, the governance of Raqqa and Deir ez-Zor is controlled by civil councils.<sup>971</sup>

Raqqa was heavily damaged, if not totally destroyed, during the final battle to defeat ISIS.<sup>972</sup> Civil institutions, including the courts, had to be rebuilt –

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<sup>969</sup> Koontz and Waters, 'Between the Coalition, ISIS, and Assad', 2020, *supra* n. 608; National Coalition of Syrian Revolution and Opposition Forces, 'Criticism and proposals from Syrian Democratic Council consultation, Raqqa', press release, 3 October 2020, <<https://rojavainformationcenter.com/2020/10/translation-criticism-and-proposals-from-syrian-democratic-council-consultation-raqqa/>>.

<sup>970</sup> *Ibid.*

<sup>971</sup> Rojava Information Center, 'Final Declaration of the Third Syrian Democratic Council Congress', 2018, *supra* n. 623; van Wilgenburg, 'New administration formed for northeastern Syria', 2018, *supra* n. 623.

<sup>972</sup> Al-Masdar News (AMN), 'US-Backed forces succeed in making Raqqa 80 percent "uninhabitable"', 20 October 2017, <<https://www.almasdarnews.com/article/us-backed-forces-succeed-making-raqqa-80-percent-uninhabitable/>>.

essentially from the ground up. To the extent that legal professionals remained, they faced many of the issues discussed in the preceding section regarding the choice to join a Kurdish-controlled justice system.

The result was that the AANES has struggled to build a justice system in Raqqa. As noted above, interviewees reported that judges were appointed in that area who had studied English literature or maths instead of the law.<sup>973</sup> Institutional rigor is absent, as exemplified by reports that the local Social Justice Council in Raqqa examined all cases brought before it, even though the local Cassation Commission often refused to recognise the council's decisions as binding.<sup>974</sup>

Similarly, since the AANES women's justice institutions are not so well established, women in Raqqa face particular problems in cases of a sensitive nature. One example involved family law cases such as divorce or disputes between a husband and wife. Women in such cases were required to discuss personal issues in open court, in front of parties waiting in other cases, including criminal defendants. According to one lawyer, such situations were a source of much embarrassment for female clients.<sup>975</sup>

The situation in Deir ez-Zor is even less stable. Following the military defeat of ISIS forces, military control of this region was divided along the Euphrates River between the SDF and the Syrian government forces. This division meant that virtually all populated areas, and consequently all pre-existing public services, were in government territory. The AANES-governed north-eastern part of the governorate is a vast rural area, which historically has relied on its own traditional customs to resolve the majority of legal disputes.<sup>976</sup>

Currently, there is only one AANES court in the entire region, located in Kassra to the west of Deir ez-Zor city. Another courthouse was established in Basira in the rural areas east of the city, where most SDF-controlled land lies, but that facility has only a Prosecution Commission and no court chamber.<sup>977</sup>

As noted above, given the rural nature of the primarily desert territory, few legally trained professionals reside in the area.<sup>978</sup> According to one report, given the dearth of trained professionals, many newly appointed judges were

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<sup>973</sup> Field Team Interview 1, NEFT Lawyer.

<sup>974</sup> Interview 2, NE Lawyer. It was not clear to ILAC if the commission took this position based on a legal argument that it was indeed the final stage of appeal, or if it was based on some distinction between cases decided on points of law and sent back to the Cassation Commission, and cases decided by the Social Justice Council on substance.

<sup>975</sup> Field Team Interview 1, NEFT Lawyer.

<sup>976</sup> Field Team Interview 1, NEFT Lawyer; Field Team Interview 5, NEFT Former Minister of Labor and Social Affairs in Al Jazira.

<sup>977</sup> Field Team Interview 5, NEFT Former Minister of Labor and Social Affairs in Al Jazira.

