
ILAC Rule of Law Assessment Report:

Syria 2017

This report details the findings of a team of experts from member organisations of the International Legal Assistance Consortium (ILAC) based on an assessment of justice sector institutions in Syria.

Editor: Mikael Ekman



**International Legal
Assistance Consortium**



ILAC Rule of Law Assessment Report:

Syria 2017

This report details the findings of a team of experts from member organisations of the International Legal Assistance Consortium (ILAC) based on an assessment of justice sector institutions in Syria.

Editor: Mikael Ekman

Table of Contents

Table of Contents	03
Abbreviations	05
Executive summary	07
Part 1	
I. Introduction	13
II. Historical and legal background	19
2.1 Before independence	19
2.2 Independence after the second world war	20
2.3 The Assad rule	22
2.4 The 2011 uprising and armed conflict	25
III. The justice system in the Syrian Arab Republic	29
3.1 The courts	29
3.2 Exceptional courts	42
3.3 The legal profession	48
3.4 Status of women	51
Part 2	
IV. Developments after the 2011 uprising	59
4.1 Areas under government control	61
4.2 Common features of areas outside government control	75
4.3 Detailed overview of four areas outside government control	82
4.4 Areas under kurdish control	106
4.5 Areas under Isis control	128
Part 3	
V. Planning for peace – anticipating conflict-related justice challenges in Syria	139
5.1 Accountability	141
5.2 Missing persons	145
5.3 Housing, land and property	148
5.4 Personal documentation	150
5.5 Empowering women both inside and outside Syria	154
Annex to the Assessment	159

Abbreviations

CTC	Counter-Terrorism Court
FSA	Free Syrian Army
ICC	International Criminal Court
ICMP	International Commission of Missing Persons
ICRC	International Committee of the Red Cross
ILAC	International Legal Assistance Consortium
ISIS	Islamic State in Iraq and Syria
KDPS	Kurdish Democratic Party of Syria
NGO	Non-governmental organisation
PKK	Kurdistan Workers' Party
PYD	Kurdish Democratic Union Party
SCC	Supreme Constitutional Court
SLPS	Syrian Law of Personal Status, Legislative Decree No. 59 of 17 September 1953
SSSC	Supreme State Security Court
TEV-DEM	Movement for a Democratic Society
UN	United Nations
US	United States of America
YPG	People's Protection Units

Executive Summary

In November 2016, a six-person team of experts from member organisations of the International Legal Assistance Consortium (ILAC) conducted an assessment of the justice sector in Syria. In addition to the ILAC assessment, the team included a gender expert who also conducted a specific study of the status of women in the Syrian justice sector. Findings from that study have been included in this report.

In total, the team met with over 100 Syrian legal professionals, civil society actors and international officials. Among those interviewed were approximately 70 Syrian judges and lawyers, who included both those currently practicing law in different parts of Syria, and those who have been forced to flee to neighbouring countries due to the conflict. Those interviewed come from all parts of Syria, representing all major ethnic and religious groups, as well as different ends of the political spectrum in the different areas. The assessment aimed to provide an overview of the administration of justice in all of Syria. It also examined several crosscutting issues facing the justice sector in the aftermath of the current conflict.

ILAC found that in all parts of the country, Syrian judges and lawyers have continued to work to establish the rule of law in their communities. They are frequently the target of violent attacks simply because of their profession and commitment to the rule of law. On 13 March 2017, just days before this report was sent to the print, the Palace of Justice in Damascus and a nearby restaurant were targeted in a double bombing that killed over 30 persons – a grim reminder of the brutality often faced in Syria by those Syrians in the pursuit of justice.

The breakdown in the government's control over territory has resulted in differences in the execution of justice across the country. As a result, a major challenge facing Syria in the future will be how to reinstate a unified system of justice capable of upholding the rule of law and due process.

ILAC has made two key findings that will be crucial in planning for this process:

1. Interviews with those from and working in non-government controlled areas revealed that virtually all armed groups involved in the conflict recognise, and in fact embrace the concept of courts or similar structures to settle disputes, provide justice (however defined), and handle routine administrative tasks;
2. Legal professionals in all of Syria share a pride in their profession and a commitment to professionalism in their respective role. Judges and lawyers living on either side of frontlines universally express their deep respect for colleagues on the other side, maintaining that they simply try to do their best to achieve fairness in an unfair system.

These two factors are significant for the future of Syria and should be considered in any reconciliatory efforts between the parties to the conflict.

The majority of people currently in Syria live in areas under the control by the Syrian government and the justice institutions. ILAC identified two parallel justice systems operating here. One is the regular court system, which handles all civil, criminal and personal status claims. The other is a web of exceptional courts without fixed procedure and with no clear limitations on jurisdiction.

Both regular and exceptional courts generally fail to live up to international standards of independence and impartiality. However, there is a clear tendency of the government to move politically sensitive cases out of the regular court system to be heard before the exceptional courts, which may be seen as an indication that the regular courts have retained at least some measure of independence in relation to the executive and the security forces. If the government felt certain the case would reach its desired outcome whichever court was used, it is difficult to understand why moving cases to the separate system would be necessary.

This notion is supported by judges who have been forced to leave Syria who claim that even though the regular courts where they served were not independent, they did retain a level of personal independence in their role as judges. Indeed, this independence was what forced many of them to flee after refusing to cooperate with the government. These remaining aspirations to independence will be important to support and to sustain for a future post-conflict situation, when building an independent court system will be an urgent priority.

Upholding judicial independence and due process is not only an obligation on states according to the right to a fair trial under international human rights law. The fact that there is a non-international armed conflict in Syria means that international humanitarian law is applicable. This imposes additional and complementary obligations on the different parties engaged in the conflict, including obligations relevant to the operation of the system of justice.

The exceptional courts are fundamentally flawed when it comes to implementing acceptable standards of independence and due process. This means that their continued use by Syria may violate the requirements under international humanitarian law if such courts pass sentences or carry out executions against protected persons under Common Article 3 to the Geneva Conventions of 1949. Without substantial reforms to bring the exceptional courts in line with what could be considered to be “regularly constituted” within the meaning of the Common Article 3 and customary international law, the government’s continued use of these courts would constitute a war crime.

Non-state armed actors participating in a non-international armed conflict are equally bound by the requirements enshrined in Common Article 3, including fair trial guarantees in relation to persons taking no active part in the hostilities. In large parts of Syria, the government is no longer present. Instead, a wide range of different armed groups now control different areas, each of which have formed their own separate

administrative and judicial institutions. The result is that there is no single system of justice in areas outside of government control. Instead, “justice” is a patchwork of courts, tribunals and panels with varying structures, influence and quality. ILAC found that the ideology underlying a given court can range from a belief in democracy and civil law to various interpretations of Islamic ideology or *Sharia*.

Nevertheless, common features to the various justice systems outside government control can be identified. One such common feature is the rejection of Syrian law. In many areas, Syrian law was rejected as too intimately associated with the current government and President Bashar al-Assad. In spite of many valiant efforts by lawyers and judges to uphold Syrian law after the government’s withdrawal from many areas, a combination of lack of international support to such efforts, and popular discontent with the government meant that Syrian law has been gradually replaced by other regimes.

Another common feature in opposition-controlled areas is the simple fact that some type of “judicial” system has been created. In virtually all areas in Syria where the government has lost control, efforts have been made to fill the vacuum created after courts and justice institutions were closed as part of the government’s retreat. Though many judges working in these newly formed courts assert that they are in control of how the courts operate, the overall results from the interviews and other reports demonstrate that many are under the direct control of armed groups. Nearly all these new courts struggle to assert their independence from the armed actors in control of the areas where they operate. However, interviewees described many laudable attempts to bring stability and judicial interventions in very difficult political situations.

Even where there may not be direct control by the armed groups in the area, indirect influence still raises issues of judicial independence. The House of Justice in Daraa in the south of Syria, for example, is arguably one of the more sophisticated and ambitious attempts to establish a legitimate non-state court system with safeguards in place to ensure its institutional independence. But lawyers and judges interviewed acknowledged that they allow themselves to be influenced by concerns other than the merits of the case. Interviewees said that they may apply the death penalty even where it runs contrary their judicial beliefs, if a milder punishment would lead to a conflict between armed groups. This implicitly acknowledges that the court is not strong enough to act independently of the armed factions.

The failure of armed opposition groups to establish independent and impartial tribunals serves to reduce their legitimacy and credibility, both within the local population and in the international community. Accordingly, it is widely recognised that these groups need to ensure that judges are qualified in matters of law, able to execute their duties without the interference from armed actors, and ensure that due process is respected at all times.

States who support armed groups opposed to the government, be it through finances, training or otherwise, have a particular responsibility to ensure that those groups adhere to international fair trial standards. This includes putting pressure on the groups to ensure that courts and tribunals they have established are regularly constituted within the meaning of Common Article 3 to the Geneva Conventions of 1949.

Women face distinct threats and challenges when they come into contact with the justice system. Syrian laws explicitly afford greater rights to men than women, particularly in matters related to marriage, divorce, custody and guardianship, and inheritance. This has had a continued impact on the status afforded to women during the conflict, including in areas that have fallen outside the control of the government after 2011.

In areas outside government control, the situation is further complicated by restrictions on freedom of movement, displacement, economic hardship, aerial bombardment by the government and international actors, and the actions of armed groups. Freedom of movement is crucial for women to be able to access the legal system in these areas. The need to document births, deaths, marriage, and divorce in the civil registry remains a top priority, as proof of status is necessary for many daily needs, such as travel. The ability to obtain documentation has been severely hampered by the armed conflict, and this has had a particularly negative impact on the lives of women.

For decades, the Kurdish minority were subject to considerable repression by the government. While the Kurdish population is primarily concentrated to the north of Syria, Kurds live in all parts of Syria, just as there is no part of Syria that is entirely Kurdish. However, in the events following the 2011 uprisings, large parts of northern Syria have come under the control of Kurdish forces. The particular political context of these areas has meant that the justice sector there has come to develop differently from other areas outside government control.

It is very difficult to get a clear picture of the current justice system in Kurdish-controlled areas in northern Syria. In part, this lack of clarity arises from the fluid, transitional nature of the situation, with only *de facto* governance and the continuation of the armed conflict. Equally important in this is the fact that the Kurdish-controlled areas are geographically separated. Accordingly, rather than the justice system being designed and formed by one central administration, different systems and structures are being formed locally, without coordination with or informing other regions or the embryonic central authority of developments.

Nevertheless, these areas have also followed a similar pattern to other areas not under government control, albeit with its own particularities. The most notable distinction to other areas outside of government control is that there are still government courts in operation in some locations in the Kurdish controlled areas that function alongside the new Kurdish justice institutions. However, it seems that while they do not outright defy Syrian law, the new justice institutions in these areas often simply ignore it in favour of norms adopted by Kurdish authorities or local customs and government courts have no capacity to enforce decisions.

The de-facto ruling Kurdish Democratic Ruling Party (PYD) seeks to establish a vision of justice in these areas based upon a Social Contract. Although the system as it stands today suffers from many serious flaws and there is no unity even among the Kurdish on how these areas should be governed in the future, Syrian Kurds of all political persuasions largely reject the visions of justice put forth by extremist groups in other areas of the country. Such voices may be pivotal in deciding the course of post-conflict Syria.

By 2011 there were substantial numbers of legally trained Kurds living in northern parts of Syria. Many of those have fled, leaving the areas under Kurdish control with a shortage of professionals, but Kurdish lawyers have begun to return to some extent to assist in rebuilding. Although political divisions within Kurdish society also run deep, bridging the divide between the different political and ethnic groups in these areas will be crucial when rebuilding them in the future. Previous experience in conflict-affected settings demonstrates that there are a variety of pressing challenges that need to be addressed as soon as hostilities end. Life-saving humanitarian aid and reconstruction of destroyed infrastructure are obvious issues of general concern, but a number of challenges also go directly to questions of where justice plays an integral role. Advance plans can be devised even during the conflict to address some of the conflict-related justice issues in order for responses to be timely and effective.

Justice questions will almost certainly destabilise peace processes if they are not addressed, particularly when there are high numbers of victims on all sides, as is the case in the Syrian conflict. At the same time, addressing conflict-related violations often threatens the objectives and vested interests of those negotiating for peace. The scale of these challenges and the difficulty of addressing them tends to increase with the duration and extent of the conflict, and systematic and strategic nature of the violations.

The two points are interconnected and all emanate from two of Syria's most pressing concerns, namely the hundreds of thousands of persons who are missing as a result of the conflict, and the millions who have been displaced. In the final part of this report, some of these conflict-related justice issues are outlined, including accountability, missing persons and property restitution, and recommendations provided for how the Syrian legal profession, as well as the international community, can best prepare to take them on.

Lawyers may provide a potential engine of reform within Syria. The legal profession in Syria has a history of resistance to governmental overreach that is a source of significant pride among many lawyers. Moreover, judges and lawyers understand many of the issues that will need to be addressed in the post-conflict setting. Through their professional experience, they also understand the necessary changes and improvements needed within the system, and should be at the centre of any future efforts for reform.

As events in Libya demonstrate, post-government vacuums permit space for antidemocratic forces to prosper. Conversely, the post-2011 history in Tunisia illustrates the positive impacts that reform-minded bar associations and their members can have in creating a peaceful, stable transition. Given the numbers and probable influence of Syrian lawyers, the situation should be monitored with resources allocated to identify and provide rapid support for democratic reformers among the bar associations in the future.

Part 1

I. Introduction

The International Legal Assistance Consortium (ILAC) was established in 2002 as a mechanism to coordinate the work of international and regional actors involved in rebuilding justice systems and establishing the rule of law in countries that had experienced conflict.

ILAC consists of 52 member organisations worldwide representing over three million judges, prosecutors, lawyers and academics. During its first 15 years, ILAC has carried out assessment missions and initiated legal reform programmes in 16 countries. In making its assessment reports public, ILAC seeks to assist national rule of law actors identify both gaps and opportunities for reform, and to contribute to better coordinated and more effective international support to post-conflict rule of law reconstruction.

ILAC has been working to support the rule of law in Syria since 2013. The purpose of ILAC's work has been to assist Syrian lawyers and judges in their efforts to prevent the complete collapse of the Syrian justice system in parts of Syria where the government no longer is in control. Specifically, ILAC has assisted in reopening personal documentation centres in these areas to ensure that personal status documents are still available to members of the public during the conflict. Documentation centres are operated by local Syrian organisations and monitored by Syrian judges to ensure that all centres in these areas apply the same standards and regulatory framework as government registries. The intention is to facilitate a future process to validate all documents and merge with the official registry once the conflict ends. To date, ILAC support reaches 15 centres inside Syria that have issued over 100,000 documents, recording births, marriages and divorces.

This work has highlighted how Syrian lawyers and judges in all parts of the country have continued to work to establish the rule of law in their communities. The breakdown in territorial control by the state has resulted in differences in the execution of justice across the country. This is significant for future efforts to rebuild the justice sector in Syria. Yet much of the reporting on Syria to date has blurred distinctions between the different systems present. ILAC has found that many of the actors in the sector were willing to share information if asked.

At its annual general meeting in 2016, ILAC decided to make an assessment of the administration of justice in all of Syria. A goal of the mission was to identify the features of the justice sectors in the different areas, and establish what are the commonalities and distinctions between those systems. In doing so, ILAC aims to inform future efforts

to rebuild Syria. In addition, it is hoped that this will aid in preventing a repetition of mistakes made in other post-conflict situations, where working justice sector institutions were dismantled, and new, weaker institutions constructed in their place.

In November 2016, a team of experts from four of ILAC's member organisations carried out a needs assessment concerning the rule of law and the justice system(s) in Syria. The team examined the justice sector as it stood before the uprisings in 2011 and used this as a starting point for a comparison of the situation today in different parts of the country. Specific attention is given to the status of women in the justice sector. The assessment team was composed of distinguished legal and human rights professionals with diverse backgrounds and areas of expertise:

- **Agneta Johansson** (Sweden), Executive Director of ILAC and assessment team leader;
- **Gönül Erönen** (Northern Cyprus, United Kingdom), retired judge, Supreme Court of Northern Cyprus and the European Court of Human Rights, nominated by the International Association of Women Judges;
- **Finn Lynghjem** (Norway), retired judge, High Court of Appeals of Agder in Norway and Court of Bosnia and Herzegovina, individual member of ILAC;
- **Keith Raynor** (United Kingdom), judge, Woolwich Crown Court in the United Kingdom and former senior assistant prosecutor, Extraordinary Chambers in the Courts of Cambodia nominated by The Law Society of England and Wales;
- **William D. Meyer** (United States), former Chair of ILAC, lawyer and individual member of ILAC;
- **Stefan von Raumer** (Germany), lawyer specialised in property restitution, nominated by Deutscher Anwaltverein (German Bar Association);
- **Ismaël Benkhalifa** (Tunisia), coordinator of the ILAC MENA programme, lawyer;
- **Lynn Sferrazza** (United States), lawyer and consultant in justice and gender, nominated by the American Bar Association;
- **Mikael Ekman** (Sweden), ILAC legal adviser and report writer.

Due to security concerns, the team was unable to enter Syria. Instead, interviews were conducted in neighbouring countries with lawyers, judges and various civil society actors who work or have worked in the justice sector in each of the areas covered by the report. Interviews were carried out either as individual interviews, or in group sessions with panels of three to seven Syrian lawyers or judges, followed by individual interviews on specific issues raised. In some instances key persons were unable to cross the border to meet with the team in person. On such occasions, ILAC also interviewed persons inside Syria via video call, or by using questionnaires or intermediaries. Interviews have been complemented with extensive desk research. ILAC also relied on the expertise of the Syrian Legal Development Programme, a non-governmental organisation based in the UK, for interviews with five judges at courts in Idlib province, as

well as additional desk research. Separate meetings were held to discuss gender specific impact on numerous occasions.

In total, the team met with over 100 Syrian legal professionals and civil society actors, and 20 international officials. Among those interviewed were approximately 55 Syrian lawyers, who included lawyers that have been forced to flee to neighbouring countries, lawyers currently practicing law either in Syrian state courts or before courts established by opposition and armed groups, or who sit as judges in such courts. The team also interviewed Syrian judges who have been forced to flee to neighbouring countries, as well as six judges of different *Sharia* courts. Those interviewed come from all parts of Syria, representing all major ethnic and religious minorities, as well as different ends of the political spectrum in the different areas. In addition, three local lawyer associations in non-government controlled areas answered questionnaires from ILAC relating to housing, land and property in their areas. No names are used in this assessment to protect the identity of those interviewed, some of whom still live in or frequently travel into Syria. Their identities are known to the authors and to ILAC. The report is 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.

The armed conflict in Syria presented the team with unique challenges when compared to previous ILAC assessment missions. Most notably, the ability to gain a clear picture of the capacity and status of various institutions was hampered by the fact that the team could not visit them in person. It is significantly easier to access persons who are outside Syria than who are inside, which presents a risk of overreliance on second hand sources or outdated information. In many of the areas discussed in the report, the situation on the ground is also subject to frequent change, which can have an impact on the reliability of the information received. An otherwise accurate description of the situation by an eyewitness one day may not necessarily reflect developments after they left the area in question, for example. In a conflict setting, many of the actors also have strong interests to put across their own perspective of the situation. This can lead an outside observer to believe a situation is better or worse than it really is, depending on the political affiliation of the persons interviewed. In addition, the parties to the conflict often do not trust outsiders, and may try to use interviews to mislead opponents by withholding or distorting information.

ILAC has tried to manage these limitations in a number of ways. First, the team has sought to use as many different sources as possible, attempting to interview both experts who work within the systems analysed, and those who work outside or have rejected those same systems. The team has also met with academics, journalists and other civil society actors as well as staff at international organisations to gain a more objective perspective of the evidence presented. Where opinions differ among Syrians, the report tries to address this by stating where information was obtained and making sure to present both sets of opinions. In addition, the information obtained during the interviews has been corroborated with Syrian legislation and official documents, as well as reports from other independent organisations.

In Syria there is a non-international armed conflict. This means that international humanitarian law is applicable and imposes further obligations on the different parties engaged in the conflict, including obligations relevant to the operation of the system of justice. This report looks at the administration of justice by the Syrian government as well as a number of non-state actors in Syria. International humanitarian law applies equally to all parties to the conflict, including state parties and non-state organised armed groups directly participating in the armed conflict. Therefore, investigating whether the parties live up to these obligations should not be construed as taking sides in the conflict, or as expressing any opinion on the emergence of different bodies on the part of ILAC or any of the experts on the assessment team.

The team has 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 they were not appointed as judges in accordance with the Syrian Constitution. Similarly, the term “Rojava” is used in the report when accounting for how the Kurdish Democratic Union Party (PYD) describes the system of governance established by the group in areas under its control in the northern provinces of Syria. 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.

The report makes a number of recommendations for action. These recommendations are founded in ILAC’s unwavering commitment to the rule of law even in the most difficult of circumstances, and firm belief that measures need to be practical and realistic and designed to visibly improve the justice situation for all Syrians.

In planning for peace, Syria and the international community will need to base their actions in rebuilding the justice system on what the current situation inside Syria is like. This report therefore aims to help inform that process by providing a comprehensive, publicly available account of the current state of the justice sector.

Finally, ILAC and the assessment team would like to express our deep gratitude to the many individuals from all parts of Syria and the international community, without whose support and active contributions this report would have not been possible. Unfortunately, due to the risks associated with work in relation to the Syrian conflict, it is not possible to include the names of those who deserve acknowledgement. We would equally like to thank ILAC’s intern Simon Rose for his contributions to preparations and desk research ahead of the mission, as well as for his assistance in the production of this report. The report was made possible thanks to funding provided to ILAC by the Swedish International Development Cooperation Agency (Sida).

II. Historical and legal background

2.1 Before independence

Syria is situated in the heart of the Middle East and borders Turkey, Iraq, Jordan, Lebanon and Israeli annexed Golan Heights. It is divided into 14 administrative governorates. Prior to 2011, Syrians numbered roughly 22 million, with more than half living in urban areas. The population was very heterogeneous. Although Arabs formed around 90 per cent of the population, many other ethnic groups existed.

The Kurdish community made up the largest ethnic minority, constituting approximately ten per cent of the population. Other large minority groups included Syrian Turkmen, Armenians and Circassians. Ninety per cent of the population were Muslim, the majority of whom were Sunni Muslims. The Alawi minority accounted for roughly 12 per cent of the population, the Druze minority three per cent, and minor Shia groups another one per cent. The ten per cent non-Muslims were primarily composed of several Christian denominations, such as Syrian or Greek Orthodox, Maronite, Chaldean, and Catholic.¹

The region's exposed geographical location, as a rich and fertile land surrounded by powerful empires, has meant that throughout history it has rarely ruled itself. As a result, Syrian legal traditions are a mixture of a wide variety of sources with historical influences from Roman and Hellenistic traditions, built on by Ottoman traditions in later years. In addition, religious law has played a role.² In the mid-nineteenth century, the Ottoman Empire introduced a dual court structure, with regular courts operating in parallel to religious community courts, and the first written civil codes.

After the fall of the Ottoman Empire, Syria issued a proclamation of state-hood in the summer of 1919 and experienced a brief period of independence. However, this was not recognised by either the United Kingdom or France, who had decided to divide the Middle East according to their own interests in the Sykes-Picot Agreement in 1916. Accordingly, Syria became a French mandate in 1920 in the partition of the Arab world following the end of the First World War.³

1 The United States Central Intelligence Agency, 'Factbook: Syria', 2017, <<https://www.cia.gov/library/publications/the-world-factbook/geos/sy.html>> [accessed 12 September 2016]; Seth Kaplan, 'Syria's Ethnic and Religious Divisions' 2016, <<http://www.fragilestates.org/2012/02/20/syrias-ethnic-and-religious-divides/>> [accessed 12 September 2016].

2 Thomas Colello (ed.), 'Syria – a country study' (Washington D.C., USA: US Library of Congress – Federal Research Division, 1987), p. 11 (hereinafter "Colello 1987").

3 *Ibid.*, p. 18.

It was not until mounting pressure compelled France to abandon its presence in the region after the end of the Second World War that Syria became fully independent in 1946.⁴

2.2 Independence after the Second World War

The modern legal system in Syria has been shaped by laws enacted in the years after independence. The Penal Code, Civil Code and Commercial Code were adopted in 1949, followed by the Criminal Procedure Code in 1950 and the Civil Procedure Code in 1953.⁵ Many of the prominent Syrian lawyers responsible for drafting these laws were educated in French universities, and hence Syrian law gained inspiration from civil law traditions, as well as Islamic and Egyptian sources.⁶

The Ottoman Law of Family Rights was replaced with the Syrian Law of Personal Status (SLPS) in 1953.⁷ The SLPS continued the Ottoman traditions of a dual court system and allowing minorities to rule their own personal status affairs in most areas. These principles were further developed in the Judicial Authority Law (Law No. 98 of 15 November 1961), which established the structure for the court system in Syria. However, under the Judicial Authority Law, religious courts do not have unlimited jurisdiction over personal status issues within the Syrian legal system.

Syrian jurists take pride in the fact that Syria has one of the oldest constitutional traditions in the Arab world, stretching back to efforts to adopt a constitution during the first period of independence in 1919-1920.⁸ However, during the French Mandate, the French blocked any independent constitutional process. As such, it was not until 1950 that the Syrian Constitution was approved by the Constitutional Assembly. It received popular support, despite the presence of some controversial articles regarding minorities and freedom of expression.⁹

In 1948, Syria joined its Arab neighbours in declaring war on the newly created state of Israel, and a state of war remains in place today. The post-independence period was also marked by widespread political instability, with numerous military coups. A brief political union with Egypt from 1958 until 1961 was followed by more coups.

⁴ *Ibid.*, p. 26.

⁵ Penal Code, Legislative Decree No.148 of 22 June 1949, Civil Code, Legislative Decree No. 84 of 18 May 1949, Commercial Code, Legislative Decree No. 149 of 1949 (replaced by Commercial Code, Law No. 33 of 9 December 2007), Criminal Procedure Code, Legislative Decree No. 112 of 13 March 1950, and Civil Procedure Code, Legislative Decree No. 84 of 28 September 1953 (replaced by Civil Procedure Code, Law No. 1 of 3 January 2016).

⁶ Euro-Mediterranean Human Rights Network, 'The Reform of Judiciaries in the Wake of the Arab Spring, Proceedings of the Seminar: 11-12 February 2012', (EMHRN: Rabat, 2012), p. 53 (hereinafter "EMHRN 2012 report").

⁷ Legislative Decree No. 59 of 17 September 1953, as amended by Law No. 34 of 1975 and Legislative Decree No. 76 of 2010.

⁸ Interviews in Gaziantep, 9-12 November 2016. See also Syrian Law Journal 'Constitutional Law', 21 March 2017, <<http://www.syrianlawjournal.com/index.php/main-legislation/constitutional-law/>> [accessed 21 March 2017]; and Colello 1987, *supra* n. 2.

⁹ Syrian Centre for Political and Strategic Studies, 'Syrian judges hold unity conference in Turkey', 2013, <<http://scps.org/en/?p=309>> [accessed 21 January 2017].

The Ba'ath Party established itself as the country's power centre following a coup in 1963, although infighting between different factions continued.¹⁰

In the aftermath of the 1963 coup, the new government enacted a host of laws. This collection of laws has had a lasting effect on the Syrian justice system, allowing the executive to establish firm control over the judiciary. A cornerstone of this process was the State of Emergency Law (Legislative Decree No. 51 of 22 December 1962), in which the government established a nation-wide state of emergency that continued until popular unrest in 2011 prompted the government to introduce a new legislative framework to address the situation.¹¹ The law authorised the adoption of exceptional measures during the state of emergency, including limitations on the freedom of association, residence rights, and freedom of movement, the arrest of persons suspected of endangering security, and authorisation for the government to request any person to perform any task.¹²

At the same time, the role and composition of the Supreme Judicial Council was altered.¹³ Originally designed as an independent body comprised of senior judges with the task to oversee the judicial system, the Supreme Judicial Council was changed to include a majority of members from the Ministry of Justice. These changes effectively gave the Ministry control over promotions, transfers, discipline, dismissal, and retirement of judges, prosecutors, and technical court staff.¹⁴ Multiple types of military and security courts were also established in the 1960s, and given jurisdiction to handle alleged violations of emergency laws and orders.¹⁵ In February 1966, the Regional Command of the Ba'ath party ordered the establishment of a Supreme State Security Court (SSSC). This was followed by Legislative Decree No. 47 of 28 March 1968, which gave the SSSC jurisdiction to try political and security cases.¹⁶

Under Ba'athist rule, the powers and immunities of military and security forces were expanded. Since the introduction of Legislative Decree No. 61 of 27 February 1950, members of intelligence agencies, including military, air and public security forces, have been immune from prosecution. When Decree No. 14 of 14 January 1969 created the General Intelligence Directorate, it gave its staff similar immunity to prosecution unless it was based on a referral by the director of the General Intelligence Directorate.¹⁷

10 Colello 1987, *supra* n. 2, p. 29.

11 These laws included the Emergency Law, Decree No. 15 of 22 December 1962, Revolution Protection Law, Decree No. 6 of 17 January 1964, Law for Establishing the State Security Department, Decree No. 14 of 14 January 1969, the Internal Organisations Law for the State Security Department, Decree No. 549 of 25 May 1969, Law for Setting Up Field Martial Courts Decree No. 109 of 17 August 1967, Law for Setting Up a State Security Court Decree No. 39 of 28 March 1968. The state of emergency was abolished through Decree No. 161 of 21 April 2011. However, fundamental aspects of the laws introduced in 1960's were resurrected soon after through the adoption of the new Counter-Terrorism Law, Law No. 19 of 2 July 2012. See further section 4.1 below

12 Violations and Documentation Center in Syria (VDC), 'Counter-Terrorism Court: a Tool for War Crimes Violations', Special Report on Counter-Terrorism Law No. 19 and the Counter-Terrorism Court in Syria, April 2015, <<http://www.vdc-sy.info/pdf/reports/1430186775-English.pdf>> [accessed 17 January 2017] (hereinafter "VDC 2015"); Jacques el-Hakim and Taymour Harding, 'Syria' 2010, Volume 16, Issue 1, Yearbook of Islamic and Middle Eastern Law, pp. 179–195. (hereinafter "El-Hakim and Harding 2010").

13 For more on the SJC, see section 3.1 below.

14 EMHRN 2012 report, *supra* n. 6, p. 57.

15 El-Hakim and Harding 2010, *supra* n. 12.

16 For more on the SSSC, see section 3.2 below.

17 Decree No. 14 of 14 January 1969, Article 16. The General Intelligence Directorate was initially known as the State Security Authority.

This immunity was further expanded by Decree No. 69 of 30 September 2008, which prohibited the prosecution of political security, police and customs officials for crimes committed on duty except in cases where a warrant was issued by the general leadership of the army and military forces.¹⁸

During this period, individual freedoms were further curtailed. In 1964, the Revolution Protection Law, Decree no. 6 of 17 January 1964, criminalised those who opposed the goals of the revolution or the socialist regime, whether in words, writing or with acts. The combination of these broadly defined crimes and the effective immunity from prosecution for those connected with the government led to a decline in monitoring and accountability of those responsible for torture and other abuse. Efforts to weaken judiciary also resulted in the detention of a large number of individuals for long periods.¹⁹

2.3 The Assad rule

During the 1960s, Hafez Al-Assad rose in the ranks in both the military and the Ba'ath Party thanks to his successful participation in military coups. After Syria's defeat in the 1967 war with Israel, and a failed military intervention to support Palestinian groups fighting in a Jordanian civil war, Assad assumed control in a bloodless military coup in November 1970. He immediately initiated a reconstruction of Syrian state institutions, concentrating power in the presidency, reforming the leadership of the Ba'ath Party, and creating a national parliament known as the People's Assembly.²⁰

Many of these principles were enshrined in a new Syrian Constitution enacted in 1973.²¹ Influenced in part by the Egyptian model, this document vested the President with extensive powers including the right to veto laws, dissolve the People's Assembly and assume legislative authority when it is not in session, and act of his own accord if necessary to safeguard the nations interests or for national security. The 1973 Constitution also explicitly granted the Ba'ath Party a leading role in the Syrian state, which it retains today.

Though the 1973 Constitution included protections for judicial independence and integrity of the justice system, these provisions did not reflect the reality of life for judges, lawyers or persons using the courts.²²

18 Decree No. 69 of 30 September 2008; Amnesty International, 'Briefing to the Committee Against Torture', 2010, available online at: <<http://www.refworld.org/pdfid/4c7fbee62.pdf>> [accessed 17 January 2017]; VDC 2015, *supra* n. 12 p. 2.

19 Decree No. 5409 of 15 May 1969, Article 4; EMHRN 2012 report, *supra* n 6, p. 54. See also Amal Women Center et al, 'Joint NGO Submission on Politic and Civic Rights: Universal Periodic Review of the Syrian Arab Republic 26th Session of the Working Group - November 2016', November 2016, -, pp. 6-8, <<http://www.efi-ife.org/sites/default/files/IFE-EF1%20-%20UPR%20Report%20Politic%20and%20Civic%20Coalition%20Syria%20Nov2016.pdf>> [accessed 27 January 2017].

20 Colello 1987, *supra* n. 2, p. 37 ff.

21 Alan George, 'Neither Bread Nor Freedom' (London: Zed Books, 2003) p. 9 (hereinafter "George 2003"); EMHRN 2012 report, *supra* n. 6, p. 60; and Khalil Mechantaf, 'UPDATE: Constitutional Law and Courts' System in the Syrian Arab Republic', 2012, GlobalLex, Hauser Global Law School Program, NYU School of Law, <<http://www.nyulawglobal.org/globalex/Syria1.html>> [accessed 27 January 2017].

22 See Chapter 3 below.

In practice, the executive's power over the court system established a few years earlier continued. The President was appointed as guarantor of the independence of the judicial system. This power was nominally shared with the Supreme Judicial Council, but the President now presided over the Council and the executive retained the majority of votes in it.²³

During the late 1970s, opposition to Ba'athist control in Syria began to grow. Elements of the Muslim Brotherhood began an armed Islamist opposition, while the Syrian Bar Association, local bar associations and several other similar professional bodies followed more peaceful forms of opposition and obstruction.²⁴ President Assad's response included the creation in 1977 of the Economic Security Court, adding to the pre-existing multitude of exceptional courts. This new security court was supposedly focused on financial and economic crimes, but also had general jurisdiction over cases of "crimes against the socialist regime".²⁵ It was subsequently abolished in 2004.

The culmination of opposition to Ba'athist control came in February 1982, when the Muslim Brotherhood led a major insurrection in the city of Hama. Thousands of Syrian troops besieged the city. Sustained aerial and tank bombardment reduced many parts of the city to rubble, and tens of thousands of civilians lost their lives. This marked the end of the turbulence and the effective end of violent opposition to the Ba'athist government.²⁶ In interviews for this report, it was apparent that this dark episode in Syrian history – 34 years before – left a lasting imprint on Syrian society.

When the eldest son of Hafez, Bassel Al-Assad, died in a car crash in 1994, his second son, Bashar Al-Assad, took the place as their father's successor. Hafez Al-Assad died of a heart attack in June 2000 at age 69. Immediately after his death, the People's Assembly lowered the mandatory minimum age of the president from 40 to 34 to allow Bashar Al-Assad to be nominated for the post.

A period of apparent political openness ensued – the so-called Damascus Spring – with several civil society organisations forming amid growing calls to allow genuine democracy to take root. However, the new atmosphere did not last. The government clamped down on those calling for reform in August 2001, imprisoning several prominent activists.²⁷ In another incident, around 81 judges were dismissed from the judiciary in 2005.

23 Constitution of 13 March 1973, Articles 131-148.

24 Colello 1987, *supra* n. 2, p. 44; George 2003, *supra* n. 21, p. 103; EMHRN 2012 report, *supra* n. 6, p. 60.

25 EMHRN 2012 report, *supra* n. 6, p. 55, and US State Department, '2004 Country Reports on Human Rights Practices - Syria' (28 February 2005) <<http://www.state.gov/j/drl/rls/hrrpt/2004/41732.htm>> [accessed 19 February 2017].

26 Colello 1987, *supra* n. 2, p. 45; George 2003, *supra* n. 21, p. 16, EMHRN 2012 report, *supra* n. 6, p. 55; Robert Fisk, 'Freedom, democracy and human rights in Syria', The Independent, news article, 16 September 2010, <<http://www.independent.co.uk/voices/commentators/fisk/robert-fisk-freedom-democracy-and-human-rights-in-syria-2080463.html>> [accessed 12 September 2016]; Amnesty International, 'Syria: 30 years on, Hama survivors recount the horror', press release, 28 February 2012, <<https://www.amnesty.org/en/latest/news/2012/02/syria-years-hama-survivors-recount-horror/>> [accessed 23 September 2016]; and Robert Danin, 'Remembering the Hama Massacre' 2 February 2012, Council on Foreign Relations, <<http://blogs.cfr.org/danin/2012/02/02/guest-post-remembering-the-hama-massacre/>> [accessed 23 September 2016].

27 George 2003, *supra* n. 21, p. 77.

This was allegedly because of corruption, but no trial or charges were ever brought against the dismissed judges.²⁸

During the exceptionally long state of emergency between 1963 and 2011, Syrian society had become militarised. Many of those interviewed described a community that was divided into loyalists, who exchanged their loyalty for safety and career opportunities, and opponents, who faced detention, exile or displacement. Lawyers and judges had to be approved by the security services, and be members of the Ba'ath Party or at least confirm their support for its ideals:²⁹

*“In all meetings, there must be a representative of the Ba'ath party. In regards to the judicial system, the security forces are controlling it specifically in relation to the criminal court. (...) [T]hey were persecuting people even for bringing their own pens. Above all human rights defenders ”.*³⁰

The extent of the security services' interference with the justice system was illustrated by a judge with several years of experience working in courts in rural areas. The judge described what it was like to work within the regular court system subject to the interference from exceptional courts and security forces:

*“To start with, there were not many interventions by the security services during my service. I was not under pressure because the regime did not transfer any political crimes to the courts where I was working. Political crimes were transferred to field military courts and military courts. First, we had the state security courts and later the terrorism court. [T]he Syrian law did not give [judges] immunity. I was bound to the laws and to defend freedoms. I swore to do this. In Item 425 of the Principles of Criminal Procedure there is a law that states that if a person is detained and not processed in a court (by the government), he shall be freed and the person who detained him shall be detained. That was the law, but we could not enforce it. We didn't have force – it was in their hands ”.*³¹

28 Interviews with lawyers 1 and 4 and judges 2, 3 and 4, November 2016. There were some discrepancies between those interviewed as to how many judges were affected, some only said around 80, lawyer 4 said 81 and judge 2 was convinced the number was 82. See also Press release from Amnesty International who at the time listed the number of judges concerned at 81: Amnesty International, 'Syrian Human Rights Defenders under attack', press release, MDE 24/092/2005, 21 October 2005, <<http://www.mafhoum.com/press9/254S21.htm>> [accessed 19 February 2017] (“hereinafter Amnesty International 2005 press release”).

29 Interviews with lawyers in Gaziantep, 9 November 2016.

30 Interview with Lawyer 4, November 2016.

31 Interview with Judge 1, November 2016.

2.4 The 2011 uprising and armed conflict

In March 2011, minor protests broke out after security forces in Daraa arrested a group of teenagers for painting revolutionary slogans on their school wall. Fuelled by economic grievances, social injustices, and political frustration, the demonstrations grew and soon evolved into general anti-government protests. The protests were spurred by a breakdown of the culture of fear after the successful overthrow of other regimes in the region during the “Arab Spring”. On 18 of March 2011, security forces used live ammunition against the protesters.³² The repressive response by the authorities further escalated the protests. By mid-March, Syrians were demonstrating in all of the country’s major cities, and organising through newly created Local Coordination Committees and social media.³³

Violent repression by the government against protestors continued and worsened during the spring of 2011. By the summer, the opposition began to organise militarily when army defectors formed the Free Syrian Army (FSA). The government increasingly lost control over large parts of the territory, violence proliferated, and armed groups grew in number. The need for weapons and funds to sustain an armed conflict drove anti-government groups to seek international support. Driven by geopolitical and other differences, various actors within the international community soon offered support to these disparate groups.³⁴ Syria’s membership to the Arab League was also suspended in November 2011. The international community was, however, unable to agree on a coordinated response, and a proliferation of armed opposition groups formed,³⁵ ranging from nationalist based Syrian groups to extremist ideologically based groups, such as Jabhat al-Nusra.³⁶

The Syrian Armed Forces were weakened during this time from defections, amongst other things, and the government in Damascus increasingly became dependent on various pro-government militias (*shabiha*) that had formed, propped up by international fighters from Iran, Iraq, Russia and the Lebanese group Hezbollah.

32 Lisa Sinjab, ‘Middle East unrest: Silence broken in Syria’, BBC, news article, 19 March 2011, <<http://www.bbc.com/news/world-middle-east-12794882>> [accessed 21 March 2017].

33 Samer N. Abboud, ‘Syria’, (Cambridge, UK: Polity: 2016) (hereinafter “Abboud 2016”).

34 Udi Dekel, Nir Boms and Ofir Winter, ‘Syria’s New Map and New Actors’, Memorandum No. 156, Tel Aviv: Institute for National Security Studies, August 2016, pp. 13-24, <http://www.inss.org.il/uploadImages/system-Files/memo156_5.pdf> [accessed 12 February 2017].

35 Because of the loose networks coordinating military action and changing conditions on the ground, the overall number of armed rebel groups is difficult to estimate. See BBC, ‘Guide to the Syrian Rebels’, 2013, available at <http://www.bbc.com/news/world-middle-east-24403003> [accessed 2016-09-14]; and Combatting Terrorism Center, ‘The Non-State Militant Landscape in Syria’, 2013, <<https://www.ctc.usma.edu/posts/the-non-state-militant-landscape-in-syria>> [accessed 2016-09-14].

36 The group has renamed several times. In the summer 2016 it as announced that it had renounced its connection to al-Qaeda and took the Jabhat Fateh al-Sham. See Washington Post, ‘Syria’s Jabhat al-Nusra splits from al-Qaeda and changes its name’, 28 July 2016, <https://www.washingtonpost.com/world/middle_east/syrias-jabhat-al-nusra-splits-from-al-qaeda-and-changes-its-name/2016/07/28/5b89ad22-54e6-11e6-b652-315ae5d4d4dd_story.html> [accessed 28 September 2016]. The group also previously had a connection to ISIS, but relations deteriorated during 2013, and all ties have been severed since early 2014. See Rania Abouzeid, ‘The Jihad Next Door’, Politico, 23 June 2014, <http://www.politico.com/magazine/story/2014/06/al-qaeda-iraq-syria-108214_full.html#.V-zInzsp2Q> [accessed 28 September 2016]; and Jennifer Cafarella, ‘Jabhat al-Nusra in Syria’, Institute for the Study of War, 2014, <<http://www.understandingwar.org/sites/default/files/JN%20Final.pdf>> [accessed 28 September 2016]. For ease of reference, Jabhat al-Nusra will be used throughout this report.

These were mostly organised under an umbrella called the National Defence Forces.

At the time of writing, the situation on the ground in Syria remains fluid. In September 2015, Russia intervened in support of the government, which revitalised pro-government forces, leading to military victories, as well as massive human suffering among those opposed to the Assad regime. At the same time, the United States and other nations have provided support for a variety of forces battling extremist groups, especially the Islamic State in Iraq and Syria (ISIS).

Since the outbreak of hostilities, several attempts at peace negotiations have been made under United Nations (UN) auspices. However, all negotiation and mediation attempts have been frustrated by several factors, including division among the Syrian opposition, inability to reach agreement on the future role of Bashar al-Assad in Syria, the continuation of violence on the ground, and the fact that so many nations are directly involved in the conflict.³⁷

The violent conflict has also taken a heavy toll on the population and created the worst humanitarian crisis since the end of the Second World War. The UN has stopped trying to calculate an official death toll due to the complicated situation on the ground. However, various Syrian non-governmental organisations (NGOs) estimated the death toll to be between 310,000 and 470,000 persons in the summer 2016, with between 1 million and 2 million people injured.³⁸

In 2016, an estimated 13.5 million people were in need of humanitarian assistance inside Syria, half of whom are children.³⁹ Lack of access to health care and scarcity of medicine have led to a catastrophic health situation. Nutritional deprivation has been exasperated by poor food availability and quality, and successive cuts in subsidies on bread. Over 50 per cent of children could not attend school in 2015.⁴⁰

Over half of the Syrian population has been forced to leave their homes, with at least 6.5 million internally displaced persons and 4.9 million Syrians registered as refugees outside the borders of Syria. Refugees are mostly hosted in neighbouring countries, namely Turkey (2.9 million), Lebanon (1 million), Jordan (656,000), and Iraq (233,000), as well as in European countries (over 1 million), Egypt (118,000) and other parts of northern Africa (30,000).⁴¹

37 New York Times, 'Syria Talks are Complicated by Competing Opposition Groups', 29 January 2014, <http://www.nytimes.com/2016/01/30/world/middleeast/syria-talks-geneva-opposition.html?_r=0> [accessed 23 September 2016], and Abboud 2016, *supra* n. 33, p. 148.

38 Syrian Network for Human Rights, 'Death Tolls', <<http://www.iam Syria.org/death-tolls.html>> [accessed 13 September 2016]; Syrian Observatory for Human Rights, 'About 430 thousands were killed since the beginning of the Syrian revolution', <<http://www.syria hr.com/en/?p=50612>> [accessed 14 September 2016]; and Foreign Policy, 'U.N. Envoy Revises Syria Death Toll to 400 000', 22 April 2016, <<http://foreignpolicy.com/2016/04/22/u-n-envoy-revises-syria-death-toll-to-400000/>> [accessed 19 February 2017].

39 United Nations Office for the Coordination of Humanitarian Relief, 'Crisis overview', <<http://www.unocha.org/syrian-arab-republic/syria-country-profile/about-crisis>> [accessed 12 September 2016].

40 *Ibid*; and World Bank, 'Syria: overview', <<http://www.worldbank.org/en/country/syria/overview>> [accessed 2016-09-12].

41 United Nations High Commissioner for Refugees, 'Syria Regional Refugee Response – Inter-agency Information Sharing Portal', February 2017, <<http://data.unhcr.org/syrianrefugees/regional.php>> [accessed 12 September 2016].

