



# Seeking the Rule of Law in the Absence of the State:

Transitional Justice and Policing in  
Opposition-Controlled Syria Pt. I

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## Objectives of this Report

This report is the first of a three-part series focusing on the current status and lessons learned relating to transitional justice and policing initiatives in opposition-controlled Syria.

- **Part I** focuses on the effects of the departure of judicial and security elements of the Syrian state has had on conditions on the ground currently and on the nascent justice institutions that have emerged in this void (including levels of institutionalisation, Islamic law, and the legal systems currently being debated and trialed in some areas).
- **Part II** examines the variety of institutions and structures attempting to implement these various legal systems and practices and explores attempts to build a unity among this diverse mix.
- **Part III** explores the critical role of legal professionals in the various justice and security initiatives that have been attempted or are currently in place in areas outside of the control of the government, and examines the role of local governance organisations in such initiatives. In conclusion, Part III also provides a brief summary of lessons learned and recommendations for future efforts based upon these lessons.

Information in this paper is primarily drawn from interviews conducted between January 2013 and March 2014. It focuses in particular on cases from the Aleppo, Idlib and Dara'a governorates and alludes to some of the differences between these situations. It also refers to material from other governorates outside of government-control (Rif Damascus, Deir Ez-Zor, the three cantons of Rojava and areas of Raqqa) and those within it (where the state's increasing reliance on, and unwillingness or inability to control, local paramilitary actors<sup>1</sup> poses serious longer-term questions for the nature of administration's judicial and policing writ).<sup>2</sup> For further information or briefings on the material included in this report, please contact Integrity at [syria@integrityresearch.com](mailto:syria@integrityresearch.com).

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<sup>1</sup> Such as the National Defence Forces and popular committees.

<sup>2</sup> The more autocratic administration of the current president's father, Hafez al-Assad faced a similar problem with its own pro-regime paramilitary organisation. The original '*shabiha*' that emerged in 1980s Syria were given similar free reign to operate smuggling and drug rings with comparative freedom. The shabiha were known for fierce displays of pro-regime support and high-ranking military and administrative ties. However the state had its own serious problems with them, finding the level of corruption and autonomy so great that bringing them back under control became a conscious element of the economic liberalisation of Syria's state-run economy in the 1990s.

## Introduction

Civil wars over the past half-century have lasted on average ten years; more so during the Cold War period, or when they were multilateral, rather than bilateral, conflicts.<sup>3</sup> The conflict in Syria is now an internationalised multi-lateral civil war, in its third year. The extended stalemate in the political process, and the active backing for both the government and the opposition by multiple external parties do not suggest that the Syrian conflict will necessarily fare better than this average. The Syrian Government exerts ground control over as little as one-third of the country, yet local governance initiatives by the opposition remain for the most part only moderately influential. The government tactic of bombing, besieging and/ or starving areas into truces that are labeled “reconciliation”, in combination with foreign military reinforcements, has proved effective for the government. Such tactics are likely to increase in lieu of serious punitive measures by the international community, which currently appear unlikely. However it is not necessarily enough to retake the other two-thirds of the country. Most accounts of the two rounds of peace negotiations in Geneva considered them failed prior to commencing and increased diplomatic tensions between key conference sponsors – Russia and the United States – resulting from the recent Ukraine crisis, does not bode well for a third round should it occur at all.<sup>4</sup>

In a modern civic state the judiciary is usually understood as a branch of government; critical to the balance of powers whose imperative enables a police force, located in a state, with a monopoly on the use of force. None of these conditions exist in the areas outside of the control of the Syrian Government in Damascus. The internationally recognised representative of the opposition outside of Syria, the National Coalition (NC), has mainly followed, rather than led, the internal opposition. Inside Syria, there is no singular alternative. Armed opposition groups (AOGs) are organised into a variety of coalitions, none of them under the command of the external NC. Local administrative councils (LACs) exist in spite of significant challenges and although some have organised into relatively legitimate governorate-level structures, they are very local, ad hoc and concentrate mainly on relief activities due to a lack of funding. Police programs are strongest at sub-governorate levels but are often insufficient for the policing needs of towns, and where they exist are not necessarily linked to a court. They are also not necessarily linked to LACs and at times operate in competition (especially when funding is sparse or non-existent). Increasingly,

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<sup>3</sup> Fearon J and Laitin, D, “Ethnicity, Insurgency, and Civil War”, *American Political Science Review*, Vol 97, No 1, 2003.