<sup>978</sup> *Ibid.*

only second and third year students at the Mesopotamia Academy and had not completed their studies.<sup>979</sup>

One judge in Deir ez-Zor said that in that region's relatively new justice system, there was no discernible separation between the legislative and judiciary branches. In fact, after the previous council president was assassinated, the legislative and justice councils continued to operate with the same person serving as president of both:<sup>980</sup>

*In Deir ez-Zor in particular, there is no separation of the three authorities because the work is intertwined between the Executive Council and the Legislative Council.*<sup>981</sup>

Another obstacle in Deir ez-Zor was that many of the relatively few senior lawyers left legal practice to seek more lucrative positions with international organisations or within the AANES, or to emigrate from the country. Without an official Lawyers Union to register powers of attorney and set standardised fees, lawyers were also hampered in obtaining paying clients. As a result, there were barely any active professional legal services available to people in these areas at the time of this research.<sup>982</sup>

In this vacuum, the pre-existing traditional tribal judiciary has become a leading forum for resolving legal disputes in the SDF-controlled areas of Deir ez-Zor. This judiciary has even started to take on more complicated matters, such as criminal cases, which were previously handled by the Syrian state.<sup>983</sup>

The AANES has also attempted to use local input in other ways. For example, it decided to maintain a Religious Affairs Institute, a reconciliation commission focused on family law, which is made up of elected prominent individuals from the tribal leadership in villages and neighbourhoods in the Deir ez-Zor governorate. This institute works closely with local Women's Houses, whose jurisdiction it largely overlaps.<sup>984</sup>

Unfortunately, these issues are complicated by anger at the SDF and AANES, whose tactics have alienated many local Deir ez-Zor residents.<sup>985</sup> Coming to grips with the lack of resources and societal fissures remains a major

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<sup>979</sup> Interview 18, NE Judge.

<sup>980</sup> Interview 9, NE Judge.

<sup>981</sup> Interview 9, NE Judge.

<sup>982</sup> Field Team Interview 5, NEFT Former Minister of Labor and Social Affairs in Al Jazira.

<sup>983</sup> *Ibid.*

<sup>984</sup> Field Team Interview 4, NEFT Lawyer.

<sup>985</sup> Enab Baladi, 'Demonstrations Against SDF Rage in Deir ez-Zor Countryside', 24 December 2020, <<https://syrianobserver.com/news/62747/demonstrations-against-sdf-rage-in-deir-ez-zor-countryside.html>>; Syrian Association for Citizens' Dignity, 'SACD seriously concerned with the actions of SDF authorities in Deir Ezzor', 2 February 2021, <<https://syacd.org/sacd-seriously-concerned-with-the-actions-of-sdf-authorities-in-deir-ezzor/>>.

challenge for the AANES, particularly in areas where Kurds do not predominate.

### Parallel legal systems

While the various military and political changes were in progress in north-eastern Syria, the Syrian government continued to maintain residual courts and other administrative offices in certain enclaves within otherwise Kurdish-controlled areas.<sup>986</sup> As noted in ILAC's 2017 report, the Syrian government seeks to use these facilities in areas such as Qamishli and al-Hasakah as tools for remote management, allowing its security and intelligence services to control key levers of local power, while limiting local autonomy. Such controls were particularly apparent with respect to administrative functions intimately linked to issues of sovereignty and statehood, such as the government's retention of control over land registry, banking and financial systems.<sup>987</sup>

This situation resulted in the emergence – and now continuance – of two justice systems in Northeast Syria.