III. The justice system in the Syrian Arab Republic

“As men of law, we felt strangers in our houses”

Former Syrian judge⁴²

3.1 The courts

Legislation introduced in the decades of rule by the Ba’ath party has led to the development of two parallel justice systems in Syria. One is the regular court system with roots dating back to the Ottoman Empire, French rule and Syrian independence, handling all civil, criminal and personal status claims. The other is a web of exceptional courts. However, no clear limitations on the jurisdiction of the exceptional courts means a given case might be heard in either system.

During the interviews for this report, ILAC repeatedly heard how an accused could find himself subjected to quite different processes depending on which state apparatus controlled his case. Some people have been arrested by the security services and detained without any lawful process. Others were dealt with in the Counter-Terrorism Court (CTC), the military courts or the ordinary courts of first instance.

Separation of powers and independence of the judiciary

“There was corruption and bribery. Justice was never independent.

The Head of Judicial Council was the President and the Deputy was the Minister of Justice, and both of them were part of the executive.

*In order to be appointed as a judge, you had to be from the Ba’ath party and have a recommendation from the security services”.*⁴³

The 1973 Constitution established the President of the Republic as the guarantor of judicial independence, with the Supreme Judicial Council to assist him. Under this Constitution, the President was empowered to personally preside over the Supreme Judicial Council, though he was allowed to (and often did) deputise the Minister of Justice.⁴⁴

⁴² Interviews with Judge 2, November 2016.

⁴³ Interview with Lawyer 3, November 2016.

⁴⁴ Constitution of 27 February 2012, Article 132; Legislative Decree No. 24 of 14 February 1966, Article 3; Judicial Authority Law, Law No. 98 of 15 November 1961, Article 65.

The public prosecutor, the President of the Judicial Inspection Department, the Deputy Minister of Justice, the President of the Court of Cassation, and his two most senior deputies also sat on the Supreme Judicial Council. Thus, in addition to the Minister of Justice personally sitting on the Council, three out of the seven members report to him. Since the Council decisions were by majority vote, these three subordinates together with the Minister controlled the vote.⁴⁵

The only avenue to influence how the courts were run that remained for members of the judiciary was that they could offer input on administrative concerns through a general body (*hay'a`amma*) of the Court of Cassation, which had the power to present the needs and suggestions of the judiciary to the Ministry of Justice.⁴⁶ Through this and similar mechanisms, the executive branch controlled the judiciary including appointments, discipline and transfer of judges via the Ministry of Justice. Under this superior-subordinate relationship, judges were in effect the “civil servants” of the executive.⁴⁷

The Judicial Inspection Department also monitored judges’ performance and ability to efficiently function. The Judicial Inspection Department had broad powers to inspect the functioning of judges, prosecutors and all judicial departments.⁴⁸ These powers included the inspection of places of detention, and preparing statistics in relation to the functioning of judicial departments. It also monitored judges’ records, the extent of judicial independence, judges’ attendance, efforts in adjudicating lawsuits, the management of courts, commitment to impartiality, and the like.

The Judicial Inspection Department was composed of one chairman of an Appeals Courts Chamber, and six advisors appointed by the Minister of Justice on recommendation from the Supreme Judicial Council. The Minister of Justice disseminated judicial inspection regulations proposed by the Judicial Inspection Department following approval of the Supreme Judicial Council.⁴⁹ Judges serving in the Judicial Inspection Department reported to the Minister of Justice and the president of the Supreme Judicial Council. From the information received during interviews, it was clear that interviewees perceived the Judicial Inspection Department as an instrument of the executive to exert control over judges and the judicial system.

Judges interviewed for this report were deeply concerned about the resulting level of dependence on the executive.⁵⁰ One judge described how the President of the Republic was able to fire any judge with a decree, without giving any reason or opportunity to appeal.⁵¹

45 EMHRN 2012 report, *supra* n. 6, pp. 59-60.

46 Judicial Authority Law, Law No. 98 of 15 November 1961, Article 66.1(d); Nathan Brown, ‘Arab judicial structures: A Study Presented to United Nations Development Programme on Governance in the Arab Region Pogar’, George Washington University, August 2001, <<http://web.dubaichamber.ae/LibPublic/Arab%20judicial%20structures.pdf>> [accessed 23 September 2016].

47 EMHRN 2012 report, *supra* n. 6, pp. 59-60.

48 Judicial Authority Law, Law No. 98 of 15 November 1961, Article 13.

49 *Ibid*, Article 11.

50 See also International Bar Association’s Human Rights Institute, ‘Human Rights Lawyers and Defenders in Syria: A Watershed for the Rule of Law, July 2011, p. 29, <<http://www.ibanet.org/>> [accessed 23 September 2016] (hereinafter “IBAHRI 2011”).

51 Interview with judges in Gaziantep, 9 November 2016.

Many interviewees mentioned the incident when 81 judges were dismissed for corruption on orders from a Head of Security in 2005, despite the fact that they had been approved by the security branches prior to their appointment.⁵²

This event was part of a pattern of intimidation against judges, which was not limited to mere administrative sanctions. Another judge described how a gang connected to one of the state security agencies threatened the judge in a case against them. That judge was forced to flee his office in the judicial palace in Hama after it was raided by armed personnel, asking for the judge and searching the office.⁵³

The judges' lack of individual power and authority made life very difficult if they chose not to co-operate. As one interviewee put it: "[I] *didn't feel I was a judge...*".⁵⁴

Civil and criminal courts

The ordinary courts in Syria hear civil and criminal matters. These courts are divided into three tiers. The first tier consists of the Courts of Conciliation or Courts of Peace (*mahakim al-sulh*), which have jurisdiction over claims with a value not exceeding 100,000 Syria pounds or in criminal cases, minor criminal offences with a maximum punishment of a fine or up to one year imprisonment.

The second tier are the Courts of First Instance (*mahakim al-bidaya*), containing both civil and criminal divisions. Claims exceeding 100,000 Syrian pounds, or more severe crimes, are heard directly in the Courts of First Instance. For suspected crimes deemed to be of a "significant nature," investigatory judges carry out the investigations.⁵⁵ The Courts of First Instance also include the Customs Court (*al-mahkama al-jumrukiyya*) and the Court of Labour Conflicts. These specialised courts are assigned jurisdiction according to the nature of a case. The Court of Assize is a criminal court that acts as first instance in cases where the alleged crime carries a possible punishment exceeding three years' imprisonment.⁵⁶

Under Syrian law, children between the ages of eight and 18 can be tried for criminal offences. Such trials should take place before special first instance juvenile courts (*mahakim al-ahdath*), where particular procedural safeguards should apply.

52 Interviews with lawyers and judges *supra* n. 28; and Amnesty International 2005 press release, *supra* n. 28.

53 Interview with Judge 4, November 2016.

54 Interview with Judge 1, November 2016. Similar sentiments were expressed in some of the interviews with lawyers.

55 This form of evidence gathering is an adaptation taken from the French "inquisitorial" system in criminal trials and may last many months as evidence is gathered by the presiding judge.

56 Syrian Law Journal, 'An Overview of the Syrian Court System', 5 September 2016, <<http://www.syrianlawjournal.com/index.php/overview-syrian-court-system/>> [accessed on 15.12.2016] (hereinafter "SLJ 2016 overview of court system").

However, judges and lawyers with experience from working on such cases indicated that it was not uncommon that children as young as eight were processed through the adult courts, even when a juvenile court was based in the same building.⁵⁷

Judgements from Courts of Conciliation and Courts of First Instance could be appealed to the Court of Appeal (*mahakim al-isti'naf*). Courts of Appeal were located throughout Syria, with three criminal courts and four civil courts in Damascus, and one civil and one criminal appeals court in every other district.

For most cases, a final appeal could be made to the Court of Cassation (*mahkamah al-naqd*) in Damascus.⁵⁸ The Court of Cassation sits in specialised three-judge panels according to four different areas of action: civil, criminal, canon law, and military law. The Court of Cassation only publishes summaries of its cases rather than full transcripts, making it difficult for Syrians to effectively plead and succeed in appeals. While Court of Appeal decisions were difficult to overturn, verdicts occasionally were nullified by the Court of Cassation on issues of form, rather than substance.

All final judgments are enforced through the Execution Court, on which a single judge sits. Complaints about the lack of implementation of court decisions are referred to the Execution Court by the relevant court department.⁵⁹ Decisions by the Execution Court could be reviewed before the Court of Appeal.

The Syrian system also includes two levels of administrative courts. The regular administrative courts operate within the relevant ministry of government in relation to cases involving that Ministry.⁶⁰ For example, cases involving administrative disputes with the military came under Ministry of Defence, whereas labour issues and social insurance came under the Ministry of Social Affairs. The other administrative structure was the Council of State.⁶¹ Originally based on the French system, the Syrian Council of State was adjusted to follow Egyptian model during the period of union with Egypt. Its role is to decide administrative cases involving the state, and to serve as an advisory body to public entities on diverse aspects of public law, such as administrative contracts, tenders, and ministerial decrees.

The Council of State is fully independent from the other courts of general jurisdiction.⁶² The Council consists of two divisions – the Judicial Division and the Advisory Division. The Judicial Division in turn is made up of two tiers, namely the Court of Administrative Disputes and the Supreme Administrative Court. The Court of Administrative Disputes hears cases in the first instance and the Supreme Administrative Court hears cases on appeal and delivers final judgments. The Council of State also has the authority to participate in arbitral proceedings.⁶³

57 Interviews with judges in Gaziantep, 9 November 2016; and interview with Lawyer 5, 2016.

58 Principles of evidence are governed by the Evidence Law, Law No. 359 of 10 June 1947.

59 Interview with judge, 10 November 2016.

60 Interview with judge, 10 November 2016.

61 Council of State Administrative Law, Legislative Decree No. 55 of 1 February 1959.

62 Alessandro Bacci, 'The System of Justice in Syria: Current Organization and Future Challenges', 2010, p. 4, <<http://www.daonline.info/public/foto/BACCI%20-%20The%20System%20Of%20Justice%20In%20Syria.pdf>> [accessed 12 December 2016] (hereinafter "Bacci 2010").

63 SLJ 2016 overview of court system, *supra* n. 56.

The Court of Conflicts hears disputes concerning whether a matter falls under the jurisdiction of the civil or administrative courts.

Syrian courts were notoriously slow in delivering decisions, with cases taking years to complete. Lawyers described the lack of competence and independence from the executive as two main causes for delays.⁶⁴ Such factors are also likely to have contributed to the large backlog of pending cases in Syrian courts.⁶⁵

The courts routinely dealt with about 4,000-5,000 first instance cases per year. Former judges testified to being consumed by work every day. A lawyer from Tartus indicated that judges dealt with about 30 cases each day. In one case involving accusations that a man raped his own daughter detailed below, the lawyer felt that this excessive workload contributed to serious procedural errors violating the rights of both the victim and the accused.⁶⁶

Similar problems extended to the Appeal Courts where only one-fifth of cases were concluded within a year. A Damascus lawyer attributed this to the lack of motivational incentives for judges working in a system where “[t]he judiciary is turned into a tool to bring citizens into submission”.⁶⁷

Criminal procedure

The first step in the penal process following ordinary Syrian criminal procedure is to file a complaint with the police, who then contacts the alleged perpetrator and initiates a preliminary investigation. If the police determine that the case warrants further investigation, the case is referred to the public prosecutor, who is subject to the authority of the Minister of Justice.⁶⁸ Prosecutors look at the facts of the case and determine whether to prosecute in a system of inquiry known as the *niyaba*. If the accused person is detained, the matter is subject to a full investigation by the prosecutor, who puts forward the charges and which court is competent to hear the matter based on the severity of the crime.

Cases involving more serious offences go to an investigating judge. The investigating judge questions the accused, decides whether or not to detain them, and works with the prosecution to gather evidence. Under Syrian law, if there is evidence showing a 50 per cent likelihood that the accused committed the offence, the case is sent to trial. However, this standard was not always observed.⁶⁹

64 Confirmed in many interviews with lawyers, in Beirut and Gaziantep.

65 Bacci 2010, *supra* n. 62, p. 4.

66 See *infra* n. 73.

67 Interview with Lawyer 6, 2016.

68 Constitution of 27 February 2012, Article 137; Judicial Authority Law, Law No. 98 of 15 November 1961, Article 56.

69 IBAHRI 2011, *supra* n. 50, p. 29.

Once the investigating judge has completed investigations, they take a decision on whether an offence has been committed and on the competent court. If the investigating judge agrees that the matter concerns a more severe crime that should be referred to the criminal court, it is forwarded to a referral judge. The referral judge is ultimately responsible for issuing an indictment and it is only at this stage that the defendant is considered to be formally accused of a crime. This judge is known among lawyers as the “gateway” to the criminal court. If at any stage the investigating judge or the referral judge finds that there is insufficient evidence, they should issue a decision declaring the defendant not guilty. Decisions by investigating judge and referral judge on innocence or on severity of the charges can be appealed by the prosecutor, defence or the victim.⁷⁰

Trials are inquisitorial in nature with the judge in control and lawyers playing a more marginal role than in many adversarial systems. Most proceedings are dealt with on file. The accused is brought into the courtroom, is identified and the charges are read. The accused is then asked if they accept the charges.

The accused person has the right to be represented at all stages of the trial, if they so choose.⁷¹ While women are not allowed to appear alone in a *Sharia* court, they can represent themselves in criminal cases.⁷² Though the accused has a right to legal representation of their choice,⁷³ often whatever lawyer is in the courtroom on that day will be asked to defend the accused. In addition, the right to representation is not always respected.⁷⁴ There are also explicit exceptions within the law:

*“There is a shocking item in the criminal law – if a person is accused of spying, they cannot have defence lawyers”.*⁷⁵

If the accused pleads guilty, a case is concluded relatively quickly.⁷⁶ If they plead not guilty, the judge will usually consider written statements taken from witnesses against the accused and then consider written representations from the defence lawyer.

Witnesses rarely attend court to give live oral testimony. Although the victim has the right to appear, in practice women generally let their attorneys appear on their behalf. But it can be a struggle for defendants to have their case considered. As one lawyer put it:

*“You have to force the judge to deal with the case there and then, and not to adjourn, and you have to fight to be heard”.*⁷⁷

70 Interview with Judge 2 in March 2017.

71 Interview with judges in Gaziantep, 9 November 2016.

72 Interview with lawyers in Gaziantep, 9-10 November 2016.

73 IBAHRI 2011, *supra* n. 50, p. 29.

74 One lawyer practicing in a court in areas under government control highlighted a case from 2015 where a man was arrested for having sexual intercourse with his 14-year-old daughter. He appeared in the Court of First Instance and was released on conditions awaiting his trial. He failed to appear at court for his trial, but the judge considered the written evidence on the case file, found the accused person guilty and sentenced him to ten years' imprisonment in his absence and without any lawyer appearing on his behalf. The judge not hear any evidence from the victim, breaching the procedural requirements established in Syrian law. Interview with lawyer in November 2016.

75 Interview with Lawyer 4, November 2016.

76 Interview with judge, November 2016.

77 Interview with lawyer in November 2016.

In cases where the state had a strong interest in securing a particular outcome, there seems to have been a preference for transferring these cases to exceptional courts. For example, where the accused was known as not supporting the government, their case would often be sent to the military court system. The exceptional courts are considerably more severe in their sentencing, and easier for the executive to control.⁷⁸

Personal Status Courts

Matters of personal status, i.e. family law, are heard in the Personal Status Courts. The Personal Status Courts consist of the *Sharia* Courts, *Ruhl* Courts and *Madhabhi* Courts. The *Sharia* Courts have jurisdiction over all matters regulated by the SLPS, including marriage, divorce, paternity, custody, maintenance, guardianship and legal capacity, and inheritance.⁷⁹

Under the SLPS, *Sharia* Courts have exclusive jurisdiction over matters relating to: legal guardianship, trusteeship, and legal representation; registration of deaths; legal capacity and mental maturity; missing persons; determination of paternity; and the maintenance of relatives.⁸⁰ All Syrians, regardless of religion, are subject to the jurisdiction of the *Sharia* Courts on these matters. Other matters in this area may be heard by the religious court of the specific community concerned.

The SLPS explicitly exempts the Druze, Christian, and Jewish communities from certain provisions, mainly in the areas of marriage and divorce. In those communities, such matters are handled by the *Ruhl* Courts for Christians and Jews and the *Madhabhi* Courts for Druze.⁸¹ An amendment to the SLPS in 2010 allowed inheritance and bequests to be determined in the various religious courts according to their own codes.⁸² Therefore, Druze, Christians and Jews may bequeath an estate in accordance with a last will and testament, and this need not be in accordance with *Sharia* principles.⁸³

Judgments of the Personal Status Courts are reviewed by the Court of Appeal (*mahakim al-isti'naf*), which has a *Sharia* Chamber to deal with appeals from the *Sharia* Personal Status Courts. Final appeals may be made to the Canonical and Spiritual Divisions of the Court of Cassation.⁸⁴

78 Repeated by lawyers and judges in numerous interviews. See section 3.2 below.

79 The SLPS, Legislative Decree No. 59 of 17 September 1953, was amended by Law No. 34 of 1975 and Legislative Decree No. 76 of 2010, which dealt with inheritance matters.

80 Civil Procedure Code, Legislative Decree No. 84 of 28 September 1953 (replaced by Civil Procedure Code, Law No. 1 of 3 January 2016), Article 535. Cited in Esther van Eijk, 2013, 'Family Law in Syria: A Plurality of Laws, Norms, and Legal Practices', Doctoral thesis, Leiden University, 2013, p. 60 (hereinafter "van Eijk 2013").

81 SLPS, Articles 307 and 308.

82 Law No. 34 of 1975 and Legislative Decree No. 76 of 2010; Ester van Eijk, 'Family Law in Syria: Patriarchy, Pluralism and Personal Status Laws', (London: I.B. Tauris, 2016), pp. 72-98 (hereinafter "van Eijk 2016").

83 A Sharia court judge and numerous lawyers interviewed for this report were unaware of the 2010 amendment to the SLPS. Amongst those interviewed, only Druze lawyers with experience from practicing in the Madhabhi court were aware of the changes to inheritance provisions. This suggests that the amendment to the law was not widely publicised.

84 IBAHRI 2011, *supra* n. 50, p. 28.

While *Sharia* court judges administer *Sharia* law, they are not religious clerics trained in Islamic jurisprudence. Rather they are appointed the same as other judges working within the courts of general jurisdiction, and require a law degree, amongst other qualifications.

The SLPS is taught in law faculties in Syrian universities, but often by professors from the *Sharia* faculties, rather than the faculty of law. Personal status laws for the other religions are generally not taught.⁸⁵ As such, judges in the Christian courts are clergymen.⁸⁶ Although not explicitly required by law, in practice, all judges in all Personal Status Court are men.⁸⁷

According to interviewees, there was little interference with the Personal Status Courts for security reasons before 2011. They functioned relatively well, with people being able to access the rights they had under the law without impediment.⁸⁸

Supreme Constitutional Court

The Supreme Constitutional Court (SCC) was established under the 1973 Constitution.⁸⁹ The Court has seven members, appointed to four-year renewable terms by decree of the President of the Republic. The President of the Republic also selects the Court President.⁹⁰ The Court has both an advisory role, and the capacity to rule on the constitutionality of laws, if requested to do so by the President, by one-fifth of the members of the People's Assembly, or by a lower court.⁹¹ It is also ultimately responsible for overseeing presidential elections and is the sole body empowered to try the President of the Republic for high treason (the only crime for which he can be held responsible).⁹²

Even though the Constitution was changed in 2012 to include an explicit provision that the SCC should be independent, it is clear from the other provisions within the Constitution that judges could not act independently of the President of the Republic. The President thus has effective control over the organ responsible for overseeing presidential elections and the only institution capable of trying criminal charges against him. Before the new Constitution in 2012, the only entities allowed to challenge laws in Syria before the SCC had been the President of the Republic or the People's Assembly, the same bodies responsible for enacting laws in the first place. With the 2012 Constitution, a provision in Article 147(2) was introduced to allow parties before lower courts to submit challenges to the constitutionality of laws to the SCC.

85 Van Eijk 2016, *supra* n. 82, pp. 46-71.

86 *Ibid.*

87 Monique C. Cardinal, (2010), 'Why Aren't Women Sharia Court Judges? The Case of Syria', Volume 17, Issue 2, *Islamic Law and Society*, 2010, pp. 185-214 (hereinafter "Cardinal 2010").

88 *Ibid.*

89 Constitution of 13 March 1973, Articles 139-148, supplanted by the Constitution of 27 February 2012, Articles 140-149.

90 Constitution of 27 February 2012, Article 141.

91 *Ibid.*, Articles 146 and 147.

92 *Ibid.*, Articles 117 and 146.

However, it is not clear whether this provision had ever been used. The President's institutional control over the SCC is likely to have contributed to reducing the respect of the people for the Court. The ILAC team noticed that interviewees often did not feel the need to comment or reflect in detail on the operation or functions of the SCC, despite explicit questions relating to this. The impression given was that it was not respected amongst legal professionals and somewhat looked down on as just another part of the corruption prevailing throughout the judiciary.

As such, in interviews discussions on the important supervisory powers granted to the SCC in the 2012 Constitution were overshadowed by the widely held perception that it operated as a tool for the President to control and manipulate the constitutional, legislative and judicial organs and the state structures, and was not trusted to reflect or meet the needs or concerns of the people.

Judges

ILAC was not been able to verify the precise number of judges in Syria before the uprising in 2011. One lawyer reported that there were 1,180 judges in 2007,⁹³ while another indicated that there were 1,453 judges in Syria prior to the conflict conducting "regular work".⁹⁴ In any event, Syrian law envisaged that there should be one judge for every 25,000 citizens, including the religious courts.

Women comprised approximately 14 per cent of the judiciary. However, as noted above, there are no women judges in the Personal Status Courts.⁹⁵ Women are not explicitly excluded by law, but Article 24 of the SLPS states that "[t]he judge is the guardian of whoever has no guardian". Some officials argue that based on this provision, a woman may not function as a *Sharia* Court judge because a woman cannot act as the guardian of a minor or a marriage guardian.⁹⁶ Among the other Personal Status Courts, only the Greek Orthodox religious courts explicitly allow female judges. However, in practice, all Personal Status Court judges are men.⁹⁷

Unofficially, the government clearly slanted judicial appointments in favour of the Alawite minority, who are traditionally strong supporters of the Assad family. Alawite areas accordingly had more judges and fewer problems with understaffing. A judge with experience working in Homs told the team:

*"About 40 per cent of the judges were Alawites. In Homs, there were 2 million citizens, but only five judges. On the other hand, in one village with 2,000-3,000 people there were over ten judges and three of them were brothers!"*⁹⁸

93 Interview with Lawyer 7, November 2016.

94 Interviews with lawyers in Gaziantep, 9 November 2016.

95 Cardinal 2010, *supra* n. 87, pp. 185-186.

96 *Ibid.*, pp.189-190.

97 *Ibid.*, p.186.

98 Interview with Judge 8, November 2016.

The selection process for judges typically begins with the announcement of a special competition inviting lawyers with at least ten years experience to apply. To be selected, applicants were required to: (a) receive high marks in a written test; and (b) obtain clearance from the security services, who would undertake seven separate security checks. Such checks involved not only the applicant, but also included scrutiny of extended family members up to four times removed from the applicant.⁹⁹

These background checks were carried out by staff without any academic training.¹⁰⁰ Security tests were obligatory and frequently resulted in rejection. Among the judges interviewed, many believed that reliability from a security perspective was the most important factor in the selection process.¹⁰¹ Accordingly, in spite of formal requirements, judges were appointed who had no legal training.¹⁰²

Applicants for judicial office were required to be members of the Ba'ath Party. However, as one lawyer explained, this requirement did not necessarily mean that applicants actively participated in Ba'ath Party politics.¹⁰³ The reality was simple and followed a pattern repeated in many other professions in Syria – without joining the Party, a candidate knew there was no prospect of being selected.

Personal contacts and relationships were also crucial, even for talented applicants who obtained very high marks in the exam. One lawyer described the disappointment he felt after two years on judicial courses that he passed with high marks, all places were filled by other applicants with poorer grades, but whose fathers were judges or officers in the army.¹⁰⁴

After applicants were approved by the security services, the names of prospective judges were sent to the President who would issue a decree. However, the Presidential decree alone might not suffice for applicants to obtain a judicial appointment. As with other state agencies, bribery was widespread. It was often the case that Ministry of Justice officials would require a bribe to actually obtain the judicial appointment.¹⁰⁵

99 Four times removed could mean, for instance, that an applicant would fail if one of their cousins had a close relation who was considered as a security risk by any of the security services.

100 Interview with judge in Gaziantep, 9 November 2016: “My friend used to do some of the checks on the applicants who wanted to become judges. He had only received education to the ninth grade. Was he a suitable person to be doing this vetting of applicants? If he said you were not appropriate, then you would not be appointed.”

101 See also IBAHRI 2011, *supra* n. 50, p. 29.

102 Interview with Judge 9, November 2016.

103 Interview with lawyer in Gaziantep, 9 November 2016: “[...] according to the law the judge shall not be political. However, being part of Ba'ath party does not mean he is in politics.”

104 Interviews with lawyers in Gaziantep, 9 November 2016.

105 Interview with Judge 4, November 2016.

According to one judge:

*“There was bribery in the selection to become a judge. People paid a bribe to get the appointment. You did not have to be a lawyer to get appointed as a judge. It was possible for a graduate from agriculture or engineering to be appointed – to deal, for instance, with the Ministry of Agriculture and compensation”.*¹⁰⁶

Judicial training

In Syria, judicial education is the responsibility of the Supreme Judicial Training Institute. The Institute was set up by Legislative Decree No. 42 of 2000 to increase the level of quality of judges and prosecutors through training, and to ensure new candidates are “competitively appointed to the lowest judicial ranks in accordance with the Judicial Authority Law”.¹⁰⁷ The Decree installed the Minister of Justice as Chairman of the Institute Board. From this position, the Minister controlled the Institute’s activities, and allowed him to dictate the curricula, issue directives on the Institute’s activities, nominate lecturers and instructors, and determine the assignment of research papers.¹⁰⁸ The Decree even empowered the Minister to endorse his own nominations.¹⁰⁹

Many of those interviewed felt that most judges did not have the adequate legal knowledge or training. As one lawyer put it: “[t]hey do not have good knowledge of the law – I have to explain everything to them”.¹¹⁰ As was noted above, in spite of a formal requirement that judges must have a law degree, some judges did not have any legal background.

Bribery and corruption

Interviewees from all parts of Syrian society described corruption within the courts as a major obstacle to justice. Throughout the interviews, corruption was described as widespread and chronic.¹¹¹ One lawyer said that it was impossible to achieve justice for an ordinary citizen in a case if the other party had financial or other ties with the government. In such cases, “even if the person was right, [they] could not obtain their rights”.¹¹²

106 *Ibid.*

107 Legislative Decree No. 42 of 2000, Article 4.

108 *Ibid.*, Article 11.

109 *Ibid.*, Articles 11 and 13.

110 Interview with lawyer, November 2016.

111 Although corruption is widespread and common, it seems it is not universal. One lawyer who had fled the government and supported the opposition said: “People know who is a good judge and who is related to the regime and who take bribes. Some judges are honest. We respect some judges and lawyers who work in regime areas – we understand their position.” Interview with lawyer in Gaziantep, 10 November 2016. See also Bacci 2010, *supra* n. 62.

112 Interview with Lawyer 4, November 2016.

Bribes were often necessary to win even the strongest of cases:¹¹³

*“Even a small employee can contact the judge and influence his position. Bribes were always widespread. Before the war, the bribe was under table, but now it is out in the open ”.*¹¹⁴

This picture was corroborated by judges. One judge described the working methods of a colleague he knew of at a court in Douma, near Damascus as such:

*“With corruption – In Douma there was a judge. She used to show the lawyers two versions of verdicts she had prepared. One verdict would be for the accused to be found not guilty, in which case she would receive a bribe, which would cost the accused 1 million Syrian pounds. The other was for the accused to be found guilty. That was “free” where no bribe would be paid, and the accused would receive a sentence ”.*¹¹⁵

Corruption did not only take the monetary form. According to legal professionals, interventions in the process by security officials or superiors to induce a certain outcome to the case were regular occurrence.¹¹⁶ This included civil cases, as well as criminal cases. Lawyers reported that it was practically impossible for the other party to successfully defend their rights in courts where one party belonged to or had ties with the government.¹¹⁷ Even on appeal, the possibility of a retrial or successful appeal often depended on the positions of the parties, and the sensitivities of the subject matter of the case.¹¹⁸ As one lawyer put it:

*“The regime used to bring people to justice only if they wanted to. There were people who deserved to be brought to justice but this never happened ”.*¹¹⁹

As discussed below, women were particularly vulnerable to the impacts of corruption perverting the course of justice.¹²⁰ An Alawite lawyer working in areas under government control described how bribes were often paid to doctors who provided expert reports to criminal courts on the sexual history of women charged with immoral sexual offences, such as prostitution.

113 Interviews with lawyers in Gaziantep, 10 November 2016.

114 Interview with Lawyer 3, November 2016; interview with lawyers in Beirut, November 2016.

115 Interview with Judge 1, November 2016.

116 Interview with Judge 4, November 2016; and interview with Lawyer 10, November 2016.

117 Interviews with lawyers in Gaziantep, 9 November 2016.

118 Interview with lawyer in Beirut, November 2016.

119 Interview with Judge 9, November 2016.

120 Dr. Naomi Hossain, Dr. Celestine Nyamu Musembi and Jessica Hughes, 'Corruption, Accountability and Gender: Understanding the Connections', United Nations Development Programme and United Nations Development Fund for Women, 2010, p. 8, <<http://www.undp.org/content/dam/aplaws/publication/en/publications/womens-empowerment/corruption-accountability-and-gender-understanding-the-connection/Corruption-accountability-and-gender.pdf>> [accessed 12 January 2017].

Such cases are inherently dangerous to women suspects who, if not released at an early stage of an investigation, face a real risk of being disowned for bringing shame and dishonour to the family.¹²¹

Judges interviewed for this study believed that corruption was deliberately encouraged by the government. Keeping judicial salaries low, impacts on the standard of living for many judges. At the same time, workloads were high. This resulted in judges being more easily influenced in individual cases by routinely accepting bribes. In the words of a Syrian correspondent, “*money speaks in the courts*”.¹²² The pressure to accept bribes was exacerbated by the fact that judges themselves needed to use bribes to further their own careers. According to one prominent lawyer, in the years leading up to the uprising a judge even had to resort to bribes to obtain a seat on the Supreme Judicial Council.¹²³

Conclusions

The Syrian Constitution contains several articles aimed at guaranteeing the independence of the judiciary.¹²⁴ Nevertheless, judges, lawyers and members of civil society consulted for this report did not consider the judiciary to be independent.¹²⁵ Interviewees routinely remarked that judges were not independent even at the lower ranks of the judicial system, stating it was the same in all of Syria.¹²⁶

Their concerns fell primarily into two categories. First, a recurring theme in interviews was the description of the entire judicial system as subservient to and corrupted by the President of the Republic, the Ba’ath Party and organs of the multiple security services in Syria. Successive constitutions and legislation purported to give effect to the principle of the separation of powers between the legislative, the judiciary and the executive, and the principle of independence of the judiciary. In reality however, the system was systematically designed to make any judicial independence impossible at an institutional level, and very difficult if not equally impossible to act independently as an individual judge.¹²⁷ Second, widespread bribery and corruption destroyed any chance of real independence.¹²⁸

Not surprisingly, the judges interviewed steadfastly maintained that they had been independent as judges, but that they were forced to work in a system that was not.¹²⁹ Judges took pride in what they deemed to have been a good judicial system with good legislation to guide it, but said that the government had used exceptional laws to control the judges.

121 Interview with Lawyer 5, 2016.

122 Interview with journalists 1 and 2 in Gaziantep, November 2016.

123 Interview with Lawyer 3, November 2016.

124 For example, Constitution of 27 February 2012, Articles 131-140, 142, 144-145 and 149.

125 See also IBAHRI 2011, *supra* n. 50, p. 27.

126 Interviews with lawyers in Beirut, November 2016.

127 EMHRN 2012 report, *supra* n. 6, pp. 52-53.

128 Interviews with lawyers in Gaziantep, 9 November 2016; and interview with lawyer in Beirut, November 2016.

129 Interviews with lawyers and judges in Gaziantep, 10 November 2016.

Coupled with the immunity for security officers and a widening military justice system, they considered that the civilian courts had scant opportunity to enforce the law in a fair and just manner.¹³⁰

3.2 Exceptional courts

As has been noted above, a parallel system of exceptional courts has been created in Syria through a raft of repressive laws to deal with perceived threats to the state or the political control of the Ba'ath party.¹³¹ There is no clear delineation between the jurisdictions of the regular courts and the exceptional courts, or even between the various exceptional courts. For example, violations of the 1963 State of Emergency Law could be tried either by the military courts or a separate extraordinary tribunal.¹³²

According to interviewees, security agencies could instruct judges to treat a particular case as a security issue, even in cases that were blatantly ordinary crimes, such as drug dealing.¹³³ Among those interviewed, the exceptional courts were infamous for how they dealt with any opponents to the government, demonstrators, and alleged spies under the guise of treason.¹³⁴ While ILAC did not investigate in any detail the extent to the role or involvement exception courts in executions or enforced disappearances, Human Rights Watch has estimated that 17,000 individuals were victims of enforced disappearances between 1980 and 2000 under former President Hafez al-Assad, many of whom were processed through the exceptional court system.¹³⁵

The exceptional courts are divided in a military and a civilian system. The Military Courts and Military Field Courts are organised under the Ministry of Defence, and the Counter-Terrorism Court, which replaced the Supreme State Security Court, under the Ministry of Justice.

130 *Ibid.*

131 This legislative framework includes Emergency Law, Decree No. 15 of 22 December 1962, Revolution Protection Law, Decree No. 6 of 17 January 1965, Law for Establishing the State Security Department, Decree No. 14 of 14 January 1969, the Internal Organisations Law for the State Security Department, Decree No. 549 of 25 May 1969, Law for Setting Up Field Martial Courts, Decree No. 109 of 17 August 1967, Law for Setting Up a State Security Court, Decree No. 39 of 28 March 1968, Law No. 49 of 7 July 1980 (which provided for the death penalty for members of the Muslim Brotherhood), and Law for Practicing the Legal Profession No. 39 of 15 August 1981.

132 IBAHRI 2011, *supra* n. 50, p 28.

133 Interviews with lawyers in Gaziantep, 10 November 2016.

134 Interview with Lawyer 11, 2016; interview with Lawyer 7, November 2016; interview with Lawyer 15, November 2016; interview with Judge 1, November 2016; and interview with Judge 3, November 2016.

135 Human Rights Watch, 'A Wasted Decade: Human Rights in Syria During Bashar al-Asad's First Ten Years in Power', New York, 2010, <<https://www.hrw.org/sites/default/files/reports/syria0710webwcover.pdf>> [accessed 12 January 2017].

The Military Courts

Syria has traditionally used two types of courts where military officers act as judges: the Military Courts proper, with a mix of military officers and legally trained judges, and Military Field Courts, presided over solely by military officers.

The Military Courts proper were originally established to deal with all cases involving members of the military or police. However, these courts also have authority to try civilians for “state security offences” as defined in Articles 260–339 of the Penal Code.¹³⁶ As a result, the Military Courts hear cases concerning not only soldiers, but also those involving activists, demonstrators, or persons related to such individuals.¹³⁷

A military prosecutor is responsible for drawing up the charges and deciding the venue for a civilian defendant.¹³⁸ If the accused was a serving soldier, approval from the Chief of Command or Minister of Defence is required before a prosecution can be initiated. In all cases involving either civilian military personnel, representatives of political security, state security and the Ba’ath party are present. The court could also call upon the assistance of military intelligence.

The bench in a basic Military Court is composed of two civil judges and one military judge in “military rooms.” The selection of judges is very much in the hands of the security services. In order to be appointed, Military Court judges need to pass a security check. According to one lawyer, judges are not in a position to challenge the military prosecutor and could not stop the trial, even if they are convinced that the accused is innocent, unless a bribe is paid.¹³⁹

Accused persons do have the right to be represented by a defence lawyer in these courts. However, their presence was of little relevance according to one lawyer: “*Currently in military courts, the lawyers have no real role, they are only decoration*”.¹⁴⁰ Lawyers typically are not allowed to meet with defendants in detention without the authorisation of the Syrian Bar Association, which was routinely refused.¹⁴¹

One lawyer who had worked in the Military Courts in Aleppo before the war described political representatives of the state military security and the Ba’ath Party as the “*main movers of the whole court*”. With members of military intelligence present, many times judges did not even dare to release an obviously innocent person.¹⁴²

136 IBAHRI 2011, *supra* n. 50, p. 28.

137 Interview with Lawyer 11, 2016; interview with Lawyer 7, November 2016; interview with Lawyer 15, November 2016; interview with Judge 1, November 2016; and interview with Judge 3, November 2016. See also International Federation for Human Rights, ‘Syria: The Trial of Human rights Lawyer Haytham Al-Maleh Before the Second Military Court of Damascus – February-July 2010’, Joint Trial Observation Mission Report, February 2011, <<https://www.icj.org/wp-content/uploads/2012/08/Syria-trial-Al-Maleh-trial-observation-report-2010-eng.pdf>> [accessed 12 January 2017] (hereinafter “FIDH 2011 report”).

138 IBAHRI 2011, *supra* n. 50, p. 28.

139 Interview with lawyers in Gaziantep, 10 November 2016.

140 Interview with Lawyer 4, November 2016.

141 FIDH 2011 report, *supra* n. 137, p. 11.

142 Interview with Lawyer 7, November 2016.

Indeed, military courts reportedly would not require the prosecution to present any evidence, but instead would only consider secret military intelligence reports. Defence arguments were summarily rejected.¹⁴³

According to interviewees, civilians were often brought before the military courts, even if they had only committed a minor offence. One lawyer highlighted that a civilian being tried in a military court would get a much heavier sentence than if they had been tried in the ordinary criminal courts:

*“In the start of the demonstrations, if a protester was brought to a civilian court, they would go to prison for one month. However, at a military court they would get a minimum of one year. They would look at any demonstrator as a traitor of the country”.*¹⁴⁴

During the 1980s, the Military Courts issued numerous death sentences against defendants accused of belonging to the Muslim Brotherhood pursuant to Law No. 49 of 7 July 1980.¹⁴⁵ This law stipulated that political affiliation with the Muslim Brotherhood was punishable with the death sentence, even if the defendant did not commit concrete acts against the state.

One lawyer who helps those detained or imprisoned following Military Court conviction or detention reported of deplorable conditions, including forced disappearances and torture in prisons.¹⁴⁶

Anyone convicted has the right to appeal to the Military Chamber of the Court of Cassation.¹⁴⁷ On appeal, the Court of Cassation does not look at the facts of the case. However, in theory it can find trial proceedings in a Military Court defective in form and declare the decision null and void.¹⁴⁸ If the case is referred to the Court of Cassation a second time, the Court of Cassation then has jurisdiction to look at both the facts of the case and its form.¹⁴⁹ It was not clear if such appeals in fact do occur, or their chances of success.

143 FIDH 2011 report, *supra* n. 137, p. 9.

144 Interview with Lawyer 7, November 2016.

145 Law No. 49 of 7 July 1980, Article 1.

146 Interview with Lawyer 11, 2016.

147 IBAHRI 2011, *supra* n. 50, p. 28.

148 FIDH 2011 report, *supra* n. 137, p. 12.

149 Interview with lawyer in November 2016.

Military Field Courts

The Military Field Courts were established by Legislative Decree No. 109 of 17 August 1968. These courts were intended for use during armed conflict, either against the enemy or to prosecute soldiers who deserted the battlefield for crimes that would otherwise fall within the jurisdiction of the military courts. The need to subject the latter category of persons to the Military Field Courts jurisdiction became apparent due to the widespread desertions during the war against Israel in 1967.¹⁵⁰ Later, Legislative Decree No. 109 of 17 August 1968 was amended to expand the court's jurisdiction to also cover periods of "domestic unrest".¹⁵¹

A Military Field Court can be established by a decision of the Minister of Defence. All the judges in the Military Field Courts are military personnel. The Chair should not be of lower military rank than the rank of major, and other judges not lower than rank captain. Trials are conducted behind closed doors, and both trial and judgment kept secret.¹⁵² According to one report, the secrecy surrounding the courts could extend even to informing the accused, who even after receiving a death sentence is not told until shortly before the execution.¹⁵³

Officers sitting as judges on these courts could not rely on their position in the military to shield them from pressure from other state agencies when deciding individual cases. Rather, two of the judges interviewed for this study described how even the military officers sitting as judges on these courts lived in fear of the security forces.¹⁵⁴ These Military Field Courts are not bound to apply Syrian criminal law of procedure, and sometimes adapt the procedure to suit the needs or desires of the Chair.¹⁵⁵ Sentences include life imprisonment or the death penalty.¹⁵⁶ In theory, judgments issued by the Military Field Courts are signed by the Minister for Defence or, in the case of death sentences, by the Head of State i.e. the President of the Republic.¹⁵⁷ Such judgments are final and there is no appeal.¹⁵⁸

150 Interview with Judge 1, November 2016.

151 Interviews with judges in Gaziantep, 10 November 2016.

152 Interview with lawyers in Gaziantep, 10 November 2016.

153 Amnesty International, "Human Slaughterhouse: Mass Hangings and Exterminations in Syria", 2017, <<https://www.amnesty.org/en/documents/mde24/5415/2017/en/>> [accessed 2017-02-19] (hereinafter "Amnesty International 2017 report").

154 Interviews with judges in Gaziantep, 10 November 2016.

155 Legislative Decree No. 109 of 17 August 1968, Article 5; and interviews with judges in Gaziantep, 10 November 2016. See also Bacci 2010, *supra* n. 62, p. 4.

156 Interviews with judges and lawyers in Gaziantep, 9 November 2016; and interviews with judges in Gaziantep, 10 November 2016.

157 Legislative Decree No. 109 of 17 August 1968, Article 8; and interview with Syrian lawyer in Beirut, 12 November 2016. See also Amnesty International 2017 Report, *supra* n. 153 p. 19, which detail the procedure used to sign death sentences.

158 Interview with lawyer in Beirut in November 2016; and interviews with judges in Gaziantep, 10 November 2016.

Even before the 2011 uprising, Military Field Courts were accused of summarily trying and executing individuals deemed to be enemies of the government.¹⁵⁹ A Damascus lawyer described the accused before Military Field Courts as “doomed.” According to this lawyer, the standard procedure was to take prisoners from detention directly to death row, with those sentenced to death executed shortly after judgments against them had been entered.¹⁶⁰

Supreme State Security Court

In the years leading up to the 2011 uprising, one of the most reviled organs of the Syrian government was the Supreme State Security Court (SSSC). Although the SSSC was abolished in 2011, its legacy lives on in its replacement, the Counter-Terrorism Court (CTC).¹⁶¹

Like the Military Courts proper and Military Field Courts, the SSSC existed outside the ordinary criminal justice system and was accountable only to the Minister of Interior.¹⁶² The SSSC had jurisdiction to consider all cases referred to it by the Military Governor or his deputy. It was mandated to cover all civilians and military persons of all capacities and regardless of immunities.¹⁶³ Under this scheme, the SSSC’s jurisdiction was virtually unlimited.¹⁶⁴ Over the years, the SSSC tried thousands of people perceived by the government as threats, including communists, pan-Arab Nasserites, Iraqi Ba’athists, human rights activists, members of the Muslim Brotherhood, suspected Islamists, Kurdish activists and assorted independent activists critical of the government.¹⁶⁵

Proceedings in the SSSC were not public, and exempt from the rules of criminal procedure that apply in the courts of general jurisdiction. The SSSC and the security services typically denied defence lawyers access to their clients prior to trial, and only fleeting access immediately before or after a trial session began. Proceedings often began before defence lawyers even saw their client’s file.

159 The Syrian Human Rights Committee, ‘Jurisdiction Authority in Syria: Its Role in Protecting Human Rights’, 2004, <<http://www.shrc.org/en/?p=19884>> [accessed 5 March 2017].

160 Interview with Lawyer 12, 2016. See Amnesty International 2017 Report, *supra* n. 153 p. 19, which states that executions normally take place approximately two months after sentencing to allow time for the approval of the death sentence by the Minister of Defence or the Chief of Staff of the Army acting on behalf of President Bashar al-Assad.

161 See section 4.1 below.

162 See Human Rights Watch, ‘Far From Justice: Syria’s Supreme State Security Court’, February 2009, <<https://www.hrw.org/sites/default/files/reports/syria0209web.pdf>> [accessed 5 March 2017] (hereinafter “HRW 2009 report”).

163 Interview with lawyer in Gaziantep, 10 November 2016. After the SSSC was abolished in 2011, these cases were transferred to the Counter-Terrorism Court.

164 IBAHRI 2011, *supra* n. 50, p 28.

165 See further HRW 2009 report, *supra* n. 162.

Lawyers were permitted to submit only written defence statements, and were routinely denied the opportunity to present any oral defence.¹⁶⁶

Human Rights Watch reported on a conversation with a western diplomat who frequently attended SSSC proceedings, who commented:

*“I have never seen [SSSC President] al-Nuri really look at a file. He basically tells the defendant, ‘this is the charge, what do you have to say?’ As the defendant speaks, he may suddenly say, ‘enough!’ The prosecutor never asks questions. He might add a comment or share a joke with al-Nuri ”.*¹⁶⁷

Judgments were not subject to appeal. SSSC sentences were final, but not enforceable until ratified by the President of the Republic. In practice, however, the Minister of Interior ratified the verdicts.¹⁶⁸ Sentences were often harsh, ranging between three and 15 years imprisonment, and in many cases involving political prisoners, life imprisonment or sentenced to death.¹⁶⁹

166 *Ibid.*, and IBAHRI 2011, *supra* n. 50, pp. 28-29.

