



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

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

September 2014

Reference

20140903LON01

Acknowledgement

Front cover photograph taken by Anthony Ellis.

This report has been written by Integrity Research and Consultancy.

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Objectives of this report

This report is the third in 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 actors¹ poses serious longer-term questions for the nature of administration's judicial and policing writ²). For further information or briefings on the material included in this report, please contact Integrity at syria@integrityresearch.com.

¹ Such as the National Defence Forces and popular committees.

² 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.

The critical role of legal professionals

Former legal professionals in Syria have played a limited but important role in the various judicial organisations that have emerged to date. This role could be usefully expanded in both the current period and in the development of the post-conflict state (whatever form this may take) through support to professional unions, as well as in financial and political support for the participation of professionals in courts inside Syria.

Successful political transitions elsewhere commonly feature common to balance the removal of individuals and systems involved in past injustices, and the preservation of enough of the existing system so as to prevent chaos and maintain social cohesion. South Africa following Apartheid provides an important example of this balance, particularly as it relates to the rule of law in political transition. Rather than extra-legal revolutionary justice, South Africa's Truth and Reconciliation Commission offered amnesties in return for confessions from both opposition activists and members of the security services of the old regime. Similarly, minority and property rights were enshrined in the new constitution even though this meant that many conditions of economic inequality were left unaddressed. Once elected, President Nelson Mandela sent a clear message with the choice of the former head of the apartheid system as his vice-president.

The process of lustration³ in Eastern Europe and notably Poland also provides valuable insight into the issues of lustration relevant to the role of legal professionals in Syria. In this case, the departure of large numbers of academics and middle-ranking government employees (many of whom had been forced to Communist party members) would have paralysed state institutions, left a significant gap in institutional and technocratic knowledge, and potentially encouraged the pursuit of personal political vendettas. These negative outcomes eventuated as a result of Iraq's extensive and highly politicised 'de-Ba'athification' process after 2003. Such cases indicate that the more sustainable and stable solution in the long run, is often the more gradualist and less 'revolutionary' one; and may be at odds with what is initially desired by those who have been actively fighting or who have lost most.

To maintain social cohesion and the on-going functioning of systems of governance, the role of existing legal professionals is crucial. Before the war, Syria had a substantial and educated, middle class working in the legal system. The legal system was corrupt (even a death sentence could be overturned with a significant bribe or well-placed personal connections), and the security apparatus involved frequent use of torture. Yet, respondents note that not all of the legal class was involved in such corruption or abuses, as demonstrated particularly, by the substantial number of former legal professionals who risked their careers and lives to lead

³ This report refers to lustration to mean the process of removing and/or barring officials or collaborators of previous regime from positions of influence within new, official state structures.

protests in the early stages of the conflict.

Currently many court workers (legal or religious) receive little or no education or training, a situation that is being made worse by the extended conflict. This growing and considerable knowledge gap at the professional level has ramifications for the future. Evidence suggests that the professional class is increasingly leaving the country as refugees, and once departed and established elsewhere, are unlikely to return. This is particularly the case if the post-conflict situation exposes family members to violence or critical food insecurity. Such fears are reasonable given recent regional experience. In Iraq in a comparable period in the civil war of the mid-2000s (albeit with lower levels of monthly violence compared to Syria; no arbitrary aerial bombing; and a semi-functional central state) leaders were so desperate to induce the return of professionals that they offered them guaranteed paid positions and the right to carry handguns for their personal protection. However, personal security concerns were such that little notable increase in returns was recorded.

In Syria, notably in the North, unions of legal professionals have played a critical role in attempting to maintain a minimal degree of administrative and professional discipline. This has been most evident in record keeping, administering law in emergent judicial institutions, and significantly, acting as persistent advocates for the use of a written legal code rather than arbitrary implementation. Unions of judges, such as the Free Independent Judicial Council and the Free Judicial Council have remained based in border areas, generally for financial reasons and for reasons of personal security.⁴ After the departure of ISIS from areas in the north, some judges have returned to certain areas in Idlib and Dara'a. A number of courts also include judges who are pushing against current political and military limits within conflict areas by attempting to pursue civilian-military cases at risk to their own safety. Judges unions have also been involved in violations documentation and, as mentioned in Part I of this series, research on reforms of Syrian Law, necessary for a post-conflict legal code. Despite this crucial role, such groups have received little outside funding for their activities, either as individuals or institutions.

⁴ One judge, working in Idlib to expand the role of judicial professionals in interim legal systems, noted "Do you think I tell anyone when I am inside that I am a (defected) judge? I would be killed". Two other respondents, both religious figures (one of whom is working as a judge in a mixed court in the South of the province) were divided: one noted that professionals judges have left because there are no more salaries. The second interviewees stated: "Yes, salaries are an issue, but also it is hard for people to untie their associations the heads of the regime's legal system, its law, and the corruption of the regime itself. Common people, when the regime fell, thought it was inappropriate to continue with the old law, and the law of the Qur'an seemed like an obvious alternative. After the experience with ISIS and even JN, and the Salafists though, common people are more suspicious. I myself am a man of with a religious training not judicial training. I can therefore handle marriages, divorces, and mediation but we desperately need real (professional, defected) judges for the other cases."