In principle, there is no direct influence or connection between the Syrian government and the AANES. For example, the Syrian state does not recognise the AANES judicial bodies. But in practice, there is significant interplay between the systems. Some lawyers stated that final judgments issued by the Syrian state courts were recognised by the AANES, and that it was not permissible to violate them because they were issued by a state.<sup>988</sup>

Others reported that when evidence was submitted before a court in the AANES that a case was pending before the Syrian state courts, the case in the AANES could be suspended or cancelled.<sup>989</sup> However, another lawyer said that such cases were not heard in the AANES courts while the case was under consideration by a government court. Once the case was concluded by the government court, it would again be possible to bring the same matter before an AANES court.<sup>990</sup>

Additionally, courts in the AANES recognised, at least to some extent, documents issued by the Syrian government system. Thus, a power of attorney issued by a notary public or a judicial decision from the Syrian state system may be considered as written evidence.<sup>991</sup>

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<sup>986</sup> Sirwan Kajjo, 'Tensions Remain After Kurdish, Government Forces Clash in Syria's Qamishli', *VOANews*, 24 January 2021; van Wilgenburg, 'Syrian regime-aligned militia, Kurdish-led forces clash in Hasakah; casualties reported', *Kurdistan24*, 31 January 2021.

<sup>987</sup> COAR, 'Qamishli Community Capital Analysis', 2020, *supra* n. 631; COAR, 'Al-Hassakeh Community Capital Analysis', 2020, *supra* n. 631.

<sup>988</sup> Interview 3, NE Judge.

<sup>989</sup> Interview 19, NE Lawyer.

<sup>990</sup> Interview 46, NE Judge; Field Team Interview 4, NEFT Lawyer.

<sup>991</sup> Interview 16, NE Lawyer.

Among those interviewed, there seemed to be a sense that the AANES courts had recently become more assertive. In some instances, those courts were making decisions in cases regarding matters such as property or family lineage, where previously they might have refrained due to the practical obstacles and risks associated with taking action in those functions more directly linked to issues of sovereignty and statehood.

In any event, these parallel systems generate a complex institutional environment in which civilians are required to make an array of duplicate transactions for governmental services. These difficulties continue, complicating the activities of both members of the legal community and ordinary citizens.

### **Unresolved status of ISIS detainees**

Though not a subject of this assessment, a continuing and thus far insoluble question for the justice system in the Kurdish-controlled areas is the resolution of the status of thousands of detainees held by the SDF in camps within the jurisdiction of the AANES.

As previously noted, in the latter part of 2017, when the SDF captured territory in the Raqqa governorate from ISIS, it took many ISIS fighters and their families captive. While statistics are inexact, at the time of writing it appeared that the SDF held between 8,000 and 9,000 prisoners. This number included between 2,000 and 3,000 Iraqis, 4,000–5,000 Syrians, and somewhat less than 2,000 from third countries. Additionally, it was estimated that another 70,000 family members remained in camps in SDF-controlled areas.<sup>992</sup>

For the past three years, the AANES has been grappling with issues surrounding the disposition of these detainees. Beginning as early as 2015, Kurdish authorities began using the People's Defence Courts to try 7,000–8,000 Syrians accused of being ISIS members.<sup>993</sup> More than a year ago, the AANES announced they would hold trials for foreign ISIS fighters from more than 50 countries, after becoming exasperated by a failure to reach

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<sup>992</sup> Jeffrey, 'ISIS: Its Fighters, Prisoners and Future, Part 2', 2020, *supra* n. 612.

<sup>993</sup> AP News, 'A look at the Kurdish-run courts trying IS in northern Syria', 7 May 2018, <<https://apnews.com/article/2dc5bceeeea407e836030bc28a2b231>>; Rojava Information Center, 'Bringing ISIS to Justice: Towards an international tribunal in North East Syria', March 2019, <<https://rojvainformationcenter.com/storage/2019/07/Bringing-ISIS-to-justice-Rojava-Information-Center-Report-2019-Website.pdf>>; HRW, 'Thousands of Foreigners Unlawfully Held in NE Syria', 23 March 2021, <<https://www.hrw.org/news/2021/03/23/thousands-foreigners-unlawfully-held-ne-syria#>>.

international agreements over what to do with them.<sup>994</sup> However, the COVID pandemic forced Kurdish authorities to suspend those plans.<sup>995</sup>

At the same time, the United States took the position that there was “the urgent need for countries of origin to rehabilitate and reintegrate repatriated foreign terrorist fighters and ISIS-associated family members from Syria and Iraq”.<sup>996</sup> This position was either directly or implicitly rejected by several European and non-European countries.