167 See HRW 2009 report, *supra* n. 162, p. 6.

168 *Ibid.*

169 VDC 2015, *supra* n. 12.

3.3 The legal profession

Though their official organs have been hijacked, Syrian lawyers speak of a history of independence and clashes with governmental authorities. Going back to the French Mandate and the years following Syrian independence, many lawyers were activists and politicians.¹⁷⁰

After Hafez Al-Assad took control of the government in 1970, the representative bodies of the legal profession became increasingly opposed to his policies.¹⁷¹ In 1972, the government passed a law unifying the previously decentralised bar associations under its umbrella leadership.¹⁷² However, the Bar Association of Damascus passed a resolution in June 1978 demanding the immediate lifting of the Emergency Law, condemning the use of torture, and threatening to discipline lawyers if they took part in government activities. The resolution further stated that the judgments of exceptional courts “should be considered as contrary to the law and to the principles of justice,” and it warned lawyers against allowing “the prestige of the legal profession [to] give credibility to these disastrous courts”.¹⁷³ Bar associations in other cities soon followed with similar resolutions, and in December 1978 the national Syrian Bar Association demanded independence for the judiciary, dissolution of the exceptional courts, and termination of the state of emergency.¹⁷⁴

The Syrian Bar Association and local bar associations continued their protest activities over the course of the next two years, as anti-government agitation increased overall. When the numerous professional groups including the bar called a national strike in the spring of 1980, the Assad government reacted by dissolving all professional associations on the ground that they had been “infiltrated by reactionary elements” and were a danger to society, replacing their leadership.¹⁷⁵

At the same time, more than 50 lawyers were arrested by the intelligence agency (*mukhabarat*), including the President of the Syrian Bar Association. While some were tried in secret, others were detained without trial. Presidential amnesties between 1991 and 1995 permitted some to be released, but others are believed to have died in prison.¹⁷⁶

170 Human Rights Watch, ‘Human Rights in Syria’, New York, 1990, p. 79, <https://archive.org/stream/bub_gb_N-xjxWYWnlwC/bub_gb_N-xjxWYWnlwC_djvu.txt> [accessed 12 January 2017] (hereinafter “HRW 1990 report”).

171 *Ibid.*

172 Law No. 14 of 1972.

173 Quoted in HRW 2009 report, *supra* n. 162, p. 18.

174 George 2003, *supra* n. 21, p. 103.

175 Centre for the Independence of Judges and Lawyers, ‘Syria’, Geneva, October 1980, pp. 25-28 <<http://icj.wpenet.net/dna-cdn.com/wp-content/uploads/2013/10/CIJL-Bulletin-6-1980-eng.pdf>> [accessed 21 March 2017]; HRW 1990 report, *supra* n. 170, pp. 79-80; and George (2003), *supra* n. 21, p. 104.

176 *Ibid.*

On 15 August 1981, Law No. 39 was passed, which required the Bar to act “in conformity with the principles and resolutions” of the Ba’ath Party, and “in coordination with the competent office” of the party’s Regional Command. Bar association meetings were banned unless called and attended by a Ba’ath Party representative. The new law also gave the government the power to dissolve any local or national bar association at any time.¹⁷⁷ The ability to practice law was likewise restricted. Ministry of Justice approval was required for a lawyer to represent foreign individuals or companies. Lawyers faced arrest or disbarment and their offices were subject to search if they represented clients considered to be threat to state security. The government started to vet all candidates who applied to the Bar, filling positions with Ba’ath party members, many of whom had no legal training. In 1987, President Hafez Assad named the former Director of Intelligence for the Damascus Governate – a non-lawyer – as Head of the Syrian Bar Association.¹⁷⁸

Some of these provisions were relaxed with the passage of Law No. 30 of 11 July 2010. Under the new law, the Syrian Bar Association was referred to as a professional body “founded in accordance with the provisions of the Constitution.”¹⁷⁹ However, the 2010 law still mandated that the Bar Association must cooperate “with the official and People’s authorities in the Arab country of Syria, and also “in coordination with the office responsible for the regional leadership of the Socialist Arab Ba’ath Party”.¹⁸⁰ Actions of the general meetings of the local and national Bars were legally void without the attendance of representatives of both the Ba’ath Party and Ministry of Justice,¹⁸¹ a restriction that was routinely enforced.¹⁸²

As before, the Ministry of Justice had the right to supervise and inspect the Syrian Bar Association and its branches,¹⁸³ while the government retained the power to dissolve any bar association at any time.¹⁸⁴ While lawyers were not required to be party members, it was reported that those registering for entry to the Bar were required to swear allegiance to the Party.¹⁸⁵ At the same time, the presidents and a majority of council members of the various local and national bar associations must be party members.

The changes in 2010 also added restrictions to Syrian lawyer’s abilities to properly represent a client. For example, lawyers were required “to abstain from visiting prisoners in places of detention” without written permission from the head of the local bar association or faced disbarment.¹⁸⁶

177 HRW 1990 report, *supra* n. 170, pp. 79-80.

178 *Ibid.*, p. 81.

179 Law No. 30 of 11 July 2010, Article 3.

180 *Ibid.*, Article 4.

181 *Ibid.*, Articles 37 and 49.

182 Interviews with lawyers in Gaziantep, 9 November 2016.

183 Law No. 30 of 11 July 2010, Article 7.

184 *Ibid.*, Article 107.

185 Interviews with lawyers in Gaziantep, 9 November 2016.

186 Law No. 30 of 11 July 2010, Article 74.

Reports from prior to the 2011 uprising indicate that such consent was granted or denied based on political considerations and that, even when consent was granted, a guard or security officer often was present to record statements made during the meeting.¹⁸⁷ The 2010 Law also allowed the investigation, arrest and interrogation of a lawyer and the search of his/her offices, although only with the permission of the president of the local bar association. However, the law also allowed such activities without permission in cases “which relate to the security of the State.”¹⁸⁸

On the eve of the 2011 uprising, the Syrian Bar Association had 14 local chapters.¹⁸⁹ Official statistics from the Syrian Bar Association indicate that in 2011, there were 21,687 registered lawyers in Syria. One quarter of all registered lawyers were found in Damascus, and another 20 per cent were registered in Aleppo.¹⁹⁰

Prior to the conflict, law faculties were reportedly operating through Damascus University in Damascus and its Daraa branch, Aleppo University in Aleppo and its Idlib branch, El Baath University in Homs, Tishreen University in Latakia, and Euphrates University in Deir ez-Zor and its branch in Hasakah.

Until the start of the conflict, women in Syria generally had equal access to educational opportunities.¹⁹¹ However, while women constituted approximately half of the pre-conflict total university population,¹⁹² they were less well represented in law faculties. In the early 2000s, approximately 30 per cent of the graduates from the University of Damascus and 19 per cent of the graduates from the University of Aleppo were women.¹⁹³

Statistics obtained by ILAC showed that in 2011, 17,147 (79 per cent) of registered lawyers were male, and 5,486 (21 per cent) were female. The percentage of registered female lawyers varied greatly by province, from as high as 30 per cent in Damascus and 26 in Tarsus to 19 per cent in Aleppo and as low as 9 per cent in Raqqa.¹⁹⁴ Approximately 14 per cent of the total workforce were women in 2012,¹⁹⁵ indicating that women's participation in the legal sector appears to be similar to other employment sectors. However, it was indicated during interviews that the status of women in the Syrian justice system impacted on women's ability to practice at the Bar.¹⁹⁶

187 See IBAHRI 2011, *supra* n. 50, p. 35.

188 Law No. 30 of 11 July 2010, Article 78.

189 See IBAHRI 2011, *supra* n. 50, p. 32.

190 Statistics provided by the Syrian Bar Association. The full text of these statistics is contained in Annex I.

191 Professor Klaus Schwab, Richard Samans, Saadia Zahidi, Till Alexander Leopold and Vesselina Ratcheva, “The Global Gender Gap Report 2016”, World Economic Forum, Geneva, 2016, <<http://reports.weforum.org/global-gender-gap-report-2016/economies/#economy=SYR>> [accessed 25 November 2016] (hereinafter “World Economic Forum 2016”).

192 Institute of International Education, ‘We will Stop Here and Go No Further: Syrian University Students and Scholars in Turkey’, 2014, p.12, <<http://www.iie.org/en/Research-and-Publications/Publications-and-Reports/IIE-Bookstore/We-Will-Stop-Here-And-Go-No-Further-Syrian-University-Students-And-Scholars-In-Turkey#.WEmOBaLx4RE>> [accessed 8 December 2016].

193 Monique C. Cardinal, ‘Women and the Judiciary in Syria: Appointments Process, Training and Career Paths’, Volume 15, Issues 1-2, International Journal of the Legal Profession, 2008, pp. 123-139.

194 Annex I. See also *supra* n. 190.

195 World Economic Forum 2016, *supra* n. 191.

196 Interviews with lawyers in Gaziantep, 4 November 2016; interview with judge in Gaziantep, 9 November 2016; and interviews with lawyers in Amman, 17 November 2016.

Examples of this included the ability to attract clients, interactions with male members of the judiciary and the Bar, and stigma attached to practicing in particular areas of law or government.

While women are represented in the lower ranks of the judiciary and various bar associations, they are less likely to hold high-level positions. According to interviewees, there are no women in leadership positions in the Syrian Bar Association, which still functions in government-controlled areas.¹⁹⁷ One female lawyer noted that there is a Women's Committee within the Bar. However, it is chaired by a man and she described its work as “*decorative, pro-forma*”.¹⁹⁸

3.4 Status of women

Women face particular threats and challenges when they come into contact with the Syrian justice system. The extent to which existing Syrian laws explicitly afford greater rights to men than women, particularly in matters related to marriage, divorce, custody and guardianship, and inheritance, has had a continued impact on the status afforded to women in areas that have fallen outside the control of the government after 2011.

Constitutional provisions and laws relevant to the status of women
Article 45 of the 1973 Constitution provided:

The state guarantees women all opportunities enabling them to fully and effectively participate in the political, social, cultural, and economic life. The state removes the restrictions that prevent women's development and participation in building the socialist Arab society.

Article 23 of the 2012 Constitution is similar in scope.¹⁹⁹ Indeed, the 2012 Constitution enshrines the principle of equality among all citizens even more clearly than its 1973 predecessor, prohibiting discrimination on the grounds of “sex, origin, language, religion or creed” and guaranteeing “respect for the principles of social justice, freedom, equality and maintenance of human dignity of every individual”.²⁰⁰

Article 3 of the 1973 Constitution provides that “Islamic jurisprudence shall be a major source of legislation.” This is reflected in the SLPS, which is largely based on *Sharia* law. Although Article 3 of the Constitution goes on to state “[t]he personal status of religious communities shall be protected and respected”, as noted above the SLPS applies to all Syrians, regardless of religion, with only a few exceptions in the areas of marriage, divorce, and inheritance.²⁰¹ As such, the provisions of the SLPS apply to the majority of the Syrian population.

197 Interviews with lawyers from Aleppo, Damascus, Idlib and Raqqa in November 2016.

198 Interview with lawyer in November 2016.

199 Constitution of 27 February 2012, Article 23 is phrased essentially the same way, with the exception that it replaces the reference to “building the Socialist Arab society” with “building society”.

200 Constitution of 27 February 2012, Articles 19 and 33.

201 See further section 3.1 above.

The legal age of marriage is 18 for men and 17 for women, or 15 for boys and 13 for girls with the consent of a guardian and a judge.²⁰² Women must have the consent of a guardian in order to marry in any case, while men may freely choose to marry without matrimonial guardianship.²⁰³ A Muslim man may marry a non-Muslim woman, but a Muslim woman may not marry a non-Muslim man.²⁰⁴

Syrian law allows for polygamy. Amendments to the SLPS in 1975 intended to make it more difficult for a man to have multiple wives by requiring a husband to have the financial ability to support an additional wife and a *Sharia* justification, the wife's consent to share a marital home with a co-wife, and equal housing for all wives.²⁰⁵ However, in spite of these efforts to limit polygamy, it is still practiced in Syria, particularly in areas where government control is weak or non-existent. In addition, some interviewees cited cases where husbands would threaten to divorce their wife and leave her penniless unless she consented, rendering the legislative safeguards ineffective.²⁰⁶

Marriage is conditioned upon obedience. If a wife is disobedient to her husband, she loses her right to maintenance for as long as she is disobedient.²⁰⁷ A married woman requires her husband's permission to work, or she forfeits her right to maintenance.²⁰⁸ Christian personal status laws also require a woman's obedience in exchange for a husband's maintenance.²⁰⁹

A man has the right to one-sided and unconditional repudiation of a marriage (*talaq*).²¹⁰ In contrast, a woman may petition for divorce only under very restrictive conditions, including insanity, lack of consummation, and "harm" – referred to as "judicial divorce" (*tafriq*).²¹¹ Under Article 177 of the SLPS, if a man abuses his unilateral right to divorce and arbitrarily divorces his wife, she may seek compensation. However, if there are relatives who can financially support her, a man who arbitrarily divorces his wife may not be required to pay her compensation.²¹² A third type of divorce, *mukhala*, is a contract for divorce in which a man agrees to a divorce in exchange for his wife relinquishing all or some of her financial rights.²¹³

In the event of a divorce, a mother is entitled to physical custody of a son until he is 13 years old and of a daughter until she reaches the age of 15.²¹⁴ A woman loses this right if she remarries.²¹⁵

202 SLPS 1953, Articles 16 and 18.

203 *Ibid*, Article 20.

204 *Ibid*, Article 48(2).

205 *Ibid*, Articles 17, 67 and 68.

206 Interviews with lawyers and women's rights activists in Amman, November 2016.

207 SLPS 1953, Article 74.

208 *Ibid*, Article 73.

209 Van Eijk 2013, *supra* n. 80, p. 64; van Eijk 2016, *supra* n. 82, pp. 99-128.

210 SLPS 1953, Articles 85-94.

211 *Ibid*, Articles. 105-114. See Gihane Tabet, 'Women in Personal Status Laws: Iraq, Jordan, Lebanon, Palestine, Syria', UNESCO, Gender Equality and Development Section, SHS Papers in Women's Studies/Gender Research, p. 26, < http://www.unesco.org/fileadmin/MULTIMEDIA/HQ/SHS/pdf/Women_in_Personal_Status_Laws.pdf > [accessed 12 January 2016].

212 Van Eijk 2016, *supra* n. 82, pp. 215-228.

213 SLPS 1953, Articles 95-104.

214 *Ibid*, Article 146.

215 *Ibid*, Article 138.

However, even while the mother has physical custody, the father retains legal guardianship until the child reaches 18 years of age.²¹⁶ Guardianship involves control over “education, medical treatment, instruction, career guidance, consent to marriage and any other affairs concerning a minor’s interest.”²¹⁷ The father also retains guardianship over a minor’s funds,²¹⁸ and therefore a mother with custody of her child might not have access to the funds to provide for that child. In addition, even if a mother retains physical custody, a father may decide to marry off his daughter without the consent of either the mother or daughter.

During marriage, a woman may not travel with her child without permission of the child’s father, while a father may travel freely with his child during marriage.²¹⁹ If a woman retains custody after a divorce, a woman’s right to travel with her child is limited without permission of the guardian, i.e. the father; however, likewise, a father may not travel with his child without the permission of the custodian, i.e. the mother.²²⁰

The SLPS provisions on guardianship apply to all religions, but Christians and Jews are exempt from the provisions on physical custody.²²¹

Sharia law provides detailed and complicated calculations of inheritance shares, and a complete discussion on this topic is beyond the scope of this report. However, as a general rule, a woman may inherit from her father, mother, husband or children, and under certain conditions, from other family members.

However, her share is smaller than a man’s entitlement. For example, a son inherits twice the amount that a daughter inherits. These principles are embodied in Book Six of the SLPS. Article 209 of the SLPS provides that a will may not contain anything prohibited by *Sharia*. Unless all heirs agree, only up to one-third of an estate may be bequeathed in a will to persons not considered heirs under *Sharia* law, and the remaining two-thirds are distributed in accordance with *Sharia* principles.²²²

In addition to provisions of the SLPS, provisions in the Penal Code and Nationality Law impact the rights of women. Specifically, Article 3 of the Nationality Law, Legislative Decree 276 of 24 November 1969, permits only fathers to transmit citizenship. Although the law does provide exceptions for foundlings (a person of unknown parents or parents of unknown nationality) and for persons born in Syria whose relationship to a father cannot be established, these exceptions are rarely applied.²²³

216 *Ibid.*, Article 162.

217 *Ibid.*, Article 170.

218 *Ibid.*

219 *Ibid.*, Article 148.

220 *Ibid.*

221 SLPS 1953, Article 308; and Civil Procedure Code, Legislative Decree No. 84 of 28 September 1953, Article 535 (this law was replaced by Civil Procedure Code, Law No. 1 of 3 January 2016).

222 SLPS 1953, Article 238.

223 International Rescue Committee, ‘Civil Status Documentation in Non-Government Areas of Northern Syria’, 2016, p.15, <<https://www.scribd.com/document/319310864/IRC-Full-Assessment-Civil-Status-Documentation-in-Non-Government-Areas-in-Northern-Syria-July-2016>> [accessed 18 November 2016].

Provisions in the Penal Code allow men to invoke the defence of honour as a mitigating circumstance for assault or murder. Article 548 provides: “He who catches his wife, sister, mother or daughter by surprise, engaging in an illegitimate sexual act and kills or injures them unintentionally” may be sentenced to five to seven years imprisonment.²²⁴ This provision was amended in 2009 and 2011 to increase the minimum sentence. Prior to the 2009 amendment, there was no punishment imposed for such killings. The 2009 amendment introduced punishment of only two to three years, which was increased to five to seven years in 2011. In contrast, the punishment for murder is 20 years hard labour.

Further, the Penal Code facilitates impunity for rape, and pressures women to marry their rapists. Article 508 of the Penal Code provides for a reduced sentence of two years if a rapist marries his victim. Prior to an amendment introduced in 2011, a perpetrator was exempt from punishment altogether if he married the victim. There is no law against marital rape, domestic violence or gender-based violence.

Adultery is a crime in Syria, but has a different definition, punishment and conditions for proof for men and women. Adultery must be committed inside the home in order for a man to be charged. In contrast, a woman may be prosecuted for committing adultery anywhere. While a man may produce any form of evidence against his wife in court, including witnesses, physical proof, or written documents, a woman may only present written evidence of adultery. If convicted of adultery, women may serve from three months to two years in prison, while men serve only one month to one year.²²⁵

Syria’s ratifications of international instruments like Convention on the Elimination of Discrimination Against Women²²⁶ (CEDAW) in 2003 did little to secure women’s rights. Syria ratified the treaty with reservations to articles that it claimed were incompatible with *Sharia* law and the SLPS, thus making it ineffective as a tool for addressing many of the concerns raised above. The reservations made related to: Article 2 (policy measures); Article 9, paragraph 2, concerning the grant of a woman’s nationality to her children; Article 15, paragraph 4, concerning freedom of movement and of residence and domicile; Article 16, paragraph 1 (c), (d), (f) and (g), concerning equal rights and responsibilities during marriage and at its dissolution with regard to guardianship, the right to choose a family name, maintenance and adoption; Article 16, paragraph 2, concerning the legal effect of the betrothal and the marriage of a child; and Article 29, paragraph 1, concerning arbitration between States in the event of a dispute.²²⁷

224 Human Rights and Gender Justice Clinic, Madre and The Women’s International League for Peace and Freedom, ‘Human Rights Violations Against Women and Girls in Syria,’ Submission to the United Nations Universal Periodic Review of the Syrian Arab Republic, 26th Session of the UPR Working Group of the Human Rights Council, City University of New York School of Law, 2016, p. 3, <<https://www.madre.org/sites/default/files/PDFs/Syria%20UPR%20submission%20Final.pdf>> [accessed 18 November 2016] (hereinafter “Human Rights and Gender Justice Clinic et al UPR Submission 2016”).

225 Freedom House, ‘Women’s Rights in the Middle East and North Africa – Syria,’ 14 October 2005, <<http://www.refworld.org/docid/47387b70c.html>> [accessed 22 November 2016].

226 Convention on Elimination of Discrimination Against Women 1979, 1249 UNTS 13.

227 <<http://www.un.org/womenwatch/daw/cedaw/reservations-country>> [accessed 22 November 2016].

Women's access to formal and informal justice institutions

There is no formal legal aid system in Syria, and lawyers generally do not accept pro-bono cases. While the cost of obtaining a lawyer is a barrier to access to justice for both men and women, lack of pro-bono services may disproportionately impact women, as they often lack control over household finances. Under *Sharia* law, a husband must provide for his wife. The legal framework does provide that a woman may have her own bank account and control her own money. However, in practice men generally control the family finances, which can result in women's inability to retain private legal assistance.²²⁸ Fears of repercussions from her husband and family may also contribute to a woman not pursuing formal legal remedies.

Numerous female interviewees reported that male judges often harass women litigants and even women lawyers in court.²²⁹ An employee of an NGO that provides legal assistance within Syria recounted an instance where a woman was beaten in court by her husband, and the judge did not intervene.²³⁰ In addition, interviewees also noted that corruption in the court system prevents effective remedies for the party with fewer resources, typically the woman.²³¹

These factors may result in a woman's reluctance to seek legal assistance or resort to the Personal Status Courts. Whilst these "gender norms and values apply equally to all Syrian women, regardless of religion",²³² many interviewees stated that these barriers were less significant in urban centres, such as central Damascus, where non-religious attitudes were more prevalent.²³³

Women have traditionally had access to informal justice mechanisms, which generally involve a male community elder or leader mediating a dispute. Given the difficulties presented in accessing the formal justice system due to the legal framework, procedure and societal pressures, this has been an important route of redress for many women. There are, however, challenges in these mechanisms, as well. While informal mechanisms may make it easier for women to make their case heard, women are often marginalised in these customary systems, due to their lack of status and influence in their communities. Indeed, when interviewees were asked about informal justice, they were dismissive of these traditional practices and considered them another form of control over women.²³⁴

228 Interview with activist, November 2016.

229 Interviews with lawyers in Gaziantep, 4 November 2016; interview with judge in Gaziantep, 9 November 2016; and interviews with lawyers in Amman, November 2016.

230 Interview with activist and NGO worker in Gaziantep, 7 November 2016.

231 Interviews with lawyers and legal professionals in Amman, November 2016.

232 Van Eijk 2016, *supra* n. 82, pp. 1-18.

233 Interviews with lawyers in Gaziantep, 4 November 2016; interview with judge in Gaziantep, 9 November 2016; and interviews with lawyers in Amman, November 2016.

234 *Ibid.*

Women's access to effective remedies

Sharia court judges have wide discretion over areas not covered in detail in the SLPS, which includes remedies.²³⁵ The majority of female lawyers and activists interviewed felt that this discretion allows a manifest bias by male *Sharia* court judges in favour of men.

This bias was noted particularly in divorce and custody cases. In a judicial divorce (*tafriq*) case, the first step is an obligatory reconciliation process set forth in Articles 112-115 of the SLPS. In this process, a judge “appoint[s] two arbitrators from among the families of the couple or anyone the judge deems able to reconcile them”.²³⁶ If efforts at reconciliation fail, the two arbitrators – who are always men – issue a report that determines “wrongdoing.” Based on this report, the judge determines the rights of the husband and wife. If it is determined that the marital discord is the greater or equal fault of the wife, she will be required to return all or part of the marriage dowry.²³⁷ The judge has broad discretion in appointing arbitrators. Several interviewees noted that these arbitrators usually are not professionals or trained in any way, but may be distantly related to the couple.²³⁸ All considered that the practice of appointing only men results in a bias toward the husband’s point of view. Combined with the wide discretion of the judge, this practice often results in a loss of financial support for women in divorce cases.

The separation of guardianship and custody can also prevent effective remedies for women in custody cases. Women activists and lawyers report that while a woman is entitled to physical custody of her children, if a judge does not require adequate financial support by the father, including the right to stay in the family home, many women are forced to give up custody.²³⁹ Without her own resources or the assistance of her family, this can result in a mother simply being unable to care for her children. As such, it is not uncommon for children to remain with their father even if the mother has been awarded custody. Many female lawyers report that men often use custody as a bargaining chip to get women to relinquish rights to financial support.²⁴⁰

If a woman loses custody of her child, visitation rights are decided by the judge. Interviewees report that a woman’s visitation right is often confined to a Child Visitation Centre for two to six hours each week. Interviewees reported that conditions in these Centres are poor.²⁴¹ In areas without Centres, these visits may happen in courthouses.²⁴²

235 SLPS 1953, Article 305.

236 *Ibid*, Article 112(3).

237 *Ibid*, Article 114.

238 Interviews with lawyers and legal professionals in Amman, November 2016.

239 Interview with activist, November 2016.

240 Interviews with lawyers and legal professionals in Amman, November 2016.

241 Interview with lawyer, 11 November 2016; and interview with lawyers in Amman, November 2016.

242 Interview with lawyer in Amman, November 2016.

Remedies and procedures in gender-based violence and honour killings

Interviewees told us that in their view many women never lodge a formal complaint of domestic violence due to social constraints. This includes fear of reprisal from a husband or family member, as well as perceptions of the police as untrained and unsympathetic to such complaints.²⁴³ In the case of death due to domestic violence, a prosecution will be brought, but sentences are often reduced.

If a woman does lodge a formal complaint, the process for obtaining relief is not easy. According to a lawyer who has handled many such cases, domestic violence cases are most often considered minor offences and sent to the Court of Conciliation. Whilst this offence may be subject to a sentence of three to fifteen years imprisonment, the lawyer stated that in their experience 99 per cent of cases are dropped by the victim before sentencing. The lawyer, however, did highlight one case in which a husband who broke his wife's arm was sentenced to six months in prison and fined 280,000 Syrian pounds.²⁴⁴

In the case of death of the victim, a defendant may avail themselves of Article 548 of the Penal Code noted above that allows for a reduced sentence for honour crimes. According to one criminal defence lawyer interviewed, judges often reduce a man's sentence even if there is no first-hand evidence to support the application of this provision.²⁴⁵ It is within a judge's discretion to determine if a murder is an honour crime, and judges frequently take the defendant on his word, admitting no other evidence.

Official statistics on honour killings do not exist. However, the Syrian Women Observatory estimates that there are nearly 200 honour killings each year.²⁴⁶ Other NGOs have estimated that there were 300-400 honour crimes in 2010.²⁴⁷

243 Interview with lawyers and legal professionals in Amman, November 2016; and interview with civil society representatives, 11 November 2016. Inquiry into police services is beyond the scope of this report. However, it is noteworthy that the number of female officers at police stations in government-controlled areas reportedly varies by district depending on social norms in that community, and most police stations in opposition-held areas have no female officers at all, which is likely to have had an impact on how the police is perceived.

244 Interview with lawyer in November 2016.

245 *Ibid.*

246 Human Rights Watch, 'Syria: No Exceptions for "Honor Killings"', press release, 28 July 2009, <<https://www.hrw.org/news/2009/07/28/syria-no-exceptions-honor-killings>> [accessed 22 November 2016].

247 Human Rights and Gender Justice Clinic et al UPR Submission 2016, *supra* n. 224, p. 3.

Part 2

IV. Developments after the 2011 uprising

Since the uprisings in 2011, Syrians in different parts of the country have been living under the rule of different masters. With the loss of territorial control in large areas, official Syrian government organs disappeared in these areas, including the justice system. In its place, a variety of systems of justice have emerged in different regions controlled by the various armed groups. Changes in the justice system in areas under government control can also be observed.

While the situation on the ground changes daily, these systems are and are likely to continue to shape the future justice and judicial system in Syria with profound effects on the citizens of Syria. The following section gives an account of the changes to the justice system in both government and non-government controlled areas.

For the purposes of this analysis, it should be noted that there has been an ongoing non-international armed conflict since at least 2012.²⁴⁸ In addition to the tragic humanitarian consequences, the escalation from peaceful protests to a full scale armed conflict has had specific legal consequences. International humanitarian law is applicable during armed conflicts and imposes further obligations on the different parties engaged in the conflict, including obligations relevant to the operation of the system of justice.

These obligations are additional to those already owed by the Syrian government under international human rights law.²⁴⁹ International humanitarian law applies equally to all parties to the conflict, including state parties and non-state organised armed groups directly participating in the armed conflict.²⁵⁰

248 The International Committee of the Red Cross (ICRC) has been describing the situation in Syria as an armed conflict of non-international character at least since July 2012. See International Committee of the Red Cross, 'Syria: ICRC and Syrian Arab Red Crescent maintain aid effort amid increased fighting', operational update, 17 February 2012, <<https://www.icrc.org/eng/resources/documents/update/2012/syria-update-2012-07-17.htm>> [accessed 20 February 2017]. This qualification has not been contested by the Syrian government or by any other international organisation concerned with the situation in Syria.

249 These obligations include the right to a fair trial under Article 14 of the International Covenant on Civil and Political Rights 1969, 999 UNTS 171 and 1057 UNTS 407, ratified by the Syrian Arab Republic on 21 April 1969 (hereinafter "ICCPR").

250 Lindsey Cameron et al, 'Article 3: Conflicts not of an international character', in Knut Dörmann et al, 'Commentary on the First Geneva Convention: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field', (Cambridge: Cambridge University Press, 2016), pp. 126-325, paras. 384-517 (hereinafter "ICRC Commentary 2016"). See in particular paras. 422-327 on requirements of organisation and intensity, and paras. 505-508 on the binding nature of Common Article 3 on non-state armed groups.

Common Article 3 to the four Geneva Conventions of 1949, ratified by Syria in 1953, is applicable in non-international armed conflicts.²⁵¹ Common Article 3(1)(d) provides that it is prohibited at any time and in any place to pass sentence or carry out executions “without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples” on “persons taking no active part in the hostilities”, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause. In addition, the requirements relating to fair trial guarantees as part of customary international law are also binding on all parties to the conflict.²⁵² Under Article 8(2)(c)(iv) of the Rome Statute of the International Criminal Court, serious violations of the requirements set out in Common Article 3(1)(d) constitutes a war crime.²⁵³

Guidance can be found within other international instruments on how to interpret Common Article 3(1)(d). The requirement that a court be regularly constituted was replaced in Article 6(2) of Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts 1977 (Additional Protocol II) by the requirement that a court offers “the essential guarantees of independence and impartiality”.²⁵⁴ According to the International Committee of the Red Cross’ (ICRC) General Commentary to Common Article 3, this formula focuses more on the capacity of the court to conduct a fair trial than on how it is established. This takes into account the reality of non-international armed conflicts, which places obligations on all parties to the conflict, be they State or non-State actors.²⁵⁵ The International Criminal Court (ICC) Elements of Crimes also defines a regularly constituted court as one that affords “the essential guarantees of independence and impartiality”.²⁵⁶ As such, no trial should be held, either by State authorities or by non-State armed groups, if the guarantees of independent and impartiality cannot be provided.

Whether an armed group can hold trials providing these guarantees is a question of fact and needs to be determined on a case-by-case basis.²⁵⁷ The ICRC Commentary offers an analysis for the purposes of assessing an organised armed group’s compliance with the requirements of Common Article 3. According to this, a regularly constituted court

251 Common Article 3 to Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949, 75 UNTS 31 (1949) (hereinafter “GCI”); Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 12 August 1949, 75 UNTS 85 (hereinafter “GCII”); Geneva Convention Relative to the Treatment of Prisoners of War, 12 August 1949, 75 UNTS 135 (hereinafter “GCIII”); Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949, 75 UNTS 287 (hereinafter “GCIV”). Ratified by the Syrian Arab Republic on 2 November 1953.

252 See, for example, ICRC Study on Customary International Humanitarian Law (2005), Rule 100, <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule100> [accessed 12 February 2017].

253 Rome Statute of the International Criminal Court 1998, 2187 UNTS 90, Article 8(2)(c)(iv) (hereinafter “ICC Statute”). The ICC Statute has not been ratified by the Syrian Arab Republic. However, many of the crimes included in the ICC’s jurisdiction are based on customary international law. See further Philippe Kirsch, ‘Introduction to the First Edition’ in Otto Triffterer (Ed.), ‘Commentary on the Rome Statute of the International Criminal Court – Observers’ Notes, Article by Article’, 2nd ed. (München: C. H. Beck, 2008), p. XXXIX.

254 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts 1977, 1125 UNTS 609. Syria is not a party to this treaty.

255 ICRC Commentary 2016, *supra* n. 250, para 678.

256 ICC, Elements of Crimes, U.N. Doc. PCNICC/2000/1/Add.2 (2000), Article 8(2)(c)(iv).

257 ICRC Commentary 2016, *supra* n. 250, para 694.

cannot be interpreted as referring exclusively to state courts constituted according to domestic law, as that would leave non-state armed groups unable to comply with this requirement. This would be in contradiction to the rule that the obligations set out in Common Article 3 apply equally to “each Party to the conflict”. According to the ICRC Commentary, to give effect to this provision it may be argued that courts are regularly constituted as long as they are constituted in accordance with the “laws” of the armed group.²⁵⁸ Alternatively, armed groups could continue to operate existing courts applying existing legislation.²⁵⁹

4.1 Areas under government control

As the peaceful protests against the government that began in early 2011 grew in intensity, it seemed inevitable to many observers that the Syrian justice system – a primary target of protestors’ grievances – would face major upheaval. However, despite many years of peaceful demonstrations and even with the outbreak of armed conflict, Syrian courts and justice institutions appear to have experienced relatively little formal change.

Change did initially seem to be on the horizon. In response to domestic and international pressure, the Assad government approved a number of reforms to the legal system in an effort to meet the demands of protestors. These included lifting the State of Emergency and abolishing the SSSC in 2011, as well as adopting a new Constitution in 2012.²⁶⁰

However, while the 2012 Constitution did tone down the emphasis on control by the Ba’ath party, it did not substantially alter the overall constitutional framework that had granted the executive and security forces complete control over the judiciary.²⁶¹ Moreover, just over a year after the SSSC was abolished, it was replaced with the new Counter-Terrorism Court (CTC). By all accounts, the CTC has virtually the exact same function, procedures and capacity as its predecessor.²⁶²

258 There is some support for a similar approach under international human rights law. For example, the European Court of Human Rights has held that “[i]n certain circumstances, a court belonging to the judicial system of an entity not recognised under international law may be regarded as a tribunal established by law provided that it forms part of a judicial system operating on a “constitutional and legal basis” reflecting a judicial tradition compatible with the Convention, in order to enable individuals to enjoy the Convention guarantees’ [emphasis added]; *Ilaşcu and others v. Moldova and Russia*, Application No. 48787/99, Grand Chamber Judgment, ECHR 2004-VII, 8 July 2004, para. 460.

259 ICRC Commentary 2016, *supra* n. 250, para 692.

260 Legislative Decree No. 161 of 21 April 2011, and Legislative Decree No. 53 of 21 April 2011.

261 See further 2012 Constitution, Articles 131-140, 142, 144-145 and 149.

262 See section 3.2 above.

Courts

One area which has seen relatively little change since the uprisings in 2011 is the courts. Most of the same structures, strengths and weaknesses that were in place beforehand continue to operate. Interviewees confirmed that civilian courts in government-controlled areas generally have continued functioning with the same basic personnel and procedures as before the armed conflict began.

To the extent that change has occurred, it has further weakened rather strengthened the justice system. For example, in 2011 the Criminal Procedure Code was amended, indirectly allowing police officers to issue orders delegating police duties to unspecified persons. These duties could include the power to enforce court decisions, gather evidence, organise witness statements and confessions, amongst others. Thus, it is now seems that any branch of the government with a delegation order, including the security services, can independently gather evidence and confessions admissible in courts.²⁶³

Problems with interference from the security forces, and judicial bribery and corruption remain endemic. A lawyer working in courts in an area under government control described how after the start of the conflict all people accused of committing crimes who appeared in court, including children, were questioned about their political affiliations and those of family members.²⁶⁴ Another lawyer said that the situation for litigants had worsened during the conflict, as judges now insist that payments be made in US dollars and not Syrian pounds.²⁶⁵ A lawyer who had practised in government courts after the uprisings confessed to have personally been involved in bribing judges, meeting directly with a judge in his office and agreeing a sum to be paid, usually 1,000-3,000 US dollars depending on the nature of the charge.²⁶⁶ Another lawyer from the same region described a payment of 10,000 US dollars to release suspects in a case of alleged murder and rape.²⁶⁷

The situation does not seem likely to improve soon. While the Judicial Inspections Department now appears to be defunct, the quality of “qualified” judges who graduated from the Supreme Judicial Training Institute after 2011 is no better than before. Many interviewees remarked on the lack of training provided to judges and the poor legal skills often encountered. One judge put this down to a lack of motivation among judges to further develop their skills stemming from low wages and poor living conditions.²⁶⁸

*“...every court in each governorate has an inspection department, totally ineffective. Not one single case to look at ”.*²⁶⁹

263 Decree 55 of 21 April 2011, further amended by Decree 109 of 28 August 2011.

264 Interview with Lawyer 5, 2016.

265 Interview with Lawyer 3, 9 November 2016.

266 Interview with Lawyer 13, 2016.

267 Interview with Lawyer 14, 2016.

268 Interview with Judge 11 in November 2016.

269 Interview with lawyers in Beirut, November 2016.

Perhaps the biggest difficulty for judges working in government controlled areas in the post-uprising environment was that they were forced to pick sides. A number of judges were killed or had to flee either government or anti-government forces. The best estimate ILAC was able to obtain is that approximately 100 judges fled from the government after the outbreak of armed hostilities.²⁷⁰ The judges that remained have come to be considered affiliated (by choice or by force) to the government, making it very difficult for them to maintain any appearance of impartiality or independence in relation to alleged crimes, whether committed by the government or those who oppose it.

Although both the regular and extraordinary courts have not substantially changed how they work, in practice the balance between them has changed. According to some sources, virtually all serious cases now go through the extraordinary courts, where the security services have greater control over the outcome. Even if there have not been major changes to how these courts operate, other reports have shown that the pre-existing problems have grown to an unprecedented scale, as the system is now being used to process tens of thousands of people perceived to be loyal to the opposition.²⁷¹

ILAC's research confirmed the findings of other sources that the Military Field Courts are now used to try civilians far removed from military operations for even the slightest offence to the government. In the years after 2011, these courts have developed into a key component in the Assad government's efforts to repress opposition among the population.²⁷² According to a report by the UN Independent International Commission of Inquiry on the Syrian Arab Republic (COI), "[Military] Field Court proceedings have been extensively used to issue punishments, including the death penalty, for acts alleged to have been committed in the context of the Syrian uprising." The COI concluded in the report that "[p]roceedings in the field courts bear no resemblance to a fair trial, and confessions obtained during torture are often submitted as the only evidence, to the extent any evidence is submitted at all."²⁷³

The COI's findings are consistent with the evidence gathered in the interviews conducted by ILAC. The complete absence of legally binding procedure in these courts, coupled with the denial of any rights of the accused and total secrecy surrounding proceedings renders the Military Field Courts unequipped to conduct a fair trial. Such inadequacies are particularly alarming given the multiple reports of the extremely high number of cases before these courts. The lack of any meaningful procedures to protect defendants has resulted in sentencing people to death after only a few minutes of trial and without a proper defence.²⁷⁴

270 Interviews with Judge 4 and Judge 2, November 2016.

271 Confirmed in several interviews with lawyers in November 2016. See also e.g. Amnesty International 2017 report, *supra* n. 153; and VDC 2015, *supra* n. 12.

272 Interviews with lawyers and judges in November 2016. See also Amnesty International 2017 report, *supra* n. 153.

273 United Nations Human Rights Council, Independent International Commission of Inquiry on the Syrian Arab Republic, "Thematic Report: Out of Sight, Out of Mind: Deaths in Detention in the Syrian Arab Republic," UN Doc. A/HRC/31/CRP1., 3 February 2016, <http://www.ohchr.org/Documents/HRBodies/HRCouncil/CoISyria/A-HRC-31-CRP1_en.pdf> [accessed 12 February 2017] (hereinafter "COI Report 2016").

274 Interviews with lawyers in November 2016. See also, for example, Amnesty International 2017 report, *supra* n. 153, p. 6.

As noted above, ILAC did not investigate in any detail the extent to which the extraordinary courts participate in executions or enforced disappearances. However, many other reports indicate that this practice has intensified considerably since the start of peaceful protests in 2011. According to the COI, military commanders undertook a coordinated policy together with intelligence agencies to target civilian protesters through mass arrests and enforced disappearances in 2011 and early 2012.²⁷⁵ Since then, the COI has found that enforced disappearances have continued with rampant use of torture and inhumane conditions of detention, causing death in large numbers in prisons operated by the government.²⁷⁶ According to independent reports, approximately 17,723 have died in Syrian prisons from the start of the conflict.²⁷⁷ In Sidnaya prison in Damascus alone, between 5,000 and 13,000 are estimated to have been executed.²⁷⁸

Following the start of the conflict, arbitrary detention has become a particular threat to women. Indiscriminate arbitrary internment, abuse, humiliation and torture of women has been used by government-allied forces as a means to draw out men to surrender,²⁷⁹ or in exchange for weapons in the possession of armed groups.²⁸⁰ As a result, there are thousands of women whose whereabouts are unknown.²⁸¹ One lawyer working in Damascus stated that while official statistics say there are 11,000 women being held in detention by the Military Field Courts, Counter-Terrorism Courts and Courts of First Instance, the real number may be as high as 15,000.²⁸²

Another lawyer also working in Damascus stated that there were 7,000 women detainees in Adra prison in Damascus alone, along with as many as 30 children arrested with their mothers. On entering detention, women may be stripped and searched by male guards. They are often beaten and subjected to sexual violence. Food at these detention centres is inadequate, and women have no access to health care or feminine hygiene products.²⁸³ Though prison rape and sexual violence is common for both male and female prisoners, sexual violence against women is reportedly used as a tool of oppression by government forces, as it brings shame to the entire family.²⁸⁴

275 United Nations Human Rights Council, Independent International Commission of Inquiry on the Syrian Arab Republic, 'Conference Room Paper - Without a trace: enforced disappearances in Syria', 19 December 2013, <<http://www.ohchr.org/Documents/HRBodies/HRCouncil/CoSyria/ThematicPaperEDInSyria.pdf>> [accessed 19 February 2017].

276 COI report 2016, *supra* n. 273, p. 2.

277 Amnesty International 2017 report, *supra* n. 153, p. 17; Megan Price, Anita Ghodes and Patrick Ball, 'Technical Memo for Amnesty International Report on Deaths in Detention', Human Rights Data Analysis Group, August 2016, <<http://hrdag.org/wp-content/uploads/2016/07/HRDAG-AI-memo.pdf>> [accessed 19 February 2017].

278 *Ibid.*

279 Human Rights Watch, 'We Are Still Here: Women on the Front Lines of Syria's Conflict', 2014 <https://www.hrw.org/sites/default/files/reports/syriawrd0714_web_1.pdf> [accessed 17 February 2017].

280 Women's International League for Peace and Freedom 'Violations Against Women in Syria and the Disproportionate Impact of the Conflict on Them', 2016, p. 10, <http://wilpf.org/wp-content/uploads/2016/06/WILPF_VAW_HC-2016_WEB-ONEPAGE.pdf> [accessed 17 February 2017] (hereinafter "WILPF 2016").

281 *Ibid.*

282 Interview with lawyer, 2016.

283 Interview with Lawyer 12, 2016.

284 WILPF, 2016, *supra* n. 280, p. 10.

The Counter-Terrorism Court

In response to the anti-government demonstrations, the Assad regime lifted the State of Emergency and abolished the SSSC in April 2011.²⁸⁵ Little more than a year later, however, the government adopted a new Counter-Terrorism Law.²⁸⁶ Further to this law, the Syrian government issued a decree establishing a new Counter-Terrorism Court (CTC) a month later in July 2012.²⁸⁷

Although the CTC has exclusive jurisdiction over all cases concerning terrorism in Syria,²⁸⁸ the decree leaves the jurisdiction of the court open ended by stating that it shall address terrorism “and the crimes referred to it from the court’s prosecution department”.²⁸⁹ The CTC’s personal jurisdiction, however, is clear: “[a]ll individuals, whether civil or military, shall be under the Court’s jurisdiction”.²⁹⁰

The law guiding the CTC’s work gives a wide definition of terrorism including “any action aimed to cause panic among people, disturb public security or harm the State’s infrastructure...”.²⁹¹ This was widely seen as designed to allow the government to silence political opponents.²⁹² According to a report by the Violations Documentation Center in Syria, frequent charges brought against people appearing before the CTC include financing, promoting and supporting terrorism, participating in demonstrations, writing statements on Facebook, contacting opponents abroad, smuggling weapons to insurgents, photographing or bombing checkpoints, kidnapping, or delivering food, aid or medicines to opposition-held areas.²⁹³ By 2016, the majority of alleged criminal offences committed by civilians were sent to trial at the CTC.²⁹⁴ One lawyer indicated that they had seen juveniles appearing before the CTC.²⁹⁵

The CTC is based within the Ministry of Justice in Damascus. At least three judges sit on the bench, including one member of the military, appointed by the Supreme Judicial Council.²⁹⁶ The Supreme Judicial Council can create additional chambers of the CTC, but it was unclear how many chambers exist at present. According to some reports, the CTC does have some female judges.²⁹⁷

285 Syrian Human Rights Committee, ‘Five years on the dissolution of The Supreme State Security Court: Repression as a court’, 21 April 2016, <<http://www.shrc.org/en/?p=27146>> [accessed 17 February 2017].

286 Law No. 19 of 2 July 2012.

287 Legislative Decree No. 22 of 26 July 2012. As part of the same reforms, Law No. 20 of 2012 was passed to the effect that any member of the civil service convicted for involvement in terrorist activity should be dismissed.

288 Legislative Decree No. 22 of 26 July 2012, Article 8. This was also confirmed in numerous interviews with lawyers who defend clients at the court.

289 Legislative Decree No. 22 of 26 July 2012, Article 3 (emphasis added).

290 *Ibid.*, Article. 4.