Local governance in Syria and its role in security and justice

The role of local administrative councils (LACs) and governorate councils in security and justice has thus far been modest. As detailed in Part I, policing or court functions in many areas have been up separately of local councils. Yet, where LACs have participated in politicking or justice initiatives, their role has been highly constructive and could be usefully expanded.

The role of local governance institutions in security and justice work to date can be divided into two categories. Firstly, some local governance institutions have been directly involved in the foundation of courts and police, or in funding such. For example, in Idlib some LACs participated in the foundation of a police force (made up primarily of defected officers) for their town. In Saraqib, the LAC played an important role in encouraging the local court to take on more local sheikhs after the military situation changed. Major funding shortages within LACs have also been a key impediment to the expansion of this useful security and justice role. In Aleppo, the predecessor to the Aleppo Governorate Council (the Aleppo Revolutionary Council) attempted to establish a judicial police of up to 1,500 defected police officers. However, the Revolutionary Council lacked funding to maintain the project and also subsequently encountered tensions between more technocrat and non-technocrat forces over the selection of the head of the police force.⁵

Secondly, LACs have played a coordination role with existing forces. In the case of the Free Aleppo Police (FAP),⁶ local governance organisations up to the governorate level have assumed a useful guidance and oversight role, even though these governance organisations were not involved in the establishment of the FAP. For instance, the Aleppo Governorate Council became involved with, and sought to involve smaller local LACs, in coordination, monitoring, and even vetting of elements of the Free Aleppo Police. Aleppo Governorate Council (GC) Decision No. 56, relating to the leadership of FAP stations, notes that they must be members of the local LAC. Another Aleppo GC notice requires LACs to submit bi-monthly

⁵ According to a source involved in the initiative, secular opposition members proposed a defected and ranking police officer (with a relatively clean record) to head the force. However the project was weakened by non-professional revolutionary forces notably a leader of a local battalion who insisted on filling the leadership of the new police force with brigade members with no prior professional policing experience, military qualifications or administrative skills.

⁶ The program is a pilot project with a professional officer at its head and a balance between new and professional recruits. The FAP was formed in September 2012 as a joint initiative between the Aleppo Transitional Council and the SNC with Shalaf as head. Shalaf toured the governorate with lawyers and defected police officers to meet local councils, coordinating with them to pick volunteers. According to Shalaf, there was no funding whatsoever and any weapons were either given as donations by LACs, FSA groups, or were weapons defected police officers had kept with them. The force was successful within its self-imposed limits (largely avoiding dealing with military issues) especially in parts of the *countryside* surrounding Aleppo city where the FSA had strong control, and overall does best in areas where armed groups, such as the nationalist and moderate Islamist Tawheed have played a constructive role. Underscoring the importance of the tolerance, or assistance, of local opposition brigades in the areas in which the FAP, is a necessary substitute for a steady support for equipment and training.

reports on the efficacy of the FAP stations and LAC involvement in FAP salary disbursement.

In a mature state, policing and judiciary functions are linked to state and local governance institutions by chains of command and state revenue distribution mechanisms. Even in situations of nascent institutional development, such a link is frequently natural and positive. In light of the current conflict environment in Syria, and in the absence of extractive tax mechanisms and extremely limited local governance budgets (which are prioritising relief activities), the security and justice achievements LACs are particularly significant.

Of the three levels of governance institutions that have emerged as a result of the conflict, respondents suggest that those which are most closely linked to the interior and which have the longest established record of service provision are the most legitimate. Governorate Councils (GC) generally emerged after LACs, and varied between those that were established inside Syria and those established outside; a dynamic that has left many GCs dependent upon support or tolerance of proximate border authorities for their operation. A range of other factors have also limited the role that GCs have played in the provision of justice and security services or in the organisations that deliver these services. The Idlib Governorate Council has overstayed the mandate laid out in its own bylaws by longer than its whole first term in office, extending into its second and now third six-month term without new elections. Likewise its only two visible programs have been participation in a polio campaign (run almost entirely by the Assistance Coordination Unit and which was a national, rather than local, initiative). By contrast the Aleppo GC not only held elections for its second term, but also moved from Gaziantep, Turkey to Aleppo itself. The Aleppo GC also managed to increase the participation of technocrats in its second session, a marked success in light of the fact that voting took place under government barrel bombing and heated anti-ISIS battles. The Dara'a GC stands between the two, hampered by a controversial election process (including a preparatory committee that was allowed to elect themselves into the executive committee) which facilitated the overwhelming influence of the institution by individuals from one particular ideological background. On the other hand it has helped to distribute a considerable amount of relief aid, which is arguably as important an element of success as its institutional development.⁷

The National Coalition, based in Istanbul, have to date followed more than led the internal opposition. The National Coalition has no practical control over any aspect of the armed opposition movement inside Syria and does not provide significant levels of service to populations. The divide between the NC's credentials as opposition and as administration is partly attributable to the absolute ban on any form of political organisation imposed by the two Assad governments. However as the conflict enters its fourth year, the lack of organisation is

⁷ For more detail on the Dara'a Governorate Council and the status of local governance in Dara'a, see *Integrity Research Summary Report: Local Governance in Dara'a*, 2014.

proving to have increasingly adverse affects, leading to the frequent critique by other members of the opposition of the NC as a “hotel opposition”, insufficiently representative of the interior.