In October 2020, the AANES announced that thousands of suspected ISIS members would be tried in Northeast Syria at the beginning of 2021, and that the trials would be conducted by the Kurdish authorities, as per local laws but under international monitoring.<sup>997</sup> However, Ambassador Peter Galbraith, a retired US diplomat who had been asked by the AANES authorities for advice on prisoner issues, stated, “I doubt that any government would sanction foreign monitors of AANES trials, or pay for the monitors”.<sup>998</sup> To date, it appears that no trials have occurred.

Instead, some countries are repatriating women and children on a case-by-case basis. Germany and Finland say they have recently repatriated 23 of their nationals, women and children from Syria, some of whom were under criminal investigation for allegedly belonging to the ISIS group.<sup>999</sup> Similarly, through individual effort, a four-year-old Canadian girl was repatriated.<sup>1000</sup> However, other efforts to repatriate the non-Syrians have stalled.<sup>1001</sup>

<sup>994</sup> Dan Sabbagh, ‘Syrian Kurds to put Isis fighters from dozens of countries on trial’, *The Guardian*, 6 February 2020 <<https://www.theguardian.com/world/2020/feb/06/syrian-kurds-to-put-isis-fighters-from-dozens-of-countries-on-trial>>.

<sup>995</sup> Heather Murdock, ‘Trials of IS Fighters in Syria Suspended Indefinitely’, *Voice of America*, 2 April 2020, <<https://www.voanews.com/middle-east/trials-fighters-syria-suspended-indefinitely>>.

<sup>996</sup> Address by Deputy Coordinator for Counterterrorism Chris Harnisch at the UNOCT/OSCE Joint Regional High-Level Conference on ‘Foreign Terrorist Fighters: Addressing Current Challenges’, Vienna, February 11, 2020, <<https://osce.usmission.gov/foreign-terrorist-fighters-addressing-current-challenges/>>.

<sup>997</sup> Karwan Faidhi Dri, ‘Rojava to try ISIS prisoners under international monitoring in early 2021: Kurdish official’, *RUDAW*, 21 October 2020, <<https://www.rudaw.net/english/middleeast/syria/21102020-amp>>.

<sup>998</sup> Anne Speckhard and Molly Ellenberg, ‘Will Upcoming Trials of ISIS Women in Syria Speed Up Repatriations of Some?’, 26 October 2020, <<https://www.hstoday.us/subject-matter-areas/counterterrorism/will-upcoming-trials-of-isis-women-in-northeast-syria-speed-up-repatriations-of-some/>>.

<sup>999</sup> Al Jazeera, ‘Germany, Finland repatriate women and children from Syria camps’, 20 December 2020, <<https://www.aljazeera.com/news/2020/12/20/germany-finland-to-repatriate-women-children-from-syria>>.

<sup>1000</sup> Ashley Burke, ‘American who freed Canadian girl calls on world to repatriate children stranded in Syrian camps’, *CBC News*, 16 March 2021, <<https://www.cbc.ca/news/politics/former-us-diplomat-wants-children-freed-syria-detention-camps-1.5951716>>.

<sup>1001</sup> See, for example, Wladimir van Wilgenburg, ‘Netherlands not obliged to repatriate Dutch woman from Syria, court rules’, *Kurdistan24*, 30 March 2021,

At the same time, violence in the camps appears to be increasing.<sup>1002</sup> In the face of these developments, some foreign women in the camps have begun protests, including a hunger strike.<sup>1003</sup> While amnesties and other efforts are being made to dispose of some of these cases,<sup>1004</sup> the general situation remains unresolved.<sup>1005</sup>

## **Conclusions: the Northeast – the AANES justice system**

The justice system in north-eastern Syria has become more defined since ILAC visited the region in 2016 for its previous report. In an effort to unify and professionalise that system, the AANES has adopted comprehensive reforms, both within the justice sector to streamline the court structure, and more broadly to make it more inclusive, such as by dropping the controversial term ‘Rojava’ from the polity’s name.