291 Law No. 19 of 2 July 2012, Article 1.

292 Interviews with Judges and Lawyers, Gaziantep, Erbil and Amman, November 2016.

293 VDC 2015, *supra* n. 12, p. 20.

294 *Ibid.*

295 Interview with lawyer, November 2016.

296 Decree No. 22 of 26 July 2012, Article 2.

297 Interview with Civil society representative 4 in Gaziantep, November 2016.

The court has its own investigating magistrate and prosecution department who are appointed by decree after nomination by the Supreme Judicial Council.²⁹⁸ A lawyer from Damascus said that in order to ensure that prosecutors stayed in their jobs, the authorities forbade them to leave, seized their property, and informed them that they would be killed if they tried to escape.²⁹⁹

Accused persons are often arrested at checkpoints, or taken from their homes. Arrest warrants are issued by a number of departments of the security services specialised in criminal cases. The arrested person is then taken to a special detention centre, depending on the particular agency who issued the warrant. Often these detention centres are located in underground basements.³⁰⁰

The legislation establishing the CTC is only two pages long and contains only one rule on procedure, which effectively exempts the court from any procedural rules. Article 7 of Decree No. 22 of 2012 provides that “[a]part from the right of the defendant, the Court shall not abide by any of the rules stated in the effective legislation, in all phases and procedures of prosecution and litigation.”³⁰¹ Trials are not public, and although the defendant is allowed a defence counsel and to hear the charges, several lawyers working at the CTC stated that the right to legal representation is theoretical and not a functioning reality. In practice, defence lawyers are present, but not allowed to speak during proceedings. They are permitted to examine documents on the court file, but they are not provided with copies. Defending suspects in terrorism cases is not without risks to lawyers in Syria. One lawyer described how a colleague specialised in terrorism was forced to flee the country after their house was raided.³⁰²

Another lawyer with recent experience in defending suspects before the CTC stated that evidence obtained as a result of torture is admissible. Coerced confessions are frequently used as the only evidence. Nevertheless, a lawyer suggested that persons detained by the government were “lucky” to find themselves before the CTC, where there was some form of judicial process. Many were not so lucky, in the sense that they were arrested and then disappeared, never to appear in any court:

“...if the security services take a person and they do not appear in a court within 24 hours of being taken, we presume they are dead because it looks like they have disappeared. If a suspect reaches the Terrorism Court, this is good for them”.³⁰³

Several lawyers stated that the most prominent characteristic of the new court is that it tries to issue verdicts very fast. A lawyer described a recent case involving 25 people accused of funding terrorist activities against the government. The President of the Court presided over the trial, together with two other judges on the bench.

298 Decree No. 22 of 26 July 2012, Article 2.

299 Interview with Lawyer 6, 2016.

300 Interview with Lawyer 12, 2016. See also VDC 2015, *supra* n. 12, p. 13.

301 VDC 2015, *supra* n. 12, Annex 1; confirmed in interviews with Lawyer 5 and Judge 1.

302 Interview with Lawyer 4. Corroborated by Lawyer 6 and Lawyer 10 in November 2016; and Lawyer 12, 2016.

303 Interview with Lawyer 5, 2016.

The presiding judge reviewed all 25 case files, and called each accused to come before him. Some of the defendants who had managed to obtain legal representation had a defence lawyer present. If no defence attorney had been retained, the court would undertake a wholly artificial procedure of nominating any lawyer present to represent the accused. However, the process was purely cosmetic. Defence lawyers, although present in court were often not allowed to speak. Instead, if the accused pled not guilty, the trial consisted of the judges reading the case file and considering written submissions from the defence. After reviewing all 25 case files in quick succession, the President and the other judges then retired to consider the case, but returned shortly to issue their final judgement. All 25 accused were found guilty. The client of the lawyer describing the case received five years' imprisonment.³⁰⁴ The Violations Documentation Center described another trial where 28 defendants were tried and convicted in individual trials in under three hours in total.³⁰⁵ Such procedures are the norm in trials before the CTC.

The CTC's sentencing practices are very harsh. Under the Counter-Terrorism Law, sentences may include 10 to 20 years of hard labour, or the death penalty. Membership in a "terrorist organisation" with the aim "to change the government system or State's identity" leads to a higher sentence.³⁰⁶ It was not clear this means that the Court can apply the death penalty to more acts than those explicitly punishable by death according to the law, or if it merely means that such cases should be punished with the higher end of the sentencing scale.³⁰⁷ In any event, lawyers interviewed confirmed that the death penalty has been imposed by the court.³⁰⁸

Minors tried before the CTC are supposed to be sent to rehabilitation centres, rather than sanctioned or punished. Anecdotal reports suggest that this principle is seldom followed. The Counter-Terrorism Law also provides for the confiscation of movable and immovable property of perpetrators in the sentencing of all crimes within the court's jurisdiction.³⁰⁹ Lawyers practising at the court say that travel bans and seizures of property are routinely enforced.³¹⁰

The CTC can hold trials *in absentia* and such judgments can only be re-considered if the convicted person voluntarily surrenders to the authorities.³¹¹ Decisions by the CTC can be appealed directly to the Court of Cassation without having to go through the Court of Appeal.³¹²

304 Interview with lawyer, 2016.

305 VDC 2015, *supra* n. 12, pp. 6 and 20.

306 Law No. 19 of 2 July 2012, Articles 3, 5 and 6.

307 Penal Code, Legislative Decree No.148 of 22 June 1949, Articles 581-585.

308 Interview with Lawyer 10 in November 2016; and Lawyer 12, 2016.

309 Law No. 19 of 2 July 2012, Article 12.

310 Interview with Lawyer 6, 2016. See also Human Rights Watch, 'Syria: Counterterrorism Court used to stifle dissent', press release, 25 June 2013, <<https://www.hrw.org/news/2013/06/25/syria-counterterrorism-court-used-stifle-dissent>> [accessed 12 September 2016] (hereinafter "HRW 2013 CTC press release").

311 Decree No. 22 of 26 July 2012, Article 6.

312 *Ibid*, Article 5; and interview with Lawyer 12, 2016.

Despite the CTC's repressive nature, suspects are occasionally released from the court. Lawyers working at the court confirmed that their clients had successfully bribed CTC judges to be released. However, the same lawyers stated that a bribe cannot make the difference between a death sentence and release, only to a reduction of the sentence. Moreover, bribery at the CTC is difficult, as one must be either well-connected within the government or with the judge themselves.³¹³ Lawyers also described recently issued instructions, requiring any decision of the CTC to release a suspect be referred to higher security office for monitoring. This was apparently issued due to suspicions that judges are receiving bribes.³¹⁴ A judge noted that since CTC judges have no immunity for actions taken in the course of their duty, they are afraid of the security services.³¹⁵

The secrecy surrounding the CTC makes it difficult to assess the extent of its activity. According to one account, somewhere between 35,000 and 50,000 persons were brought before the CTC between July 2012 and June 2013.³¹⁶ Another report estimates that approximately 80,000 persons have been referred to the court between June 2012 and December 2014.³¹⁷

The legal profession

Many lawyers and judges have suffered from violence and oppression in Syria. ILAC received consistent evidence of the mistreatment of lawyers and judges. With the first stirrings of the Arab Spring in Tunisia in December 2010, Syrian lawyers increasingly began to speak out about issues inside their own country. On 16 March 2011, a group of protestors approached the Ministry of Interior in Damascus to submit a petition requesting information concerning a number of political prisoners. When police officers and military security agents began physically confronting the group, a lawyer named Sirine al-Khoury tried to intervene when she saw a security officer using excessive force against a woman demonstrator. According to witnesses, Ms. al-Khoury was indeed pulled by her hair for roughly 150 metres, thrown into a security officer's parked vehicle, and taken away. Later, when the President of the Syrian Bar Association was asked about Ms. al-Khoury's case, he stated that he had no concerns about the arrest of a member of the Bar, and commented that he was "sure that Sirine al-Khoury would not have been arrested unless she was [in the act of committing an offence]".³¹⁸

313 Interview with Lawyer 12, 2016.

314 Interview with Lawyer 6, 2016.

315 Interview with Judge 1 in November 2016; also confirmed in interview with International organisation representative 1, 8 November 2016.

316 HRW 2013 CTC press release, *supra* n. 310.

317 VDC 2015, *supra* n. 12, p. 21.

318 IBAHRI 2011, *supra* n. 50.

The Damascus protests were followed two days later by events in Daraa, where escalating demonstrations were met with lethal force.³¹⁹ Again, Syrian lawyers were among those arrested and tortured by government security officials.³²⁰ Lawyers organised numerous gatherings across the country demanding an end to the repression of peaceful demonstrators, and respect for human rights and democratic principles.³²¹ One of the largest demonstrations took place in Aleppo, where roughly 300 lawyers reportedly staged a sit-in at the Palace of Justice, chanting slogans for liberty and the release of political prisoners, while pro-government lawyers gathered in a different room to pledge their loyalty to the government.³²² According to one report, more than 80 lawyers were subjected to arbitrary arrests based on their peaceful exercise of freedoms of expression and assembly in the first three months of the 2011 demonstrations.³²³

Numerous reports state that the Syrian Bar Association and other local bar associations pressured lawyers to support the government, and reported those who refused or expressed their opposition to the authorities. They also initiated disciplinary procedures and criminal proceedings against those who did not support the government, and lawyers who defended protesters often faced immediate action from their local bar association and the judiciary.³²⁴ Activist lawyers inside Syria continued using social media to call on the country's lawyers to join the anti-Assad protests "out of ... professional obligation."³²⁵

In Aleppo, one-third of the city's 6,000 lawyers reportedly signed a petition against the government's repression of the protests circulated by a new "Free Syrian Lawyers Association."³²⁶ At the same time, a Committee of Syrian Lawyers for Freedom was formed in Damascus.³²⁷ On 23 August, 2011, a group of lawyers issued a call for Syrian lawyers to protest against the continued complicity of the Syrian Bar Association with the government, and approximately 100 lawyers participated in protests outside bar associations in at least four regions, including Damascus, Aleppo, Hasakah, and Swaida.³²⁸

319 Human Rights Watch, "'We've Never Seen Such Horror': Crimes against Humanity by Syrian Security Forces", report, June 2011, <<https://www.hrw.org/report/2011/06/01/weve-never-seen-such-horror/crimes-against-humanity-syrian-security-forces>> [accessed 12 September 2016].

320 *Ibid.*

321 Euro-Mediterranean Human Rights Network and the Observatory for the Protection of Human Rights Defenders, "Syria: Escalation of acts of harassment and arbitrary arrests of lawyers," urgent appeal press release, 25 August 2011, <<https://www.fidh.org/en/region/north-africa-middle-east/syria/SYRIA-Escalation-of-acts-of->> [accessed 12 September 2016] (hereinafter "EMHRN and OPHRD 2011 press release").

322 Agence France-Presse, 'Syrian troops storm villages and kill seven as lawyers stage Aleppo sit-in', The National, 30 June 2011, <<http://www.thenational.ae/news/world/middle-east/syrian-troops-storm-villages-and-kill-seven-as-lawyers-stage-aleppo-sit-in>> [accessed 12 September 2017].

323 EMHRN and OPHRD 2011 press release, *supra* n. 321.

324 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_0.pdf> [accessed 12 September 2017].

325 Taimour Lay, 'Syria's legal fight amid the gunfire', Garden Court Chambers Blog, blog article, 4 March 2013, <<https://gclaw.wordpress.com/2013/03/04/syrias-legal-fight-amid-the-gunfire/>> [accessed 12 September 2016].

326 *Ibid.*, and interviews with lawyers in Gaziantep, 9-10 November 2016.

327 *Ibid.*

328 Interview with lawyers in Gaziantep, 9 November 2016. See also Michael Rundle, 'Syrian Lawyers Break Ranks With Assad's Regime To Lead Sit-In Protests', Huffington Post, news article, 24 August 2011, <http://www.huffingtonpost.co.uk/2011/08/24/syrian-lawyers-break-rank_n_935056.html> [accessed 12 September 2017] (hereinafter "Huffington Post 2011 news article").

Reports from the scene indicated that lawyers still loyal to the government were very aggressive, and the protesters were assaulted by pro-government militias (*shabiha*) led by the heads of the local bar association.³²⁹ Some participating lawyers were detained.³³⁰

As the opposition against the Assad government increased, the arrests, detention and disciplinary proceedings against Syrian lawyers participating in the uprising continued.³³¹ In one widely reported incident, a group of men attacked a lawyer at the Palace of Justice in Aleppo, beating him with rifle butts in front of his colleagues before dragging him away, covered in blood, and stuffing him in the trunk of a car. Outraged, other lawyers rescued their colleague and grabbed two of the attackers, handing them over to the police. When the lawyers filed a complaint with the Chief Prosecutor in Aleppo, a large number of armed men stormed the assaulted lawyer's house searching for him.³³²

We were told in interviews of when a lawyer had attended the military hospital in Quser to collect the bodies of those supposedly killed for demonstrating against the government. He took custody of the corpse of a defence lawyer called Mohammed Aruk (who had defended suspects in court). Mr Aruk had been summoned to a meeting with the security services, and then tortured and murdered. Photographs of his body were taken and are included in the Caesar photographs.³³³ Another lawyer Jarfat Jeehan was tortured and murdered in 2013.³³⁴

At the same time, the Syrian Bar Association continued its support for the Assad government. In one instance, the Syrian Bar Association indicated that it was preparing a formal complaint against the perceived "Sheikhs of conspiracy" who, it alleged, were acting against Syria, and had "invited militants and gathered financial support for killing Syrian people."³³⁵ It was also reported that the Syrian Bar had formed "a legal committee" to study the investigate alleged crimes perpetrated by a number of Arab and international TV stations and individuals "who have contributed to the media forgery and acts of instigation to destabilise Syria."³³⁶

329 Huffington Post 2011 news article, *supra n.* 328. See also Committee of Syrian lawyers for freedom, 'Statement about repression of lawyers sit-ins and in response to a statement of lawyers association related to security services', Facebook post, 25 August 2011, <<https://www.facebook.com/notes/%D9%84%D8%AC%D8%A7%D9%86-%D8%A7%D9%84%D8%AA%D9%86%D8%B3%D9%8A%D9%82-%D8%A7%D9%84%D9%85%D8%AD%D9%84%D9%8A%D8%A9-%D9%81%D9%8A-%D8%B3%D9%88%D8%B1%D9%8A%D8%A7/about-repression-of-lawyers-sit-ins-and-in-response-to-a-statement-of-lawyers-as/273438922683251/>> [accessed 12 September 2016].

330 Interview with lawyers in Gaziantep, 9 November 2016.

331 Union Internationale des Avocats, 'Letter to His Excellency Bashar al-Assad', 22 December 2011, <http://www.uianet.org/sites/default/files/UIA_Letter_Syrian_Lawyers_111222_EN_02.pdf> [accessed 12 September 2016]; Union Internationale des Avocats, 'Letter to His Excellency Bashar al-Assad', 16 January 2012, <http://www.uianet.org/sites/default/files/UIA_Situation_of_Lawyers_120116_EN_01.pdf> [accessed 12 September 2016]; Union Internationale des Avocats, 'Over One and a Half Years since Enforced Disappearance of Human Rights Lawyer Khalil Ma'touq', press release, 23 May 2014, <http://www.uianet.org/sites/default/files/UIA_Syria_Matouq_150523_EN.pdf> [accessed 12 September 2016].

332 The Syrian Organization for Human Rights, 'Statement', 24 December 2011, <<http://souriahouria.com/the-syrian-organization-for-human-rights-swasiash-statement/>> [accessed 12 September 2016].

333 Interview with Lawyer 21, 2016.

334 *Ibid.*

335 Alalam News Network, 'Syrian Lawyers to Act Legally Against Takfiri Clerics', news article, 20 August 2013, <<http://en.alalam.ir/news/1507640>> [accessed 12 September 2016].

336 WikiLeaks, 'Syria – Bar Association collects evidence to prosecute owners of media forgery and instigation', The Global Intelligence Files, 25 August 2013, <https://wikileaks.org/gifiles/docs/18/1870289_syria-bar-association-collects-evidence-to-prosecute-owners.html> [accessed 12 September 2016].

The complicity of the organised Syrian Bar Association in these activities ultimately led to its condemnation by several international legal associations, including ILAC member organisations Union Internationale des Avocats and the International Bar Association.³³⁷ In March 2012, ILAC along with fourteen other international legal professional organisations wrote to United Nations Secretary-General Ban Ki-moon condemning the actions of the Syrian government and expressing strong support for Syrian lawyers engaged in peaceful dissent or in representing persons peacefully pursuing change in their country.³³⁸

As the conflict has dragged on, dissent by lawyers remaining in government held areas has diminished. This has been due in part to the threat of reprisals by the government, but some lawyers have also remained supporters of the government. One measure of Syrian lawyers' continuing support for the existing order can be seen in the membership in local bar associations since 2011. According to official statistics from the Syrian Bar Association, the number of lawyers registered with government bar associations increased from pre-2011 numbers reaching a high water mark of 23,422 lawyers in 2013. In 2014, while hostilities raged and a number of areas were outside government control, the number of Syrian lawyers registered with the government-controlled bar associations was higher than in 2010, before the uprising began.³³⁹ Even in the Hasakah governate, which is largely under Kurdish control and where an alternative bar association controlled by the PYD is available,³⁴⁰ the number of lawyers registered with the government-controlled bar association increased by one person between 2010 and 2014.³⁴¹

According to one report, in the fully Kurdish-controlled city of Kobani, 98 out of 105 lawyers remained registered with the government bar association in 2013.³⁴² The first dip in registrations appeared in 2014, when the total number of lawyers in the various local bar associations declined by roughly 1,400. Most of this decline came from Aleppo, where the local bar association lost over 1,800 members between 2013 and 2014, mostly due to defection and death.³⁴³ In contrast, the number of registered lawyers has continued to increase year-on-year in other governates largely controlled by the government, such as Damascus and Tarsus.³⁴⁴

337 Union Internationale des Avocats, 'The UIA initiates an inquiry of the Syrian Bar, which could lead to expulsion', press release, 1 December 2011, <http://www.uanet.org/sites/default/files/PR_UIA_Exclusion_Syrian-Bar_EN_111201.pdf> [accessed 12 September 2016]; Jonathan Goldsmith, 'What to do about the Syrian Bar?', news article, 9 January 2012, <<https://www.lawgazette.co.uk/analysis/what-to-do-about-the-syrian-bar/63665.article>> [accessed 12 September 2016]; International Bar Association, 'Syrian Bar suspended from bar association membership of the IBA', press release, 27 July 2012, <<http://www.ibanet.org/Article/Detail.aspx?ArticleUid=BBB92DCD-BF82-4B16-8990-004018913EF7>> [accessed 12 September 2016].

338 ILAC, 'UN receives letter of support for Syrian lawyers', press release, 14 March 2012, <<http://www.ilacnet.org/blog/2012/03/14/letter-of-support-for-lawyers-in-syria/>> [accessed 12 September 2016].

339 Annex I. See *supra* n. 190.

340 Interview in Gaziantep, 9 November 2016; and interview in Erbil, 12 November 2016.

341 Annex I. See *supra* n. 190.

342 Interview in Gaziantep, 9 November 2016.

343 *Ibid.*

344 Annex I. See *supra* n. 190.

Legal education

As with other types of education in Syria, law students have had their education disrupted by the conflict. Current enrolment statistics for law faculties could not be obtained. Interviewees could not agree concerning which, if any, law faculties were still in operation. Some were of the opinion that all faculties except Daraa and Homs are still functioning. Lawyers familiar with the situation indicated that the Deir ez-Zor faculty was closed due to the fighting with ISIS, but that its branch in Hasakah was operating on a limited basis.

Regardless, given that primary education enrolment has dropped to 50 per cent overall, and as low as 6 per cent in places like Aleppo where conflict has been prolonged, it can be concluded that many individuals will have greater difficulty accessing higher education programmes, such as law degrees, than before the conflict began. Some refugees have been able to attend law faculties in Turkey, Lebanon and Jordan. However, for many the cost of tuition is out of reach.³⁴⁵

Women have been particularly impacted in this respect. While women comprised half of all university students in Syria prior to the conflict, only approximately 20 per cent of Syrian university students in Turkey, Lebanon and Jordan are women. This may be due to a number of factors, including families allocating scarce resources to male family members for economic and cultural reasons.³⁴⁶

Analysis and recommendations

The Syrian justice system generally fails to live up to international standards of independence and impartiality, particularly in the operation of the exceptional courts. However, the tendency of the government to move politically sensitive cases out of the regular court system to be tried before the extraordinary courts may be seen as an indication that the regular courts have retained at least some measure of independence in relation to the executive and the security forces. If the government felt certain the case would reach its desired outcome whichever court was used, it is difficult to understand why moving cases to the separate system would be necessary.

This notion is supported by judges who have been forced to leave Syria who claim that they did retain a level of personal independence as judges. Indeed, this independence was what forced many of them to flee after refusing to cooperate with the government.

³⁴⁵ Human Rights and Gender Justice Clinic *et al* UPR Submission 2016, *supra* n. 224, p.6.

³⁴⁶ Keith David Watenpaugh, Adrienne L. Fricke and James R. King, 'We Will Stop Here and Go No Further: Syrian University Students and Scholars in Turkey', Institute of International Education, 2014, p.12, <<http://www.iie.org/~media/Files/Corporate/Publications/We-Will-Stop-Here-And-Go-No-Further-Syrian-University-Students-And-Scholars-In-Turkey-002.pdf?la=en>> [accessed 8 December 2016].

These remaining glimpses of independence will be important to support and to sustain for a future post-conflict situation, when building an independent Syrian court system will be an urgent priority.

As noted above, the exceptional courts are even more problematic when it comes to implementing acceptable standards of independence and due process. The fact that there is now a non-international armed conflict in Syria means that these courts may also violate the requirements under international humanitarian law if such courts pass sentences or carry out executions against protected persons under Common Article 3.³⁴⁷ Without substantial reforms to bring the exceptional courts in line with what could be considered to be “regularly constituted” within the meaning of the Common Article 3 and customary international law, the government’s continued use of these courts could constitute a war crime.

Long-term peace in Syria will require rebuilding the justice institutions. This process should focus on the regular court system, which has been less burdened with political interference and therefore may be less controversial in the eyes of many Syrians. Closing down the extraordinary courts could be an important first step in rebuilding trust in Syrian justice. The extraordinary courts in Syria, and in particular the Military Field Courts, are not independent, and fail to offer accused persons a fair trial. Trials in these courts are not seen as impartial, and undermine trust in the Syrian state. Abolishing these courts would not only help bring the Syrian government’s actions to be more in line with international human rights and international humanitarian law, it could also be an important step towards returning to peace.

Another area where support should be considered is legal education. Many of those interviewed expressed interest in regional law faculties, including those in Lebanon, Jordan, Egypt, Tunisia, and Algeria, as the law in those countries is similar to Syrian law and diplomas from many of the law faculties in those countries are recognised in Syria. Interviewees also specifically requested that these opportunities should not be limited to those under a certain age. With the conflict now in its sixth year, many of the displaced are older and have equally had their opportunities disrupted. Higher educational opportunities, such as masters degree programmes, should also be considered, as already qualified lawyers would also benefit greatly from these programmes. Programmes that supplement legal education for Syrian youth, such as skills training in areas like conflict resolution and legislative drafting, would better prepare law students to participate in rebuilding the Syrian justice sector.

Unfortunately, after an initial burst of enthusiasm for reform by some Syrian lawyers in 2011, such activities decreased as government repression increased, and activist lawyers either left the country or were silenced.

347 As noted above, the fair trial protections afforded under international humanitarian law to protected persons are complementary to their right to a fair trial under international human rights law, which is applicable to all persons.

Control of the Syrian Bar Association and the various local bar associations remains firmly in the hands of government supporters.³⁴⁸

While Syrian authorities permit sympathetic delegations from outside the country to visit,³⁴⁹ creating an open dialogue with lawyers in areas under government control remains very difficult under current conditions. This is especially so when it comes to any dialogue between lawyers in government and opposition areas, due to security concerns on both sides.

However, if the government's control loosens, lawyers may provide a potential engine for reform within Syria. The legal profession's history of resistance to governmental overreach is a source of significant pride among Syrian lawyers. Moreover, lawyers understand many of the issues that will be facing any new Syrian state. Through their professional experiences, they also understand the necessary changes and improvements the Syrian system needs, and should be at the centre of any future efforts for reform. As events in Libya demonstrate, post-government vacuums permit space for anti-democratic forces to prosper. Conversely, the post-2011 history in Tunisia illustrates the positive impacts that reform-minded bar associations and their members can have in creating a peaceful, stable transition. Given the numbers and probable influence of Syrian lawyers, the situation should be monitored with resources allocated to identify and provide rapid support for democratic reformers among the bar associations in the future.

1. *Efforts should be made to convince the Syrian government to abolish the extraordinary courts.*
2. *Cooperate with faculties of law at universities and judicial training institutes in Syria's neighbouring countries to initiate comprehensive law programmes in Syrian and international law, as well as the law of the host country to build future generations of Syrian legal professionals.*
As women's attendance at law faculties outside Syria is lower than men's, programmes should aim to ensure equality in the number of male and female participants. Where appropriate, ensuring that programmes are available to a wide audience, and not just law students, could contribute to addressing the problems caused by disruption to the formal education system, and may contribute to encouraging other students to stay in education.
3. *Fund scholarships for law students in these programmes or whose studies in Syria have been interrupted.*
4. *Encourage dialogue between lawyers from different parts of Syria as well as with regional and international colleagues.*

348 Syrian Arab News Agency, 'Al-Hilal: Syria considers war against terrorism as a duty towards the whole world,' news article, Bristol Star, 10 December 2016, 10 December 2016, <<http://www.bristolstar.com/index.php/sid/250082997>> [accessed 8 December 2016].

349 *Ibid*; and Dr. Mohammad Abdo Al-Ibrahim, 'Transparent and Fruitful Visit,' news article, The Syria Times, 26 February 26, 2015, <<http://syriatimes.sy/index.php/editorials/commentary/16839-transparent-and-fruitful-visit>> [accessed 8 December 2016].

4.2 Common features of areas outside government control

“There is funding for humanitarian aid and for the military, but not for justice”.
Lawyer on the international support in Syria³⁵⁰

It is difficult to provide a comprehensive account of all aspects of the justice sector in opposition areas in Syria. The sheer number of different armed opposition groups, each of which have formed their own separate administrative and judicial institutions, means that there is no single system of justice in areas outside of government control. Instead, “justice” is a patchwork of courts, tribunals and panels with varying structures, influence and quality. The ideology underlying a given court can range from secular, non-religious to various interpretations of Islamic ideology or *Sharia*.

With some exceptions, most judicial bodies in areas outside government control handle any case brought before them, without the constraint of formal specialisations, such as civil, criminal, military, or administrative. These bodies each have their own procedures and laws, ranging from some more ambitious attempts at systematic imposition of justice in more moderate opposition areas, to the draconian ideology of ISIS. Information regarding how these courts engage and interact with one another is scarce, and access is difficult.

The situation is also constantly changing, following the ebb and flow of the conflict. The rapidly altering territorial control makes it difficult to ascertain the exact hierarchies and communication procedures amongst the different courts. From the interviews conducted, it is apparent that even judges in these non-governmental courts can find the situation bewildering, making it impossible to accurately map the situation in every opposition area at a single point in time.³⁵¹

Notwithstanding these difficulties, ILAC has been able to identify three features common to the various justice systems outside government control. These are outlined below, followed by a discussion of the specific situations in four areas controlled by a variety of actors loosely referred to as “the opposition”, namely Aleppo, Daraa, Idlib, and East Ghouta. Detailed analysis of the situations in the areas in northern Syria under control of the Kurdish majority and the presently shrinking areas under ISIS control follows from this.

350 Interview with Lawyer 1, November 2016.

351 Syria Legal Development Programme, ‘Study produced for ILAC Syria Assessment Report’, 2016, p. 1 (on file with ILAC), (hereinafter “SLDP 2016 study”).

Rejection of Syrian law

One common feature of the justice sectors in areas outside government control has been the rejection of Syrian law. As these areas came under the control of armed opposition groups, government institutions came to be viewed as being part of the government, and the law itself was seen as “the government law”.³⁵² Even on technical issues where legal experts viewed the existing Syrian law as superior, they could not apply it openly due to its association with the government.³⁵³ In order to gain power, some anti-government forces actively encouraged this equation between Syrian law and the Assad government.³⁵⁴ This was particularly true for the institutions within the Syrian justice system where the influence of the executive had been deeply entrenched.

The groups that gained military control of these territories established new judicial systems based on their ideals.³⁵⁵ In early 2011, most Syrians had never experienced free and public debate about matters of government policy. Under the changing circumstances, it was relatively easy for extremist groups to garner support for any alternative to the previous oppression. While legal professionals recognised the need for some sort of reasoned structure to the new system, memories of the corrupt court system imposed by the Assad government were too fresh. For many ordinary citizens, religious courts and judges were preferable to the old system.³⁵⁶

This phenomenon was illustrated by a lawyer who described a project to establish courts in the north west of Syria. Lawyers in the area offered two-day informational workshops on rule of law to persons living there. When people were asked before a course what kind of system they wanted, they replied that they wanted an Islamic Caliphate. He attributed this to the fact that ISIS had been handing out leaflets in the area prior to the interviews. After the course, the same respondents all said they wanted a multi-ethnic pluralistic society.³⁵⁷

In other areas, *Sharia* courts were established specifically to handle conflicts between the military factions and not to look at the civil disputes. These courts would be staffed with fighters and were used as a means to control the area.³⁵⁸

352 Interview with Judge 9, November 2016; and interview with lawyers in Beirut, November 2016.

353 Maxwell Martin, ‘Lawyers, Guns, and Mujahideen: Inside Syria’s sharia court system’, *Foreign Policy*, 20 October 2014, <<http://foreignpolicy.com/2014/10/30/lawyers-guns-and-mujahideen/>> [accessed 9 December 2016] (hereinafter “Martin 2014”).

354 Interview with Judge 9, November 2016.

355 Interview with Judge 9, November 2016.

356 Deborah Amos, ‘Courts become a battleground for secularists, Islamists in Syria’, news article, National Public Radio, 14 March 2013, <<http://www.npr.org/2013/03/14/174327447/courts-become-a-battleground-for-secularists-islamists-in-syria>> [accessed 9 December 2016] (hereinafter “NPR 2013 press release”).

357 Interview with Lawyer 16, November 2016.

358 Interview with Lawyer 15, November 2016.

In a number of areas, opposition activists took the initiative to develop new judicial systems in the months after government forces retreated. Many judges and lawyers described ambitious and sophisticated programmes to establish courts based on legal principles and international human rights standards in the initial stages of the conflict.³⁵⁹

However, such efforts received negligible international support. Most failed due to a lack of funding:

*“ We had a plan to open courts and submitted an application to a major international donor. Unfortunately, our application was refused. This opened up the way for al-Nusra and ISIS to take over the justice file. The donors had no problem to support humanitarian aid but justice was a red line for them ”.*³⁶⁰

In contrast, groups that favoured of stricter interpretations of Islamic law did not face the same difficulties in raising funds. Donors outside Syria who shared or wanted to promote these conservative ideals often generously supported such groups, most of whom were militarily active.³⁶¹ For this reason, many Syrian legal professionals who initially stayed in Syria to rebuild the justice system were forced to withdraw.³⁶²

As discussed below, the resulting legal frameworks used in areas outside government control differ significantly based on the armed group in control. However, some remnants of Syrian law may still be found in certain areas, particularly where the continuity in maintaining on-going records is vital, such as births, deaths and other transactions. In a number of areas outside government control, various forms of *Sharia* law and courts have been adopted, notably where conservative factions gained military dominance. Another approach taken in some areas was the adoption of the Unified Arab Code. This 20-year-old set of legal codes was originally endorsed by the Arab League, but has never been adopted in any country.

It reflects a relatively strict, but codified interpretation of Islamic law, and includes criminal, civil, and personal status codes, as well as books of civil and criminal procedure.³⁶³ The Unified Arab Code provided those looking for a way to reject Syrian law to establish religious credibility by adopting a *Sharia*-based system.

359 Interview with Lawyer 16, November 2016.

360 *Ibid.*

361 Aron Lund, 'Syrian Jihadism', UI Brief, Swedish Institute of International Affairs, 14 September 2012, <<http://www.ui.se/upl/files/77409.pdf>> [accessed 23 March 2017]; Jennifer Cafarella and Genevieve Casagrande, 'Syrian Opposition Guide', Institute for the Study of War, 7 October 2015, <http://understandingwar.org/sites/default/files/Syrian%20Opposition%20Guide_0.pdf> [accessed 23 March 2017].

362 Interview with Lawyer 16, November 2016.

363 See Islamic Sham Organization, 'The Unified Arab Code – A Study and Assessment', 2014, <<http://islamicsham.org/versions/1993/>> (in Arabic) [accessed 17 February 2017]. A summary of the document is available in English at Maxwell Martin, 'Document summary – "The Unified Arab Code – a Study and Assessment" by the Islamic Sham Organization', 5 December 2014, <<https://wilayatnowhere.wordpress.com/2014/12/05/document-summary-the-unified-arab-code-a-study-and-assessment-by-the-islamic-sham-organization/>> [accessed 17 February 2017].

One proponent described it as valuable because they are “*organised, usable, that they have aspects of a codified law but are still based on Sharia, and that they are distinct from pre-revolutionary law*”.³⁶⁴ At the same time, the Unified Arab Code provides a code-based system of law, rejecting the more traditional concept that *Sharia* is to be interpreted and applied on a case-by-case basis by religious judges.

It does attempt to capture the spirit of classical Islamic jurisprudence, however. For example, judges have a broad discretion in choosing punishments and penalties to suit the circumstances of a case within specified minimum and maximum bounds:³⁶⁵

*“We decided on the Unified Arab Code because it is codified [and] was developed by both legal experts and sharia experts, and because our popular base is keen on applying the rulings of the Islamic Sharia”.*³⁶⁶

For those struggling to establish justice systems in the areas outside government control, the use of the Unified Arab Code represented a pragmatic decision, mollifying legal professionals trained in the use of a written code, while its strong Islamic flavour met the demands of some armed groups and religious leaders for a stricter brand of Islamic law.³⁶⁷ Nonetheless, the controversy over the codification of *Sharia* continues, with the result often depending on which faction carries enough popular legitimacy and/or military strength to impose its will.³⁶⁸

Creation of new justice mechanisms

Another common feature in opposition-controlled areas is the simple fact that some type of “judicial” system has been created. In virtually all areas in Syria where the government has lost control, efforts have been made to fill the vacuum created after courts and justice institutions were closed as part of the government’s retreat. Many of these lacked essential features of independence and impartiality. However, interviewees described many laudable attempts to bring stability and judicial interventions in very difficult political situations.

In the interviews conducted for this study, Syrians pointed to three primary factors driving groups to establish new justice mechanisms. First, after Syrian state institutions ceased operations and withdrew from an area, court records and property registries were deliberately destroyed. This destruction was intended to hinder governance and create turmoil in the areas under opposition control.³⁶⁹ As courts, civil registries, property

³⁶⁴ Martin 2014, *supra* n. 353.

³⁶⁵ *Ibid.*

³⁶⁶ *Ibid.*

³⁶⁷ *Ibid.*

³⁶⁸ SLDP 2016 study, *supra* n. 351, p. 2.

³⁶⁹ Jon D. Unruh, ‘Weaponization of the Land and Property Rights system in the Syrian civil war: facilitating restitution?’, 2016, Vol. 10, Issue 4, *Journal of Intervention and Statebuilding*, pp. 453-471; Kate Connolly and Werner Bloch, ‘The war is still raging, but the race to rebuild Aleppo has already begun’, *The Guardian*, news article, 12 March 2015, <<https://www.theguardian.com/world/2015/mar/12/war-rebuild-aleppo-syria-architects-reconstruction>> [accessed 23 March 2017].

registration offices and other services ceased working, a justice vacuum arose that soon led to administrative chaos.³⁷⁰

Second, popular pressure mounted for a new system to settle disputes, particularly in areas controlled by the Free Syrian Army (FSA).³⁷¹ Anxious to build legitimacy, the FSA and allied groups felt a need to respond. However, in meeting these demands, these groups also began to use the newly established justice mechanisms as a means to exert control over the territory under their dominion. The manner in which a given armed group reconciled these two interests appears to have determined how the justice sector developed in areas under their control. The outcome also has depended on additional external factors, such as on whom the group depends for funding and equipment, ideology and if the group in question relied primarily on Syrian or foreign fighters.³⁷²

A third factor was the need for trusted mechanisms for the peaceful settlement of disputes between armed actors.³⁷³ This perceived need may have been an incentive to improve independence and impartiality of new justice mechanisms, since none of the fighters would accept decisions by a body perceived to be biased against them. The strength of this factor or whether it had any impact on cases involving civilians is unclear, however.

The consequences when armed groups failed to agree can lead to further fighting. One activist said that a contributing factor to the conflict between Ahrar al-Sham and ISIS in 2014 was the refusal to use each other's court.³⁷⁴ In January 2017, events followed a similar pattern when Jabhat al-Nusra attacked many other rebel factions, including Ahrar al-Sham. The latter had previously requested that al-Nusra and other factions consent to a judicial committee, and accept its *Sharia* ruling with regards to the fighting.³⁷⁵

370 Interview with Judge 9, November 2016.

371 Interview with judge at the House of Justice in Daraa, 2016.

372 Interview with Civil society representative 8, November 2016; and interview with Civil society representative 9, November 2016. The dependency on foreign donors has become part of life in Syria. It was said that as a result of the depletion of domestic resources over the past five years, the ebb and flow of funds from the outside world could be followed in the length of the beards worn by men, which grew or shrunk depending on if armed groups in the area were funded by the western government or from the Gulf. Syrians described how it has become a running joke whenever asked about inconsistent or negative behaviour from the different groups to simply say that "it is what the donor wants."

373 By way of example of such a dispute, after a shooting between two armed groups in March 2016, the groups involved agreed that the armed faction responsible for the murder should deliver the suspected killer to the other armed group. A three-part committee was formed to adjudicate the dispute, which included members of the disputing parties and the Islamic Commission for Liberated Areas (a judicial authority supported by Ahrar Al Sham, see section on Idlib Region below). The Commission looked into the claim and defence, and provided a judgment of manslaughter. The sentence was four months imprisonment for the leader of the faction responsible and one month imprisonment for the deputy for complicity in the crime, as well as a 95,000 US dollars fine. Two persons from the other group were also punished for participating in the shooting. SLDP 2016 study, *supra* n. 351, p 10.

374 Interview with Civil society representative 8, November 2016. Disagreement over courts also seems to have been a substantial aspect of the split between Jabhat al-Nusra and the Southern Front in Daraa. Interview with a judge at the House of Justice in Daraa, 2016 (see further section on Daraa Region below).

375 Statement by Ahrar Al Sham requesting Al-Nusra to consent to judicial committees, 24 January 2017, received from Civil society representative 8, November 2016 (in Arabic).

Challenges to women's rights

In the areas outside government control barriers to access to justice and women's legal needs identified above are exacerbated. These issues are further complicated by restrictions on freedom of movement, displacement, economic hardship, aerial bombardment by the government and international actors, and the actions of armed groups. Although the systems in these areas differ depending on the armed group, the systems are generally more conservative in dealing with women than the approach in government controlled regions.³⁷⁶

Women's access to the legal system in non-government areas is highly dependent on women's freedom of movement. In most areas held by extremist groups, women's freedom of movement is extremely restricted. In such areas, it is often the case that women cannot move freely without a male relative, and men and women cannot mix in public. As stated by one interviewee, the law in these areas is "*the intersection of patriarchy and extremism*."³⁷⁷ While restrictions on movement are most strict in areas controlled by extremist groups, such as Jabhat al-Nusra and ISIS, even in areas controlled by less extreme armed groups, women's freedom of movement may be restricted as a result of the conflict, in addition to social and religious norms.³⁷⁸

When women are able to access a legal forum, remedies are often ineffective. This is partly due to the rules of evidence applied, such as considering woman's testimony as worth less than that of a man's.³⁷⁹ Under some schools of *Sharia*, the testimony of two women is equal to that of one man, whereas in other schools the testimony of four women is needed to equal the testimony of one man. Interviewees affirmed that these rules are being applied in some non-government areas, and, even where they are applied, women's testimony is often still ignored.³⁸⁰

At the very least, the systems put in place in non-government areas have the same problems relating to rights of women in the areas of marriage, divorce, custody, guardianship and inheritance to those described under the SLPS before the 2011 uprisings. Under the interpretations given to *Sharia* by some extremist armed groups, women have even fewer rights. These issues are further exacerbated and complicated by the ongoing conflict.

The need to document births, deaths, marriage, and divorce in the civil registry remains a top priority for women, as proof of status is necessary for many daily needs, such as travel. Documentation in government areas continues as before. However, many people in non-government areas cannot access or are afraid to access government civil registries for fear of reprisal. Over the course of the conflict, donor-funded efforts have assisted in establishing documentation centres attached to local councils established

376 Interview with Lawyer 4, November 2016.

377 Interview with activist in Gaziantep, 7 November 2016.

378 *Ibid.*

379 Interview with Lawyer 12, 2016.

380 Interview with Lawyer 17, November 2016; and interview with Civil society representative 4, November 2016.

by opposition forces. For example, ILAC sponsors 15 such centres inside Syria. While initially there were problems with documents from one non-government area not being recognised in other areas also outside government control, the situation has greatly improved with time. All non-government areas now use the same documentation forms and systems. These documents are generally recognised throughout the non-government areas and are designed so that they may be merged with the government system post-conflict. There is even anecdotal evidence of these documents being accepted by foreign governments, although there is no official international recognition of the system.

The potential for stateless children is on the rise due to nationality laws that only permit transmission of nationality through fathers, and due to an inability to properly document birth during the conflict. Those interviewed by ILAC confirm that some women are unable to prove the identity of their children's father, due to his disappearance or death. If a father is away from home fighting in the conflict, dead, missing or otherwise no longer with a child's mother, a mother may be unable to register the birth of the child with the name of the biological father. This can render a child stateless. While this is also an issue in government-held areas, this situation combined with the civil documentation problem discussed above renders children born in non-government areas particularly vulnerable to future statelessness.

Interviewees stated that child marriage, forced marriage and polygamy is on the rise throughout Syria, due to economic hardship and the rising number of widows.³⁸¹ Numerous interviewees reported that gender-based violence has been on the rise during the conflict, although there are no official statistics. Even prior to the conflict, there were few services in Syria for victims of gender-based violence. According to one women's rights activist, only three shelters existed in all of Syria before 2011, all of which are in areas currently controlled by the government.³⁸² Consequently, victims of gender-based violence in non-government held areas appear to have nowhere to turn to for assistance and services. Seeking redress in court is equally unavailable. As noted above, this was difficult prior to the conflict, but it is now virtually impossible in many non-government areas where the laws now imposed provide no recourse, even if women could freely access the courts.

381 Interview with lawyers in Gaziantep, 4 November 2016; interview with judge in Gaziantep, 9 November 2016; interview with female activist, November 2016; interview with activist, November 2016; interview with activist, November 2016.

382 Interview with activist, November 2016.

4.3 Detailed overview of four areas outside government control

In the descriptions of the new justice mechanisms introduced in Aleppo, Daraa, Idlib and East Ghouta, references to “courts” are used as a convenient short-hand. Many of these mechanisms lacked essential features of independence and impartiality to constitute “courts”. That said, interviewees recounted many laudable attempts to bring stability and judicial interventions in very difficult political situations.

Aleppo Region

The largest city in northern Syria, Aleppo has become a tragic symbol of the Syrian civil war. ILAC heard considerable testimony from judges and lawyers with direct knowledge of the justice situation in Aleppo before and during the war. However, at the time of the mission’s visit to the region in November 2016, the intense fighting for control over central and eastern Aleppo made it impossible to undertake the interviews planned with judges and lawyers then working in the region. Nevertheless, information obtained from those who had escaped to the border regions provided substantial insights into the situation. In particular, developments in Aleppo illustrate the tension between legal professionals and extremist Islamist groups, and their differing visions for justice in Syria.

After the uprising in 2011, judges and lawyers in the more urban areas of Aleppo discussed forming courts in the areas outside government control to deal with criminal cases, and land, property, and administrative disputes. These professionals were committed to creating a new judicial system, going so far as to discuss amended internal written procedures to enhance the efficiency and fairness in the new courts.³⁸³

At the same time, while the fighting continued in the northern countryside, customary dispute resolution mechanisms morphed into local dispute resolution committees. Though based on traditional practices and fuelled by a rejection of the corrupt government judiciary, as Islamists took control of the armed opposition these committees gradually became identified as *Sharia* courts, boards or commissions to better align with the militants’ ideology. As an employee in one of these early courts reported:

“They worked without a written law. Instead, each member of the commission relied on his knowledge of law, custom, and religion.... They did not have the ability at first to enforce their rulings, but they had a sort of informal, moral authority, and so their word was respected”.³⁸⁴

383 Interview with Civil society representative 5 in Gaziantep, November 2016.

384 Martin 2014, *supra* n. 353.

These armed groups, including Jabhat al-Nusra, ultimately formed dozens of their own religious courts.³⁸⁵ One observer from Aleppo remarked at the time: “*It is almost the fashion to have your own courthouse now.*”³⁸⁶ These bodies had no unified structure and generally lacked qualified judges.³⁸⁷ Many presiding over them were fighters lacking legal training, including in *Sharia* law. Despite this, they issued death sentences to government supporters.³⁸⁸

Even their more modest judgments were procedurally flawed and only moderately *Sharia*-compliant.³⁸⁹

In these early stages, legal professionals engaged in a kind of “diplomacy” with Islamists over the question of how judicial mechanisms might operate. The Aleppo lawyers invited the armed groups to voluntarily form a joint judicial system. Known as the Unified Council in Syria, this system was formed in late 2012 with the creation of two central courts and plans to develop branches in outlying areas.³⁹⁰ According to media reports at the time, the Council also had a prison, and a desk for prisoners’ rights.³⁹¹

The Aleppo lawyers envisaged a mechanism operated by trained lawyers alone. However, Jabhat al-Nusra conditioned its support on an agreement that half of the members of the proposed judicial council should be Islamists and half actual lawyers. Even with this condition, the lawyers were enthusiastic given the immediate need to suppress serious criminal activity and kidnapping by organised criminal groups. Furthermore, the lawyers appreciated that Islamic law had a role to play:

“*There is an assumption in our country that people believe in Islamic law. If there is a dispute people go to Islamic judges without going to the court to try and solve their problems there*”.³⁹²

385 See p. 91 below.

386 Interview with Civil society representative 2, November 2016.

387 NPR 2013 press release, *supra* n. 356.

388 Neil McFarquhar, ‘A Battle For Syria, One Court At a Time’, news article, New York Times, 14 March 2013, <<http://www.nytimes.com/2013/03/14/world/middleeast/a-battle-for-syria-one-court-at-a-time.html>> [accessed 10 December 2016] (hereinafter “New York Times 2013 article”).

389 Rozana Radio, ‘Sharia Courts eliminate their revolutionary counterparts’, news article, 19 November 2014, <<http://rozana.fm/ar/node/8287>> (in Arabic) [accessed 10 December 2016].

