CHAPTER 7

Establishing the Rule of Law and the Independence of the Judiciary

The judiciary is a basic branch of the modern state, alongside the legislative and executive branches. The raison d'être of the judiciary is to provide justice and equality before the law to all citizens, to decide on their conflicts accordingly, and to administer the proper penalties when laws are broken.[1] Thus, any deflection in its basic principles of independence, impartiality, and integrity will necessarily mean that the judiciary is unable to fulfill its purpose. Hence, it is plausible that a fair, independent, and impartial judicial authority is integral to the very existence of a state, and by extension to its people and to full respect for the rule of law.

Syria has remained under a state of emergency for almost half a century, the longest continuous period of emergency in history. This state of emergency has destroyed the foundations of the Syrian judiciary, reducing it to a tool in the hands of the executive authority. According to Legislative Decree No. 51 passed on December 22, 1962 (Syrian Emergency Law), a state of emergency and martial law was to be carried out in Syria. This was announced according to the military order issued by the National Council of the Revolutionary Command No. 2 on March 8, 1963. The order declared that the prime minister would be appointed as military ruler, with the minister of the interior as his deputy. The state of emergency remained in force until 2012. When the peaceful demonstrations that demanded the fall of the Assad regime began in 2011, as an attempt to defuse popular unrest, the Syrian government brought the state of emergency to an end (among other procedures). However, even after the rhetorical end to emergency law in Syria, the executive authority and the security forces continued to kill peaceful protesters, stripping this gesture of any perceived sincerity.

The 1973 constitution proclaims Syria as a democratic, popular, socialist, and sovereign state.[2] Despite the fact that the constitution explicitly recognizes the principle of the separation of powers, the unconstitutional, extended state of emergency and emergency law gives a wide range of powers to the executive authorities, the military governor, and various security services delegated by the military governor and restricts a wide range of human rights, including serious infringements of the independence of the judiciary. This law, and its implications, reduce the Syrian judiciary to a tool for the executive branch, and deprive the Syrian justice system of the basic tenets of judicial integrity: independence, integrity,

and impartiality. Emergency law has thus hindered the judiciary from performing its main task: providing justice to all Syrian citizens.

The International Covenant on Civil and Political Rights—which was released in 1966, was ratified by Syria in 1968, and came into force in 1979—determines the rights whose violation necessitates the intervention of a judicial, administrative, or legislative authority and ensures that the designated authority shall implement the issued verdicts on behalf of the interests of the aggrieved.[3] Although this covenant allows the state party to take measures derogating from their obligations in certain cases, it is expressly stipulated in Article IV, to take these measures in cases of emergency that "threaten the nation and the existence of which is officially proclaimed . . . and strictly required by the exigencies of the situation . . . and that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, color, sex, language, religion or social origin."

The Basic Principles on the Independence of the Judiciarcy were released in Montreal in 1983, and endorsed by the UN General Assembly in 1985.[4] The articles of the declaration regulate several matters pertaining to the judiciary, so as to ensure that it will fulfill its purpose. The declaration stipulates these regulations:

1. The independence of the judiciary shall be guaranteed by the state and enshrined in the constitution or the law of the country. It is the duty of all governmental and nongovernmental institutions to respect and observe the independence of the judiciary.
2. The members of the judiciary shall decide matters brought before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.
3. The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence, as defined by the law.
4. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.
5. Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.
6. The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.
7. It is the duty of each member state to provide adequate resources to enable the judiciary to properly perform its functions.
8. In accordance with the United Nations' Universal Declaration of Human Rights, the members of the judiciary are, like other citizens, entitled to freedom of expression, belief, association, and assembly—provided, however, that in exercising such rights, judges shall always conduct themselves in such a manner as to preserve the dignity

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of their office and the impartiality and independence of the judiciary.[5]

9. Judges shall be free to form and join associations of judges or other organizations to represent their interests, to promote their professional training, and to protect their judicial independence.
10. Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives. In the selection of judges, there shall be no discrimination against a person on the grounds of race, color, sex, religion, political or other opinion, national or social origin, property, birth, or status. Only the requirement that a candidate for judicial office must be a national of the country concerned shall not be considered discriminatory.
11. The terms of office of judges—including their independence, security, adequate remuneration, conditions of service, pensions, and age of retirement—shall be adequately secured by law.
12. Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiration of their term of office, where such exists.
13. Promotion of judges, wherever such a system exists, should be based on objective factors, in particular ability, integrity, and experience.
14. The assignment of cases to judges within the court to which they belong is an internal matter of judicial administration.
15. The judiciary shall be bound by professional secrecy with regard to their deliberations and to confidential information acquired in the course of their duties other than in public proceedings, and shall not be compelled to testify on such matters.
16. Without prejudice to any disciplinary procedure or to any right of appeal or to compensation from the state, in accordance with national law, judges should enjoy personal immunity from civil suits for monetary damages for improper acts or omissions in the exercise of their judicial functions.
17. A charge or complaint made against a judge in his or her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the right to a fair hearing. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge.
18. Judges shall be subject to suspension or removal only for reasons of incapacity or behavior that renders them unfit to perform their duties.
19. All disciplinary, suspension, or removal proceedings shall be determined in accordance with established standards of judicial conduct.
20. Decisions in disciplinary, suspension, or removal proceedings should be subject to an independent review. This principle may not apply to the decisions of the highest court and those of the legislature in impeachment or similar proceedings.[6]