<sup>4</sup> Both a French initiative to send both Syrian sides of the conflict before the International Criminal Court for possible prosecution of war crimes, and then of a UN Security Council resolution to give UNSC-2139 greater power under Section 7 of the UN Charter have been vetoed since.

there is little is left of the policing and justice institutions of the previous era to build upon, attributable in part to government tactics and the severe degradation of governance structures, particularly in judicial and policing service provision. Yet, with the reasonable possibility of another decade of war, and in the absence of a state, respondents clearly express the on-going desire for the rule of law. The nature of what this law should be, and how it is being enacted currently is the focus of these papers.

## **The Departure of the State: More than a Void**

When the state retreated from areas of former control, it did not simply leave a void; it departed with what was likened by some respondents to a “scorched earth” policy. Key civilian medical, judicial, communication, security, electrical, water, flour and diesel service providing infrastructure were targeted. This was the beginning of a series of tactics that disregarded traditional distinctions between combatants and civilians and instead target civilian institutions to ensure there would be regime rule or nothing.<sup>5</sup>

In addition to military and paramilitary attacks on opposition-controlled areas or on service infrastructure or providers, the state also cut salaries of police.<sup>6</sup> Furthermore, the government also released thousands of common criminals from state prisons. According to one legal source’s estimate, approximately 15,000 criminals have been released in the Aleppo Governorate so far as part of multiple state amnesties. These were presented formally as amnesties for political prisoners, yet very few “political cases” were actually freed. Indeed the misuse of the amnesties became so widely recognised it was even referenced in popular Ramadan TV series filmed in Damascus.

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<sup>5</sup> Further evidence of this approach is provided by the well-publicised banning entry of food; indiscriminate barrel bombing over heavily populated civilian areas; turning off water mains; targeting civilian infrastructure such as electricity generators but leaving apparent military targets like ISIS headquarters unscathed.

<sup>6</sup> Some other state employees (notably school teachers) in opposition-controlled territories maintained their salaries as long as they did not openly defect, even if it was widely known that they were not actually working.

## Emergent Justice Institutions

### Levels of Institutionalisation

The judicial and policing institutions that have emerged in the opposition-controlled areas of Syria reviewed in this report are largely local and ad hoc. There has been a proliferation of town or smaller level courts,<sup>7</sup> some mobile courts and a few multi-court networking initiatives.

Respondents report that a single town may have more than one local justice institution with overlapping mandates. IN Kafr Nabel and Saraqib (in Idlib) for example, there is a Shari'a Court, a Civil Magistrates Court, an LAC, a police force (ostensibly affiliated with the LAC) and a Security Committees (which acts as the police force for the Shari'a Court). Levels of institutionalisation vary but are overall moderate to low, with a few prominent and powerful exceptions. Evidence suggests that judicial institutions are concerned with the implementation of law across five levels, ranging from least controversial to highly politically sensitive.

- 1. Personal status or family law (e.g. marriages, divorces, etc.):** Prior to the current conflict, this was already the jurisdiction of the law of an individual's religion, and largely accordant with Shari'a under Syrian Law. This area remains relatively non-controversial to implement and is also not generally an issue of debate between secularists and Islamists, or legal professionals and non-professionals, inside Syria.
- 2. Laws regarding non-familial civilian disputes (e.g. petty theft, trade):** critical to returning citizens to a normal way of life.
- 3. Notary functions:** such as issuing drivers licenses, ID cards, certificates of ownership, commercial contracts.
- 4. Law regarding civil-military disputes is highly political:** because war entrepreneurs have used the rhetoric of resistance to benefit from the conflict (e.g.