390 SLDP 2016 study, *supra* n. 351, p. 3; All4Syria, ‘Establishment of United Judiciary Council in Aleppo’, 21 December 2012. Last accessed 10th of December 2016, <<http://all4syria.info/Archive/63187>> (in Arabic) [accessed 10 December 2016] (hereinafter “All4Syria article 2012”).

391 SLDP 2016 study, *supra* n. 351, p. 3; Al Jazeera, ‘Judicial power in Aleppo’, news article, 1 March 2013, <<http://www.aljazeera.net/news/reportsandinterviews/2013/1/3/%D8%A7%D9%84%D8%B3%D9%84%D8%B7%D8%A9-%D8%A7%D9%84%D9%82%D8%B6%D8%A7%D8%A6%D9%8A%D8%A9-%D8%A8%D9%86%D9%83%D9%87%D8%A9-%D8%A7%D9%84%D8%AB%D9%88%D8%B1%D8%A9-%D9%81%D9%8A-%D8%AD%D9%84%D8%A8>> (in Arabic) [accessed 10 December 2016].

392 Interview with Civil society representative 5 in Gaziantep, November 2016.

The members of the Council ended up including ten *Sharia* experts, made up of three judges and seven lawyers.³⁹³ Approximately twenty-four courts in or around the city would be staffed with one lawyer and two religious scholars, with decisions based on *Sharia* and the Unified Arab Code.³⁹⁴

Despite this arrangement, armed groups were not in agreement with the Unified Council over property and jurisdiction.³⁹⁵ Tensions escalated between the lawyers and the militants, culminating in Jabhat al-Nusra's demand that court personnel hand over the newly refurbished offices of the civil court to the head of the militants' *Sharia* board.³⁹⁶ When they refused, heavily armed fighters in four vehicles roared through the building's fence.

These so-called *Sharia* Board Police detained 20 lawyers and other employees.³⁹⁷ They were brought before the militants' al-Nusra *Sharia* Commission, but were ultimately released after a few hours when the parties agreed to allow an independent judge to look into the matter.³⁹⁸

After this incident, lawyers ceased contact with Jabhat al-Nusra, turning instead to co-operate with less extremist groups, with a view to applying the Unified Arab Code:³⁹⁹

*“Some moderate Islamists stayed and together we used a government building to form the court and used the Syrian judicial system to make the court operate. Eventually we formed a committee with colleagues from a Sharia background, who are not qualified lawyers. We took the decision to follow the Unified Arab Law, which is endorsed by the Arab League. Our main goal was to achieve a court to solve the basic problems. We needed to have a legislative reference, because otherwise the court cannot function in an appropriate way. Some of the people from the moderate Islamists who were going to act as judges started to work with us for two months, but later they came to Turkey”.*⁴⁰⁰

Islamist extremists continued to seek control over the Unified Council, ultimately stopping its work in 2013.⁴⁰¹ After the Council's collapse, lawyers and judges moved on to work where somewhat more moderate armed groups were strong.⁴⁰²

393 SLDP 2016 study, *supra* n. 351, p. 3; Al Jazeera 2013 *supra* n. 418.

394 New York Times 2013 article, *supra* n. 387.

395 SLDP 2016 study, *supra* n. 351, p. 3; Orient News, 'Jebhat Nusra storms United Judiciary Council in Aleppo', 19 February 2013, <http://www.orient-news.net/ar/news_show/2094> [accessed 10 December 2016] (hereinafter "Orient News 2013").

396 Interview with Civil society representative 5 in Gaziantep, November 2016.

397 New York Times 2013 article, *supra* n. 387.

398 SLDP 2016 study, *supra* n. 351, p. 3; New York Times 2013 article, *supra* n. 387; Orient News 2013, *supra* n. 394.

399 SLDP 2016 study, *supra* n. 351, p. 3; All4Syria article 2012, *supra* n. 389. However, the decision to apply the Unified Arab Code as opposed to lawfully adopted Syrian law was not without controversy. In the words of one lawyer: "The court failed to gain respect, because the factions controlled the court and it became worse. For instance, the cousin of a leader was assigned as a judge. In my opinion the sharia law in the Unified Arab League Code law is not unified. It is not evaluated by the judge's opinion. We need Syrian law and the unified law for a stable country." Interview with Lawyer 18, November 2016.

400 Interview with Lawyer 18, November 2016.

401 SLDP 2016 study, *supra* n. 351, p. 3.

402 Martin 2014, *supra* n. 353.

As the conflict dragged on, the the region of Aleppo fell under the control of a wide range of different armed groups and a variety of new justice systems were introduced. For example, elements of ISIS controlled some areas in the Aleppo region at different times, bringing with it the brutal law that characterises the group’s rule.⁴⁰³ Other factions in the region in fact appeared to compete with ISIS by attempting to prove their *bona fides* by demonstrating similar brutality.⁴⁰⁴

The result was an assortment of conflicting judgments and jurisdictions. A judge who had worked in Aleppo said that at that time the courts in Aleppo simply did not respect each other’s decisions. The judge described the situation as thus:

“*These are exceptional circumstance and this is a pragmatic response, but it is far removed from a proper system of justice*”.⁴⁰⁵

Daraa Region

In the south of Syria, Daraa was at the heart of the 2011 protests against President Bashar Al-Assad. When the government was pushed out of parts of Daraa, it abolished the courts and withdrew all lawyers and judges from those areas. According to a local source, there were approximately 500-600 lawyers and about 60 judges working in the area before 2011.⁴⁰⁶ Ninety per cent of judges were from the Ba’ath Party. When the government withdrew, only a handful of these judges refused to leave and remained in region, or fled.

In the third week of protests, the government freed all convicted criminals in the city, and their files destroyed to make it impossible to find and return them to prison.⁴⁰⁷ As a result, the local population was left to assume responsibility for the civil administration in the area.⁴⁰⁸ Having gained control of territory, the FSA soon found itself under public pressure to provide these administrative resources, including calls for the creation of councils to manage daily life.

In response, the territory outside government control around Daraa was divided into six sections. In each, exceptional judiciary councils were established to handle all types of legal matters.⁴⁰⁹ Legal experts and Islamic scholars were appointed to lead the councils.⁴¹⁰ Smaller city centres followed, establishing judiciary councils to replace services shut down by the government. At the same time, other armed groups began to set up their own councils consisting of Islamic scholars.⁴¹¹ By the end of 2012, the judiciary

403 See Chapter 4.5 ‘Areas under ISIS Control’ below.

404 Martin 2014, *supra* n. 353.

405 Interview with Judge 9, corroborated by Lawyer 7.

406 Interview with judge at House of Justice, 2016.

407 Interview with Civil society representative 6 in Gaziantep, November 2016.

408 Interview with Lawyer 19, November 2016.

409 *Ibid.*, and interview with judge at the House of Justice in Daraa, November 2016.

410 Interview with judge at House of Justice in Daraa, November 2016.

411 Interview with Lawyer 19, November 2016.

councils had increasingly taken on many of the characteristics of courts.⁴¹² As a result, there were four different types of courts created in Daraa. These were the courts controlled by the FSA,⁴¹³ Islamic courts created by other armed groups,⁴¹⁴ *Sharia* councils where two consenting parties could turn for arbitration, and secret courts shielded from public view and operated by unknown forces.⁴¹⁵

The profusion of different bodies applying different laws and often reaching contradictory results was unacceptable, even for the armed groups.⁴¹⁶ Faced with public demonstrations, all armed groups present in Daraa agreed to form a single unified judicial system to address these contradictions.⁴¹⁷

Under this agreement, a “House of Justice” was set up to function as one common court, with jurisdiction over areas outside government control in Daraa and al-Quneitra. Initially, a group of Islamic scholars were appointed as judges. However, lawyers from the region had organised themselves in the Daraa Bar Association. These lawyers opposed this approach, demanding that they – as trained and experienced professionals – be involved in the application of law and procedures. These objections sparked a second round of negotiations, during which it was agreed that the House of Justice would no longer rely solely on Islamic experts. Instead, the Daraa Bar Association was invited to appoint judges, and to help write formal laws, rules and procedures.⁴¹⁸ As a compromise to satisfy the lawyers’ demands for a written code, and demands of armed groups that the law be based on *Sharia*, the negotiators agreed to rely on the Unified Arab Code.⁴¹⁹

Some groups continued to oppose the deal on the grounds that a written law would violate *Sharia*.⁴²⁰ Most notable among these dissenters was Jabhat al-Nusra, which had fundamental disagreements with the Southern Front (part of the FSA). Attempts to reconcile the two factions failed, due to Jabhat al-Nusra’s refusal to provide information concerning the fate of people who disappeared in the hands of their court or forces (including prominent opposition fighters), and Jabhat al-Nusra’s steadfast belief that the compromise principles used at the House of Justice violated its conservative interpretation of *Sharia*.⁴²¹

412 Interview with judge at the House of Justice in Daraa, November 2016.

413 Such as the court of Altaiba.

414 Such as the courts by Jabhat al-Nusra in Korba and court of Muthenda (loyal to ISIS) in Jill Leen.

415 Interview with Civil society representative 7 in Gaziantep, November 2016.

416 Interview with Lawyer 19, November 2016.

417 Interview with Lawyer 19, November 2016; and interview with Civil society representative 6 in Gaziantep, November 2016. According to one judge at the House of Justice in Daraa, minor factions affiliated with ISIS or opposed to any form of government were excluded from the agreement. Interview, November 2016

418 Interview with Lawyer 19, November 2016. A copy of the rules and procedures were provided to ILAC in March 2017, see *infra* n. 426.

419 *Ibid*. See also Enab Baladi English, ‘Deraa: The Judiciary Scheme, Shape of laws in it since its Liberation’, 26 January 2016, <<http://english.enabbaladi.net/archives/2016/01/deraa-the-judiciary-scheme-shape-of-laws-in-it-since-its-liberation/>> [accessed 10 December 2016].

420 Interview with Lawyer 19, November 2016.

421 Interview with judge at the House of Justice in Daraa, November 2016.

Despite opposition from Jabhat al-Nusra, the reconstituted House of Justice appeared to be a relatively successful attempt at building a system for justice, at least as compared to many other parts of Syria. The decision to rely on the Unified Arab Code also appeared to win credibility among civil society actors:

*“The House of Justice looks like it belongs ideologically to The Muslim Brotherhood. It has adopted the Unified Arab Code. This is the court for the people. The judges are religious scholars in Sharia ”.*⁴²²

Court structure

The House of Justice is a core institution in the local administration in Daraa and al-Quneitra.⁴²³ Its territorial jurisdiction includes the city of Daraa and those parts of the surrounding region outside government control (approximately 100 villages or 70 per cent of the governate according to their own account). In addition, the House of Justice has jurisdiction over roughly 60 per cent of al-Quneitra governate.⁴²⁴

The House of Justice is staffed by a variety of judges, lawyers and trainers. As part of the agreement between the armed groups controlling the region and the lawyers of Daraa, a judicial council was created to manage judicial appointments. Each of the original armed opposition groups' courts or councils were allowed to send one representative to a meeting where the council members were appointed.⁴²⁵ A bargain was struck whereby the lawyers and the armed groups were each allowed to nominate half of the members to the council, ensuring that half would be trained in law and half would be trained Islamic scholars. This judicial council appoints the judges of the HOJ. In addition, the council is responsible for general support of the judiciary, including legal training and motivational support:

*“The Judicial Council supports the House of Justice and works to motivate them to do their job in order to not have conflicts between the different groups ”.*⁴²⁶

Recently, the House of Justice was reconstituted to provide training for lawyers and scholars in an effort to find the right balance between lay judges and trained professionals.⁴²⁷ At the time ILAC conducted interviews, 52 judges were working at the House of Justice, including 37 lawyers who received training to become judges.⁴²⁸

422 Interview with Civil society representative 7 in Gaziantep, November 2016.

423 Interview with Lawyer 19, November 2016.

424 Interview with Lawyer 19, November 2016; and Interview with Civil society representative 6 in Gaziantep, November 2016. Figures not taking into account those parts of that region currently under control by Israel.

425 Interview with Lawyer 19, November 2016; and interview with judge at the House of Justice in Daraa, 2016.

426 Interview with Lawyer 19, November 2016; and Law of the Judicial Authority in Houran's courthouse, articles 8-9, as provided to ILAC in March 2017 (hereinafter “2017 HOJ Judicial Authority Law”).

427 Interview with Lawyer 19, November 2016.

428 Interview with Lawyer 19, November 2016; and interview with Civil society representative 6 in Gaziantep, November 2016.

Information provided to ILAC indicated that approximately 250 lawyers currently work in Daraa, compared to 600 before the outbreak of hostilities. In addition, the Daraa Bar Association has 100 more members currently in Jordan. As of November 2016, defence lawyers from the region were receiving training in the Unified Arab Code. In fact, a requirement had been introduced that lawyers wanting to represent clients in Daraa must have had such training.⁴²⁹

At the time of interviews, the House of Justice was organised in two “stages”, apparently functioning as first and second instance courts.

At the first stage, the court consists of one judge for misdemeanours and three judges for more severe criminal cases.⁴³⁰ In 2015, the House of Justice began the process of establishing a Court of Appeals, which was finalised in 2016, adding a second stage to its operations.⁴³¹ According to the temporary “Law of the judicial authority in Houran’s courthouse” (HOJ Judicial Authority Law), which was provided to ILAC in March 2017 and is applied as an exceptional law in the HOJ during the conflict, there is also a court of cassation connected to the HOJ.⁴³² Three judges serve on a panel in the appeals stage, with the provision that the judge in the first stage cannot sit on an appeal from his or her own first stage judgment.⁴³³ For serious cases, such as a murder trial, there may be something known as the “third stage” where the accused would face a panel of five judges, though this procedure apparently is not consistently utilised.⁴³⁴

Procedures

The procedure in criminal cases at the House of Justice appears to be essentially identical to those previously used in the Syrian courts.⁴³⁵ As such, the process is controlled by a prosecutor and an investigative judge. A case is initiated when a victim of a crime lodges a complaint directly to the prosecutor. A case number is issued and the prosecutor, with the support of investigators, can either call witnesses to the court house, or go to investigate in person. After talking to witnesses and taking a statement from the victim, the prosecutor evaluates the severity of the case, and forwards the matter to an investigative judge. The latter then calls in the suspect for questioning and decides whether to bring the case to court.⁴³⁶

At the trial stage, the trial judge has generally read the file. As such, trials normally are short, particularly in the event of a guilty plea.⁴³⁷ In the courtroom, the accused is advised of the charges and requested to plead guilty or not guilty.

429 Interview with Lawyer 19, November 2016; and interview with judge at the House of Justice in Daraa, 2016.

430 Interviews with lawyers and legal professionals in November 2016; and 2017 HOJ Judicial authority law, articles 20-21, *supra* n. 423.

431 Interview with, judge at the House of Justice in Daraa, 2016.

432 2017 HOJ Judicial authority law, articles 3, 16-17, *supra* n. 426.

433 *Ibid*, articles 18-19.

434 Interview with Lawyer 19, November 2016.

435 Interview with Civil society representative 7 in Gaziantep, November 2016.

436 Interview with judge at the House of Justice in Daraa, 2016.

437 Interview with judge at the House of Justice in Daraa, November 2016.

Accused persons are entitled to legal representation, but the defence lawyer is not allowed to talk to the judge during the proceedings. If the accused pleads guilty, the victim is not brought to court. If the plea is not guilty, the victim is brought before the court. The judge controls the proceedings. The judge takes notes of the victims' testimony and creates a written record of the victim's statement, including any claim for compensation. In a similar fashion, the judge takes a statement from the accused. After the hearing, the judge will prepare a verdict, though it is rare to have the verdict on the same day as the hearing.⁴³⁸

The House of Justice is currently working to introduce a greater adversarial element into the process, and to ensure that defendants are represented by a lawyer present in court.⁴³⁹ The current process also includes elements of mediation. In more serious cases, in particular those that would justify the death penalty under the law, the judge will often work with the victims' families to reach some form of reconciliation.

According to the HOJ Judicial authority law, there is a Judicial Inspector who answers to the Judicial Council. The inspector is responsible for inspecting the judgments, decisions and judicial procedures at the courts as well as managerial and disciplinary issues. The Judicial Inspector should also conduct prison inspections and verifying the legality of arrests and implementation of punishments.⁴⁴⁰

Applicable law

As discussed above, the House of Justice applies the Unified Arab Code.⁴⁴¹ The House of Justice had initially rejected the idea of applying either Syrian law or the Unified Arab Code. However, the judges and lawyers found the application of unwritten *Sharia* law confusing, and with time became convinced that a written code was needed. The Daraa Bar Association suggested the Unified Arab Code, as it was keen to abandon the unwritten law, and hoping that this would be acceptable to the armed groups, given the Code's origin and heavy reliance on interpretations of *Sharia*.⁴⁴² The Daraa Bar Association prepared a study of the Code, and recommended that the House of Justice adapt it. Due to the deeply rooted feeling that Syrian law as applied by the government was unfair, the recommendation to apply a different law – or, indeed, any law – was welcomed by many.⁴⁴³

House of Justice officials acknowledge that the introduction of *Sharia* into the penal code is something new in Syria. Many legal professionals in the Daraa region consider the Unified Arab Code to be a transitional law during the conflict.

438 Interview with judge at the House of Justice in Daraa, November 2016.

439 Interview with judge at the House of Justice in Daraa, November 2016.

440 2017 HOJ Judicial authority law, articles 9-15, *supra* n. 426.

441 Interview with judge at the House of Justice in Daraa, November 2016 and Lawyer 19.

442 Interview with Lawyer 20, November 2016.

443 *Ibid.*

These professionals hope that the House of Justice will ultimately amend the current Unified Arab Code, and that new criminal and procedural codes will be adopted.⁴⁴⁴ However, there may be different interpretations as to what law's application should indicate a transition to. Recently, a common statement was released by the HOJ in Daraa, the Higher board of judiciary in Western Ghouta and the Higher judiciary in Aleppo that declared that the Unified Arab Code should be applied in their judicial proceedings "as a constant standard law, and this an initial step as they would hope that this law is implemented in the remaining districts of Syria."⁴⁴⁵

The Unified Arab Code does provide for the death penalty. According to the legal professionals from Daraa interviewed, the House of Justice tries to avoid applying the death penalty, due to the unavoidable substantive and procedural shortcomings in a justice system during the armed conflict. However, interviewees could list six cases handled by the House of Justice where convictions had resulted in a death sentence.⁴⁴⁶ According to these sources, in each case the death penalty was applied to prevent very severe consequences, such as violent conflict between two armed groups, if a lesser punishment had been imposed.⁴⁴⁷

444 Interview with judge at the House of Justice in Daraa, November 2016.

445 Common statement released by the HOJ in Daraa, the Higher board of judiciary in Western Ghouta and the Higher judiciary in Aleppo on the judiciary in Syria and the application of the Unified Arab Law, issued in February 2017.

446 One example from 2015 described in an interview with a judge at the House of Justice in Daraa: "Two persons had killed an old lady. The criminals were found and admitted. They said they watched the victim for almost two hours only. She bought some chicken from the first defendant in the market. He agreed with the second defendant to take her in the car. She agreed to be taken to one place. They took her to a different place and hit her on her head and she fell unconscious. They threw her in the empty fields while conscious in a hole - I have seen it. A military place. She was tied. The two families didn't reach a conciliation and so the final judgement was death sentence. It was applied. We talk for criminal cases and delay to get the families to agree. We called the family of the victim to get them to be merciful. Sometimes it works."

447 Interview with Lawyer 20, November 2016.

Idlib Region

Courts

One Idlib lawyer explained that the civil society supported the creation of new courts after the withdrawal of the Assad government, particularly to maintain the existing system for the documentation of births and marriages.⁴⁴⁸ However, by the end of 2013 there were four separate “judicial” systems established by different factions in the area of Selkrin alone. These were administered by ISIS, Jabhat al-Nusra, Ahrar al-Sham and the Syrian government respectively, depending on which group had control of an area.⁴⁴⁹ The resulting bedlam created a chaotic situation difficult to follow even for the lawyers and judges working in the region.⁴⁵⁰

By 2015, Idlib was fully in the hands of Islamic armed groups who formed *Sharia* courts to replace what was left of the pre-existing judicial system.⁴⁵¹ ILAC was to identify three possible bodies that dominate the justice sector in the Idlib region:

- Dar al-Qada’ - the adjudicatory councils of Jabhat al-Nusra;
- The High Judicial Council of Jaish al-Fatha; and
- The Islamic Commission for Liberated Areas of Ahrar al-Sham – which appears to be part of the High Judicial Council of Jaish al-Fatha.

Information concerning the relationships between these bodies is confusing and sometimes contradictory. For example, Jabhat al-Nusra and Ahrar al-Sham are apparently part of Jaish al-Fatha, but have their own fully (al-Nusra) or semi- (al-Sham) independent court systems.⁴⁵²

The different bodies typically adhere to directives from its armed group’s legal office, and its judges are members of the armed group. As such, they lack independence from the armed group’s leadership and fighters.

448 Interview with Lawyer 15, November 2016.

449 There was also one group of Syrian judges from Selkrin who had insisted on their independence from the executive and had to flee, yet they were not allowed to stay in Selkrin by the groups in control, and so they moved their court to Harim instead.

450 Interviews by SLDP on behalf of ILAC with judges working at opposition courts in Idlib, December 2016.

451 Asaad Hanna, ‘Sharia courts in Idlib and their proximity to justice’, Al-Monitor, 11 February 2016, <<http://www.al-monitor.com/pulse/ar/originals/2016/02/syria-extremist-factions-sharia-courts-aleppo-idlib.html>> [accessed 10 December 2016] (hereinafter “Al-Monitor 2016 article”).

452 Tirwada Abd Al-Haqq, ‘The Islamist factions’ judicial system in Idlib’, Atlantic Council, 19 August 2016, <<http://www.atlanticcouncil.org/blogs/syriasource/the-islamist-factions-judicial-system-in-idlib>> [accessed 10 December 2016] (hereinafter “Atlantic Council 2016 article”).

One of the judges interviewed described the current relationship between the courts as such:

“In liberated areas, we see several judicial systems in place. Jaish al-Fatah immediately establishes courts in the areas it liberates. These are centrally controlled by the High Judicial Council of Jaish al-Fatah (al-Majles al-Qada’i) - which forms and provides the authority for these courts. Jaish al-Fatah has seven factions – Ahrar al-Sham, al-Nusra, Faylaq al-Sham, Liwa al-Haq, Jaish al-Sunnah, Suqour al-Sham and Jund al-Aqsa,⁴⁵³ – and some of these factions also have their own judicial bodies, or when disputes occur among them, they attempt to create committees external to the courts themselves) ”.⁴⁵⁴

These judges still working in the Idlib region emphasised coordination efforts and meetings between the different judicial systems to try to negotiate differences, but they did admit to overlapping jurisdictions. This was confirmed by one judge, who said that it is unclear even to the lawyers and judges operating within these areas how jurisdiction and fora are determined. Most arrangements occur through negotiations, agreements and optional coordination. Given the fluid nature of the conflict and the factions engaged in the hostilities, these agreements are often changed, broken or dismissed at a moment’s notice, making the administration of justice highly unpredictable.

In cases where jurisdictions overlap between two courts, there is an agreement that the claimant may choose the forum in which to bring the claim. Though denied by sitting judges, other reports indicate that a major factor in choosing a court in the Idlib region was whether the litigant had a relationship with one of the judges, to ensure a favourable judgment before submitting the complaint.⁴⁵⁵ In interviews, Idlib lawyers also suggested that local citizens might choose the court depending on the jurisprudence it applied:

“We were working in unnatural conditions. We carried out a survey. From a random sample, the result was that the type of court the citizens preferred depended on the description of the case. If a person was filing a complaint, they wanted it to go to a Daesh [ISIS] court in order that an extreme result would follow. If you were an accused, you would prefer to go to a court run by Ahrar ”.⁴⁵⁶

Occasionally, a party may apply to a different court after a case has been decided. However, there is a written agreement among the courts that they will not consider cases already adjudicated by another court.⁴⁵⁷

⁴⁵³ This group has since been removed from the coalition.

⁴⁵⁴ Interview by SLDP on behalf of ILAC with judge working at an opposition court in Idlib, January 2017.

⁴⁵⁵ Atlantic Council 2016 article, *supra* n. 452.

⁴⁵⁶ Interview with Lawyer 15, November 2016.

⁴⁵⁷ Interviews by SLDP on behalf of ILAC with judges 13, 14, 16 and 17 working at opposition courts in Idlib, December 2016.

One interviewee said that the heads of the various courts meet and discuss how to handle such issues.⁴⁵⁸ Another stated that in more politically sensitive cases, *ad hoc* commissions can be established. For example, in a dispute between two armed groups, each with an associated court, a joint office between the two courts can be established to look at the dispute.⁴⁵⁹

According to judges currently working in Idlib, all *Sharia* courts offer a right to appeal.⁴⁶⁰ This was confirmed by a lawyer from the region.⁴⁶¹ According to the head of the Appeals Chamber of the Criminal Court of Jaish al-Fatha, however, the actual verdict from the Trial Chamber cannot be appealed if it was issued based on *ijtihad* (the exercise of independent reasoning or freedom for judges to make new rulings not based on precedent).⁴⁶² Different judges sit on the Court of Appeal than those that sit in the first instance courts, and reportedly have extensive experience and the necessary expertise to sit on a higher court.⁴⁶³

Functioning of the courts

Although judges currently working in Idlib disagreed, other interviews conducted by ILAC confirmed the conclusions of other studies and media reports that these bodies function poorly, at best.

According to many of those interviewed, and supported by news articles at the time, the judges in these courts are mostly not qualified to handle matters governed by such non-religious legal frameworks, as they are not trained in non-*Sharia* law.⁴⁶⁴ Moreover, these courts have handed down harsh sentences on individuals who are considered to deviate from Islamic orthodoxy. One lawyer described, for example, how three judges from the government courts in Idlib were sentenced to death and executed for high treason for having applied Syrian law.⁴⁶⁵

Even in relation to matters governed by *Sharia* law, many judges in the Idlib courts are laypersons with little formal training.⁴⁶⁶ As such, their expertise is minimal. One report notes that these courts often apply provisions of *Sharia* law without taking into account the full application of the law, such as for example exceptions to applicability in times of conflict, or disregarding evidentiary rules.⁴⁶⁷

458 Interview by SLDP on behalf of ILAC with judge 14 working at an opposition court in Idlib, December 2016.

459 Interview by SLDP on behalf of ILAC with judge 15 working at an opposition court in Idlib, December 2016.

460 Interviews by SLDP on behalf of ILAC with judges 13, 14, 15, 16 and 17 working at opposition courts in Idlib, December 2016.

461 Interview with Lawyer 7, November 2016.

462 Interview by SLDP on behalf of ILAC with judge 15 working at an opposition court in Idlib, December 2016.

463 Interviews by SLDP on behalf of ILAC with judges 13, 14, 16 and 17 working at opposition courts in Idlib, December 2016.

464 See Al-Monitor 2016 article, *supra* n. 451.

465 Interview with Lawyer 7, November 2016. According to this same lawyer, when they later obtained the death sentence they found that it was signed by Abu Fulan, an infamous Islamist extremist from the UK.

466 Atlantic Council 2016 article, *supra* n. 452.

467 Al-Monitor 2016 article, *supra* n. 451.

Another report indicated that a *Sharia* court in Idlib ordered the execution of a woman for adultery without requiring the other involved party to be present during the trial and ignoring *Sharia's* evidentiary requirement of eyewitness testimony.⁴⁶⁸ The *Sharia* courts are also often accused of following the direction of the armed faction that established them.⁴⁶⁹

Interviews with judges currently working in the Idlib region illustrate the dichotomy between their view of their own competence, and the observations of outside informants. *Sharia* court judges in Idlib uniformly reported that judges in their courts have no political or military affiliations, are objective and fair, and have a commitment to Islam, honesty and ethics.⁴⁷⁰ They reported that judicial selection is based on interviews and previously decided written criteria, which include experience, education and competence.⁴⁷¹

Idlib judges gave varying details regarding the background and education of *Sharia* judges working in the region, with several stating that they must have a university degree, either in law or *Sharia*. One judge stated that judges are *Sharia* experts, each with an individual legal adviser attached.⁴⁷² In addition, some stated that judges receive training from other judges prior to starting working as a judge.⁴⁷³ One judge said that judges are initially required to complete a training period, during which their competence is determined in practice.⁴⁷⁴ Although responses from judges currently working in Idlib were inconsistent, it appears they generally acknowledged that judicial appointments ultimately were up to the armed group in control.

However, according to outside observers the *Sharia* courts in the Idlib region are commonly viewed as lacking basic competence.⁴⁷⁵ Contrary to information provided by current judges, others contend that many judges are former tailors or construction workers with little legal expertise. Court decisions are often poorly reasoned and inconsistent. Judges seldom adhere to a fixed set of procedures and principles, and often render judgments in accordance with the wishes of their armed group's leadership.⁴⁷⁶ The *ad hoc* nature of the judicial decision-making in turn results in squabbles among the judges over matters of jurisprudence and religious ideology.⁴⁷⁷

468 *Ibid.*

469 Enab Baladi English, 'Jaysh al-Fateh Promises to implement a Unified Judicial Reference in Idlib', 26 January 2016. <<http://english.enabbaladi.net/archives/2016/01/jaysh-al-fateh-promises-to-implement-a-unified-judicial-reference-in-idlib/>> [accessed 27 January 2017] (hereinafter "Enab Baladi English 2016 Idlib article").

470 Interviews by SLDP on behalf of ILAC with judges 14, 16 and 17 working at opposition courts in Idlib, December 2016.

471 Interviews by SLDP on behalf of ILAC with judges 13, 14, 16 and 17 working at opposition courts in Idlib, December 2016.

472 *Ibid.*

473 Interviews by SLDP on behalf of ILAC with judges 13, 14 and 16 working at an opposition court in Idlib, December 2016.

474 Interview by SLDP on behalf of ILAC with judge 17 working at an opposition court in Idlib, December 2016.

475 Interview with Lawyer 15, November 2016; Al-Monitor 2016, *supra* n. 451; Enab Baladi English 2016 Idlib article, *supra* n. 469; and Atlantic Council 2016 article, *supra* n. 452.

476 Atlantic Council 2016 article, *supra* n. 452. and Enab Baladi English 2016 Idlib article, *supra* n. 469.

477 Atlantic Council 2016 article, *supra* n. 452.

Public perceptions of these *Sharia* courts is difficult to determine. Some Idlib lawyers indicated that they had canvassed the local populations to determine their views on these issues. The answers received depended on the most recent information given to the respondents. For example, the initial responses in one area strongly favoured the imposition of harsh *Sharia* law as interpreted by ISIS. This was based largely on flyers spread in the area by ISIS. After the lawyers conducted informational workshops, all participants favoured a civil system based on the rule of law. However, by that time many Syrian lawyers and judges had been forced out of the region.

One lawyer from Idlib described sentencing to death of a woman who had been found guilty of forcing young women to participate in sexual acts, which were filmed with a view to distribution for profit. Many of the local population apparently approved of this sentence. Describing the prevailing mentality, the lawyer said:

*“If they believe an adulterer should be killed, then she will be.
In short, all the verdicts in the liberated areas are governed
by social traditions, not laws and a certain system”*.⁴⁷⁸

Criminal procedures

There is again stark contrast between what is reported by the judiciary currently sitting on the *Sharia* courts in Idlib, and the reports of others.

Though the descriptions from sitting judges in the Idlib region were inconsistent, they generally described procedures that appear to be fairly consistent with the Syrian criminal procedure. In one instance, one of the judges connected to the High Judicial Council even made explicit reference to Syrian law applying procedurally.⁴⁷⁹

Most of the Idlib judges interviewed described procedures for criminal cases that contained the following common features. A case at one of the tribunals will generally first be considered by a magistrate, arbitrator or anyone else as appointed by both parties, trying to reach a settlement outside the court structure.⁴⁸⁰ If settlement out of court cannot be reached, a plaintiff or the Prosecutor General can submit a complaint to the court, together with any evidence and names of witnesses. An investigatory judge then investigates the case based on the evidence provided. After an initial inquiry by the investigation judge, the case is referred to the court and the court will issue a summons for the defendant to attend trial.⁴⁸¹ The Prosecutor General can also issue a warrant of arrest at an earlier stage in criminal cases. There is a police force working as an enforcement body for each court, consisting of 15 to 50 individuals who bring in suspects, amongst other activities. However, in some cases the court can also cooperate with armed groups in the area to bring in suspects.⁴⁸² If the suspect is a member of an armed group, one interviewee stated that the court contacts the head of the relevant group to deliver the suspect.⁴⁸³ Interviewees indicated that defendants tend to adhere to court's summons and turn up at the court voluntarily.⁴⁸⁴

A defendant in a criminal case can be detained pending trial, and several interviewees said that the time limit for initial detention is 48 hours.⁴⁸⁵ After that, the detained person must be presented to a prosecutor or a judge for a further decision to extend detention.⁴⁸⁶ Detainees have the right to meet with their legal representative during detention. Women are kept separate from men in detention, and one judge also stated that they have women working in the police force who are responsible for detaining women.⁴⁸⁷

479 Interview by SLDP on behalf of ILAC with judge 17 working at an opposition court in Idlib, December 2016.

480 Interview by SLDP on behalf of ILAC with judge 13 working at an opposition court in Idlib, December 2016.

481 Interviews by SLDP on behalf of ILAC with judges 14 and 15 working at opposition courts in Idlib, December 2016.

482 Interview by SLDP on behalf of ILAC with judge 15 working at an opposition court in Idlib, December 2016.

483 *Ibid.*

484 Interviews by SLDP on behalf of ILAC with judges 13, 14, 16 and 17 working at opposition courts in Idlib, December 2016.

485 Interviews by SLDP on behalf of ILAC with judges 13, 14, 15 and 16 working at opposition courts in Idlib, December 2016.

486 Interviews by SLDP on behalf of ILAC with judges 15 and 16 working at opposition courts in Idlib, December 2016.

487 Interview by SLDP on behalf of ILAC with judge 15 working at an opposition court in Idlib, December 2016.

According to the information received from the judges currently working in Idlib, these procedures are written down and available to the people in the area should they wish to read them.⁴⁸⁸

The defendant can bring witnesses or other evidence, within a time limit, and is given some time to prepare the defence, although no exact time was specified. Women can also be called as witnesses. However, there was no information in the interviews as to the weight given to women's testimony compared with men's. The defendant is allowed to speak in front of the court and tell their own version of events, and also has the right to stay silent. They also have the right to be represented in court by anyone, be they a lawyer or a relative, of their own choosing.⁴⁸⁹

The one who brings an accusation has to prove that it is true. Thus, the prosecution has the burden of proof in proceedings, meaning that a person is innocent until proven guilty in criminal cases.⁴⁹⁰ However, it is not clear what standard of proof is required.

The courts seem to have some enforcement issues, although most judges stated that fees and penalties are generally paid in accordance with their judgments.⁴⁹¹ If they are not, the court can warn the parties, and can use detention to enforce the decisions.⁴⁹² One interviewee reported that this has happened to members of armed groups as well.⁴⁹³

It is not surprising that the procedure described by the judges above coincides with Syrian criminal procedure. This is likely to be the only criminal procedural that many of them are familiar with. This is consistent with the account from the House of Justice in Daraa and might indicate some willingness to accept some aspects of Syrian procedural aspects as common ground between different groups.

488 Interviews by SLDP on behalf of ILAC with judges 13, 14 and 16 working at opposition courts in Idlib, December 2016.

489 Interviews by SLDP on behalf of ILAC with judges 13, 14, 15, 16 and 17 working at opposition courts in Idlib, December 2016.

490 *Ibid.*

491 Interviews by SLDP on behalf of ILAC with judges 14, 16 and 17 working at opposition courts in Idlib, December 2016.

492 *Ibid.*

493 Interview by SLDP on behalf of ILAC with judge 16 working at an opposition court in Idlib, December 2016..

Reports and interviews from outside observers paint a different picture of the operation of the courts in Idlib, however.

*“The judiciary system in Idlib is akin to jungle law, in which the powerful use it to impose their rule on the others. Examining the judicial system shows how the role of the military factions use the judiciary to encroach on civilian affairs. Some traditional Islamic concepts like Sharia and ijihad [freedom for judges to make new rulings not based on precedent] are exploited to eliminate armed groups’ enemies and reinforce the control of militants and their associates ”.*⁴⁹⁴

According to reports, the Idlib *Sharia* courts work with armed groups that openly arrest, kidnap, or assassinate people in their respective areas of control.⁴⁹⁵ Reports also indicate that armed groups arrest political opponents or civil society activists under charges of espionage and apostasy. Contrary to the account given by the *Sharia* judges, persons arrested by armed groups are often driven to a secret prison, where former detainees report the use of physical and psychological torture. There are many documented cases of prisoners dying under torture in these areas. In other cases, prisoners are released after bribing their jailers.⁴⁹⁶

Outsiders also report that if a person is convicted by the *Sharia* courts, they are imprisoned or given huge fines that can reach as much as 500,000 US dollars. Prisoners who are found innocent are obliged to pay money for lodging and food they received during their detention.⁴⁹⁷

494 Atlantic Council 2016 article, *supra* n. 452. See also Enab Baladi English 2016 *Idlib* article, *supra* n. 469.

495 Atlantic Council 2016 article, *supra* n. 452.

496 *Ibid.*

497 *Ibid.*

Applicable law

The *Sharia* courts in Idlib generally have not followed any single source of law to define their work, or determine the punishments to be levied. Instead, different sources and methods of interpretation of *Sharia* law are said to be used.⁴⁹⁸ One Idlib *Sharia* judge described this situation as follows:

*“We do not adhere to any one school. We are bound by the consensus of Islamic judicial scholars. In case of disagreement between them, we then decide which opinion seems most appropriate ”.*⁴⁹⁹

But even this generalisation is subject to differences of opinion between the judges currently working in Idlib. One judge stated that they rely on the *Shafi* or *Hanafi* schools of jurisprudence (*fiqh*),⁵⁰⁰ whereas others stated that “absolute public interest” could be relied on in judgments.⁵⁰¹ The need for a written law has become more apparent to the judges and as such, some interviewees indicated that the Unified Arab Code has also come to be widely relied upon.⁵⁰²

The Islamic Commission for Liberated Areas

As noted above, one of the new bodies involved in the administration of justice in Idlib is the Islamic Commission for Liberated Areas. Established by Ahrar al-Sham in April 2014 as an independent civil institution, it functions to provide security, adjudication, and *Sharia*-related management. The Commission has several police stations, and is formed of ten main offices, which includes an office for the judiciary, office for the police, amongst others. The Commission runs courts in several locations, including Armitaz and Abu-El Duhoor. Ahrar al-Sham, Failaq and Jaish al-Fatha provide support for the Commission in Hama and Idlib and act as enforcers of the Commission's work.⁵⁰³ By August 2015, the Commission claimed to have finalised 5,000 cases, including criminal and civil claims.⁵⁰⁴

498 Interviews by SLDP on behalf of ILAC with judges 13, 14 and 16 working at opposition courts in Idlib, December 2016.

499 Hazzaa Adnan al-Hazaa, 'Syria: Sharia Courts Impose Justice in Rebel-Held Idlib', Institute for War and Peace Reporting, 26 March 2014, <<https://iwpr.net/global-voices/syria-sharia-courts-impose-justice-rebel-held-idlib>> [accessed 28 January 2017].

500 Interview by SLDP on behalf of ILAC with judge 17 working at an opposition court in Idlib, December 2016.

501 Interview by SLDP on behalf of ILAC with judge 16 working at an opposition court in Idlib, December 2016.

502 Interviews by SLDP on behalf of ILAC with judges 13, 14 and 15 working at opposition courts in Idlib, December 2016.

503 El-Dorar, 'What is the Islamic Commission for Liberated areas? What are its activities?', 22 August 2015, <<http://eldorar.com/node/84377>> (in Arabic) [accessed 10 December 2016].

504 *Ibid.*

One account described how one Idlib court became part of the Commission in the summer of 2014, and now reportedly employs 65 people, including judges, ancillary staff and security officers.⁵⁰⁵ After the court joined the Islamic Commission, its judges were sent on training courses run by the Syrian Higher Judicial Institute in the Turkish city of Sanliurfa. These workshops are conducted over a period of two months and train 50 people at a time, using the Unified Arab Code as their reference point.

The Commission has YouTube, Twitter, Gmail and Facebook accounts. It uses these accounts to posts forms and announcements, as well as to provide notice and issue summons to court to parties to a case. The form indicates that the Commission has a case registry, a seal and includes information on the date of entry for the claim and the parties involved.

Arbitration courts

A parallel arbitration system has started to operate in Idlib, due to the problems with the newly established *Sharia* courts. Staffed by tribal religious leaders and law professionals, these structures can be used instead of the *Sharia* courts to handle civil or personal disputes.⁵⁰⁶ Such proceedings can be instituted before, during, and after a trial, if the parties are not satisfied with the verdict.⁵⁰⁷

Eastern Ghouta

On the outskirts of the city of Damascus is an area known as Eastern Ghouta. Originally an agricultural area made up of small villages, recent decades brought suburban sprawl and new satellite towns. The area is home to roughly 2 million people before the conflict. One of the principal centres in Eastern Ghouta is Douma, a conservative regional centre of religious learning where before the conflict, the austere *Hanbali* school of Sunni Islam was widely practiced.⁵⁰⁸

Eastern Ghouta was one of the first areas to join in the anti-government protests.⁵⁰⁹ As government forces withdrew and government control weakened, chaos, kidnapping and assassinations became commonplace.⁵¹⁰

505 Mostafa al-Jalal, 'In Idlib, Some Turn to Sharia Courts' Syria Stories, a project by the Institute for War and Peace Reporting, 25 May 2015, <<https://syriastories.net/in-idlib-some-turn-to-sharia-courts/>> [accessed 27 January 2017].

506 Sonia al-Ali, 'Idlib's Courts of Arbitration,' The Syrian Observer, 25 February 2016, <http://syrianobserver.com/EN/Features/30603/Idlib_Courts_Arbitration> [accessed 27 January 2017].

507 Interviews by SLDP on behalf of ILAC with judges 13, 14 and 16 working at opposition courts in Idlib, December 2016.

508 Aron Lund, 'An Islamist Experiment: Political Order in the East Ghouta,' Carnegie Middle East Center, 18 April 2016, <<http://carnegie-mec.org/diwan/63362>> [accessed 27 January 2017] (hereinafter "Carnegie Middle East Center 2016 article"); Aron Lund, 'Into the Tunnels: The Rise and Fall of Syria's Rebel Enclave in the Eastern Ghouta,' The Century Foundation, 21 December 2016, <<https://tcf.org/content/report/into-the-tunnels/>> [accessed 27 January 2017] (hereinafter "The Century Foundation 2016 article").

509 Linah Alsaafin, 'Syria's Eastern Ghouta: the latest casualty of war,' Middle East Eye, 6 February 2015, <<http://www.middleeasteye.net/news/eastern-ghouta-caught-between-rock-and-hard-place-1997307396>> [accessed 27 January 2017] (hereinafter "Middle East Eye 2015 East Ghouta article").

510 The Century Foundation 2016 article, *supra* n. 508.

Armed groups created improvised “courts” where detainees were tried without the presence of judges, and sentenced to death. While judges and lawyers did start going to detention centres to check the minutes and interrogate the suspects for trial, the situation was essentially anarchy. Reports did suggest though that the actions of judges and lawyers did somewhat reduce kidnapping, assassination, and capital punishment without trial.⁵¹¹

In the resulting bedlam, many of the modest gains made by women under the Assad government disappeared. Women were precluded from practising law as lawyers or judges, especially in the *Sharia* courts. A few women were allowed to work in women prisons, but only as prison functionaries and not in any judicial role. Women were required to be accompanied in order to appear in court. Domestic violence victims were reportedly not able to file complaints or go to court.⁵¹²

By 2012, these legal professionals began forming more substantive courts. A *Shura* Judiciary Board was formed and several lawyers were appointed as judges. Improvised procedures were developed to deal with the exigencies of the chaotic situation. For example, judgment from these courts reportedly would be reviewed by legalist scholars and experienced jurists, and then submitted to a *Sharia* court established by one of the armed groups controlling the area. According to this source, if there was a conflict between the two judges, a third judge was brought in to settle the issue.⁵¹³

The situation was made more difficult by the fact that the government transferred the government courts and its current files out of the region, leaving only the archives in the courts’ warehouses. Some files were damaged by shelling, and others were destroyed by weather. Nonetheless, the *Shura* Judiciary Board reportedly commissioned several experts to clean and archive the files, which were transferred to a safe place and put under the control of the Judiciary Board.⁵¹⁴

On 24 June 2014, the main rebel factions of the Eastern Ghouta announced the creation of a Unified Judiciary Council. This was supported by 17 different armed groups in the area. Under this plan, the Unified Judiciary Council was not under the direct control of the armed groups. The armed groups agreed to relinquish control over legal affairs to a panel composed of respected Islamic scholars. This panel presided over the courts with territorial jurisdictions covering the region controlled by the armed groups. The courts also had extensive subject matter jurisdiction including criminal law, civilian matters, and family-status issues.⁵¹⁵

511 Enab Baladi English, ‘Eastern Ghouta: Foundation of Independent Judiciary following Liberation’, 26 January 2016, <<http://english.enabbaladi.net/archives/2016/01/eastern-ghouta-foundation-of-independent-judiciary-following-liberation/>> [accessed 27 January 2017].