JUDICIAL AUTHORITY IN SYRIA DURING THE RULE OF AL-ASSAD

The Theoretical Basis for Judicial Authority

The Permanent Constitution of the Arab Republic of Syria was adopted on March 13, 1973, and remained in force until 2012, when Bashar al-Assad passed a new constitution. The 2012 constitution does not differ greatly from the previous one, particularly with regard to the role of the judiciary and the ruling political system. Article 25 of the Constitution of 1973 states that the "rule of law is a fundamental principle in the society and the State." Article 50 of the 2012 constitution declares that "all citizens are equal before the law in rights and duties and the rule of law is the basis of governance in the state." Furthermore, the "right to litigate and conduct remedies and defense before the judiciary is safeguarded by the law" (Article 28 of the 1973 Constitution and Article 51 of the Constitution of 2012).

The third chapters of the 1973 and 2012 constitutions are virtually identical. Articles 131 through 148 of the 1973 constitution (articles 132–149 of the 2012 constitution) divide the judiciary into two sections.

1. Public prosecution: According to articles 131 through 138, the judicial authority is independent. The president of the republic guarantees this independence with the assistance of the Supreme Judicial Council, which is headed by the president. The law defines its composition, powers, and its internal operating procedures.

The judges are independent and subject to no authority except that of the law. The honor, conscience, and impartiality of judges are guarantees of public rights and freedoms. Sentences are issued in the name of the Arab People of Syria. The law organizes the judicial system, along with its categories, types, and grades of judges. It also defines the regulations pertaining to the jurisdiction of different courts, as well as the terms of appointment, promotion, transfer, discipline, and removal of judges. As for the Public Prosecution, it is a singular juridical institution headed by the minister of justice. The law organizes its functions and powers.

Alongside these judicial institutions, The Council of State exercises administrative jurisdiction. The law defines the terms of appointment, promotion, discipline, and removal of its judges.

2. The Supreme Constitutional Court: Described in articles 139–48, it is comprised five members, of whom one will be the president, and all of whom are appointed by the president of the republic by decree (under the 2012 constitution, the number of members of the constitutional court was expanded to seven). It is not permissible to combine the membership of the Supreme Constitutional Court with a ministerial post or membership in the People's Assembly. The law also defines other functions that cannot be combined with court membership.

The term of membership of the Supreme Constitutional Court is four years, subject to renewal. Further, members of the Supreme Constitutional Court cannot be removed from court membership except in accordance with the provisions of the law.

Before assuming their duty, the president and members of the Supreme Constitutional Court take an oath before the president of the republic in the presence of the speaker of the People's Assembly.

The Supreme Constitutional Court determines the validity of the special appeals regarding the election of the members of the People's Assembly, to which it submits a report on its findings. The Supreme Constitutional Court looks into and decides on the constitutionality of laws, in accordance with the following:

1. If the president of the republic or a quarter of the People's Assembly members decide to challenge the constitutionality of a law before its promulgation, the promulgation of such law is suspended until the court makes a decision on it within fifteen days from the date the appeal was filed with it. If the law is of an urgent nature, the Supreme Constitutional Court must make a decision within seven days.
2. If a quarter of the members of the People's Assembly object to the constitutionality of a legislative decree within fifteen days of the date of the assembly session, the Supreme Constitutional Court must decide on it within fifteen days from the date the objection was filed with it.
3. If the Supreme Constitutional Court decide that a law or a decree is contrary to the Constitution, whatever is contrary to the text of the Constitution is considered null and void with retroactive effect and has no consequence.

The Supreme Constitutional Court has no right to look into laws that the president of the republic submits to a public referendum and are approved by the people. At the request of the president of the republic, it gives its opinion on the constitutionality of bills and legislative decrees and the legality of draft decrees. The law determines the procedure for hearing and adjudicating on matters coming under the jurisdiction of the Supreme Constitutional Court. It also defines the court staff and the qualifications of its members, and it prescribes their salaries, immunities, privileges, and responsibilities.

Official Bodies of the Judiciary

Constitutional prosecution. Represented by the Supreme Constitutional Court, described above in this chapter.