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<sup>7</sup> For example, when interviewees were asked to identify the number of Shari'a courts in existence in Aleppo Governorate, estimates varied widely. One interviewee from the Free Aleppo Lawyers estimated that there were perhaps 400 'Shari'a courts' in Aleppo Governorate and that they were all tied to armed groups. Another interviewee estimated the number of Shari'a courts to be about 20; a third between 20-30; and a final National Coalition legal affairs official suggested that there are approximately 60 across the governorate. The difference in these estimates relate both to a lack of precise figures but also to a widespread lack of institutionalisation of courts resulting in an inability among the population to differentiate between a 'Shari'a court,' a brigade court or a brigade detention centre, since functionally there is often little difference between them. Indeed, respondents overwhelmingly stated that every Shari'a court was in some way affiliated with a brigade whilst at the same time some brigades themselves may have their own 'secret courts.' For example, the one operating in multiple townships in South Western Dara'a Governorate

through the expropriation of goods from traders or from individual homes).

- 5. Resolution of military-military disputes (highly political):** which ranges from distribution of the spoils of war (e.g. weapons taken from a conquered government arms store) to judging the members of an opposition armed group.

The majority of courts in opposition-controlled areas deal almost exclusively with the first three – least political – levels of the law. Limiting the sphere of action is a necessity to an operational context in which courts operate with little or no enforcement mechanisms. The institutions able to work in the latter two spheres (civil-military and military-military disputes) are comparatively few. Respondents suggest that these tend to be multiple brigade-backed courts, founded by Jubhat al-Nusra (JN) or the military tribunals of Islamic State in Iraq and the Levant (ISIS).<sup>8</sup> Although there are some signs of re-emerging court networks since the departure of most hard-line groups in the North-west of Syria, such groups are still notable for their disproportionate share of local influence and broader publicity.

## Islamic Law and its Instrumentalisation

Respondents suggest that funding from non-Islamist donor sources to opposition stakeholders inside Syria who are advocating for a civic state has been limited (particularly for secular-minded AOGs). This has paralleled a feeling of abandonment by such sources, poignantly exemplified by the change in protest slogans from the ubiquitous civic “One, one, one – the Syrian people are one!” (*wahid wahid wahid, ash-sha’ab al-souri wahid!*) to the more sombre and straight-forward “Oh Lord, we have no one but you!” (*ya Allah ma ‘anna ghairak ya Allah!*). At the same time, Muslim and Islamist sources of a variety of hues have stepped up their support. This is especially the case in regard to Islamist donor sources and the supply of arms. For both reasons, the later period of the conflict (broadly defined as the past two years) has witnessed a notable Islamisation, as well as instrumentalism of Islam.

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<sup>8</sup> The Islamic State of Iraq and al-Sham emerged in April 2013 as a merger between JN and the Islamic State of Iraq (ISI). Throughout summer 2013, ISIS established areas of control in key positions across northern and eastern Syria, especially near the Turkish border. Although ISIS did not have zones of control in Idlib as they did in other parts of Syria, they had areas of strong concentration, particularly in the north of the Governorate. In early 2014 several rebel coalitions dedicated to pushing ISIS out of opposition-held areas of Syria emerged across the north of Syria. In Idlib and western Aleppo, the newly formed Syrian Revolutionaries’ Front (SRF) as well as the Islamic Front led the fight against ISIS. At the time of writing ISIS has very limited presence in Idlib Governorate, as well as having lost some ground in Aleppo. However, the group has successfully carried out several assassinations of leaders of rival factions in several towns where they were previously active in opposition-controlled Idlib.

Given the significance of this trend, it is important to outline clearly what is meant by “Islamic Law” and its relation to the judicial systems operating in the areas outside of government control. Virtually all courts established to date use a variation of the label, “Shari’a Committee” as their official title. The handful that do not take such appellations argue that the law they wish to implement is anyway compatible with the Shari’a.<sup>9</sup>

## Legal Systems Under Debate

In areas currently beyond government control, the legal systems being implemented or under debate include most prominently:

1. Pre-Ba’athist Syrian Law using the Personal Status Code of 1953,
2. Unified Arab Law,
3. The Shari’a as unwritten law.