512 Interview with Civil society representative in Gaziantep, November 2016.

513 *Ibid.*

514 *Ibid.*

515 Carnegie Middle East Center 2016 article, *supra* n. 508.

The initial high hopes for the Council soon began to fade. The first Head of the Unified Judiciary Council resigned shortly after its formation, and was assassinated by unknown gunmen a year later. Moreover, reports suggest that the Council has increasingly fallen under the sway of Jaish al-Islam, often referred to as the Islam Army. Founded and led by Zahran Alloush, Jaish al-Islam was considered by many as an extremist group.⁵¹⁶

At the same time, the attitudes of the other factions under the Unified Judiciary Council umbrella also varied. Jabhat al-Nusra, for example, suspended its participation in the UJC almost immediately after its formation, sparking confrontations with Jaish al-Islam. Ultimately, however, the two groups co-existed, and Jabhat al-Nusra did not overtly interfere with the UJC.⁵¹⁷

Unlike some of the other opposition-held areas, the newly formed courts in Eastern Ghouta were functioning in a very difficult day-to-day environment. The area has been besieged by government forces throughout the conflict, resulting in food and other shortages, which have greatly impacted the local civilian population. In August 2013, it was the scene of a chemical weapons attack that shocked the world.⁵¹⁸ At this time, Eastern Ghouta was among the most militarised rebel strongholds in the country,⁵¹⁹ with various armed groups struggling for control of the area.⁵²⁰ The less conservative forces in Eastern Ghouta faced attacks from the government on one side, and resistance from extremist groups trying to impose strict interpretation of *Sharia* law on the other:

*“ We were working in a court bombed by the regime. It was really difficult for us to keep going. Colleagues of mine were detained and we don’t know anything about them ”.*⁵²¹

On 25 December 2015, the Head of the Islam Army was killed in an airstrike.⁵²² Though differences persisted within the Unified Judiciary Council, the new leadership of the Islam Army continued to pursue its quest for dominance among opposition forces, endorsing and later participating in the Geneva III negotiations.⁵²³ More recently, advances by government forces suggest that large portions of Eastern Ghouta may revert to government control.⁵²⁴

516 *Ibid.*

517 *Ibid.*

518 Loveday Morris and Taylor Luck, ‘A month after chemical attacks, Syrian residents of Ghouta struggle to survive’, news article, Washington Post, 20 September 2013, <https://www.washingtonpost.com/world/a-month-after-chemical-attacks-syrian-residents-of-ghouta-struggle-to-survive/2013/09/20/999e39a4-2238-11e3-ad1a-1a919f2ed890_story.html?utm_term=.890e370ecd3c> [accessed 27 January 2017].

519 Carnegie Middle East Center 2016 article, *supra* n. 508.

520 *Ibid.*; and Middle East Eye 2015 East Ghouta article, *supra* n. 509.

521 Interview with Lawyer 1, November 2016.

522 Kareem Shaheen, ‘Leader of powerful Syrian rebel group killed in airstrike’, news article, The Guardian 25 December 2015, <<https://www.theguardian.com/world/2015/dec/25/zahran-alloush-leader-syria-rebel-group-killed-airstrike>> [accessed 27 January 2017].

523 Carnegie Middle East Center 2016 article, *supra* n. 508.

524 Paul Antonopoulos, ‘Syrian Army rapidly advancing in new areas of East Ghouta’, ANM, 29 January 2017 <<https://www.almasdarnews.com/article/syrian-army-rapidly-advancing-in-new-areas-of-east-ghouta/>> [accessed 27 January 2017].

Analysis and recommendations

The justice systems operating in non-government areas revealed that virtually all armed groups involved in the conflict recognise, and in fact, embrace the concept of courts or similar structures to settle disputes, provide justice (however defined), and handle routine administrative tasks. At the same time, a common attribute to virtually all the different mechanisms described is the absence of true judicial independence and impartiality. Though many judges working in these newly formed courts assert that they are in control of how the courts operate, the overall results from the interviews and other reports demonstrate that many are under the direct control of armed groups. Nearly all these new courts struggle to assert their independence from the armed actors in control of the areas where they operate.

Even where there may not be direct control by the armed groups in the area, indirect influence still raises issues of judicial independence. The House of Justice in Daraa, for example, is arguably one of the more sophisticated and ambitious attempts to establish a legitimate non-state court system in Syria. But lawyers and judges interviewed acknowledged that they allow themselves to be influenced by concerns other than the merits of the case. Interviewees said that they may apply *hudud* punishments (including the death penalty), even where it runs contrary their judicial beliefs, if a milder punishment would lead to a conflict between armed groups. This implicitly acknowledges that the court is not strong enough to act independently of the armed factions.

The failure of Syrian opposition groups to establish independent and impartial tribunals reduces their legitimacy and credibility, both within the local population and in the international community. Accordingly, it is widely recognised that these groups need to ensure that judges are qualified in matters of law, able to execute their duties without the interference from armed actors, and ensure that due process is respected at all times.

States who support armed groups opposed to the government, be it through finances, training or otherwise, have a particular responsibility to ensure that those groups adhere to international fair trial standards. This includes putting pressure on the groups to ensure that courts and tribunals they have established are regularly constituted within the meaning of Common Article 3 to the Geneva Conventions of 1949.

Unfortunately, a significant portion of the armed groups within Syria reject these principles. This is not out of negligence or inability, but because they fervently reject these principles on their face in favour of their interpretations of a *Sharia*-based system. While states and other actors who provide direct support to armed groups must continue to emphasise the importance of fair trial guarantees, the international community should also recognise that a sizeable segment of the Syrian opposition simply will not listen.

That said, the energy, dynamism and resilience demonstrated by Syrian legal professionals since 2011 illustrates their commitment to finding a solution to the current situation. Scores of patchwork courts, councils and commissions have been created, most attempting to adapt to the unique circumstances of the conflict. It needs to be borne in

mind, however, that just as many Syrians have rejected the judicial system imposed by the government, they will likely reject any system that appears to be imposed by foreign powers or Syrian autocrats.

Recognising these realities, ILAC recommends the following features for assistance to the justice sector in the non-government controlled areas in Syria:

- 1. Continue programmes to assist non-extremist legal professionals working in Syria.** The international community has provided assistance to lawyers, judges and other legal professionals since the outbreak of the conflict. These and similar programmes should continue, but should have a more practical focus, addressing specific issues and necessary skills to assist the participants in providing critical services needed by the larger Syrian public. The focus in the international community should be on supporting those individuals and groups willing and interested in building a trusted reputation of genuine and meaningful assistance with the larger Syrian population. See further Chapter 5 below.
- 2. Support Syrian lawyers' efforts to support their local communities.** Syrian lawyers are able to operate freely in many non-government controlled areas. Courts in those areas have proven to be susceptible to pressure from lawyers and civil society to bring about positive changes to their operations. In addition, they provide vital services to the local community representing their clients before the courts. Programmes should therefore be designed to help lawyers to support the local community more. Such support could take the form of opening resource centres for defence lawyers, bringing lawyers, judges, policy makers and other stakeholders together for roundtables to coordinate solutions, or even establishing legal aid clinics to offer direct legal representation for those most vulnerable within the community.
- 3. Support arbitration centres and conflict resolution committees to allow cases to be heard before Syrian trained legal experts.** In many areas outside the control of the government, courts allow the parties to a case to agree to settle their differences through arbitration in commercial and civil cases, or through the use of conflict resolution committees in criminal cases. Such committees are able to rely on Syrian lawyers applying Syrian law, whilst at the same time respecting *Sharia* requirements. Programmes could be designed to support and promote the involvement of Syria legal professionals in such processes. A careful assessment of the local situation in each area such programmes could be considered and the potential impacts would be necessary beforehand, however. This is particularly critical for family law cases and complaints involving gender-based violence, and generally in relation to the impacts on women.

-
- 4. Assist courts in non- government controlled areas to improve their efficiency and procedures where feasible.** A common reaction among many international observers is to immediately dismiss all the newly established justice mechanisms due to concerns that they are unable to respect international human rights law requirements. However, it is probable that moving beyond the conflict situation, the Syrian justice system will retain at least some elements from these mechanisms. As such, efforts to address these issues would be welcomed sooner, rather than later. In addition, experience in the non-government controlled areas suggests that even the more extreme examples of these justice mechanisms tend to gravitate towards a more structured and clearly established set of laws and procedures when faced with the realities of deciding hundreds of concrete cases. To the extent feasible, the international community should therefore pursue initiatives to help professionalise courts in these areas.
 - 5. Support a continued dialogue about present and future Syrian law and system of justice among Syrian judges and lawyers, and between the Syrian legal profession and the international legal community.** Applicable law is a highly contentious issue in non-government controlled areas in Syria. Yet a prolonged division of the country under different *de facto* legal systems risks undermining the unity of the Syrian state in the long term. Agreement on the applicable norms in the different areas in Syria would be a significant improvement in the lives of those living in these areas, and would mitigate risks of divisions brought about by different areas being controlled by different armed actors.
 - 6. Support Syrian judges outside areas controlled by the government in building unity and improving their support to Syrians.** Those judges who were forced to flee after speaking up against abuse of peaceful protestors constitute a unique resource for Syria. These individuals have both an intimate knowledge and understanding of the Syrian state, as well as a proven commitment to human rights standards. However, these judges have struggled to maintain unity in the fractured legal landscape in non-government controlled areas. Programmes should be designed to encourage collegiality among these judges to strengthen their voice in the debate about justice in Syria.
 - 7. Ensure a balance is maintained between supporting legal professionals working in this area and ensuring wider efforts for peace are not undermined.** Support to legal professionals in non-government controlled areas needs to take into account the particular position of these individuals in the Syrian conflict, and be sensitive to the Syrian political context. These lawyers and judges have had to continuously grapple with the dilemma of how to create and support structures for upholding the rule of law in areas where the government is not present, without inadvertently establishing a *de facto* parallel state or challenging the territorial integrity or sovereignty of Syria. All activities directed towards improving the capacity of the legal professionals both inside and outside these areas, and support to the people inside Syria must take into account the need to uphold this balance.

4.4 Areas under Kurdish control

The Kurdish minority

The population of the Kurdish minority in Syria is around 1.7 to 2 million people. While some live in urban areas such as Damascus and Aleppo, most live in the northeast on the rolling plains along the Turkish border.

For decades, the Kurdish minority were subject to considerable repression by the government. One of the most infamous of its early efforts was Legislative Decree No. 193 of 1952. The Decree purported to address risks associated with suspicious people having property adjacent to the border. It prohibited most land transactions in certain border areas without first obtaining a license from the central government. According to one report, no Kurdish person has ever succeeded to obtain such a license.⁵²⁵ Included within the border areas defined by Decree No. 193 were all lands areas within 25 kilometres of the Turkish border, which were predominantly populated by Kurds. Another special decree soon followed, which expanded the border area to effectively include another Kurdish centre, the governate of al-Hasakah, situated 100 kilometres inside the border. While these decrees were later amended to apply to only agricultural lands, the net effect of these provisions was to severely hamper Kurds from transferring their lands in most of the northern Kurdish regions.⁵²⁶

Over time, the Syrian authorities also introduced restrictions on the use of the Kurdish language, banned Kurdish-language publications, and prohibited celebrations of Kurdish festivities.⁵²⁷ Government efforts to suppress the Kurdish minority were expanded with the introduction of Decree No. 93 of 1962. Numerous Syrian Kurds interviewed for this report spoke of this decree, which ordered an exceptional census in the al-Hasakah governorate in north-eastern Syria. The stated purpose for the census was to identify “alien infiltrators” who had illegally crossed the border from Turkey. Kurds were forced to prove domicile in Syria since at least 1945 or lose their Syrian citizenship. As a result, 120,000 Syrian Kurds – 20 per cent of the Syrian Kurdish population – were stripped of their citizenship and became stateless “foreigners” (*ajanib*).⁵²⁸

525 See Habitat International Coalition, ‘Systematic Housing and Land Rights Violations against Syrian Kurds’, submitted to the Office of the United Nations High Commissioner for Human Rights for the twelfth session of the Universal Periodic Review, 17 March 2011, <<http://lib.ohchr.org/HRBodies/UPR/Documents/session12/SY/HIC-HabitatInternationalCoalition-eng.pdf>> [accessed 17 February 2017] (hereinafter “Habitat International Coalition 2011 report on Kurdish areas”).

526 Interview in Gaziantep, 10 November 2016.

527 Human Rights Watch ‘Under Kurdish Rule: Abuses in PYD-run Enclaves of Syria’, report, June 2014, p. 10, <https://www.hrw.org/sites/default/files/reports/syria0614_kurds_ForUpload.pdf> [accessed 17 February 2017] (hereinafter “HRW 2014 report on Kurdish areas”).

528 Interview in Erbil, 12 November 2016. See also Human Rights Watch, ‘Group Denial: Repression of Kurdish Political and Cultural Rights in Syria’, report, 26 November 2009, p. 10, <https://www.hrw.org/sites/default/files/reports/syria1109web_0.pdf> [accessed 27 January 2017] (hereinafter “HRW 2009 report on Kurdish areas”); and Habitat International Coalition 2011 report on Kurdish areas, *supra* n. 525.

In reality, the census was part of a concerted effort to increase the Arab population in the northeast.⁵²⁹ This plan sought to create a so-called “Arab belt” roughly ten to fifteen kilometres wide along 375 kilometres of the Turkish border. Part of this plan sought to relocate 150,000 Kurds and bring in Arab settlers. As the *ajanib* were denied the right to own property, the census results allowed the government to expropriate prime Kurdish land for settlements of Syrian Arabs displaced by construction of the Tabqa Dam on the Euphrates.⁵³⁰ While the resettlement effort was only partially successful, the legacy of Decree No. 93 and the Arab Belt continues to reverberate through modern Syria.⁵³¹

Despite this oppression, Syrian Kurds have avoided open opposition against central authority. This has been attributed to the Syrian government’s support for Kurdish rights in Iraq and Turkey in the closing decades of the twentieth century. In particular, during the 1980s and early 1990s the Syrian government supported the Kurdistan Workers’ Party (*Partiya Karkeren Kurdistan* or PKK), an armed insurgency group of Turkish Kurds.⁵³² The PKK espouses a socialist nationalist philosophy while seeking a Kurdish homeland in Turkey.⁵³³

Bowing to Turkish pressure, the Syrian government ended its support for the PKK, and expelled its leader, Abdullah Öcalan, from his Damascus home in 1998. This and the subsequent constitutional changes in Iraq following the U.S.-led invasion in 2003 giving greater autonomy to Iraqi Kurds, gave rise to a Syrian-based offshoot of the PKK known as the Kurdish Democratic Union Party (*Hezb al-Ittihad al-Dimocrati* or PYD).⁵³⁴ Like the PKK, it follows a socialist nationalist philosophy, antagonistic to Turkey.⁵³⁵

The PYD soon became a rival to the earlier formed Kurdish Democratic Party of Syria (*Partiya Demokrat a Kurdî li Sûriyê* or KDPS), a sister organisation to the Kurdish Democratic Party of Massoud Barzani, President of the Kurdistan Regional Government in Iraq. In contrast to the PYD, the KDPS maintains better relations with the Turkish government.⁵³⁶

529 Habitat International Coalition 2011 report on Kurdish areas, *supra* n. 525; David L. Phillips, ‘The Kurdish Spring: A New Map of the Middle East’, (New Brunswick, NJ: Transaction Publishers, 2015) (hereinafter “Phillips 2015”).

530 Ernest Tucker, ‘The Middle East in Modern World History’ (London: Routledge, 2016), p. 276; and HRW 2009 report on Kurdish areas, *supra* n. 528.

531 Interview in Erbil, 12 November 2016. For a full discussion of Decree No. 93 of 1952 and its consequences, see Human Rights Watch, ‘Syria: The Silenced Kurds’, October 1996 E804, <<https://www.hrw.org/sites/default/files/reports/SYRIA96.pdf>> [accessed 27 January 2017]; and Habitat International Coalition 2011 report on Kurdish areas, *supra* n. 525.

532 See James Brandon, ‘The PKK and Syria’s Kurds’, The Jamestown Foundation, Terrorism Monitor, Vol. 5, Issue 3, 15 February 2007, <<https://jamestown.org/program/the-pkk-and-syrias-kurds/>> [accessed 27 January 2017].

533 See Cengiz Gunes, ‘The Kurdish National Movement in Turkey: From Protest to Resistance’, (London: Routledge, 2012).

534 See Carnegie Middle East Center, ‘Syria in Crisis: The Kurdish Democratic Union Party’, 1 March 2012, <<http://carnegie-mec.org/diwan/48526?lang=en>> [accessed 27 January 2017].

535 Wes Enzinna, ‘A Dream of Secular Utopia in ISIS’ Backyard’, New York Times Magazine, 24 November 2015, <<https://www.nytimes.com/2015/11/29/magazine/a-dream-of-utopia-in-hell.html>> [accessed 27 January 2017] (hereinafter “New York Times Magazine 2015 article on Kurdish areas”).

536 Ghadi Sary, ‘Kurdish Self-governance in Syria: Survival and Ambition’, Chatham House Royal Institute of International Affairs, September 2016, p. 8, <https://www.chathamhouse.org/sites/files/chathamhouse/publications/research/2016-09-15-kurdish-self-governance-syria-sary_0.pdf> [accessed 27 January 2017] (hereinafter “Chatham House 2016 report on Kurdish areas”).

Kurdish opposition to the government reached a boiling point in 2004 when a fight between fans at a football match in Qamishli ignited violent clashes between the authorities and Kurdish demonstrators. Numerous Kurds were killed and injured, and Syrian security services detained more than 2,000 people.⁵³⁷ While many detainees were released, some reports suggested that this did not extend to a large number of PYD members.⁵³⁸ Moreover, Kurdish political and cultural activities were further curtailed, as arbitrary arrests, sham trials, detainee abuses, and travel bans continued.⁵³⁹

Another blow to the Kurds came with the introduction of Decree No. 49 of 10 September 2008. This decree prohibited property transactions concerning all land, including urban land in the cities, in the previously-defined border areas without central government permission. Such permissions were in fact subject to approval by the security forces, and were seldom given to Kurds.⁵⁴⁰ The impact was severe, with many forced to abandon their farms and villages. According to one estimate, by 2011 these policies resulted in the elimination of 335 Kurdish villages and the removal of Kurds from their agricultural lands in the entire al-Hasakah area.⁵⁴¹

The 2011 uprising in Kurdish areas

As the uprisings in 2011 spread across the country, the government began to make conciliatory moves towards the Kurdish population. This included providing social services and employment opportunities for the *ajanib*. In April 2011, the government issued Decree No. 49 of 7 April 2011 which allowed *ajanib* in the al-Hasakah governate to apply for citizenship. According to some reports, this change in the law allowed 51,000 Kurds who had been made stateless to receive identity cards providing Syrian citizenship.⁵⁴² However, since the Decree was limited in scope, approximately 160,000 Kurdish *ajanib* remain stateless.⁵⁴³

The initial Kurdish response to the Syrian uprising was disjointed and ambivalent. Some rallied to the call of Jalal Talabani, an Iraqi Kurd and then the President of Iraq, who urged the Syrian Kurds to fight for reform within the Syrian state.⁵⁴⁴ A different view was expressed by Masoud Barzani, President of the Kurdish Region of Iraq and strong supporter of the KDPS.

537 HRW 2009 report on Kurdish areas, *supra* n. 528, pp. 15-16.

538 *Ibid*, p. 43.

539 *Ibid*, pp. 15-16.

540 Interview in Gaziantep, 10 November 2016; and interview in Erbil, 12 November 2016.

541 Phillips 2015, *supra* n. 529; Habitat International Coalition 2011 report on Kurdish areas, *supra* n. 525.

542 Aside from the partial nature of these changes, some Kurdish lawyers complained that by “granting” citizenship rather than “restoring” citizenship, the regime deftly avoided any potential claims for compensation - interview in Erbil, 12 November 2016.

543 United Nations High Commissioner for Refugees, ‘Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights’ Compilation Report- Universal Periodic Review: Syria, May 2011, <<http://www.refworld.org/docid/4f1812062.html>> [accessed 27 January 2017]; United States Department of State, ‘Syria 2012 Human Rights Report’, 2012, <<https://www.state.gov/documents/organization/204595.pdf>> [accessed 27 January 2017].

544 Chatham House 2016 report on Kurdish areas, *supra* n. 536, p. 8.

President Barzani had developed a good relationship with Turkey, which in turn supported the Syrian National Council, an umbrella group of opposition Syrian political parties based in Istanbul. President Barzani and the KDPS urged the Kurds to work with the broader Syrian opposition for a transition to a new Syrian government that was friendly to Turkey.⁵⁴⁵

The PYD took a different tack. As the Syrian revolution unfolded, the PYD offered a “third line”, supporting change but rejecting foreign intervention and alignment with the larger non-Kurdish Syrian opposition.⁵⁴⁶ Moreover, though weakened by years of Syrian and Turkish government attacks, the PYD was the only Syrian Kurdish faction with political coherence and a core of trained fighters through its military arm known as People’s Protection Units (*Yekîneyên Parastina Gel* or YPG), which reportedly included non-Syrian fighters from the PKK.⁵⁴⁷

In the months following the outbreak of hostilities, the KDPS, PYD and other factions formed the Kurdish National Council, a loose umbrella group of Kurdish political parties opposed to the Assad government. Two months after the Kurdish National Council was created, the PYD separately formed the Rojava Movement for a Democratic Society (*Tevgera Civaka Demokratîk* or TEV-DEM) in December 2011.⁵⁴⁸ This movement differed from the Kurdish National Council in that it sought to implement the PYD’s own version of the PKK’s philosophy. In broad terms, TEV-DEM’s goal is to reform society as a whole, and promote individual and collective rights, such as freedom of expression, gender equality and respect for ethnic and religious identities.⁵⁴⁹ Despite their differences, the Kurdish National Council and TEV-DEM agreed to work together within the Kurdish Supreme Committee for a rapid and stable transition in the Kurdish areas of northern Syria.⁵⁵⁰

On 20 July 2012, a massive bombing in Damascus killed several members of the Syrian government’s leadership. After skirmishes between Kurdish and government forces, the Syrian government withdrew its troops to key security zones in Qamishli and the provincial capital al-Hasakah, in order to divert its forces to Damascus and elsewhere.⁵⁵¹ The PYD moved into the vacuum left by the government forces to assert control over the majority Kurdish populations in the north of the country.⁵⁵²

545 *Ibid.*, p. 8.

546 *Ibid.*

547 Aaron Stein and Michelle Foley, ‘The YPG-PKK Connection’, 26 January 2016, <<http://www.atlanticcouncil.org/blogs/menasource/the-ypg-pkk-connection>> [accessed 27 January 2017]; International Crisis Group, ‘Flight of Icarus? The PYD’s Precarious Rise in Syria’, Middle East Report No. 151, 8 May 2014, <<https://www.crisisgroup.org/middle-east-north-africa/eastern-mediterranean/syria/flight-icarus-pyd-s-precarius-rise-syria>> [accessed 27 January 2017] (hereinafter “ICG 2014 report on Kurdish areas”).

548 Chatham House 2016 report on Kurdish areas, *supra* n. 536, p. 7. The term “Rojava” (meaning west in Kurdish) refers to the western area of greater Kurdistan, as viewed by Kurds throughout the region. It is not universally accepted in Syria or in neighbouring countries as a term for the areas with large Kurdish populations. See also ICG 2014 report on Kurdish areas, *supra* n. 547, p. 1, n. 1.

549 ICG 2014 report on Kurdish areas, *supra* n. 547, p. 12.

550 Chatham House 2016 report on Kurdish areas, *supra* n. 536, p. 9.

551 *Ibid.*

552 Cengiz Gunes, and Robert Lowe, ‘The Impact of the Syrian War on Kurdish Politics Across the Middle East’, Chatham House, July 2015, p. 4, <https://www.chathamhouse.org/sites/files/chathamhouse/field/field_document/20150723SyriaKurdsGunesLowe.pdf> [accessed 27 January 2017].

Over the next two years, the PYD increased its influence and control within the northern Syrian Kurdish dominated area referred to by them as Rojava, with its YPG successfully defending Kurdish-controlled areas against attacks by extremist militants.⁵⁵³

The Kurdish National Council's legitimacy among Syrian Kurds was dealt a serious blow at this time when the internationally backed Syrian opposition refused to recognise a distinct Kurdish identity in Syria.⁵⁵⁴ The PYD quickly established itself as the dominant force, straining relations with Kurdish National Council.⁵⁵⁵ Though the Kurdish National Council and the PYD-led TEV-DEM had initially agreed to collaborate on an interim administration in Kurdish controlled area, the Kurdish National Council gradually withdrew as popular support swung toward the PYD. Kurdish National Council officials accused the PYD of monopolising decision-making and harassing its members, while the TEV-DEM accused the KNC with seeking to establish a separate administration to divide the Kurdish controlled area into competing zones of influence.⁵⁵⁶

In November 2013, the PYD established a transitional autonomous "government" in Kurdish controlled areas together with several smaller groups, with the stated goal of an autonomous administration within a federal Syria.⁵⁵⁷ This unilateral action by the PYD further damaged relations between the Kurdish parties, leading to charges of a power grab and accusations by KDPS activists that they had been politically targeted and excluded.⁵⁵⁸ The net result was the eventual withdrawal of the KDPS from the local administration in Kurdish controlled area.⁵⁵⁹

Two months later, the PYD and its allies formally established an Interim Transitional Administration for Rojava with local administrations in three non-adjacent areas of northern Syria referred to as cantons, namely Afrin, Kobani (*Ain al-Arab*) and Cezire (al-Jazira region in al-Hasakah province). Though predominantly Kurdish, other ethnic communities including Arabs, Syrians, Armenians, and Turkmen populate these areas.⁵⁶⁰ Throughout this period, the government continued to control the security zones in Qamishli and the provincial capital of Hasakah.

553 Amnesty International, "We Had Nowhere Else to Go": Forced Displacement and Demolitions in Northern Syria, October 2015, <<https://www.amnesty.org/download/Documents/MDE2425032015ENGLISH.PDF>> [accessed 27 January 2017] (hereinafter "Amnesty International 2015 report on Kurdish areas"); and Chatham House 2016 report on Kurdish area, *supra* n. 536, p. 10.

554 Chatham House 2016 report on Kurdish areas, *supra* n. 536, p. 9.

555 BBC News, 'Who are the Kurds?', 14 March 2016, <<http://www.bbc.com/news/world-middle-east-29702440>> [accessed 27 January 2017].

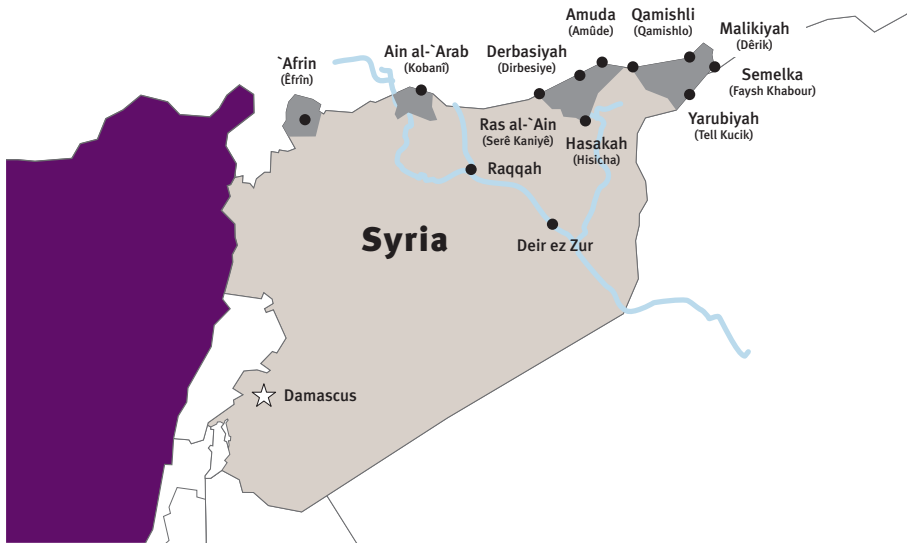
556 Chatham House 2016 report on Kurdish areas, *supra* n. 536, p. 9.

557 HRW 2014 report on Kurdish areas, *supra* n. 527, p. 14. The description of the administration in al-Hasakah, Qamishli, Afrin and other areas under the control of Kurdish authorities in this report are based on testimony and third party reports about the de facto situation inside Syria. It should not be understood as a statement on the legal status of these areas under international law.

558 Chatham House 2016 report on Kurdish areas, *supra* n. 536, p. 10.

559 *Ibid*, p. 9.

560 HRW 2014 report on Kurdish areas, *supra* n. 527, p. 14.



561

Later in January 2014, the PYD introduced a provisional constitutional document called the “Social Contract” for the three cantons. In doing so, the PYD stressed that it did not seek independence, but instead “local democratic administration” within a Syrian federal framework.⁵⁶² Described by some as following natural law theory, the Social Contract is based on the principle that the people should agree on the regulation of the essential aspects of their coexistence.⁵⁶³ Notwithstanding, the PYD assumed *de facto* authority throughout the Kurdish controlled area and began a transitional administration by providing security through its military (YPG) and police forces (*asayish*), running courts and prisons, and distributing humanitarian aid.⁵⁶⁴

According to the PYD, governance in Rojava is guided by the principles of “democratic confederalism” put forward by Abdullah Öcalan. Responding to what he saw as the failures of capitalism and the nation-state system, Öcalan promoted a direct system of bottom-up government based on grassroots democratic participation.⁵⁶⁵ In principle, this philosophy promotes the unity of all different faiths and ethnic groups without

561 Map reprinted with approval from HRW 2014 report on Kurdish areas, *supra* n. 527, p. 1.

562 HRW 2014 report on Kurdish areas, *supra* n. 527, p. 14.

563 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/>> [accessed 27 January 2017].

564 Chatham House 2016 report on Kurdish areas, *supra* n. 536, p. 9. The Social Contract was replaced with an updated version, the “Federal Democratic Rojava Social Contract” in July 2016. See Sardar Mlla Drwish, ‘After approving constitution, what’s next for Syria’s Kurds?’, Al Monitor, 22 July 2016, <<http://www.al-monitor.com/pulse/originals/2016/07/north-syria-rojava-kurdish-federation-constitution.html>> [accessed 27 January 2017].

565 Chatham House 2016 report on Kurdish areas, *supra* n. 536, p. 11.

assimilating them.⁵⁶⁶ As a result, the PYD espoused decentralisation at every level, indicating that it would establish local institutions to respond to the needs of the local communities after decades of heavily centralised rule.⁵⁶⁷

A watershed moment for the Kurdish forces occurred when ISIS launched its offensive on Kobane in September 2014. Kurdish authorities in Iraq eventually agreed to support the YPG in its struggle against ISIS, allowing fighters and weapons into Kobane through Turkey. The attack on ISIS finished the alteration of the political scene in northern Syria, leading to the establishment of a *de facto* local self-rule by the PYD and TEV-DEM.⁵⁶⁸

Many Kurds interviewed for this report, and particularly those outside the Kurdish controlled areas, describe the PYD as a “collaborator with the government”.⁵⁶⁹ In their view, the government ceded some of its power to the PYD in exchange for the Kurdish north remaining uninvolved in the broader Syrian uprising.⁵⁷⁰ Both military units and civil servants paid by Damascus remain and continue to operate in parts of Qamishli and the provincial capital al-Hasakah.⁵⁷¹ The PYD has also continued to communicate with the government in Damascus, and focused its efforts on combating ISIS and establishing its transitional administration.⁵⁷²

While the PYD concedes that it made a strategic decision not to confront Damascus, it argues that it is acting as a “third line” between the Syrian government and extremist Islamist rebels. PYD officials point to sporadic clashes with government elements as evidence of their independence from the government.⁵⁷³

PYD critics also contend that its current administration is simply authoritarianism in the guise of democratic confederalism. Opposition parties within Kurdish controlled areas have been excluded from the newly established administrative structure. In August 2016, the Kurdish National Council’s president was arrested at an *asayish* checkpoint in Qamishli, based on a complaint that the Kurdish National Council opposed the “Kurdish revolution in Rojava.” Though other senior Kurdish National Council officials have avoided arrest, hostility between the factions remain.⁵⁷⁴ Indeed, a number of lawyers and activists interviewed contended that they fled to avoid PYD persecution, and could not safely return to the area.⁵⁷⁵ In addition, as the YPG began to regain control over areas in northern Syria previously controlled by ISIS and other extremist groups, reports

566 Ulrike Flader, ‘A “Revolution” under Attack – the Alternative in midst the War in Syria’, *Movements@Manchester*, University of Manchester, 30 September 2014, <<http://www.movements.manchester.ac.uk/the-alternative-in-syria/>> [accessed 27 January 2017] (hereinafter “Movements@Manchester 2014 article”).

567 Chatham House 2016 report on Kurdish areas, *supra* n. 536, p. 11.

568 *Ibid.*, p. 10.

569 ICG 2014 report on Kurdish areas, *supra* n. 547, p. 7.

570 Interview in Erbil, 12 November 2016

571 Interview in Erbil, 11 November 2016. See also Erika Solomon, ‘Special Report: Amid Syria’s violence, Kurds carve out autonomy’, Reuters, <<http://www.reuters.com/article/us-syria-kurdistan-specialreport-idUSBR A0L17320140122>> [accessed 27 January 2017].

572 Chatham House 2016 report on Kurdish areas, *supra* n. 536, p. 9.

573 ICG 2014 report on Kurdish areas, *supra* n. 547, p. 7.

574 Chatham House 2016 report on Kurdish areas, *supra* n. 536, pp. 12-13.

575 Interviews in Erbil, 11 November 2016; and interviews in Erbil, 12 November 2016.

began to surface of abusive practices against political opponents and minority communities.⁵⁷⁶ Refugees interviewed by the ILAC contend that as many as 50 non-PYD activists are imprisoned in the Kurdish controlled areas, while many others fled.⁵⁷⁷ These actions, and Turkey's insistence that the PYD is simply an arm of the PKK have led to the PYD being excluded from many international conferences and peace negotiations.⁵⁷⁸

Courts

In the 1990s, leftist Kurdish political activists in northern Syrian cities with Kurdish majorities formed so-called Peace and Consensus Committees. These committees operated underground and often in parallel to the existing justice system.⁵⁷⁹ Though their numbers were reduced with the increased governmental repression after the violence of 2004, the Committees continued to exist in certain Kurdish communities.⁵⁸⁰ When portions of northern Syria came under Kurdish control in the summer of 2012, existing Peace and Consensus Committees quickly began handling local justice issues.⁵⁸¹ Similar committees were established in communities where they had been absent prior to the uprising.⁵⁸²

After July 2012, the TEV-DEM established regional justice councils (*diwana adalet*) in the various regions.⁵⁸³ These justice councils were composed of judges, lawyers, prosecutors, jurists, and others who had left the governmental justice system. In addition, the Peace and Consensus Committees elected and appointed members to the councils.⁵⁸⁴ After extensive discussions, the justice councils founded the new justice system in the Kurdish controlled areas.⁵⁸⁵ The PYD-led administration apparently has created a "Ministry of Justice." Although the exact details and functioning of that entity is unclear to persons not directly involved, the ministry did respond to ILAC's questions in writing.⁵⁸⁶

576 Amnesty International 2015 report on Kurdish areas, *supra* n. 553; HRW 2014 report on Kurdish areas, *supra* n. 527, p. 1.

577 Interview in Erbil, 11 November 2011.

578 Mohammed A. Salih, 'Syrian Kurds: Left Out', *Newsweek Middle East*, 10 February 2016, <<http://newsweekme.com/syrian-kurds-left-out/>> [accessed 27 January 2017]; Chatham House 2016 report on Kurdish areas, *supra* n. 536, p. 9.

579 Ercan Ayboğa, 'The New Justice System in Rojava: Consensus is Key', *New Compass Press*, 31 October 2014, <<http://new-compass.net/articles/consensus-key-new-justice-system-rojava>> [accessed 27 January 2017] (hereinafter "New Compass Press 2014 article on Kurdish areas").

580 *Ibid.* Some interviewees suggested that prior to 2011 these Committees operated only with the approval of regime security services: interview in Erbil, 11 November 2016.

581 Interview in Erbil, 11 November 2016.

582 *New Compass Press* 2014 article on Kurdish areas, *supra* n. 579; Carl Drott, 'Syrian Kurdish Areas Under the Rule of Law?', *Carnegie Middle East Center*, 7 May 2014, <<http://carnegie-mec.org/diwan/55526>> [accessed 27 January 2017] (hereinafter "Carnegie Middle East Center 2014 article on Kurdish areas").

583 *New Compass Press* 2014 article on Kurdish areas, *supra* n. 579. See also HRW 2014 report on Kurdish areas, *supra* n. 527, p. 14.

584 According to one report, the justice council in the canton of Cizîre had eleven members and was formed of several district councils, while the justice councils in Afrin and Kobanê have seven members each. See *New Compass Press* 2014 article on Kurdish areas, *supra* n. 579.

585 *New Compass Press* 2014 article on Kurdish areas, *supra* n. 579.

586 Interview with lawyer, 12 November 2016. See also *New Compass Press* 2014 article on Kurdish areas, *supra* n. 579.

People's Courts

The central features of the justice system in the Kurdish controlled areas are both first-instance and appeals People's Courts. These courts handle both civil and criminal cases. There is conflicting information whether these courts handle property and family status matters, or if these are left to the government courts still operating in Kurdish controlled areas.⁵⁸⁷ The People's Courts do not appear to include property registries, however.⁵⁸⁸

Information concerning the actual structure and functioning of the first-instance People's Courts is conflicting. Some reports indicate that there are first-instance People's Courts in Amuda, Hasakah, Tal Nemir, Derbassiyeh, Qamishli, Maaliki, Qahtaniyah, Afrin, Kobani and Al Shadada.⁵⁸⁹ Other reports indicate that there are first-instance courts in Malikiyah, Gergelige (Girkê Legê), Kahtanieh (Tirbespiyê), Qamishli, Amuda, Derbassiyah, Ras al-`Ain, Halakha (Hisicha) and Tel Tamin (Tal Tamer).⁵⁹⁰ There appear to be four appeals courts, located in Ras al-`Ain, Malikiyah, Qamishli and Halakha.⁵⁹¹

ILAC was unable to obtain any official statistics concerning the volume of cases handled by the People's Courts. One unverified report indicated that in 2014 nine courts in the Jazira canton received 6,061 cases and resolved 4,500 cases.⁵⁹²

According to a senior official in the "Ministry of Justice" in Afrin, there is one prosecutor in every city and town.⁵⁹³ However, one lawyer working inside the Kurdish controlled area indicated that there were four prosecutors in every court.⁵⁹⁴ The prosecutors of the People's Courts are appointed in the same fashion as the judges, outlined below.

587 Information given in interviews in Gaziantep, 10 November 2016, and in Erbil, 11 November 2016 stated that People's Courts do handle property and family status matters. However, ASO New Network, a media channel active in the areas under Kurdish control, has published a video with interviews with lawyers and others from the region, stating that the government courts handle these cases, see <<https://www.youtube.com/watch?v=uQY4mADsMSs&feature=youtu.be>> [accessed 23 March 2017].

588 Interview in Erbil, 11 November 2016.

589 Interview with lawyer, 12 November 2016.

590 HRW 2014 report on Kurdish area, *supra* n. 527, p. 14-15; Enab Baladi English, 'Peoples' Courts in Autonomous Administrated Regions, 26 January 2016, <<http://english.enabbaladi.net/archives/2016/01/peoples-courts-in-autonomous-administrated-regions-2/>> [accessed 27 January 2017] (hereinafter "Enab Baladi English 2016 article on Kurdish areas").

591 See HRW 2014 report on Kurdish areas, *supra* n. 527, p. 14-15; Enab Baladi English 2016 article on Kurdish areas, *supra* n. 590. One source also reported a Court of Cassation in the city of Qamishli. It is possible that this refers to Supreme Constitutional Court provided for in the PYD Social Contract. However, when asked if there is a Surpeme Constitutional Court in the Rojava, the PYD Ministry of Justice in Afrin answered that there is no such court. It was not clear from the answer if this also excludes the existence of a cassation court. Written answers from senior official at Ministry of Justice in Afrin, February 2017. See *infra* n. 646; and Enab Baladi English 2016 article on Kurdish areas, *supra* n. 590.

592 Zanyar Omrani, 'Introduction To The Political And Social Structures Of Democratic Autonomy In Rojava, Kurdish Question, 4 October 2015, <<http://kurdishquestion.com/article/3086-introduction-to-the-political-and-social-structures-of-democratic-autonomy-in-rojava>> [accessed 27 January 2017] (hereinafter "Kurdish Question 2015 article on Kurdish areas").

593 Email exchange with senior official at Ministry of Justice in Afrin, February 2017.

594 Interview with lawyer, 12 November 2016.

Judgements of the People's Courts can be enforced by the *asayish*.⁵⁹⁵ Reports based on interviews with PYD officials indicate that decisions of the first-instance courts may be appealed to the appeals court where all judges must be jurists.⁵⁹⁶ However, Kurdish lawyers interviewed contend that, while the right of appeal exists in theory, it often is absent in practice.⁵⁹⁷

In at least some of these courts, no single judge presides. Some Kurdish lawyers reported that cases are heard by a panel of three judges, which was also confirmed by a senior official in the "Ministry of Justice" in Afrin.⁵⁹⁸ The statement from this official – that there are 16 judges in total in the People's Courts – does not match with there being a three panel judge adjudicating cases, given the reported number of first-instance courts, however. Another report indicates that cases are heard by a committee of five, where four committee members are lawyers or legal experts, and the fifth is a non-legally trained citizen who "represents society."⁵⁹⁹ Another source reporting on Jazira canton indicated that there are nine judges for nine first-instance courts in 2014.⁶⁰⁰ According to information received from the "Ministry of Justice" in Afrin, there is a total of 16 judges, seven of whom are women.⁶⁰¹ However, several Kurdish lawyers interviewed by ILAC indicated that there were no women judges in any of the People's Courts, nor were there any in the government courts prior to the 2011 uprising.⁶⁰²

Descriptions of the selection process for People's Court judges likewise differ. According to statements from PYD officials, judges on the first-instance People's Courts can be nominated by the local justice council or any citizen in the area.⁶⁰³ However, according to one senior official, there are no formal processes for the selection of judges and no written criteria.⁶⁰⁴ Though regional justice councils apparently advise on the nominations, nominees need not have any judicial training.⁶⁰⁵ Seven people are elected for each area.⁶⁰⁶ A number of Kurdish lawyers interviewed by ILAC contend that this ostensible structure is simply a façade. They contend that the PYD selects judges according to their party loyalty. According to these sources, the councils appoint judges only after getting the consent of PYD.⁶⁰⁷

595 Interview in Gaziantep, 10 November 2016.

596 New Compass Press 2014 article on Kurdish areas, *supra* n. 579.

597 Interview in Gaziantep, 10 November 2016.

598 Interview with lawyer, 12 November 2016; and email exchange with senior official at Ministry of Justice in Afrin, February 2017.

599 HRW 2014 report on Kurdish area, *supra* n. 527, pp. 14-15.

600 Kurdish Question 2015 article on Kurdish areas, *supra* n. 592.

601 Email exchange with senior official at Ministry of Justice in Afrin, February 2017.

602 Interview in Gaziantep, 10 November 2016; interview in Erbil, 11 November 2016; and interview in Erbil, 12 November 2016.

603 New Compass Press 2014 article on Kurdish areas, *supra* n. 579.

604 Email exchange with senior official at Ministry of Justice in Afrin, February 2017.

605 New Compass Press 2014 article on Kurdish areas, *supra* n. 579; and email exchange with senior official at Ministry of Justice in Afrin, February 2017.

606 New Compass Press 2014 article on Kurdish areas, *supra* n. 579.

607 Interview with lawyer, 12 November 2016.

An apparent weakness in the People's Courts is the lack of trained prosecutors and judges. While there is a significant pool of Kurdish lawyers, few Kurds were allowed into the judiciary under the Ba'athist system.⁶⁰⁸ Nevertheless, a senior official in the Ministry of Justice in Afrin of the administration established by the PYD, maintained in February 2017 that 13 out of 16 judges have a law degree.⁶⁰⁹ Supporters of the new courts argue that this weakness is actually a strength, since it allows individuals from different fields and with different expertise to become judges. Under this view, by allowing the election of non-legally trained individuals, the system also allows community input in decision-making, rather than permitting the state to monopolise it.⁶¹⁰ Indeed, some supporters of the system simply characterise the elected judges as akin to a jury.⁶¹¹

A number of Kurdish lawyers not based in the Kurdish controlled areas interviewed by ILAC sharply disputed that judges were sufficiently qualified. They characterised the judges of the People's Courts as untrained, and often illiterate.⁶¹² Though some judges are lawyers, others were reportedly architects, construction workers, bakers or auto mechanics.⁶¹³ For example, according to one source, none of the People's Court judges in Kobani were legally trained.⁶¹⁴ Activists further complained that PYD authorities pressured them to avoid criticism of the new courts.⁶¹⁵

In part, the lack of qualified jurists is due to the reluctance of those legal professionals previously working in the government institutions to join the bodies created by the PYD.⁶¹⁶ Others argue that the lack of trained prosecutors and judges is a direct result of the PYD's hostility and harassment of KDPS supporters. According to these sources, many Kurdish lawyers in the Kurdish controlled areas supported the KDPS and fled to avoid the PYD.⁶¹⁷

A senior official in the "Ministry of Justice" in Afrin stated that there is no formal training program for People's Court judges.⁶¹⁸ However, some reports suggest that the citizen judges are trained by Kurdish lawyers after they are elected.⁶¹⁹ One lawyer working in the Kurdish controlled areas reported that new judges undertake a 15 day training course with ideological lectures about PYD's goals and some new laws that have been introduced in the areas.⁶²⁰ Another published report indicates that an academy for jurists of the three cantons was founded in mid-2013 in Qamishli. According to this report, the academy runs courses lasting four months. Participants must pass the exams of these courses before they can begin work in the new justice system.⁶²¹

608 Interview in Erbil, 12 November 2016. See also Carnegie Middle East Center 2014 article on Kurdish areas, *supra* n. 582.