At the same time, the differences between areas comprising the Kurdish system have increased. Military operations have reconfigured or, in the case of Afrin, destroyed the three cantons that were under Kurdish control in 2016. Other military actions have brought other areas under Kurdish control, in some instances creating tension between the predominantly Kurdish ruling party and the Arabic majority population.

Without a doubt, the challenges facing the AANES are formidable. The Kurds now strive to build an entirely new administrative system in a much larger and more diverse area than originally anticipated, one torn by years of war as well as brutal ISIS oppression. In this light, many of the AANES’s achievements are impressive.

Nevertheless, the AANES justice system suffers from several problems that cannot be explained away by these challenges. Most important is the

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<<https://www.kurdistan24.net/en/story/24184-Netherlands-not-obliged-to-repatriate-Dutch-woman-from-Syria.-court-rules>>; NBC News, ‘Runaway schoolgirl who joined ISIS cannot return to U.K., top court says’, 26 February 2021, <<https://www.nbcnews.com/news/world/runaway-schoolgirl-who-joined-isis-cannot-return-u-k-top-n1258923>>.

<sup>1002</sup> MENA, ‘Killings increase in Syria’s Al Hol camp for ISIS families’, 18 February 2021, <<https://www.thenationalnews.com/mena/killings-increase-in-syria-s-al-hol-camp-for-isis-families-1.1168599>>.

<sup>1003</sup> Constant Méheut, ‘Pressuring France to Bring Them Home, Women Who Joined ISIS Stage Hunger Strike’, *New York Times*, 21 February 2021, <<https://www.nytimes.com/2021/02/21/world/europe/isis-frenchwomen-hunger-strike.html>>.

<sup>1004</sup> Al Jazeera, ‘Syria Kurds free more than 600 ISIL fighters as part of amnesty’, 15 October 2020, <<https://www.aljazeera.com/news/2020/10/15/syria-kurds-free-more-than-600-isil-fighters-as-part-of-amnesty>>.

<sup>1005</sup> Lila Hassan, ‘Repatriating ISIS Foreign Fighters Is Key to Stemming Radicalization, Experts Say, but Many Countries Don’t Want Their Citizens Back’, *PBS*, 6 April 2021, <<https://www.pbs.org/wgbh/frontline/article/repatriating-isis-foreign-fighters-key-to-stemming-radicalization-experts-say-but-many-countries-dont-want-citizens-back/>>.

interplay between a political agenda and the application of law. The AANES court system suffers from a fundamental lack of independence from the executive, which goes beyond mere interference by the judiciary in the inner workings of courts. The lack of independence is institutional, as the courts are hindered by unclear mandates, overlapping jurisdictions, and a lack of skills and specialisation that prevent judges from asserting full authority over the administration of justice.

The most extreme example is the controversial use of ‘platforms’ to determine cases. Although the process varies across the Northeast, in most incarnations described to ILAC, a platform lacks even the most basic safeguards for judicial independence, impartiality and fair trial. At its heart, a platform physically replaces judges with representatives from various executive authorities or the broader populace as the adjudicators. One lawyer gave a fairly accurate description of the AANES judicial system, speaking of the concept of the ‘integration of powers’, rather than the ‘separation of powers’ between the branches.

Training for judges emphasises political ‘social justice’ ideology over the faithful implementation of the law. Judges have no tenure, but instead are subject to biennial elections in a politicised process – and can even be moved to non-judicial positions. Even the General Judicial Council and Local Justice Councils, which oversee the work of the judiciary, often mix judicial, legislative and executive roles in the same body.