Given this governance situation, respondents suggest that LACs have both had the strongest record of impact and appear as the most legitimate partner for future courts or police initiatives. Moreover, Syrians of all political backgrounds recognise that the current political and military division of the opposition has been a major factor contributing to the fragmentation of foreign donor funding to individuals rather than institutions. As such, many respondents are concerned that this fragmentation is likely to reoccur in the justice sector. For new institutions to be sustainable they require strong links of with nascent governance institutions, particularly LACs. The higher national-level institutions, such as the NC or the Interim Government, remain new and external to many Syrians in country and are some distance from the level of detailed, and necessarily contextualised, local decision making. Even so, the symbolic sign-off provided by higher-level organisations is regarded as valuable by some respondents in establishing a degree of respect and coherence for Syrian sovereignty that may support future institutionalisation. Evidence suggests that successful justice programmes will need to have a practical location in institutions closer to the interior, most significantly, LACs. In the middle are the Governorate Councils, elemental to the institutionalisation of justice in the opposition-controlled areas, but also widely varying in capacity and requiring institutional development themselves before they are likely to play an effective role in policing and justice efforts.

Conclusions and lessons learned

Justice and security initiatives require the tolerance of local armed groups

Evidence from interviewees makes clear that acquiring the tolerance of armed groups in the area is fundamental to the success of any policing and justice initiatives. This is unsurprising and efforts to facilitate such tolerance are natural, given that the initiatives thus far outlined in this series, have implementation capacity (training, institutional/legal frameworks, human resources, monopoly control over use of forces etc), far below that of street police. Yet these forces are operating in an active war zone, often in areas without any kind of functioning state. Securing the cooperation, buy-in, or at least tolerance of powerful actors such as local armed groups is therefore essential.

Selection of police officers needs to be done with significant care

Evidence suggests that police officers proposed for district or governorate-level policing programs have sometimes lacked local credentials and legitimacy. Unless these officers are appointed locally, there is a risk they will be unable to navigate the complex political geography of an area and will get only minimal support at best from local stakeholders.

Link security and justice programmes with nascent governance organisations

The above section notes the need for partnerships with legitimate nascent governance institutions. Higher, national-level institutions such as the NC and Interim Government remain new and external to many Syrians, and often lack the tools to make effective assessments of the needs of their constituents or effective interventions. Yet their sign-off is useful to establishing a degree of respect for Syrian sovereignty that would enable future institutionalisation.

Local administrations can play a stronger role in security and justice initiatives

Evidence suggests that where effective Governorate Councils and LACs exist, they have been ideal partners for the daily implementation challenges of local justice and policing initiatives. Working in the interior and largely selected through legitimate processes, some such organisations have demonstrated the knowledge and local ties that national level institutions are yet to acquire. Where Governorate Councils have weaker capacity, it is particularly important that LACs be integrated into policing programs. LACs would ideally be integrated into regular functioning of policing programs through, for example, having their financial offices involved in court payroll management. This approach would establish the practice of elected civilian oversight of police and courts. At the same time, involvement in another element of local service provision, such as policing, helps to reinforce the legitimacy of local governance institutions. The same is true at the governorate level, where initiating governorate-wide attempts at judicial or policing programmes in areas with existing and relatively functional local governance, and the pairing of such programs with GCs, is likely to make such initiatives more accountable.

Building capacity through intensive training is critical

The need for training is two-fold: Firstly, given the operating environment and the reputation of Syrian police forces before the Syrian uprising, defected officers that may be part of a new force, will need dedicated training. Secondly, new volunteers with no previous training or skills in policing will require different training approaches. Any nascent police program will need a considerable amount of differently calibrated training in up-to-date curricula and methods to ensure they maintain operational coherence and standards to achieve the training goals of these different elements of potential police force.

Supporting a professional judicial partner

A police force without oversight, or lacking institutional checks and balances by other branches of government, will potentially lay the foundations for a police state or statelets. Support to preserve or increase professional elements in courts, in tandem with policing initiatives, is critical for sustainable and holistic support for the emerging justice system. Evidence suggests that many lawyers are still present in Syria. Likewise, although many have fled, respondents note that some active judges remain. One way to support them could be through salary payments. These professionals can act as intermediaries with local police forces given their advanced knowledge of relevant technical tasks including the writing of arrest warrants, codes of conduct and other fundamental administrative functions.



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