609 Email exchange with senior official at Ministry of Justice in Afrin, February 2017.

610 Enab Baladi English 2016 article on Kurdish areas, *supra* n. 590.

611 *Ibid.*

612 Interview in Gaziantep, 10 November 2016; and interview in Erbil, 11 November 2016.

613 Interview in Gaziantep, 10 November 2016; and interviews in Erbil, 11-12 November 2016.

614 Interview in Gaziantep, 10 November 2016.

615 Interview in Erbil, 11 November 2016.

616 *Ibid.*

617 Interview in Erbil, 12 November 2016.

618 Email exchange with senior official at the Ministry of Justice in Afrin, February 2017.

619 Enab Baladi English 2016 article on Kurdish areas, *supra* n. 590.

620 Interview with lawyer, 12 November 2016.

621 Interview in Gaziantep, 10 November 2016. See also New Compass Press 2014 article on Kurdish areas, *supra* n. 579.

Article 63 of the Social Contract provides that “[t]he independence of the Judiciary is founding principle of the rule of law, which ensures a just and effective disposition of cases by the competent and impartial courts”. While PYD officials claim the People’s Courts enjoy full independence, others acknowledge problems, but blame them on the lack of qualified legal experts.⁶²² However, many of those interviewed for this assessment, not affiliated with the PYD, disputed that claim. Many lawyers and jurists sharply criticised the Peoples’ Courts enforcement of the concept of social justice. Several complained that the judges of the People’s Courts ignore the law, and base decisions on personal views, biases and beliefs.⁶²³ Critics also complained that there was significant corruption throughout these courts,⁶²⁴ though these allegations were dismissed by others who attributed the poor decision-making to a lack of professionalism.⁶²⁵ Regardless of the cause, the result has been a pronounced lack of consistency in court judgments.⁶²⁶

Many outside critics also argue that the division of power between the various branches of the new administration in the Kurdish controlled areas is blurred, at best.⁶²⁷ According to these critics, the People’s Court system was staffed by PYD-appointed personnel who have politicised the system to primarily serve the interests of the PYD.⁶²⁸ One critic complained that while the Assad government interfered in 80 per cent of the cases in the old system, the PYD interferes in 90 per cent of the cases in the People’s Courts.⁶²⁹ Another went so far as to say that there was no real system of justice in the Kurdish controlled areas, just a military regime.⁶³⁰

An alternative view shared by some Kurdish observers is that despite instances of political interference, the People’s Courts were the best judicial institutions in a flawed system in Syria. These courts were relatively free of corruption. Professionalism is lacking, but improving.⁶³¹ According to this view, in an imperfect world, the People’s Courts deserved support.⁶³²

622 HRW 2014 report on Kurdish areas, *supra* n. 527, pp. 14-15.

623 Interview in Gaziantep, 10 November 2016; and interviews in Erbil, 11-12 November 2016. See also Enab Baladi English 2016 article on Kurdish areas, *supra* n. 590.

624 Interview in Gaziantep, 10 November 2016.

625 Interviews in Erbil, 12 November 2016.

626 Interview in Gaziantep, 10 November 2016; and interview in Erbil, 12 November 2016.

627 Interview in Erbil, 12 November 2016. See also Carnegie Middle East Center 2014 article on Kurdish areas, *supra* n. 582.

628 Interview in Gaziantep 10 November 2016. See also HRW 2014 report on Kurdish areas, *supra* n. 527.

629 Interview in Gaziantep, 10 November 2016.

630 Interview in Erbil, 11 November 2016.

631 Interviews in Erbil, 12 November 2016.

632 *Ibid.*

Peace and Consensus Committees

Though not part of the formal justice system, the Peace and Consensus Committees are an integral component of bringing justice to the Kurdish controlled areas. Each Peace and Consensus Committee usually consists of five to nine people, 40 per cent of whom should be women.⁶³³ Most committee members are over 40 years old, chosen for their perceived ability to bring conflicting parties together in discussion.⁶³⁴ PYD supporters argue that many committee members are well-known activists who fought for the Kurdish cause, respected in the local community.⁶³⁵

The Peace and Consensus Committees are formed at the local level.⁶³⁶ For example, all residents in a commune (typically consisting of 30 to 150 households) assemble and elect the local committee members. Committees for the district or village communities (around seven to ten villages) are then chosen by delegates of the communes.⁶³⁷

General committees are responsible for minor social and legal issues, such as divorce, unpaid debts, land disputes and crimes.⁶³⁸ Separate women's commissions handle cases involving gender-sensitive issues, such as domestic violence, forced marriage, and polygamy.⁶³⁹ However, the Peace and Consensus Committees do not handle more serious criminal cases such as murder, which instead are referred to the People's Courts.⁶⁴⁰

The Committees resolve cases based on consensus decisions and not on the law. Rules and procedures are not codified, but instead have developed over the years, and to some extent are orally transmitted.⁶⁴¹

Advocates of this system argue that members of the Peace and Consensus Committees are not traditional judges, since they are elected democratically and with gender parity. Instead, the modern committees correlate to the traditional councils of elders, but infused with the values of democracy, gender liberation, and human rights.⁶⁴² Detractors point out that the failure to follow any specific laws or rules may give primacy to conservatism and traditionalism, at odds with modern principles of social justice.⁶⁴³

633 New Compass Press 2014 article on Kurdish areas, *supra* n. 579.

634 *Ibid.*

635 Carnegie Middle East Center 2014 article on Kurdish areas, *supra* n. 582.

636 New Compass Press 2014 article on Kurdish areas, *supra* n. 579.

637 Movements@Manchester 2014 article, *supra* n. 566.

638 Kurdish Question 2015 article on Kurdish areas, *supra* n. 592.

639 *Ibid.*; New Compass Press 2014 article on Kurdish areas, *supra* n. 579.

640 Carnegie Middle East Center 2014 article on Kurdish areas, *supra* n. 582; Kurdish Question 2015 article on Kurdish areas, *supra* n. 592.

641 New Compass Press 2014 article on Kurdish areas, *supra* n. 579.

642 *Ibid.*

643 Kurdish Question 2015 article on Kurdish areas, *supra* n. 592.

The Supreme Constitutional Court

Article VIII of the Social Contract provides for a Supreme Constitutional Court. According to Article VIII, this court should have seven members who must be judges, legal experts and lawyers with no less than fifteen years of professional experience. Members are to be nominated by the Legislative Assembly, and handle a variety of functions set forth in the Social Contract. However, a senior official in the “Ministry of Justice” in Afrin stated that there is no Supreme Constitutional Court.⁶⁴⁴

Government courts

A parallel system of courts operated by the Syrian government in Damascus continues to function in the enclaves they control.⁶⁴⁵ These dual court systems do not cooperate with each, only co-exist. It appears that some lawyers serving as judges in the People’s Courts still appear in the government courts in these enclaves.⁶⁴⁶

Interviews with lawyers working inside the Kurdish controlled areas indicate that government courts of first instance work in most Kurdish areas, namely al-Hasakah, Qamishli, Ras al-Ain, Derbassiyeh and Amuda, but not Kobane.⁶⁴⁷ A government Court of Appeal with both civil and criminal chambers continues to operate in al-Hasakah.⁶⁴⁸ These courts are operated by judges and employees from Syrian state, who continue to be paid by Damascus, and apply pre-existing Syrian law and procedures.⁶⁴⁹

The government courts in Qamishli and al-Hasakah handle some cases and produce documents under the auspices of the central government, but have no police or other methods of enforcing their judgments.⁶⁵⁰ These government-controlled institutions do not accept judgments or documents issued by Peoples’ Courts.⁶⁵¹ Indeed, documents issued by the People’s Courts have far less recognition both inside and outside the Kurdish controlled areas than those issued by the government courts, causing some inhabitants to leave the region.⁶⁵² The People’s Courts likewise do not typically accept the judgments of the government courts.⁶⁵³

644 Email exchange with senior official at the Ministry of Justice in Afrin in February 2016.

645 Interview in Gaziantep, 10 November 2016; and interview in Erbil, 11 November 2016.

646 Interview in Erbil, 12 November 2016.

647 Interview with lawyer, 12 November 2016. An ASO News Network interview states that there are no government courts in Kobane, see <<https://www.youtube.com/watch?v=uQY4mADsMSs&feature=youtu.be>> [accessed 17 February 2017].

648 Interview with lawyer, 12 November 2016.

649 Interview in Gaziantep, 10 November 2016; interview in Erbil, 11 November 2016; and interview with lawyer, 12 November 2016.

650 Interview in Gaziantep, 10 November 2016. See also Carnegie Middle East Center 2014 article on Kurdish areas, *supra* n. 582.

651 Interview in Erbil, 11 November 2016. See also Enab Baladi English 2016 article on Kurdish areas, *supra* n. 590. However, one lawyer interviewed insisted that judgments of the People’s Courts were appealed to the regime appeals courts in some instances, Interview in Erbil, 12 November 2016.

652 Interview in Erbil, 11 November 2016, and interview in Erbil, 12 November 2016.

653 Interview with lawyer, 12 November 2016.

Most lawyers interviewed by ILAC argue that these residual government courts lead to a confusion, double standards, and contradictory verdicts and judgment.⁶⁵⁴ Indeed, some lawyers indicated that some litigants will re-litigate disputes in the government courts if they dislike the outcome of the same claim in a People's Court, and vice-versa.⁶⁵⁵

Lawyers

As noted above, though there is a shortage of trained judges and prosecutors in the Kurdish controlled areas, there are a significant number of Syrian Kurdish lawyers. These lawyers are taking the lead in attempting to develop and professionalise the legal system in these enclaves. A number of women lawyers reportedly remain in the Kurdish controlled areas, though their roles are unclear.⁶⁵⁶

Nonetheless, Kurdish opposition lawyers complained that old patterns of favouritism and prejudice was retained in the Kurdish controlled areas, as, lawyers must be registered with a new bar association formed in 2014 and controlled by the PYD to appear in the People's Courts.⁶⁵⁷ Though statistics concerning the extent of lawyers' participation in these new bar associations are unavailable, it appears that only a small number of lawyers' joined the new PYD-controlled bar association.⁶⁵⁸ One source indicated that of the 105 lawyers in Kobani in 2013, only seven initially joined the new bar association.⁶⁵⁹

Other sources report that many Kurdish lawyers still to belong to the pre-2011 bar association controlled by the government, which continues to exist and operate.⁶⁶⁰ Official statistics from the Syrian Bar Association indicate that the number of lawyers registered in the local bar association for the al-Hasakah governate actually increased by one lawyer between 2010 and 2014.⁶⁶¹

Formal legal education in the Kurdish controlled areas has ceased. Most law students from the these areas studied at the law faculty at the Syrian university in Deir ez-Zor, or its branch in in al-Hasakah. With the main university in Deir ez-Zor shut down due to ISIS control, and the al-Hasakah branch operating on a limited basis, legal studies in the region are at a near standstill. Female students in particular avoid the law faculties, due to the increased risks brought about by the security situation. Some law students left for Damascus, while other crossed into the Kurdish region in Iraq, but most were unable to go elsewhere due to economic issues.⁶⁶²

654 Interview in Gaziantep, 10 November 2016. See also Enab Baladi English 2016 article on Kurdish areas, *supra* n. 590.

655 Interview in Gaziantep, 10 November 2016); and interview in Erbil, 11 November 2016. See also Enab Baladi English 2016 article on Kurdish areas, *supra* n. 590.

656 Interview in Erbil, 11 November 2016.

657 Interview in Gaziantep, 10 November 2016; and interview in Erbil, 12 November 2016.

658 Interview in Erbil, 12 November 2016); interview with lawyer, 12 November 2016.

659 Interview in Gaziantep, 10 November 2016.

660 Interview with lawyer, 12 November 2016.

661 Annex I. See *supra* n. 190.

662 Interview in Erbil, 11 November 2016.

Applicable law

While opinions concerning governance within the Kurdish controlled areas and the PYD remain sharply split, its supporters trumpet the secular, progressive principles outlined in the so-called Social Contract. For example, Article 20 of the Social Contract provides that international human rights conventions form “an essential part and complement this contract.” Similarly, Article 22 incorporates the Universal Declaration of Human Rights 1948⁶⁶³ and the International Covenant on Civil and Political Rights 1966 as an “integral part of this charter.” Indeed, the Contract dedicates 45 out of its 96 articles to basic principles of rights, representation and personal freedoms.

According to PYD supporters, the decision to adopt a social contract instead of a constitution reflects the multi-faith/ethnicity principles underlying the concept of the democratic autonomy in these areas. Proponents argue that the Social Contract was developed through consultations among representatives of different ethnic and belief groups, with the goal of securing safety and self-rule for all groups. In principle, the Social Contract provides that all groups are to be present and active in decision-making on political, economic and social questions. It also ensures the right of self-determination of different ethnic and religious groups through self-rule on village level, as well as the right to organise themselves autonomously on other levels.⁶⁶⁴

PYD supporters also point to the adoption of a progressive gender equality standard in governance structures. This calls for equal gender representation in all levels of administration, including the military. Indeed, the PYD-led authority has established a Ministry for Women’s Liberation to promote these values.⁶⁶⁵ PYD officials claim that these steps have dramatically improved the protections for women in the courts.⁶⁶⁶

Kurdish lawyers and activists opposed to the PYD interviewed by ILAC disputed these claims, arguing that systemic gender bias persists in the People’s Courts. These sources stated that while one could find People’s Court decisions that appeared to promote gender equity, these decisions inevitably resulted from a woman’s political connections with the PYD, rather than any commitment to human rights.⁶⁶⁷ One lawyer suggested that while a woman has no right to divorce in the Kurdish controlled areas, if she is a PYD member, a husband can be forced to agree to a divorce. Another critic concurred, stating “*if you don’t belong to the PYD, you are restricted*”.⁶⁶⁸ Even the PYD’s gender equity laws are dismissed by critics as just for the media, and seldom enforced.⁶⁶⁹

663 Universal Declaration on Human Rights 1948, adopted by GA Res. 217 A(III) of 10 December 1948, UN Doc. A/810 1948.

664 Movements@Manchester 2014 article, *supra* n. 566.

665 Chatham House 2016 report on Kurdish areas, *supra* n. 536, pp. 12-13.

666 Kurdish Question 2015 article on Kurdish areas, *supra* n. 592.

667 Interview in Gaziantep, 10 November 2016; interviews in Erbil, 11-12 November 2016.

668 Interview in Erbil, 11 November 2016.

669 Interview in Erbil, 11 November 2016.

Opponents also contend that the PYD's promotion of these progressive principles is merely a front for a military autocracy. Several lawyers interviewed by ILAC argued that the various international conventions supposedly adopted in the Social Contract are ignored in practice. They highlight as examples of this property confiscations, control over the media, and conscription of minors, including girls, into YPG forces.⁶⁷⁰

While it is unclear how the principles set out in the Social Contract are applied in practice, the courts face another significant issue of which law to apply. Various lawyers interviewed gave different accounts of the laws in effect.⁶⁷¹ Some sources suggest that while the People's Courts apply Syrian law, they do so randomly or "in a deformed way."⁶⁷² Some even suggested that Swiss, German, British, French and Egyptian law have been applied on occasion.⁶⁷³

Article 18 of the Social Contract states "[t]here is no crime and no punishment without a legal text". However, it appears that this principle is often ignored. Kurdish lawyers interviewed indicated that the People's Courts often apply customary law, which varies between different locations and ethnic communities.⁶⁷⁴ Others indicated that in some instances, no specific, written law was applied, and verdicts were a matter of "social justice" based upon public opinion.⁶⁷⁵

The issue is further complicated by the efforts of the PYD-led authorities to reform Syrian laws to reflect the principles contained in the Social Contract.⁶⁷⁶ The PYD has adopted laws covering certain family issues, such as banning polygamy and permitting civil marriages, for example.⁶⁷⁷ However, even on these issues, where a gap exists in the new laws, existing Syrian state law may be applied.⁶⁷⁸

Although some Syrian laws discriminate against Kurds or violate other human rights standards, changes are being introduced in a haphazard and non-transparent manner, leaving lawyers and the public confused.⁶⁷⁹ To make matters worse, the authorities have not otherwise published changes to Syrian laws or the Criminal Code.⁶⁸⁰

Adding further confusion to this, at least one source suggested that each of the three cantons has, or will have in the future, a justice parliament (*meclisa adalet*) composed of 23 people.

670 Interview in Erbil, 11 November 2016. See also HRW 2014 report on Kurdish areas, *supra* n. 527, pp. 14-15.

671 HRW 2014 report on Kurdish areas, *supra* n. 527, pp. 14-15.

672 Interview in Gaziantep, 10 November 2016; and interview in Erbil, 12 November 2016.

673 Carnegie Middle East Center 2014 article on Kurdish areas, *supra* n. 582; HRW 2014 report on Kurdish areas, *supra* n. 527, pp. 14-15.

674 Interview in Gaziantep, 10 November 2016. See also Carnegie Middle East Center 2014 article on Kurdish areas, *supra* n. 582.

675 Interview in Gaziantep, 10 November 2016. See also Enab Baladi English 2016 article on Kurdish areas, *supra* n. 590.

676 Interview in Erbil, 11 November 2016.

677 Interview in Gaziantep, 10 November 2016. See Enab Baladi English 2016 article on Kurdish areas, *supra* n. 590. Others interviewees reported that the PYD had also adopted new laws on customs, civil status, personal status, and criminal procedure. Interview in Erbil, 12 November 2016.

678 Interview with lawyer, 12 November 2016. See also HRW 2014 report on Kurdish areas, *supra* n. 527, pp. 14-15

679 HRW 2014 report on Kurdish areas, *supra* n. 527, p. 2.

680 *Ibid*, pp. 14-15.

Three are representatives of the cantonal justice ministry, eleven from the local justice councils, seven are supposedly from the Constitutional Court, and two from the local bar association. The justice parliaments are charged with the responsibility of accommodating the legal system to the specific needs of the Kurdish controlled area in transition. This includes both broad issues of adapting the law to meet the principles of the Social Contract, as well as resolving technical and administrative questions within the legal system. Information concerning the entities is sketchy, and it appears that the plan at present remains skeletal, with little agreement on details or procedures.⁶⁸¹

Criminal law and procedure

One critical aspect of the reforms introduced in the Kurdish controlled areas are the applicable principles of criminal law and procedures. Notably, Article 26 of the Social Contract abolishes the death penalty, Article 72 guarantees the right to a fair trial, and Article 73 makes it a criminal offence to detain a person without evidence.

PYD officials paint a picture of significant reform. These supporters contend that arrest is considered a last resort, with convicted persons viewed not as a criminal, but as someone to be rehabilitated. Prisons are described as educational institutions, soon to be transformed into rehabilitation centres, rather than punitive institutions. Though no statistics have been provided, PYD sympathisers credit the new justice system and self-organisation of the people with decreasing the number of crimes, including honour killings, throughout the Kurdish controlled areas.⁶⁸²

When an arrest is made, officials within the *asayish* claim that current procedures require police to first obtain a warrant from the public prosecutor. According to these officials, *asayish* regulations allow a person to be held for only to 24 hours, which can be extended for up to two more days by order of the public prosecutor, and that detainees must be “referred to the judiciary” within seven days.⁶⁸³

PYD officials further contend that detainees are treated humanely, granted access to a lawyer, brought promptly before a judge, and tried before an independent court.⁶⁸⁴ In principle, every accused has the right to defend themselves in their own language, and the court is required to hire an interpreter for them.⁶⁸⁵ Life imprisonment, which has been temporarily set at 20 years, can be imposed only in cases of murder, torture, or terror.⁶⁸⁶

681 New Compass Press 2014 article on Kurdish areas, *supra* n. 579.

682 *Ibid.*

683 HRW 2014 report on Kurdish areas, *supra* n. 527, pp. 14-15.

684 *Ibid.*

685 Kurdish Question 2015 article on Kurdish areas, *supra* n. 592.

686 New Compass Press 2014 article on Kurdish areas, *supra* n. 579.

However, interviews conducted by ILAC and the reports of other independent organisations strongly suggest that the current system in the Kurdish controlled areas neither meets basic standards for fair trial nor protects the right of detainees from arbitrary detention and mistreatment.⁶⁸⁷ A number of reports indicated that the it was often the case that *asayish* procedures were not followed, with detentions often occurring without due process and lasting beyond the time limitations indicated by PYD officials.⁶⁸⁸ Some lawyers contended that arrest warrants were often issued by PYD security forces, rather than the public prosecutor,⁶⁸⁹ while others contend that people are simply picked up off the street by masked men and end up before the People's Courts.⁶⁹⁰ Few prisoners reported that they were provided access to a lawyer.⁶⁹¹

These complaints were epitomised by a story told by a lawyer from Kobani. According to the interviewee, a smuggling suspect was tortured by *asayish* personnel with the approval of the People's Court prosecutor. After he was acquitted, the accused sought to sue the prosecutor. When the lawyer prepared the file to bring the claim, he was summoned to the local YPG headquarters. The General in charge took the file, and told the lawyer to never pursue such a claim again.⁶⁹²

Sentencing issues are also apparent. Detainees often complained of confusion regarding their sentences. Some reported that they were serving sentences without having ever appeared in court, while others complained that they were being held while discussions about compensation were underway with the aggrieved party.⁶⁹³

687 For example, HRW 2014 report on Kurdish areas, *supra* n. 527, pp. 14-15.

688 Interview in Erbil, 11 November 2016. See also HRW 2014 report on Kurdish areas, *supra* n. 527, pp. 14-15.

689 Interview in Gaziantep, 10 November 2016.

690 Interview in Erbil, 12 November 2016.

691 HRW 2014 report on Kurdish areas, *supra* n. 527, pp. 14-15.

692 Interview in Gaziantep, 10 November 2016.

693 HRW 2014 report on Kurdish areas, *supra* n. 527, pp. 14-15.

Analysis and recommendations

It is an understatement to say that the exact details of the current justice system in the Kurdish-controlled areas in northern Syria are murky. In part, this lack of clarity arises from the fluid, transitional nature of the situation, with only *de facto* governance and the continuation of the armed conflict. Equally important in this is the fact that the Kurdish-controlled areas are geographically separated. Accordingly, rather than the justice system being designed and formed by one central administration, different systems and structures are being locally formed, without coordination or informing other regions or the embryonic central authority of developments.

Political positions dramatically coloured the information provided to ILAC and others who have reported on Kurdish controlled positions. PYD activists and officials and their Western supporters have a human rights-oriented almost Utopian vision of justice in the areas under Kurdish control based upon the Social Contract. They acknowledge some flaws, but argue that they are minimal and inevitable in the current transitional situation. With time, they argue, these issues will disappear as the principles of democratic confederalism take root throughout these areas.

On the other side, KDPS supporters and Turkish and Iraqi officials paint a far different picture. PYD persecution of KDPS supporters led a number of Kurdish lawyers and judges to flee these areas to Turkey and Iraqi Kurdistan. While there are indications that some of those who fled earlier are now returning, many of those interviewed outside of Syria were highly critical of the justice system put in place by the PYD.⁶⁹⁴

The reality, as often occurs, appears to lie somewhere in the middle. The PYD-constructed justice system is not a unitary organisation with a consistent, well-defined structure. Rather, the judicial structures appear to vary from region to region, and even from village to village. Even within a geographic area, structures are fluid, changing with the political and military ebb and flow.

Unquestionably, the judges and prosecutors in the People's Courts are ill-trained and, in a number of instances, incompetent – at least in the sense of knowing and applying principles of law and jurisprudence. Political pressures by the PYD and its allies clearly colour some judicial decisions, as do personal biases, prejudices and community pressures. To a lesser extent, the People's Courts are also influenced by economic corruption.

At the same time, the People's Courts are essentially free from extremist religious biases seen in other areas outside government control. Many PYD supporters working in the system, though ill-equipped to bring about reform, do aspire to the standards set out in the Social Contract.⁶⁹⁵

694 Interview in Erbil, 12 November 2016.

695 See New York Times Magazine 2015 article on Kurdish areas, *supra* n. 535.

Moreover, at least at present time most Syrian Kurds speak in terms of remaining in a reformed Syria, albeit with greater autonomy in a federal system. There is a demonstrable societal and political commitment by Syrian Kurds to a system of justice based on separation of powers and the rule of law. Unlike factions in other areas of the country, Syrian Kurds of all political persuasions largely reject the visions of justice put forth by extremist groups. Such voices may be pivotal in deciding the course of post-conflict Syria.

Any programme of assistance to the Kurdish controlled regions in northern Syria must recognise the major obstacles posed by the ongoing security situation, the internal political instability within these regions, and the antipathy of regional powers to Kurdish separatism in general and the PYD in particular. Putting aside other issues, these matters create significant obstacles to any access to these areas.

Moreover, prior to 2011 there were few Kurdish judges working in the Syrian justice system in northern Syria. Nor were there any ethnic Kurdish officials in the Syrian Ministry of Justice offices in these regions. Accordingly, there is little possibility to provide training to experienced judges or Ministry officials currently working in these areas.

On the other hand, there were significant numbers of Syrian Kurds trained as lawyers living in northern Syria in 2011. Substantial numbers of these lawyers fled due to the hostilities and conflicts with the PYD, but others have remained to form at least a skeleton of trained legal professionals within the People's Courts system. Moreover, despite political differences, Kurdish lawyers inside and outside the Kurdish controlled areas, as well as those inside and outside the government-controlled enclaves, generally appear to retain some level of professional civility.

With these factors in mind, the following may form the basis for effective assistance to the justice sector in the Kurdish controlled areas:

- 1. *Provide training to lawyers presently working in these areas.*** Lawyers currently in these areas are likely to be among the leaders in developing and implementing a justice system there. Though logistical, political and security issues would need to be addressed, providing these lawyers with skills, ethics and substantive training may be among the most cost-effective methods of promoting positive change in this region.
- 2. *Provide similar training to lawyers from the Kurdish controlled areas presently outside these areas.*** One goal of any meaningful assistance programme should be to promote a healing of the divisions within the Syrian Kurdish community. Assistance programmes should not choose sides in this context, but instead provide a common message and encourage dialogue between lawyers both inside and outside the Kurdish controlled areas. Such assistance should be designed to allow lawyers to draw on experience of colleagues from the region and internationally.
- 3. *Provide organisational training and support for the new bar associations in the Kurdish controlled areas.*** Though embryonic, these bar associations are likely to remain in some form in a post-conflict Syria, regardless of how that state is organised.
- 4. *Engage the current administration in the Kurdish controlled areas to encourage and plan for the incorporation of legal professional standards in the People's Courts.*** ILAC's assessment suggests that there is a continuing debate inside the Kurdish controlled areas over the long-term nature of the court system in this region. While some progressive political theorists view the current jumble of community-based, non-professional courts as a positive development, a significant portion of the Syrian Kurdish population seeks a more formal system of justice following democratic principles. Assistance to those working on such issues in the Kurdish controlled areas may help avoid some of the pitfalls experienced in other transitional societies facing similar choices.
- 5. *Support property registration in northern Syria.*** Decades of expropriation and other forced transfers of Kurdish land followed by the recent displacement of both Kurds and non-Kurds from these regions sets the stage for decades of turmoil over title to these lands. Preservation of evidence of property rights, including the protection of archives of records, is of crucial importance in all of Syria. See also recommendations in Section 5.3 below. The ultimate rules for resolving these issues await a political solution, but maintaining records of interim transactions pending these decisions is vital.

4.5 Areas under ISIS Control

Background

In the aftermath of the 2003 invasion of Iraq, a number of Iraqi-Sunni militant groups formed to resist US forces and strike at the Shia population. Several of these groups joined together to later declare the Islamic State of Iraq, comprising Iraq's six primarily Sunni Arab governorates.⁶⁹⁶ After unrest began in Syria in 2011, this group began sending experienced fighters across the border to establish a presence throughout the country. In January 2012, these forces formed Jabhat al-Nusra, a strong military force opposed to the Syrian government.

Gradually, Jabhat al-Nusra took control of much of northern Syria together with other anti-government militant groups. In March 2013, they took control of Raqqa, a major city of more than 220,000 inhabitants in north-central Syria. At the outset, local Syrian lawyers played key roles in forming local councils to oversee the Raqqa governorate.⁶⁹⁷

Shortly after the expulsion of government forces, a *Sharia* court was established in Raqqa. Court files were initially preserved and many ongoing cases, especially civil cases, were referred to the *Sharia* court. However, most criminal cases languished because defendants fled to government-controlled areas. Government shelling also hit the courthouse and its archives, ruining many files. While this court began applying the Unified Arab Code as in other areas where the government had lost control,⁶⁹⁸ lawyers were given a limited role, though some worked as judges in civil claims. Ominously, the Islamic State of Iraq forces rejected the new *Sharia* court and instead established their own court based on their own ideology.⁶⁹⁹

In April 2013, the Islamic State of Iraq announced that it had merged with Jabhat al-Nusra to form the Islamic State of Iraq and the Levant (variously known as ISIS or ISIL). ISIS immediately made clear that its primary aims were not to fight the Syrian government, but to hold territory and impose their interpretation of *Sharia* rule.⁷⁰⁰ Though the merger was denied by some elements of Jabhat al-Nusra, ISIS began taking control of territory in northern Syria.

696 For background see Joby Warrick, 'Black Flags: The Rise of ISIS' (New York: Doubleday, 2015).

697 Enab Baladi English, 'Attempts at founding Judiciary in Raqqa were terminated by ISIS', 26 January 2016, <<http://english.enabbaladi.net/archives/2016/01/attempts-at-founding-judiciary-in-raqqa-were-terminated-by-isis/>> [accessed 17 February 2017] (hereinafter "Enab Baladi English 2016 article ISIS areas").

698 See section 4.3, above.

699 Enab Baladi English 2016 article ISIS areas, *supra* n. 697.

700 Sarah Birke, 'How ISIS Rules', NYR Daily, The New York Review of Books, 9 December 9 2014, <<http://www.nybooks.com/daily/2014/12/09/how-isis-rules/>> [accessed 17 February 2017] (hereinafter "NYR Daily 2014 article ISIS areas").

A few months later, ISIS ferociously attacked the other rebel groups in Raqqa. When these groups withdrew, ISIS took control. Though historically considered a dusty backwater by Syrians, Raqqa was a provincial capital and became the ISIS headquarters. Foreign fighters joined Syrians and Iraqis as ISIS gained notoriety.⁷⁰¹

After assuming control of Raqqa, ISIS dissolved the existing *Sharia* court, leaving its own court as the main body in the region.⁷⁰² In June 2014, an ISIS offensive seized large portions of northern Syria and western Iraq. Following the capture of the Iraqi city of Mosul, ISIS proclaimed the creation of the “State of the Islamic Caliphate,” or a *khilafa ‘ala minhaj al-nubuwwa* (“caliphate in the prophetic method”) which they claimed following the model used 1,400 years earlier by the Prophet Muhammad.⁷⁰³ At its zenith, ISIS controlled territory in Syria and Iraq containing 6 million to 8 million inhabitants.⁷⁰⁴

ISIS has constructed a system of governance, including courts and other nominal trappings of a state in the areas under its control. While such structures are clearly pertinent to a review of the current state of the justice system in Syria, ILAC had no access to ISIS-controlled areas during the preparation of this assessment. Accordingly, these observations are based on third-party (often unconfirmed) reports, and ISIS’ own propaganda.

As the time of writing, Syrian and multi-national forces are pressing military actions to eliminate ISIS control of Syrian territory and Iraq. Regardless of the outcome, given ISIS’ influence throughout the Syrian conflict, an understanding of its approach to law and justice may be vital in a post-conflict Syria.

701 *Ibid.*

702 Enab Baladi English 2016 article ISIS areas, *supra* n. 697. See also Enab Baladi English, ‘Judiciary in Deir ez-Zor terminated by ISIS’, 26 January 2016), <<http://english.enabbaladi.net/archives/2016/01/judiciary-in-deir-ez-zor-terminated-by-isis/>> [accessed 17 February 2017].

703 See William McCants, ‘The ISIS Apocalypse: The History, Strategy, and Doomsday Vision of the Islamic State’, (New York: Macmillan, 2015), pp. 126-144.

704 NYR Daily 2014 article ISIS areas, *supra* n. 700.

ISIS' conception of law

ISIS' vision of justice was shaped by its goal to restore the Caliphate. This vision did not merely seek a state governed by its interpretation of *Sharia*; it sought a specific type of state based on ISIS' conception of "God's law".⁷⁰⁵ As one commentator described it: "*ISIS aims to establish scrupulous legality for itself, from its very 'constitutional' foundations to its narrowest public policies*".⁷⁰⁶ Underscoring this quest for legality, one of the first acts of ISIS' leader, Abu Bakr al-Baghdadi, whom they describe as "Caliph", was to urge judges and *fuqaha*' (experts in Islamic jurisprudence) to join ISIS.⁷⁰⁷

At the same time, ISIS ideologues sought to avoid the trappings of many modern states, such as codes of law and formal constitutions. Following classical Islamic theories of statecraft, the ISIS model of "religiously legitimate governance" envisioned a dualistic model of law and governance. Under this theory, codification of any but the most widely known Islamic legal rules was forbidden. Instead, justice was to be found in God's law, only as expressed in the primary texts of revelation. *Sharia* courts thus were required to enforce this essentially unwritten law in most matters.⁷⁰⁸

ISIS doctrine also held that the Caliph's role is to administer and enforce the Divine Law.⁷⁰⁹ Accordingly, the Caliph and other authorities can make legal decisions based on the welfare of the Muslim community, provided that they do not violate known laws. The Caliphate can also deliver rules and regulations to enforce subjects' compliance with their obligations.⁷¹⁰

Under ISIS' conception of law, the Caliph has different legal obligations to Muslims and non-Muslims. Thus, by paying an annual tax, certain non-believers such as Christians and Jews may remain in the Caliphate.⁷¹¹ At the same time, the ISIS iteration of Divine Law provided legal justifications for the extermination of certain non-Muslim minorities within the Caliphate's territory, such as the Yazidis.⁷¹²

705 Andrew F. March and Mara Revkin, 'Caliphate of Law: ISIS' Ground Rules', Foreign Affairs, 15 April 2015, <<https://www.foreignaffairs.com/articles/syria/2015-04-15/caliphate-law>> [accessed 17 February 2017] (hereinafter "Foreign Policy 2015 ISIS article").

706 Charles C. Caris and Samuel Reynolds, 'ISIS Governance in Syria', Middle East Security Report 22, Institute for the Study of War, July 2014, <http://www.understandingwar.org/sites/default/files/ISIS_Governance.pdf> [accessed 17 February 2017] (hereinafter "ISW 2014 report on ISIS areas").

707 Mara Revkin, 'The Legal Foundations of the Islamic State', 17 December 2014, <<https://mararevkin.wordpress.com/2014/12/17/the-legal-foundations-of-the-islamic-state/>> [accessed 17 February 2017] (hereinafter "Revkin 2014").

708 Foreign Policy 2015 ISIS article, *supra* n. 705.

709 Jay Sekulow, 'Rise of ISIS: A Threat We Can't Ignore' (New York: Simon and Schuster, 2014), p. 17

710 Foreign Policy 2015 ISIS article, *supra* n. 705.

711 David Francis, 'Report: Islamic State Annual Revenue Down Nearly 30 Percent', Foreign Policy, 18 April 2016, <<http://foreignpolicy.com/2016/04/18/report-islamic-state-annual-revenue-down-nearly-30-percent/>> [accessed 17 February 2017].

712 Foreign Policy 2015 ISIS article, *supra* n. 705. The United Nations Independent International Commission of Inquiry on the Syrian Arab Republic has shown how the careful planning and execution of Yazidis by ISIS amounts to genocide. See further United Nations Human Rights Council, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, "They came to destroy": ISIS Crimes Against the Yazidis, UN Doc. A/HRC/32/CRP.2, 15 June 2016, <http://www.ohchr.org/Documents/HRBodies/HRCouncil/ColSyria/A_HRC_32_CRP.2_en.pdf> [accessed 17 February 2017].

Because ISIS' goal is to control territory, land law took on significant importance. On a conceptual level, ISIS needed legal underpinnings to support its claim that it was merely retrieving lands unlawfully expropriated from Muslims by the Crusaders and colonial powers. This required ISIS to formulate rules for property ownership and land use. ISIS issued a *fatwa* validating the expropriation of agricultural businesses from apostates, and rules for distributing the confiscated property to recruits. Indeed, ISIS propaganda stresses property as an incentive for recruitment: "*Do not worry about money or accommodations for yourself and your family. There are plenty of homes and resources to cover you and your family*".⁷¹³

The importance to ISIS of maintaining an appearance of legality can be seen in other ways. It claims to deploy legal scholars alongside combatants in Syria to advise military commanders on the legality of operations according to their interpretation of Islamic law. In the same vein, ISIS published a 136 page document, meticulously buttressed with Quranic verses, setting out rules according to which Muslim and non-believer prisoners may be killed, decapitated, tortured, enslaved, or mutilated.⁷¹⁴ ISIS also published a pamphlet for its members outlining rules for having sex with captured and enslaved non-Muslim women and girls.⁷¹⁵ All these examples are in violation of international humanitarian law obligations set out in Common Article 3 to the four Geneva Conventions of 1949 as outlined above. While completely against international legal requirements, the treatise does illustrate ISIS' efforts to develop a specific legal framework governing the conduct of its fighters.⁷¹⁶

713 Foreign Policy 2015 ISIS article, *supra* n. 705.

714 Revkin 2014, *supra* n. 707.

715 Kenneth Roth, 'Slavery: The ISIS Rules', news article, Human Rights Watch, 5 September 2015, <<https://www.hrw.org/news/2015/09/05/slavery-isis-rules>> [accessed 17 February 2017].

716 Revkin 2014, *supra* n. 707.

ISIS courts

For these reasons, ISIS leadership viewed establishing courts as a priority in creating their Caliphate. These courts were viewed as instrumental in installing ISIS' uncompromising form of *Sharia* as the sole source of authority in the territory under their control. Accordingly, there are reports describing ISIS courts in northern Aleppo province as early as July 2013. Other ISIS courts appeared in Idlib province in November 2013.⁷¹⁷

These courts were tolerated by many residents weary of lawlessness and chaos in the initial phases, if not accepted. Any law and order was seen as an improvement, even ISIS's brutal interpretation of *Sharia*. Some viewed the ISIS courts as less subject to overt corruption than the government courts.⁷¹⁸

By the spring of 2014, ISIS had expanded its court system. In Aleppo, ISIS claimed to have a system including a main court with four branches. Other ISIS propaganda suggested that ISIS courts were achieving some level of specialisation. One ISIS report described the situation in Aleppo as:

“One Main court and the remainder Sub-courts. They govern by the laws of God, implement the hudud punishments, ensure rights, and extend justice; dozens of cases are dealt with daily, and it is based upon a legal and administrative cadre”.⁷¹⁹

More definitive judicial structures appeared over time. While the “Caliph” sat at the apex, the *Sharia* Council oversaw the implementation of *Sharia* law throughout the “Caliphate”.⁷²⁰ Composed of members of several different nationalities, the Council's responsibilities are broad, including overseeing the “Caliph's” and his surrogate's speeches, dictating punishments, preaching, mediating, monitoring the group's media, indoctrinating recruits, and advising the “Caliph” on hostages and their execution.⁷²¹ Within the *Sharia* Council is a three-person committee of self-proclaimed Islamic experts who set religious policy.⁷²²

717 ISW 2014 report on ISIS areas, *supra* n. 706.

718 *Ibid*; and Mona Alami, ‘ISIS's governance crisis: Social services’, Atlantic Council, 1 January 2015, <<http://www.yementimes.com/en/1847/opinion/4762/ISIS%E2%80%99s-governance-crisis-Social-services.htm>> [accessed 17 February 2017] (hereinafter “Atlantic Council 2015 article on ISIS areas”). See also NYR Daily 2014 article ISIS areas, *supra* n. 700.

719 ISW 2014 report on ISIS areas, *supra* n. 706.

720 Foreign Policy 2015 ISIS article, *supra* n. 705.

721 Ali Hashem, ‘Who Holds the Real Power in ISIS?’, U.S. News and World Report, 23 February 23 2015, <<http://www.usnews.com/news/articles/2015/02/23/who-holds-the-real-power-in-isis>> [accessed 17 February 2017] (hereinafter “U.S. News and World Report 2015 article on ISIS”).

722 Global Cultural Knowledge Network, ‘Cultural Assessment of the Islamic State of Iraq and the Levant (ISIL)’, 31 May 2016, p. 4, <<https://info.publicintelligence.net/USArmy-CultureISIL.pdf>> [accessed 17 February 2017] (hereinafter “Global Cultural Knowledge Network 2016 report on ISIS”).

While the Council apparently had a committee for the judiciary, reports suggest that committee for religious schools was responsible for training judges.⁷²³ Other anecdotal reports indicate that ISIS also forced lawyers to take courses in their interpretation of *Sharia* law in areas they control.⁷²⁴

Under the direction of the *Sharia* Council, the governor of each ISIS administrative region supervises a *Sharia* deputy for his region. This deputy in turn supervised a regional *Sharia* Commission, which was responsible for managing the courts and monitoring the work of judges.⁷²⁵ These *Sharia* Commissions also issued *fatwas*, rulings, laws, and execution orders.⁷²⁶

While definitive information is unavailable, it appears that the ISIS judiciary was organised into three branches: (a) so-called Islamic courts, including the Supreme Islamic Court, to deal with routine civil and criminal matters; (b) a “Court of Grievances” to process complaints against ISIS public officials and fighters; and (c) a system (*Diwan al-Hisba*) for adjudicating charges brought by the morality police.⁷²⁷

The Court of Grievances, which functions like a complaints office, reportedly existed in some form in both Raqqa and Aleppo provinces. Not surprisingly, descriptions of its efficacy are mixed. For example, in one ISIS-produced video, an aging civilian describes bringing a grievance against an ISIS official, who was convicted and imprisoned by the ISIS court.⁷²⁸ Another report indicated that the ISIS court in Tal Abyad set a designated time each week for community members to come forward,⁷²⁹ while others maintained that numerous ISIS fighters had actually been punished as a result of such complaints.⁷³⁰

On the other hand, refugees from ISIS-controlled areas reported that judges often favoured ISIS members in disputes with the general public, often by quoting Quranic verses or sayings of the Prophet, including “God prefers those who fight in *jihad* over those who sit.”⁷³¹

723 U.S. News and World Report 2015 article on ISIS, *supra* n. 721.

724 Atlantic Council 2015 article on ISIS areas, *supra* n. 718.

725 Malcom Nance, ‘Defeating ISIS: Who They Are, How They Fight, What They Believe’ (New York: Skyhorse Publishing, 2016), p. 267 (hereinafter “Nance 2016”); Foreign Policy 2015 ISIS article, *supra* n. 705.

726 Global Cultural Knowledge Network 2016 report on ISIS, *supra* n. 722.

727 Foreign Policy 2015 ISIS article, *supra* n. 705.

728 Revkin 2014, *supra* n. 707.

729 ISW 2014 report on ISIS areas, *supra* n. 706.

730 Foreign Policy 2015 ISIS article, *supra* n. 705.

731 Associated Press, ‘Syrians who escaped ISIS rule talk about group’s double standards’, Al Arabiya Network, 18 January 2016, <<http://english.alarabiya.net/en/features/2016/01/18/Syrians-who-escaped-ISIS-rule-talk-about-group-s-double-standards-.html>> [accessed 17 February 2017] (hereinafter “Al Arabiya Network 2016 article on ISIS areas”).

Sharia law does distinguish between crimes specifically defined in the Quran (*hudud*), and discretionary punishments (*ta'zir*) for misconduct not mentioned in that text.⁷³² Traditional forms of punishment for *hudud* are severe, and have been rejected by most modern Muslim nations. However, as ISIS' grip strengthened, its courts implemented a more rigid form of *hudud* to eliminate any hint of tolerance or compromise from its interpretation of the principles set forth 14 centuries earlier.⁷³³

One of the first published indications of this doctrinal rigidity was the March 2014 publication in ISIS-held Aleppo of a compilation of ISIS-mandated *hudud* punishments.⁷³⁴ In Raqqa, weekly public demonstrations of punishments were held in the main square, often in the form of executions. ISIS *hudud* punishments were also reported in al-Bab, Manbij, Maskana, and Deir Hafer.⁷³⁵ ISIS also used such punishments as a device to instill fear in the populace, which the group's media operatives widely disseminated to maximise social compliance throughout the rest of the population.⁷³⁶

Fundamental due process appears totally absent.⁷³⁷ Many observers doubt that ISIS' courts even listen to evidence, yet summarily issue death sentences.⁷³⁸ First-hand accounts and videotaped proceedings leading up to and including executions bear witness to these atrocities conducted under the thin veneer of ISIS-defined law.⁷³⁹ Extrajudicial detention, torture and execution are also commonplace in ISIS-controlled areas.⁷⁴⁰

Reports indicate that ISIS punishes and sometimes executes judges who balk at the official position. In one case, an ISIS judge was removed and faced trial for objecting to the legal justification supporting the immolation of a Jordanian pilot. In another report, a judge was enforceably disappeared after objecting to the torture of prisoners in ISIS jails, while others have been executed on charges of treason and collaborating with foreign governments.⁷⁴¹

In order to enforce the legal rulings, ISIS maintains police forces to serve as the "executive body for the court".⁷⁴² One of these units, the so-called Islamic police, handles ordinary law enforcement and public safety matters. ISIS propaganda claims that this force incorporates legal specialists who report to a senior jurist, who in turn serves as a direct link to the judges in ISIS's courts. According to ISIS, these jurists will first attempt to resolve the interpersonal conflicts through informal mediation, and only refer the dispute to the court if that effort fails.⁷⁴³

732 ISW 2014 report on ISIS areas, *supra* n. 706.

733 Nance 2016, *supra* n. 725, p. 267.

734 Brian H. Fishman, 'The Master Plan: ISIS, al-Qaeda, and the Jihadi Strategy for Final Victory' (New Haven: Yale University Press, 2016), p. 192.