One result is the AANES’s difficulty in recruiting enough competent legal personnel to staff the system. According to the AANES, this shortage can also be explained by pressure and competition arising from the continued presence of Syrian state courts and institutions in the Northeast. AANES representatives reported that many lawyers in that area held back from contributing to the AANES justice system, due to expressed and implicit threats from the Syrian government and the SBA. If correct, these threats have ironically kept legal professionals – who might have worked to ensure that Syrian laws were respected in the Northeast – out of the AANES system altogether, thereby furthering the region’s drift away from the legal traditions of Damascus.

However, this explanation put forward by AANES representatives is suspect. ILAC found numerous highly qualified legal practitioners who were willing to engage with the AANES system. Many were disillusioned by what they considered to be a lack of respect for their profession and for the importance of fundamental rule of law principles.

Another factor at play may be the broader difficulty of the AANES to appeal to Arab populations in the regions retaken from ISIS since 2017. The Kurdish-dominated AANES leadership has struggled to reconcile its ‘social

justice' ideals of governance with the markedly different views of traditional Sunni Arab populations.<sup>1006</sup>

Nevertheless, as mentioned above, numerous skilled Syrian lawyers in the AANES-controlled areas engage actively to improve access to justice and protect the rights of local people. The AANES authorities should engage in active dialogue with the legal professions to draw on their skills and experience. Such outreach not only aligns with the inclusive governance philosophy that underpins the AANES Social Contract; it should also contribute to significant improvements in access to justice for all people living in AANES areas.

The rule of law in AANES areas also suffers from lack of clarity as regards the nature of the applicable law. Lawyers complained that the political emphasis on the principles of social justice over the written law had led to unpredictable outcomes, as AANES judges sometimes exercised their discretion to make decisions that seemingly contradicted the law. This lack of judicial independence and variable application of written laws is inconsistent with the high human rights standards that the AANES adopted in the 2014 Social Contract and reiterated in the 2016 Contract.

One achievement of the AANES system has been an increased emphasis on efforts to promote gender equality and stamp out injustices against women in the Northeast. Women's Houses have published information which, if accurate, would indicate that they have had some effect in addressing serious safety concerns for women and girls, including domestic violence and underage marriage.

However, the problems affecting other AANES justice institutions similarly apply to the Women's Justice Councils and the Women's Houses. Again, a lack of clarity regarding roles and authority spread confusion about who and how decisions are made concerning justice for women. Individual cases are often complicated and highly sensitive, since they concern topics related to personal and family matters. Those involved must have appropriate training and clear mandates.

One risk to the rights of women in the current system is the mix of mandates for the Women's House, which often acts as both a mediator and counsel in the same case, while also playing a policy and advocacy role. In combination with the lack of legal qualifications among the staff, this situation poses a risk

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<sup>1006</sup> See further: UN-ESCWA National Agenda for the Future of Syria, 'Preventing the Reemergence of Violent Extremism in Northeast Syria', <<https://nafsprogramme.info/sites/default/files/2021-03/Preventing%20the%20Reemergence%20of%20Violent%20Extremism%20in%20Northeast%20Syria.pdf>>.

that larger political objectives could be prioritised in individual cases at the expense of the legal rights and personal wishes of the impacted woman.

Indeed, the imposition of many improvements to women's rights in AANES has been perceived as heavy handed and remains controversial for many in the Northeast. The AANES political philosophy is vastly different to any prior system and to what is place in the rest of Syria. While radical solutions are warranted considering the vast challenges faced by Syrian women, it is equally important that the solutions be sustainable.

The impact of the Women's Houses and other AANES institutions intended to improve women's rights also depends on their legitimacy. For example, it is ultimately up to the litigants to choose whether they want to rely on these institutions to resolve conflicts.