Syrian Law is most heavily defended by legal purists and judicial professionals outside of Syria and is done so largely on a theoretical level. Interviewees note that a handful of remaining Civil Magistrates Courts (employing the government seal) do still implement Syrian law on the ground, yet these are restricted in operations almost entirely to notary functions and are left untouched by rebels for this purpose. Individuals and especially armed groups who profess a Salafist outlook<sup>10</sup> are the main proponents of implementing the Shari’a

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<sup>9</sup> There are different sources of Islamic Law, but only five legal injunctions (the *hudud*) are available in a standard written form. A minimalist understanding of Islamic Law is usually implementation of the *hudud*, five specific punishments laid out in the Qur’an. They including cutting off hands for stealing, stoning for adultery. However mainstream Islamic thought has generally put such high standards of evidence or rational stringency of circumstances (demanding that state and society have reached a level of enrichment to make stealing logically unnecessary before a thief may have his hand cut off for stealing) as to the render the punishments practically nearly un-implementable. The second condition of note for the *hadd* punishments is that they can only be implemented in peacetime with a just government. Even most people setting up literalist Shari’a courts acknowledge that, given the state of war without a unique generally-agreed upon central government, the conditions to implement *hadd* punishments do not practically exist at this point. At the same time, respondents stress that much of the wanton violence (cutting off of heads, on-the-spot summary executions, reports of ISIS crucifixions most recently etc.) are carried out with little or no reference to the mainstream understanding of Shari’a at all. If they do refer to Islam as their source, they tend to employ questionable interpretations of who is an infidel (*kafir*) and who has the right to go about naming others an infidel (*takfir*). Thus if the *hadd* punishments are the basis for Islamic Law, then no one is implementing Shari’a Law currently, and if institutions are judged by their public declarations then are all implementing Shari’a. While such an argument is deliberately reductionist, it serves to underscore the overall point about the instrumentalisation of Islam in the conflict currently.

as unwritten law without any serious role for former legal or policing professionals. Practical professionals in mixed courts have been the main supporters of United Arab Law to date.

### Syrian Law

Frequently deemed secular, the Syrian Constitution that pre-dates the 1973 amendments of the new Syrian Ba'ath Constitution and names the Shari'a as "the primary source of legislation". In the current constitution, Article No. 2 names it as "one of the primary sources of the law". In both, personal status law is expressly given as the domain of the religious law of the religion of the person being judges (thus Muslim women can seek divorce from their husbands, Catholic couples must get an annulment from the Church, etc.).

### Unified Arab Law

United Arab Law (UAL) was drafted in 1985 by religious figures delegated by Arab League states and it cites the Shari'a as the source of its code. The draft code was never implemented in any Arab state however before its implementation in a Syrian court in Aleppo city: the United Judiciary Council (UJC). The UJC was formed by defected lawyers and judges who wanted to implement the old Syrian Law "as far as it did not contradict the Shari'a." To secure sign-on local brigades, the UJC agreed to make half of the judges on the Council religious figures (selected by the brigades) but pushed back on a demand to implement unwritten Shari'a. As it was written by government delegates, UAL contains a number of clauses of concern regarding punishments for people who insult the ruler of the country among others. Such clauses have been irrelevant to date and may well remain so, given that the UAL is always cited as 'an interim', rather than an ideal, code for Syria even by its Syrian advocates.

### The Shari'a as an Unwritten Code

A few members of the opposite inside Syria have publically argued that Syrian legal institutions were among the corrupt pillars of the Assad regime. They suggest that persisting with the old Syrian code is to continue injustice and they therefore call for judicial reform. Others go further, noting that the vast majority of Syrians are Muslim and so the law of the Qur'an, administered in its "purest" form as unwritten law, is a logical and just alternative. Groups arguing this view reference 'the Shari'a' as an unwritten code as the traditional

manner of implementing Islamic jurisprudence.<sup>11</sup> However, respondents note that even this choice of law encompasses a range of ideological stances.