735 ISW 2014 report on ISIS areas, *supra* n. 706.

736 Global Cultural Knowledge Network 2016 report on ISIS, *supra* n. 722.

737 COI Report 2016, *supra* n. 273, p. 14, para. 79.

738 NYR Daily 2014 article ISIS areas, *supra* n. 700.

739 COI Report 2016, *supra* n. 273, p. 15, para. 80.

740 ISW 2014 report on ISIS areas, *supra* n. 706.

741 Foreign Policy 2015 ISIS article, *supra* n. 705.

742 ISW 2014 report on ISIS areas, *supra* n. 706.

743 Foreign Policy 2015 ISIS article, *supra* n. 705.

The other police force is a religious moral unit known as the *hisba*, comprised mainly of foreign fighters. The *hisba* has two branches, the religious Morality Police Units and Counterintelligence Combat Support Units.⁷⁴⁴

The morality units are tasked to “*promote virtue and prevent vice to dry up sources of evil, prevent the manifestation of disobedience, and urge Muslims toward well-being*”. Among their assignments are enforcing the ban on commercial activity during prayers, detecting drug or alcohol use, and destroying banned materials, including musical instruments, cigarettes, or polytheistic idols. The *hisba* also investigate other alleged instances of disobedience to ISIS’s interpretation of *Sharia*, and refer serious crimes to the courts.⁷⁴⁵

Using checkpoints and patrols, these units monitor behaviour and enforce ISIS’ brand of *Sharia* in population centres under its control.⁷⁴⁶ ISIS literature suggests that the *hisba* are a benign force maintaining social tranquillity. For example, in a 12 page ISIS manifesto detailing its judicial system, a *hisba* member is instructed to “be gentle and pleasant toward those he orders or reprimands. [...] He must be flexible and good mannered so that his influence is greater and the response (he gets) is stronger.”⁷⁴⁷

However, accounts from Syrians who fled ISIS-controlled areas depict extreme brutality including intimidation, arrest, incarceration, and draconian forms of punishment by the *hisba* for minor transgressions.⁷⁴⁸ Even when extreme violence was not used, foreign fighters in the *hisba* often subjected the local Syrian population to various forms of humiliation.⁷⁴⁹ Among the most active are the Saudi members of these forces.⁷⁵⁰

Sharia laws pertaining to women are enforced by the all-female al-Khansaa and Ume Rayhan Brigades. Segregated from the male police units, these forces’ primary function is to identify violations of the dress code by women in ISIS-controlled areas.⁷⁵¹

Members of the Counterintelligence Combat Support Units form an internal security police organisation. Like security agencies in other police states, they create an atmosphere of mistrust within society by using informants, collecting intelligence, and arresting non-conformists.⁷⁵²

744 Global Cultural Knowledge Network 2016 report on ISIS, *supra* n. 722.

745 Foreign Policy 2015 ISIS article, *supra* n. 705.

746 Global Cultural Knowledge Network 2016 report on ISIS, *supra* n. 722.

747 Al Arabiya Network 2016 article on ISIS areas, *supra* n. 731.

748 *Ibid.*

749 Global Cultural Knowledge Network 2016 report on ISIS, *supra* n. 722.

750 NYR Daily 2014 article ISIS areas, *supra* n. 700.

751 Taylor Wofford, ‘ISIS is Using an All-Women Brigade to Enforce Sharia Law in Syria’, Newsweek, 30 July 2014, <<http://www.newsweek.com/isis-using-all-women-brigade-enforce-sharia-law-syria-262074>> [accessed 17 February 2017]; NYR Daily 2014 article ISIS areas, *supra* n. 700; Global Cultural Knowledge Network 2016 report on ISIS, *supra* n. 722.

752 Global Cultural Knowledge Network 2016 report on ISIS, *supra* n. 722.

Analysis and recommendations

With the current military operations underway to dislodge and bring an end to ISIS's control of Syrian territory, the infrastructure and personnel of the "Caliphate" and its courts are being systematically degraded. At this stage, the long-term impacts are uncertain. According to some, the airstrikes have increased ISIS paranoia, resulting in more random violence.⁷⁵³ Other reports suggest ongoing resistance to ISIS and its courts.⁷⁵⁴

Still others suggest that ISIS is attempting to decrease local resentment of the foreign fighters by enlisting local leaders in its Syrian enclaves. In the unpredictable and insecure environment, even for Syrians unsympathetic to ISIS's ideology the ability to achieve positions of power and responsibility is attractive. Moreover, as military action by government forces increases in the ISIS controlled areas, some Syrians have turned to that group as what they feel is the only available defence against Assad.⁷⁵⁵

On a broader level, ideas of re-establishing the Caliphate will not vanish with the destruction of ISIS. Similarly, though ISIS' brand of conservative orthodoxy was largely promoted by non-Syrians who formed ISIS, it will not quickly disappear. Obviously, a military victory in the ISIS-controlled areas, followed by restructuring of the justice system, will push this ideology underground. But it will not result in this extremist theory disappearing.

If it is other extremist groups that drive out ISIS, debates over the nature of *Sharia* and the courts will continue. The main theoretical debate to continue will likely be over the permissibility of creating a written *Sharia* code. ISIS and most other Salafi groups reject this approach. To them, any such code or "man-made" law is a violation of the principle of absolute divine sovereignty.

In their view, *Sharia* is to be interpreted and applied on a case-by-case basis by trained religious judges. By injecting fallible human judgment into the process, any codification inevitably would alter the original meaning of *Sharia*.⁷⁵⁶ Other groups favour codification, to simplify judicial decision-making and lay the groundwork for a stable, predictable judicial system. Proponents of codification typically rally around the adoption of the Unified Arab Code.⁷⁵⁷ This twenty-year old Code reflects a relatively strict interpretation of Islamic law. For example, it recognises the *hudud* and leniency for honour killing.⁷⁵⁸ However, it provides a more moderate framework for justice and judicial decision-making compared with the extreme orthodoxy of the ISIS courts.

753 NYR Daily 2014 article ISIS areas, *supra* n. 700.

754 See Jamil Akram, 'ISIS Sharia judge killed by gunmen in Raqqa', ARA News, 1 December 2016), <<http://aranews.net/2016/12/chief-isis-sharia-court-killed-gunmen-fire-raqqa/>> [accessed 17 February 2017].

755 NYR Daily 2014 article ISIS areas, *supra* n. 700.

756 Revkin 2014, *supra* n. 707.

757 *Ibid.*

758 Martin 2014, *supra* n. 353.

1. Depending on the military and political outcome, legal assistance programmes should be prepared to move immediately to support those who will be dealing with the legacy of ISIS control in those regions. Until the military situation clarifies and stabilises, effective assistance to the justice sector in the ISIS-controlled areas of Syria is impossible. However, experience in other areas of Syria suggest that a doctrinal debate within the Islamist community may continue.⁷⁵⁹ As such, programmes to support legal professionals and others engaged in these debates and in restricting the justice system could be designed at this stage to enable quicker implementation at the appropriate time.

Part 3

V. Planning for peace – anticipating conflict-related justice challenges in Syria

Previous experience in conflict-affected settings demonstrates that there are a variety of pressing challenges that need to be addressed as soon as hostilities end. Advance plans can be devised to address some of these conflict related issues even during the conflict in order for responses to be timely and effective. Life-saving humanitarian aid and reconstruction of destroyed infrastructure are obvious issues of general concern, but a number of challenges go directly to questions of where justice plays an integral role.

Justice questions will almost certainly destabilise peace processes if they are not addressed, particularly when there are high numbers of victims on all sides, as is the case in the Syrian conflict. At the same time, addressing conflict-related violations often threatens the objectives and vested interests of those negotiating for peace. The scale of these challenges and the difficulty of addressing them tends to increase with the duration and extent of the conflict, and systematic and strategic nature of the violations.

Post-conflict justice claims engage both domestic and international law. Even where serious gaps or flaws exist in domestic law prior to conflicts, many of the acts and consequences of the conflict will clearly be illegal under domestic law. International law is also increasingly clear in proscribing particular conduct as criminal, with many serious violations now representing breaches of customary international law, and therefore giving rise to criminal responsibility regardless of whether or not the state in question has ratified the relevant international conventions. The legal nature of these questions tends to place domestic justice sector actors at the centre of dealing with these many justice claims, subjecting them to strong political pressures at a time when they and their institutions are already weakened by the effects of conflict. This can undermine their legitimacy if they cannot respond effectively.

Transitional justice has become the dominant paradigm for analysing conflict-related justice claims, and focuses not only on addressing violations directly through mechanisms such as truth-seeking, prosecution of perpetrators and reparations to victims, but also on reform of institutions to prevent the recurrence of conditions that led to

violations in the first place.⁷⁶⁰ In a 2015 report, the United Nations Special Rapporteur for transitional justice issues pointed out that judicial reform is one of the most important and challenging institutional reforms for preventing the recurrence of atrocities.⁷⁶¹ While this emphasis on increasing the capacity and independence of justice sector actors in post-conflict settings is welcome, it raises a problem seen in other ILAC assessments. As was highlighted in ILAC's assessment of the justice system in Libya in 2013, the combination of expectations that conflict-weakened courts will reform themselves, together with requirements for these courts to continue process their ordinary caseloads and undertake politically sensitive transitional justice prosecutions can constitute an unbearable burden.⁷⁶² Nevertheless, given the obstacles in politicised cases such as Syria in accessing international justice forums, it is crucial to assess the role and capacity of national justice actors in conflict situations, as well as their potential to prevent and address violations.

This has been the main aim of the current assessment, and the focus in the interviews conducted was therefore on the institutions interpreting and applying the law, as well as the law currently applied, rather than the particular conflict issues dealt with in this section. As a result, this section presents only a summary of the significance and scope of the post-conflict justice issues in Syria, as reflected in the discussions and observations of the expert assessors. In all cases, these initial findings underscore the urgent need for more focused and detailed research on each of the issues identified in order to maximise the possibility of an effective response in the context of an eventual peace process.

⁷⁶⁰ In 2004, then-UN Secretary-General Kofi Annan defined transitional justice as “the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof.” United Nations Security Council, ‘The rule of law and transitional justice in conflict and post-conflict societies – Report of the Secretary-General’, UN Doc. S/2004/616, 23 August 2004, <http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2004/616> [accessed 17 February 2017].

⁷⁶¹ United Nations General Assembly, ‘Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence’, UN Doc A/HRC/30/42, 7 September 2015, para. 52, <<http://www.ohchr.org/Documents/Issues/Truth/A-HRC-30-42.pdf>> [accessed 17 February 2017].

⁷⁶² International Legal Assistance Consortium, ‘ILAC Rule of Law Assessment Report: Libya 2013’, May 2013, <http://www.ilacnet.org/download/reports_documents/mission-reports_documents/Libya_Report_FULL-EN-GLISH-web.pdf> [accessed 17 February 2017].

5.1 Accountability

It falls outside the scope of this assessment to map and describe crimes and human rights violations committed in Syria. However, it is clear from numerous reports by Syrian and international organisations, as well as from the interviews conducted by ILAC, that a wide range of atrocities has been committed in Syria since 2011. These have involved systematic attacks against civilians, including the use of indiscriminate and chemical weapons, enforced disappearances, extrajudicial executions, and torture.⁷⁶³ What is clear is that demands for justice, accountability, and reparations will reverberate through Syrian debate for many years to come.

According to international law, states have the obligation to respect, ensure and implement international human rights law. This implies a duty to “investigate violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly responsible in accordance with domestic and international law”.⁷⁶⁴ This is an established rule under customary international law.⁷⁶⁵

States are responsible not only for violations committed by their organs, including their armed forces, but also those committed by persons or entities empowered to exercise elements of governmental authority, by persons or groups acting *de facto* under its instructions, or under the state’s direction or control, or by private persons or groups which it acknowledges and adopts as its own conduct.⁷⁶⁶ Numerous international conventions provide that the obligation for states to take measures to make reparations for the damages of violations, which can include monetary payments and giving assurances of non-repetition.⁷⁶⁷

763 See further reports of the United Nations Independent International Commission of Inquiry on the Syrian Arab Republic: <<http://www.ohchr.org/EN/HRBodies/HRC/IICISyria/Pages/IndependentInternationalCommission.aspx>> [accessed 17 February 2017].

764 United Nations General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by General Assembly Resolution 60/147, 21 March 2006, para. 3(b). See also para. 4.

765 See International Law Commission, Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, 53 UN GAOR Supp. (No. 10) at 43, U.N. Doc. A/56/83 (2001) Yearbook of the International Law Commission, 2001, vol. II (Part Two), pp. 26-143, Articles 4, 5, and 7-11 (hereinafter “ILC draft articles on state responsibility”).

766 *Ibid.*

767 See further ILC draft articles on state responsibility, *supra* n. 765, Article 34; ICCPR, *supra* n. 249, Article 2(3); International Convention on the Elimination of All Forms of Racial Discrimination 1965, 660 UNTS 195, Article 6; Convention against Torture 1984, 1465 UNTS 85, Article 14; Convention on the Rights of the Child 1989, 1577 UNTS 3, Article 39; European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, ETS No. 005, Article 13; African Charter on Human and Peoples’ Rights 1982, OAU Doc. CAB/LEG/67/3 rev. 55, 1520 UNTS 217, Article 7(1)(a); American Convention on Human Rights, OEA/ser. K/XVY1.1, Doc. 65, Rev. 1, Corr. 1 OASTS, No. 36 (1970), Article 25; ICC Statute, *supra* n. 253, Article 75; and International Court of Justice, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion [2004] ICJ Rep 136, paras. 152–153. See also ICRC Customary International Law Database, Rule 150, <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_ru_rule150> [accessed 17 February 2017].

But it is also important to emphasise that *all* parties to the conflict, including non-state organised armed groups have extensive responsibility for their actions under international humanitarian law.⁷⁶⁸

Domestic war crimes trials face a challenging and polarised political climate at the best of times. This can be exacerbated by the lack of qualified personnel, court infrastructure and that legislation usually is not in accordance with international standards typically following a non-international armed conflict. Deficiencies in justice systems lacking independence have often contributed to the conflict in the first place and, nearly every national prosecution of international crimes has been heavily criticised by human rights institutions for failing to remain independent from political institutions.⁷⁶⁹

If a post-conflict Syrian government is serious about building legitimacy, merely having the willingness and commitment to prosecute international crimes committed during the conflict will not be enough. It is also necessary to ensure that domestic trials are able to live up to demands under international standards of due process, judicial independence and fairness. If domestic courts do not meet international standards, this will undermine both the legal process itself, as well as the legitimacy of the very idea of having trials in the first place. A first step would be to explicitly allow and encourage international assistance in the statutes or laws establishing domestic prosecutions of international crimes committed during the conflict. In the challenging post-conflict context, the difficulties of establishing such a process should not be underestimated, however. It is therefore crucial that the international community prepare itself to play a comprehensive role in a coordinated fashion to support these processes.

Although it is impossible to fully predict the future, there is little to indicate today that responsibility for establishing these processes properly will be taken in the way that is necessary within the foreseeable future. That leaves the international community as the only possible avenue for victims in search of redress.

⁷⁶⁸ Common Article 3, Geneva Conventions I-IV of 1949, *supra* n. 251. See also Hague Convention II with Respect to the Laws and Customs of War on Land and its annex: Regulation concerning the Laws and Customs of War on Land: 29 July 1899, 32 Stat. 1803, 1 Bevans 247, 26 Martens Nouveau Recueil (ser. 2) 949, 187 Consol. T.S. 429, Article 1; Hague Convention IV, Declaration I- Concerning the Prohibition, for the Term of Five Years, of the Launching of Projectiles and Explosives from Balloons or Other New Methods of a Similar Nature, July 29, 1899, 32 Stat. 1839, 1 Bevans 270, 26 Martens Nouveau Recueil (ser. 2) 994, Article 1; Convention for the Protection of Cultural Property 1954, 249 UNTS 240, Article 7(1); Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, 1125 UNTS 3, Article 80(2); Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996 (Protocol II, as amended on 3 May 1996) annexed to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects, 2048 UNTS 93, Article 14(3). See further ICRC Customary International Law Database, Rule 139, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule139#Fn_60_15 [accessed 17 February 2017].

⁷⁶⁹ Mark S. Ellis, 'Sovereignty and Justice: Balancing the Principle of Complementarity Between International and Domestic War Crimes Tribunals' (Newcastle upon Tyne, UK: Cambridge Scholars Publishing, 2014).

Given these challenges, it is of the utmost importance that investigations of international crimes are conducted by properly constituted authorities and not by private initiatives or well-meaning NGOs. This work needs a focal point, a role that could potentially be played by the new International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Those Responsible for the Most Serious Crimes under International Criminal Law Committed in the Syrian Arab Republic since March 2011 set up by the United Nations General Assembly to prepare prosecutions of international crimes committed in Syria during the conflict. Though unable to initiate prosecutions, this mechanism will analyse information, organise and prepare files on the worst abuses that amount to international crimes, and identify those responsible. The files will be used for future prosecution by others.⁷⁷⁰

As noted above, Syria has not ratified the Rome Statute, efforts to refer the situation to the ICC by the United Nations Security Council under Article 13(b) of the Rome Statute have been blocked by the exercise of the veto by permanent members.⁷⁷¹ Even if this were to change, the ICC is not structurally and conceptually designed to handle mass volume of cases. Instead, it operates in a complementary role to national prosecutions. This poses its own sets of challenges. Complementarity is a dynamic and powerful principle for prosecution of international crimes providing an effective framework that emphasises the cooperation between international and domestic accountability mechanisms. However, it is conditional on the domestic legal systems incorporating, embracing and enforcing international norms, and the ICC being willing to actively support, embrace and implement the principle of complementarity.

Under the current political situation, the most realistic avenue to addressing international crimes in the near term is by other states using universal jurisdiction to prosecute individuals within their jurisdiction. There are several examples of cases relating to international crimes committed in recent years.⁷⁷²

770 General Assembly Resolution 71/248, UN Doc. A/71/L.48, 19 December 2016, <http://www.un.org/ga/search/view_doc.asp?symbol=A/71/L.48> [accessed 17 February 2017].

771 UN News Centre, 'Russia, China block Security Council referral of Syria to International Criminal Court', 22 May 2014, <<https://www.un.org/apps/news/story.asp?NewsID=47860>> [accessed 17 February 2017].

772 See, for example, John Sennero, 'Swedish court sentences Syrian rebel to life for war crimes', news article, Reuters, 16 February 2016, <<http://www.reuters.com/article/mideast-crisis-syria-sweden-idUSL8N1G12S8>> [accessed 17 February 2017].

Recommendations

- 1. Tailor efforts to related to transitional justice to those justice avenues that are actually available.*** Syrian lawyers and activists consistently highlight allegations of serious crimes committed in Syria as a key concern where they seek international support. However, such support will only be useful if it includes realistic strategies for bringing cases to courts. Support should therefore be focused on projects that can either realistically contribute to cases before existing international mechanisms, or, where applicable, before courts in third countries. Long term projects may also be designed that aim to increase the chances that the Syrian justice system might be able to deal with these cases. With this in mind, the international community could:
- 2. Facilitate dialogues between different actors in the Syrian legal professions (judges, prosecutors, defence lawyers, investigators etc.) with international colleagues from recent post-conflict countries and those with international expertise.***
- 3. Provide workshops and discussions with the Syrian legal profession about international standards, international tribunals, and universal jurisdiction.*** Such efforts could, for example, include information on when court proceedings in third countries could be an alternative, and strategies for making such trials a success.

5.2 Missing persons

The last two decades have seen significant developments in how the issue of missing persons is addressed, both in post-conflict setting or following natural or man-made disasters. Though not every missing individual can be found and identified, DNA-based techniques today make it possible to identify many more victim's remains than before. But these techniques require that investigations, and collection and handling of the remains are coordinated, professionally performed, and involve the necessary authorities. Conversely, where such work is not coordinated or performed by appropriate personnel – however well intended – individual identification of victims may be lost. Equally important, evidence needed to identify and convict responsible perpetrators may also be lost or rendered unusable in court.

In Syria, the number of missing persons cannot be accurately known. Ample evidence exists demonstrating that even before the 2011 uprising, the government used the practice of enforced disappearance as an instrument of social and political control.⁷⁷³ Since the uprising began, other armed groups have joined suit. The location and identification of missing persons in Syria is further complicated by the fact that an unknown number of Syrian refugees are missing in the Mediterranean Sea, drowned as they attempted to seek refuge in Europe. But even the numbers of persons missing as a result of the armed conflict and human rights abuses, which are more intensively monitored, are difficult to verify, given the reluctance of most state and non-state actors involved in the conflict to deal honestly with this issue.

The problem of missing persons does not respect borders. For this reason, the issue is increasingly understood as a global challenge that demands a structured and sustainable international response, as opposed to uncoordinated, *ad hoc*, situation specific approaches. As a consequence, the role of the international community in dealing with this issue has evolved.

The developing global perspective was framed in the 1990s when, the International Criminal Tribunal for former Yugoslavia (ICTY) (and the International Criminal Tribunal for Rwanda (ICTR) were established. The tsunami in 2004, and other efforts of International Criminal Police Organization (INTERPOL) and others to establish a permanent platform to respond to disasters, further highlighted the necessity and effectiveness of a coordinated international response.

⁷⁷³ International Convention for the Protection of All Persons from Enforced Disappearance 2010, 2716 UNTS 3, Article 2 provides a definition of enforced disappearance in cases involving state actors. Under ICC Statute, *supra* n. 253, Article 7(1)(i) establishes that the crime of enforced disappearance can amount to a crime against humanity.

Subjectively, a missing person can be defined as anyone whose whereabouts are unknown and who is being sought by others. However, the term “missing person” acquires an objective meaning when a person is formally reported as missing. A tribunal investigating crimes against humanity, such as a widespread or systematic murder or extermination, will look for reported missing persons in order to determine whether a crime has been committed. Ideally, the tribunal will accomplish its mission by locating victims’ remains. But locating and identifying individual missing persons may be of secondary importance in such investigations. From the perspective of the criminal tribunal, the phrase “missing person” simply signifies a common characteristic of a group of possible victims of a crime. As such, when missing persons are reported to a criminal tribunal, individual cases may not necessarily be investigated and resolved. In addition, if an individual’s disappearance does not provide evidence of the alleged crime, their case may not even be included in the investigation.

In contrast, humanitarian efforts generally concentrate on alleviating the anguish of relatives without seeking to attribute responsibility or satisfy demands for accountability. Consequently, in such cases evidence to prove a criminal act might not be collected or documented.

Through various strategies, law-based and forensic approaches are becoming the norm in attempting to redress the legacy of violent conflict and massive human rights violations. Developments in the field of genetics, the use of modern forensic methods, and the creation of dedicated databases have made it possible for investigators to locate and identify missing persons with a level of efficiency and certainty that was not previously possible. These advances have impacted developments in countries emerging from periods of conflict and systematic human rights abuses, and societies coming to terms with large-scale natural disasters.

In the conflict in the former Yugoslavia in the 1990s, it is estimated that 40,000 persons went missing as a consequence of armed conflict, abuses of human rights and other atrocities. Today, 70 per cent of those missing have been accounted for due to a well-planned, professional and coordinated international response and assistance to local authorities, professionals and relatives.

The International Commission of Missing Persons (ICMP) started its work in the former Yugoslavia. The ICMP has since become the main international actor in this field, able to provide knowledgeable and professional assistance to local authorities in these most difficult circumstances. This process involves building the capacity of local actors to create law-based, sustainable structures that are transparent and accountable to stakeholders, while at the same time involving civil society, family associations and victims’ relatives.⁷⁷⁴

⁷⁷⁴ Examples of such assistance include the creation of: the Missing Persons Institute of Bosnia and Herzegovina; the Libyan Identification Center; the Kosovo Commission on Missing Persons; Law on Missing Persons in Bosnia and Herzegovina; Central Records of Missing Persons in Bosnia and Herzegovina; and the Law on the Protection of Mass Graves in Iraq.

The involvement of families of missing persons in different decisions about how the society should deal with this issue is crucial. Such processes will influence the possibility for reconciliation, and help prevent the recurrence of violence. Lawyers working inside Syria are frequently faced with questions about missing persons, and routinely receive information about remains and temporary grave sites.⁷⁷⁵ Many humanitarian and civil society organisations receive similar reports. It is vital to support both the creation of a unified system for logging: (a) cases of missing persons in Syria; and (b) information regarding unidentified human remains or mass grave sites. The criteria for and collection of such data should be standardised in order to facilitate future identification and repatriation procedures. ILAC believes that the international community should promptly come together behind a credible, experienced and professional body to take on these tasks.

Recommendations

- 1. Support the ICMP to take a leading role in assistance to local actors, and coordination of international efforts regarding search and identification of missing persons and human remains.**
- 2. Handle issues related to missing persons within a legal framework that includes professional criminal investigators.** The high number of missing persons in Syria is an urgent humanitarian concern. However, it is crucial to involve trained legal professionals in addressing these issues – notwithstanding the difficulties and sensitivities that this entails. The magnitude of the problems experienced in Syria means that missing persons will remain a primary concern in the country long after the international community has moved on. Therefore, the Syrian legal profession must be included in this work.
- 3. Provide training and capacity building of Syrian judges, lawyers and other relevant actors within the Syrian legal community in how to support relatives and family members, preserve human remains, handle registries etc.** Such training is necessary to implement both recommendations 1 and 2 above, and should be carried out in coordination with the lead international organisation identified further to recommendation 1.

⁷⁷⁵ Interview with lawyer, Gaziantep Feb 2017.

5.3 Housing, land and property

Since the early 1990s, successive internal, interstate and regional conflicts have pitted groups against each other based on ethnic and sectarian identity. In cases in which these groups are fighting to achieve strategic territorial goals, these conflicts have frequently resulted in active policies to remove groups from different areas. Expulsion and deportation of civilian populations violate numerous provisions of international law, and are often accomplished through other human rights violations designed to terrify people into taking flight. However, the violations most associated with this phenomenon are those perpetrated against the housing, land and property assets of the displaced victims. Such violations are intended to not only force civilian populations to flee, but also to permanently prevent their return.

Housing, land and property violations frequently involve attempts to undermine the legal claims of displaced populations to their homes and lands, and to create physical impediments to their return. The former can include the intentional confiscation or destruction of individuals' documentation or property record archives, uncompensated expropriation proceedings, and the abuse of rules conditioning rights on the active use of property in cases where people have been forcibly displaced. Physical obstacles include actions such as the destruction of the property, or granting rights to other populations to use property left behind by those displaced.

Rights to housing, land and property do not traditionally enjoy strong protection under international human rights and international humanitarian law. However, these rights have emerged as a major area of focus since the end of the Cold War, with significant normative developments and innovative practice in conflict settings.

Beginning with 1990s peace processes in Central America, Cambodia and the Balkans, addressing violations of property right was increasingly recognised as key to the sustainability of the peace. This trend in recognition was reinforced by the prominent role played by restitution of confiscated properties in negotiated political transitions, such as the end of apartheid in South Africa or the reunification of Germany. In 1995, the Dayton Peace Agreement set a precedent by explicitly requiring the physical restitution of property left behind by displaced persons, along with compensation where this was not possible. This was in the context of a broader right of displaced persons to voluntary return. With the aid of heavy international monitoring, property restitution was achieved in Bosnia a decade after the peace agreement was signed. These successes prompted the drafting of international standards such as the 2005 "Pinheiro Principles," which posited a post-conflict right to house, land and property restitution.⁷⁷⁶ However, the complexities of property restitution are daunting, and there have been few success stories since Bosnia.

⁷⁷⁶ United Nations Sub-Commission on the Promotion and Protection of Human Rights, Principles on Housing and Property Restitution for Refugees and Displaced Persons, UN Doc. E/CN.4/Sub.2/2005/17, 28 June 2005, <<http://www.unhcr.org/protection/idsps/50f94d849/principles-housing-property-restitution-refugees-displaced-persons-pinheiro.html>> [accessed 17 February 2017].

Experiences ranging from German property restitution to Bosnia, together with decisions regarding the right to property by the European Court of Human Rights, tend to support a number of key principles. Most notably, efforts to provide remedies for property violations are difficult, but ultimately crucial to restoring stability and the conditions for economic wellbeing within a post-conflict society. Such remedies should be seen as fair and even-handed without discrimination against any categories of victims. Remedies should also avoid unnecessarily burdening displaced claimants through the use of expedited procedures and flexible evidentiary standards, particularly where incomplete documentation and informality were already issues prior to the conflict.

Whatever the outcome of the conflicts in Syria, the existing situation relating to housing, land and property will be a high priority for people of Syria and should be for those involved from the international community.

Both returning displaced persons and the non-displaced populations in Syria will face a major shortage of shelter as a consequence of the massive destruction during the conflict. Longer-term housing, land and property issues will therefore need attention. Without political and social peace, the economy will suffer. Such peace, in turn, cannot be achieved in the absence of a solution of the housing, land and property issues.

While ILAC has primarily focused on the status of the justice systems, this work has provided insights on the country's past and current challenges. On the one hand, the ILAC interviews revealed major rule of law issues regarding property as early as the 1970s, including arbitrary state expropriations without legal recourse and a flawed agrarian reform. Pre-conflict land conflicts also arose between private owners, in part as a result of legal pluralism and widespread informality. Although a formal property registration system has long existed, it did not extend to significant categories of property, and private property transfers within families were rarely registered. Women's rights to property were hampered by restrictive legal interpretations and practices. These pre-2011 factors will considerably complicate efforts to provide remedies for post-2011 events.

The years since 2011 have seen armed conflict, wholesale property destruction, and massive displacement, some of which has apparently come about as a result of the political agendas of parties to the conflict. These factors, along with loss and destruction of property records, create a risk of widespread disputes over land and property in the event of a ceasefire. Victims of housing and property violations will face significant difficulties in seeking to return to their homes, including the destruction of entire neighbourhoods, punitive expropriation of the property of individuals and families presumed to have sided with the different sides to the conflict, negotiated local population exchanges, and the reallocation of abandoned homes to other communities.

Recommendations

Restitution in Syria will be necessary to promote an economically and socially stable country in the future, and prevent protracted and destabilising disputes that could reignite conflict in Syria. Recommendations therefore include the following:

- 1. Any future Syrian restitution system must be adapted to the obvious fact that in many cases, little or no formal evidence will be available to support claims.* As such, alternative forms of evidence should be accepted and considered.
- 2. In light of the egregious nature of housing and property violations on all sides, the rights of those displaced from their homes should presumptively be prioritised over any right asserted by subsequent occupants to remain in possession of disputed property.*
- 3. The international community should seek to assist in the preservation of evidence of property rights, including the protection of archives of records, in any way feasible.*
- 4. In light of the centrality of property issues for the future of Syria and particularly in light of recent reports of policies intended to permanently remove some populations from their homes of origin, further focused assessment and fact-finding work on these issues is required, including a possible ILAC follow up mission specialised in housing, land and property questions.*

5.4 Personal documentation

The *de facto* division of Syria's territory under different administrations for a prolonged time has particular ramifications in the area of personal status law and civil documentation. There are promising signs that actors in some regions take efforts to avoid the further proliferation of personal status systems within the country. Nonetheless, the mere fact that life has continued under separate administrations, with all marriages, births and deaths not registered by a central government, poses enormous challenges for a future Syria. It is therefore imperative that the right to citizenship to Syrians born during the conflict should be guaranteed, and information in government and opposition registries incorporated into one unified registry.

Women and children in particular face a host of concerns which may have ramifications long after the conflict ends, including potentially statelessness of children, lack of financial rights for women in undocumented or illegal marriages, and lack of services for victims of gender-based violence. Women in Syria experience double victimisation, in the form of specific targeting and discrimination in addition to the general risk posed by the widespread violence and indiscriminate attacks on civilian populations.

The inability to access civil documentation such as marriage or birth certificates can exacerbate the effects of discriminatory practices targeting women in Syria. Such problems directly impact women's rights to move, act freely and independently, and retain custody of their children.

Children without documentation such as birth certificates or proof of birth within wedlock are particularly vulnerable to long-term negative effects, including the denial of education or inheritance. Moreover, boys and girls whose status is not registered, often as a result of being orphaned, face additional social stigma. These negative effects are felt throughout society, but are particularly pertinent in situations such as displacement, where individuals face both the immediate practical vulnerability that comes with displacement, and legal difficulties arising from the inability to access original documents or records from their home areas. Indeed, the inability to document family relationships can obstruct the receipt of humanitarian aid.

As noted above, opposition groups have rejected the application of Syrian law in many areas outside government control in Syria. Many of these groups do recognise the need to preserve the integrity of one unified system of personal status documentation, however. The need for a unified system also limits the discretion of these groups to adopt *ad hoc* solutions to meet the particular protection needs of populations under their control. The fact that pre-2011 Syrian law and procedures on these issues is not adapted to the conditions arising in armed conflict has exacerbated the risks faced by marginalised groups. Nonetheless, the rights of citizens inside Syria and in neighbouring countries must be upheld without discrimination based on factors such as gender, age or displacement.

Documentation centres have proven a viable way to restore some measure of normality and security to the lives of Syrians through the return to local governance structures with rudimentary administrative functions and by the provision of basic legal services. Thanks to the efforts of judges, lawyers and documentation centre staff, people are now able to register births, marriages and divorces in accordance with the same laws and procedures that applied before the conflict in many opposition areas.

Functioning justice sector institutions and legal services, such as these are an indispensable element in securing rights, supporting democracy and promoting development. While a fully functional justice sector is inconceivable under the current wartime circumstances, programmes that prevent complete institutional collapse and ensure that legal professionals maintain their skills and can provide critical services can contribute materially to greater respect for human rights and gender equality.

Donor countries have underscored the importance of supporting “an administration that provides public services in order to preserve existing administrative structures at a technical level and avoid institutional collapse (...)”⁷⁷⁷

⁷⁷⁷ See, for example, Swedish Ministry of Foreign Affairs, 'Sweden's Regional Strategy for the Syrian Conflict 2016-2020', p. 9, <<http://www.government.se/49104b/contentassets/0946710020004892ad04f135755b8752/swe-dens-regional-strategy-for-the-syria-crisis-2016--2020>> [accessed 17 February 2017].

The presence of an effective administration in the form of documentation centres that have proven themselves able to perform essential services may also contribute to strengthening civilian actors in relation to armed groups. In many areas outside government control, local bar associations were involved in establishing personal status documentation centres that they were then able to use as a platform to provide other services to the population outside the scope of the original programme, such as property registration. Among the most successful in this is the Daraa Bar Association, which has come to play a crucial role in the design of the entire administrative system in that region.

However, considering the political sensitivities to foreign interference in personal status documentation, such projects must build on local initiatives, rather than impose outside solutions. In many instances, records of who once lived in a particular area have been targeted in attacks, seemingly aimed at undermining future efforts for those displaced by the conflict to return home. In other instances, civilians have been punished for living in an area known for widespread support to the opposition and any records of residence in such areas could put individuals at risk. Therefore, control over personal registration programmes is a sensitive issue and must be supported in a way that promotes trust among Syrian actors, and between registries and international donors. Only by working with local actors and building on initiatives founded and run by Syrians can registries gain recognition and local legitimacy, as well as a degree of physical protection.⁷⁷⁸

Given the complexity in opposition-held areas in Syria, this necessarily means some variation between different areas. In Aleppo, the local council has taken overall responsibility of documentation centres run by two different international donors. In Idlib, Homs, Daraa and al-Quneitra, local bar associations have taken leading roles in establishing and running centres. All regions have agreed on one common system for the running of these centres, which is based on Syrian family law and focused entirely on ensuring continuity with the official Syrian documentation. Centres in all opposition areas are operated by the same staff as before the conflict began, under the supervision of qualified Syrian lawyers and judges.

The Syrian Interim Government is formally responsible for the documents. Documents from all these centres, except Aleppo, carry their stamp, both as an assurance that the documents are issued in accordance with their requirements, and as an indicator that the document is not a falsification of those issued by the Syrian state, but rather a proof that Syrian experts have verified that the marriage, birth, etc took place in accordance with Syrian law and a document should be issued. Documents from Aleppo carry the stamp of Aleppo Local Council.

⁷⁷⁸ An example is the 15 documentation centres in Syria that ILAC support, all of them run by local Bar Associations or local councils.

The fact that a common system for personal status documents has emerged in areas outside government control is hopeful for the future. Over the course of the conflict, the natural progression of family life has meant that hundreds of thousands of marriages, divorces, births, and deaths of ordinary Syrians have come to be registered in centres coordinated through this system. It will be crucial to the success of any future government in Syria to ensure that these documents are adopted as official Syrian documents and included in Syrian registries as part of a peace deal.

Recommendations

The international community and Syrian actors should take steps to:

- 1. *Include the issue of personal status documents in peace negotiations.*** It should be ensured that documents issued in areas outside government control, but in a systematic way that is based on Syrian family law, are validated as official Syrian documents and included in the Syrian census as part of a future peace agreement.
- 2. *Ensure that support to personal status documents is based on the initiative of and run by genuine Syrian actors.*** Such actors should have a commitment to ensuring the future reliability of the documents in all of Syria and the necessary local legitimacy to gain the trust of local populations.
- 3. *Work with Syrian actors to improve the services of Syrian documentation centres.*** In particular, ILAC can take steps to improve centres' responsiveness to the particular protection needs associated with the armed conflict, as well as to improve access to the centres for the local community and civil society in general and women in particular by supporting workshops, trainings and meetings.

5.5 Empowering women both inside and outside Syria

Whatever the outcome of the conflict, women are an indispensable part of any Syrian peace settlement and rebuilding. A detailed picture has been provided above on the situation of women in Syria at the present time. Programmes should be designed that aim to address the issues raised, so as to empower women to be able to access justice in a fair and equal manner.

In working towards peace, it is also necessary to recognise and design programmes to address the particular vulnerabilities of those that have fled the conflict. Syrian women and children refugees face the risk of double discrimination due to their displacement and gender and age. Children of refugees run a high risk of being stateless. These children have no right to citizenship in their host countries, and in order to attain Syrian nationality, Syrian children born outside Syria must have Syrian documentation.

While Syrian embassies still function in many neighbouring countries and provide civil registry services, refugees associated with the opposition fear entering these bodies. There are logistical and financial constraints as well, as many Syrian refugees reside outside the city where the embassy is located and cannot easily travel within their host country. As such, many refugees have resorted to paying exorbitant fees to have a middleman register the birth of a child in government-held areas inside Syria. For those who do not have the financial means to pay, their children are at risk of being undocumented and stateless.

Statelessness is also a concern for children of child marriages. Child marriage is on the rise due to economic hardship, both inside and outside Syria, but particularly in refugee camps in neighbouring countries. A female Syrian lawyer in Turkey stated that when these girls become pregnant, they refuse to go to the hospital for pre-natal care and birth because they fear being prosecuted for the illegal marriage. They are afraid to register their children for the same reason. Consequently, children of child marriages often remain undocumented and run the risk of being stateless.

According to interviewees, polygamy is also on the rise, both inside and outside Syria, due to a rising number of widows and economic hardship. While polygamy is legal in Syria, Lebanon and Jordan, it is illegal in Turkey. Despite this, many Syrian women are becoming second wives to Turkish men as result of family pressure, economic destitution, or in the false hope of accruing rights of Turkish citizenship. However, because the marriage is not legal, they cannot become Turkish citizens and, should they seek a divorce, have no right to financial support.

Gender-based violence often increases during conflict. Interviewees asserted that this is the case among refugees in countries neighbouring Syria. They also report that there are not enough programmes to assist victims. Where programmes do exist, victims are often unaware of the availability of services. According to a female activist in Beirut, there are only three shelters in Lebanon that serve the refugee and the local population. An NGO employee that works with refugees in Gaziantep in Turkey stated that she was told of the existence of a shelter in Gaziantep, but could not find out its location.

There has been at least one documented case of a trafficking ring involving Syrian refugee women in Lebanon.⁷⁷⁹ Interviewees in Lebanon and Turkey expressed the opinion that trafficking is occurring on a much larger scale, but has yet to be investigated or prosecuted.

Women's right to access to justice in post-conflict Syria will be a necessary component to reduce gender-based violence and discrimination in the future, and secure the empowerment of women. It will open the way for security and development, allowing women to be more participatory and functional in public life and thus enable them to take a greater part in the post-conflict reconstruction and rebuilding process of peace and justice at the transitional stage. Thus, in the transitional stages of return to normality and reconstruction of peace, empowering women before the law and in seeking redress in legal and judicial institutions will prevent gender-based inequality, subjugation and discrimination.

To date, the concept of justice in the Syrian legal system and culture was not conducive to affording women sufficient formal legal mechanisms to easily access or receive justice. Education is crucial in being able to identify what means and avenues are available for restitution or redress. But even those who have received an education or have trained as legal professionals face challenges and vulnerabilities in being able to overcome cultural obstacles designed to reinforce discriminatory gender roles within the society.

Research has shown that post-conflict situations make women more vulnerable to be victims of violence, discrimination and other human rights violations.⁷⁸⁰ In addition, female survivors of conflict risk stigmatisation, rejection and discrimination by their families and communities, particularly those who are disabled or otherwise impaired as a result of conflict related violence, including sexual violence. In addition, former fighters tend to experience difficulty in adjusting to family life, which can lead to substance abuse and domestic violence, leading to a cycle of violence for women in post-conflict settings. Economic hardship further aggravates the situation for both men and women. Being more susceptible to victimisation, this situation disempowers women even further, especially when seeking and obtaining legal remedies.⁷⁸¹

All of this suggests that programmes for the empowerment and education of women on their legal rights will be crucial in the future to allow women to take part in the rebuilding of Syria. While it is impossible to predict what that future looks like, there are actions that can be taken now to increase the capacity of Syrian legal professionals to take part in peace building and reconstruction post-conflict.

779 Human Rights Watch, 'Lebanon: Syrian Women at Risk of Sex Trafficking', press release, 28 July 2016, <<https://www.hrw.org/news/2016/07/28/lebanon-syrian-women-risk-sex-trafficking>> [accessed 25 November 2016].

780 United Nations Committee on the Elimination of Discrimination Against Women, 'General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations', UN Doc. CEDAW/C/GC/30, 18 October 2013, <<http://www.ohchr.org/documents/hrbodies/cedaw/gcomments/cedaw.c.cg.30.pdf>> [accessed 25 November 2016].

781 *Ibid.*

Those efforts should engage female legal professionals in the transition process from the outset to ensure that women's legal needs and concerns are addressed in constitution drafting, legislative reform, and state-building and not demoted or overlooked, as often happens in post-conflict settings where security issues are seen as paramount.

However, donors should recognise the highly controversial nature of what is easily perceived as foreign powers pushing their own agenda. In the decade prior to the conflict, several efforts were made by civil society and the Syrian government to amend the Syrian constitution and legislation to bring them in line with international standards on gender equality, efforts that faced fierce resistance.⁷⁸² To help increase the chance of successful adoption of amendments in a post-conflict Syria, efforts should be made to bring together those programmes that work through the Syrian diaspora and those programmes that work through Syrians within Syria. This will ensure that a broad array of voices is heard and result in increased legitimacy.

Recommendations

The following recommendations provide actions aimed at increasing participation of Syrian women legal professionals, and women in general, in the transition process, whatever shape it takes.

- 1. Train Syrian women legal professionals in Turkey, Lebanon, and Jordan on comparative law, international standards, legislative drafting, and peace building and mediation.** To the extent possible, these trainings should bring together Syrian women lawyers from inside and outside Syria, to ensure that Syrian women lawyers from diverse areas and backgrounds are able to take part in peace building, transition, and reconstruction of the justice system.
- 2. Coordinate with ongoing initiatives to ensure the active and equal participation of Syrian women lawyers and judges in efforts to amend the Syrian Constitution and laws, and ensure these are in line with international standards on gender equality.** Coordination with other donor efforts is important not only to avoid duplication of efforts, but also to ensure that women's voices are not side-lined to a "women only" process.
- 3. Connect Syrian women lawyers and judges with regional and international legal and judicial associations.** Connections with regional networks for women legal professionals will allow Syrian women jurists to benefit from the experience of other female legal professionals from nations that are in the process of transition. Many countries in the region also share a common legal history, which is reflected in their personal status codes, and regional networks would allow for sharing of legal reform experiences. Connections with international networks will broaden the knowledge of Syrian women jurists and allow them to draw upon global expertise.

782 Van Eijk 2016, *supra* n. 82, pp. 72-96.

4. Increase legal aid and awareness programmes for women inside and outside Syria. Outside Syria, these efforts should work through existing networks of refugee populations, including in camps and community centres that provide refugee assistance. These programmes should engage and train Syrian women lawyers, which would serve the dual purpose of providing legal assistance to refugees and building the capacity of Syrian women lawyers outside Syria. Inside Syria, legal aid and awareness programmes may meet with resistance and therefore must take place in safe spaces for women. Both inside and outside Syria, these programmes should aim to help women understand their rights under existing laws. While women will still face barriers to exercising their rights, an educated female population is not only in line with Syrian tradition in the past, it is a pre-requisite to a more just and egalitarian future Syria. In addition, opportunities to address discrimination by male judges and the population in general should be considered in conjunction with awareness activities for women.

5. Utilise the great wealth of talent and skills within the Syrian refugee legal community to strengthen host-country legal support to Syrian refugee populations. Syrians outside Syria repeatedly voiced their frustration that few Syrians are hired to assist other Syrians. This is due to a host of factors, including resistance from host country governments and bar associations, the difficulty of registering Syrian-led organisations in neighbouring countries, and a lack of training on the financial systems required to receive donor funding. While there are challenges, it is important to utilise the large body of talent and skills in the refugee community, including lawyers and judges whose legal skills are currently languishing. To the extent possible, donors should assist judges and lawyers, particularly women judges and lawyers, to establish civil society organisations with the institutional and financial capacity to enable international funding, and use their leverage with host governments to enable these organisations to work in their own communities to address gaps in host-country legal support. However, recognising these barriers may be difficult to overcome, donors should pursue alternative, near-term solutions such as supporting networking of Syrian women lawyers and judges with host-country NGOs that may be more open to cooperation with their counterparts, such as women's legal organisations or documentations centres and projects in need of increased professional capacity.

Annex to the Assessment

2014 - 2011

Governorates	Total number of Women			Total number of Men			Total number of Lawyers		
	2014	2013	2011	2014	2013	2011	2014	2013	2011
Syria	5356	5107	4540	16644	18307	17147	22000	23422	21687
Damascus	2033	1935	1669	4186	4085	3817	6219	6020	5486
Aleppo	637	804	707	2365	3911	3655	2905	4715	4362
Homs	416	430	379	1458	1572	1549	1874	2002	1938
Tarsus	488	459	402	1280	1219	1107	1768	1678	1509
Latakia	342	312	240	1322	1250	1168	1664	1562	1408
Hama	196	186	156	1119	1105	1028	1315	1291	1184
Hasakah	114	106	107	665	687	699	779	793	806
Raqqah	58	54	47	578	562	817	136	616	564
Deir ez Zur	62	46	46	469	412	410	531	458	456

2010 - 2006

Governorates	Total number of Women			Total number of Men			Total number of Lawyers		
	2010	2007	2006	2010	2007	2006	2010	2007	2006
Syria	4033	2956	2680	16398	14042	13380	20428	16998	16060
Damascus	1544	1099	1022	3648	3207	3072	5192	4306	4094
Aleppo	648	519	482	3494	3033	2918	4142	2552	3400
Homs	356	291	259	1463	1319	1261	1819	1610	1520
Tarsus	371	256	222	1069	868	830	1440	1133	1052
Latakia	204	136	122	1095	872	833	1299	1008	956
Hama	136	110	100	982	865	805	1118	975	905
Hasakah	102	91	74	676	627	613	778	718	687
Raqqah	43	54	27	496	410	383	539	441	413
Deir ez Zur	41	36	23	288	353	327	429	389	370

ILAC is a worldwide consortium providing technical legal assistance to post-conflict countries.

Today, ILAC has 50 member organisations representing judges, prosecutors, lawyers and academics world wide.

ILAC Head Office

Signalistgatan 9, SE-169 72 Solna
Sweden

Phone: +46 8 545 714 20

Fax: +46 8 517 110 77

info@ilac.se

www.ilacnet.org