One avenue for building legitimacy may be increased dialogue between those working with justice problems facing Syrian women in the AANES and in other parts of Syria. Recent Syrian government legal reforms have addressed similar issues to those addressed by AANES. In particular, in more conservative Arab communities where the AANES reforms have been seen as Kurdish experiments, it may be useful to raise awareness of the fact that they overlap with reforms in other parts of the country. At the same time, such exchanges could provide an opportunity for lawyers in areas under government control and their colleagues in the Northeast to discuss topics where their political overseers are willing to allow more freedom of interaction.

Lastly, for the past three years the AANES has been grappling with issues surrounding the situation of ISIS fighters and their families detained in AANES areas. Though several announcements been made that suspected ISIS members will be tried in courts in north-eastern Syria, few trials have occurred. The issue of repatriation of foreign ISIS members and their families remains particularly problematic.<sup>1007</sup> While the ILAC assessment has not addressed this issue, it raises critical concerns for the international community that must be resolved.

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<sup>1007</sup> Luis Martinez, 'Repatriating refugees at Syrian camp could stem ISIS resurgence: US general,' abc News, 22 May 2021, <<https://abcnews.go.com/Politics/repatriating-refugees-syrian-camp-stem-isis-resurgence-us/story?id=77811334>> [accessed 23 May 2021].

## 5 Where next?

The justice system in the Syrian Arab Republic is still fundamentally authoritarian. In areas outside government control, regardless of slogans of revolution, the armed groups now in power have not broken loose from the authoritarian legacy against which they rebelled. Though the systems differ – often radically – the problems are the same: a lack of judicial independence, corruption and an unwillingness to actually apply the laws that have been put in place.

Similarly, the practice of the Syrian government of moving cases to Military Field Courts and the Counter-Terrorism Court has parallels in many other parts of Syria. In effect, these separate systems – ostensibly required for ‘internal security’ – are simply efforts to remove targeted individuals from trial under clearly defined laws, in favour of ambiguity and giving the authorities the freedom to decide whether to convict or release.

In the AANES courts, confusion is generated, and the rule of law is undermined, when undefined norms of social justice are applied instead of written law. Ironically, this confusion is markedly similar to that described by lawyers and litigants before the Salvation Government courts in Idlib. In both systems, despite the existence of some form of written law, litigants have little assurance that it will be faithfully applied.

In all areas that ILAC studied, lawyers discussed how they worked to use any available manoeuvring room to seek justice for their clients. Similarly, court officials throughout Syria sought a measure of independence, where possible, to decide cases according to their own conscience. In this space, the available justice institutions can fulfil an important function for the populations in their respective areas.

However, this route is not equally available to everyone. Often this process involves corruption. But money is not always enough. In many cases, a resolution depends on knowing who and how to ask. Unfortunately, corruption too often provides the ‘manoeuvring space’ needed by lawyers.

Throughout all regions in Syria, resolution of these problems is blocked by a combination of political/military resistance and the legacy of decades of autocratic rule, now overlaid with a multiplicity of geopolitical fault lines. Where to go next?

A proposal. One key concern facing many Syrians is that legal documents or court orders are not recognised outside the area under the control of the group that issued them. These issues are particularly problematic for matters pertaining to an individual or their family members, such as personal status or property documents.

Unfortunately, these matters are also highly politicised. Documents are not issued at random by the authorities. Rather, the person who receives a particular document, and what it says, is often calculated by the executive authorities to achieve a particular political goal, including in many cases to force demographic change in the area in question.

In addition, in the areas outside government control, gaining acceptance and legitimacy for the governing entity – and blocking such recognition by the Syrian government – are essential goals. This means that recognition of documents immediately becomes entangled with political considerations, as the various factions strive for recognition as a legitimate authority to represent all or part of the Syrian people.

Yet interview responses suggest that *Syrian lawyers and judges sometimes have more influence over such matters than they might think*. While complete recognition of systems or bodies of documentation are political matters that will be negotiated by parties to the conflict, courts are responsible for offering all those who come before them a fair hearing and due process.