On a positive level, the incorporation of Islamic Law has enabled the broad use of '*sulh*' (the Islamic concept of reconciliation) involving a mediated solution between two parties. Where full investigation and just punitive action is simply not possible, due to lack of implementing mechanisms, the interim use of *sulh* has been praised by even legal professionals as an important interim justice mechanism with the genuine interest of the population at heart. Evidence from a central Idlibi court and one in the Jaydour area of Dara'a suggests that up to 80 per cent of cases are being resolved by *sulh*, indicating that it is not irregular and potentially reflects an innovative method in a context of few ready solutions.

However, the specific interests of armed groups are also often highly intertwined with the instrumentalisation of Islam and Islamic Law. Showing devotion to certain understandings of Islam through public statements (e.g. growing one's beard, renaming a battalion) has been central to attracting funding from some donor sources to date. In such cases, adherence to Islam is a source of legitimisation as well as the acquisition of financial influence, albeit directed at specific, and not necessarily Syrian, audiences.

The demand for 'Shari'a' in this sense can be understood more as a means of claiming legitimate authority for an armed brigade in the context of a multitude of other competing claims. Here the 'sheikh' represents the local battalion and advances their interests through recourse to 'Shari'a' as the basis of the legitimacy for their claim of jurisdiction, whether or not the local population finds the justification entirely convincing or just. In such cases, a local armed group's demand for 'Shari'a' can be understood as related less to 'Shari'a' being a coherent and fully codified set of laws they wish to see implemented, and more a means by which AOGs advance individual interests with a degree of legitimacy.

Evidence of this can be found in one modality of Shari'a Courts that ties its formation together with an armed group, and in which judges are typically men of religious background (though not usually fighters) who are appointed directly by the local armed group. In such cases, the court may act as little more than a proxy for the brigade, providing them with some legitimacy, rationale or protection from other courts in an area. In other cases, the Shari'a committee may actually be the executive arm (or at least military tribunal) of an armed group. Notably in a number of powerful ISIS Shari'a committees, the apparent executive of the court appears to be a military commander rather than a religious authority.

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<sup>11</sup> Historically this definition has been qualified by the demand that unwritten law be administered by a highly educated religious authority, a condition which respondents suggest does not necessarily apply to all, or even most, of the Shari'a courts in Syria today.

These two factors help to explain the religious rhetoric of a large number of Salafist as well as other armed groups.

In contrast to this trend however, some judicial stakeholders argue that having decisions meted out by religious individuals with no legal training and probably only intermediate religious training (often little more than memorisation of the Qur'an) is not actually Islamic law. Islamic law by this interpretation would require highly educated Islamic scholars. The stakeholders who offer this critique include defected judges, judicial purists professionals, or others demanding a civil state.<sup>12</sup> They call for the implementation of Syrian Law in so far as it does not contradict the Shari'a and note that the implementation of Shari'a by individuals without adequate training is unprofessional, lacks due process, and at worst, can serve as a veneer of legality for direct rule by militias, laying the foundations for new dictatorship.

Additionally, such stakeholders also suggest that the removal of Syrian Law (whether under the banner of unwritten Shari'a or a different code) threatens the geographic integrity of any future Syrian state by entrenching borders around statelets according to the geographic reach of the law they implement. Even if no one is implementing *hadd* punishments or infringing on the rights of women and minorities in the name of religion currently, the consolidation of a particular legal code may set a precedent for future change. Such stakeholders do recognise the flaws in Syrian law and prioritise legal reform and a number are already directly involved in preparatory work for such reform. However, they emphasise that in the interim, maintaining Syrian Law is crucial for maintaining a rule of law; for keeping legal professionals (lawyers and judges) in charge of the legal system; and for ensuring no lasting legal reforms are undertaken until such a time as there is a national parliament to approve changes for the whole country.<sup>13</sup>

END OF PART ONE

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<sup>12</sup> It should be noted that such stakeholders are frequently observant Muslims who maintain a secular political outlook.

<sup>13</sup> Interviewees stressed this point, noting that any changes made on the ground now are likely to remain, whether or not intended as interim solutions.



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