Litigants appear before a court to present the facts of the case in question, which are rarely related to the legitimacy of a specific government or quasi-governmental entity. When a court is presented with a document issued by an arm of a different authority, it need not opine on the legitimacy of the other system. Instead, the goal is to reach a decision on the merits of the case before it, so that the rights of litigants can be upheld and enforced.

More broadly, courts need to consider the need for predictability and consistency in the application of the law. Judges from the different parts of Syria share this problem. If given the chance, together they might find possible ways forward.

People in Syria have documents issued by a particular entity not by choice, but because of who was in power in the area at the time. The relevant question for a court should be whether the information is true (is the identity of the person correct, does the document accurately record the contractual agreement between to business partners and so on). Too often, documents are rejected based on which Syrian entity issued them, not because the information contained in them is wrong. Such practices directly undermine the rule of law in the area in question, and in Syria as a whole.

This problem was illustrated by an incident relayed to ILAC, where an AANES court refused to recognise a document issued by a Syrian government entity evidencing ownership of certain property. The AANES judge may have viewed the question as a choice between legitimising a ‘regime’ court or upholding social justice. In fact, the choice was whether to uphold the rights of an individual – as the AANES has committed to do under its Social

Contract. On the other hand, the decision likely had little or no detectable impact on the Syrian government. That decision, intentionally or not, made justice a little less predictable in AANES areas.

Examples recounted to ILAC from each of the geographical areas demonstrate that lawyers and judges, although mostly excluded from political discussions about the future of Syria, do have influence over decisions affecting the lives of individuals across Syria. Pessimism over the lack of political movement at the national or international levels should not obscure this fact. Syrian and international actors should consider possible ways in which the courts and lawyers throughout Syria could use their limited influence to uphold the rights of individual Syrians to effective remedies. Not only might such efforts result in some measure of justice in an individual case, but the compound impact of such decisions may also have imperceptible, yet incremental, impacts on the larger divisions in the country.

Rebuilding justice institutions in Syria to deliver justice to the population in a professional and efficient way is a long-term process that must be locally owned and locally driven. Though deeply flawed, the Syrian legal profession is an indispensable part in this process. Geographical and political divisions within the country, coupled with pressure from different political authorities, greatly complicate discussions of common problems among colleagues. Yet, common legal issues exist between the various areas that need resolution, and can be solved, regardless of any political solutions.

The international community should strive to continue to facilitate a dialogue between the Syrian legal professionals. Few are naïve enough to believe that the legacy of years of conflict, authoritarianism and corruption will disappear. But the Syrian people deserve a chance to look for ways, small though they may be, to move toward a better future. By facilitating the work of Syrians with knowledge of the local situation and a desire to improve the lives of their fellow citizens, international actors can play a part in this process.

Beginning in 2013, the International Legal Assistance Consortium (ILAC) has been working to support the rule of law in Syria. Part of that work involved conducting a rule of law assessment, published in 2017, to identify the features of the justice sectors in the different areas in Syria and the commonalities and distinctions between those systems. Given the changes on the ground since 2017, ILAC has now made an updated assessment to reflect the justice institutions and mechanisms currently in place throughout the country. This assessment focuses on the military and political developments in Syria which have unfolded since ILAC's earlier assessment, and the impact those changes have had on the justice systems in various regions in the country.

In preparing this updated assessment in Syria, ILAC faced the twin challenges of an ongoing conflict and the global COVID-19 pandemic, which made in-person field interviews impossible. To meet these challenges, the ILAC team worked with local partners in each of the four relevant geographic regions in Syria. Each local partner was familiar with and knowledgeable about their assigned region. The practical limitations imposed on the assessment team, especially by the pandemic, were frustrating for both ILAC and many of those eager to discuss the issues facing their home locale and country. Nonetheless, with the outstanding assistance of our Syrian partners and the cooperation of the legal professionals they interviewed, this report provides significant insights into the nature of the various justice systems currently functioning in tumultuous Syria.

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