Public prosecution. Judicial Authority Law was issued based on Article 135 of the constitution:[7] "The law organizes the judicial system along with its categories, types, and grades of judges. It also defines the regulations pertaining to the jurisdiction in the different courts" to regulate the functions of the justice system and its relation to the Ministry of Justice. According to this law, the Ministry of Justice oversees the judiciary, as is illustrated throughout this chapter.

Ministry of Justice: Headed by the minister of justice, who holds the powers pertaining to the ministry and is the highest authority for matters of administration, supervision, and overseeing judicial functions.

Audit Department: Its function is to audit judges and prosecutors and other judicial departments. It is composed of a president (chairman of chamber) and six counselors. They are appointed by the minister of justice according to the Supreme Judicial Counsel's recommendation. The minister of justice is in charge of the judicial audit district charter, after consultation with the Supreme Judicial Council. Judges are directly informed of findings pertaining to their work, and audit judges report to the minister of justice and the president of the Supreme Judicial Council.

Article 15 of the Judicial Authority Law delineates the powers of the auditors, listed hereunder because of its direct involvement with judges, and shows the level of interference of executive authorities (e.g., the Ministry of Justice) in judicial matters.

1. Entering judicial departments.
2. Accessing records and files of cases before the courts.
3. Deliberating with judges and law clerks on matters under audit pertaining to their work, and questioning them in writing on these matters to which they must respond.
4. Accepting complaints and investigating them and calling involved persons for testimony when applicable.
5. Recommending suspension of judges and their referral to the Supreme Judicial Council.
6. Suspending law clerks in cases deemed severe by the audit judge, withstanding that the audit judge must inform their hiring authority of the aforementioned suspension.
7. The suspension is void if no written confirmation was issued by the hiring authority within fifteen days.

Supreme Judicial Council: Article 65 describes the organization of the Supreme Judicial Council. The council is appointed by the president of the republic, delegating the minister of justice to head the council. The members are the president of the Court of Cassation and his two senior deputies, along with the deputy minister of justice, the general attorney, and the head of the judicial audit district. The council's sessions are closed, and a majority vote is required to pass decisions. A decree by the minister of justice (Article 66, 1, 2) implements decisions pertaining to appointing, promoting, transferring, reprimanding, suspending, retiring, and accepting resignations of judges. According to Article 67, the Supreme Judicial Council has the following powers:

1. Appointing, promoting, reprimanding, and dismissing judges by recommendation of the minister of justice or the chairman of the Supreme Judicial Council or three of its members.
2. Retiring judges and accepting their resignations.
3. Safeguarding the independence of the judiciary.
4. Recommending draft laws pertaining to the judiciary, the immunity of judges, and the basis for their appointment, promotion, transfer, reprimanding, and retiring.
5. Approve vacations longer than one month for judges.
6. The head of the council approves leaves of a duration less than one month.

Exceptional judicial systems. Despite the absence of a clear constitutional text allowing for establishing exceptional tribunals, their number is equal to, if not

greater than, the number of regular courts in Syria. Constitutional legislation authorities have categorically censured military jurisdiction and dubbed it an abnormal body inconsistent with the existence of a judicial authority. Exceptional tribunals are inconsistent with democratic principles that separate military and civilian rule, and consequently separate civilian and military jurisdiction, which clearly does not allow for trying civilians before military tribunals.[8] Article 135 of the constitution states: "The law organizes the judicial system along with its categories, types, and grades of judges. It also defines the regulations pertaining to the jurisdiction in the different courts." Exceptional tribunals detract from the judicial authority that should have complete jurisdiction over all legal matters.[9] Exceptional judicial entities were established by legislative decrees, illustrated as follows:

Military jurisdiction is one of the forms of exceptional judicial systems in Syria and is affiliated with the ministry of defense, as opposed to a constitutional judicial authority. This clearly violates the principle of equality before a sole judicial authority. Military jurisdiction was established by the penal code and fundamentals of military courts, which was issued in 1950 by Legislative Decree No. 61.[10]

The Supreme Court of State Security was established by legislative Decree No. 47 on March 28, 1968. Its formation was based on the provisions of Decree No. 2 by the transient national command of the Ba'ath Party of February 25, 1966, and on cabinet decree No. 47, dated March 20, 1968.

Article 5 of the above-mentioned decree replaces the exceptional military tribunal established by Decree No. 6, dated January 7, 1965, with the Supreme Court of State Security. It can be contended that if military jurisdiction is an exception to judicial authority, then the Supreme Court of State Security is an exception to the exception. Given that Article 1 of Decree No. 47 established the court by a martial order (in effect, due to the state of emergency), and, given that the state of emergency is unconstitutional, then all decrees issued by the martial governor are null and void and inconsistent with the law and the constitution, thus rendering the Supreme Court of State Security unconstitutional and ineligible to hold trials and issue sentences. The Damascus Center for Human Rights Studies issued a report titled *Justice in Exceptional Jurisdiction? The Supreme Court of State Security,* which detailed the structure, powers, and procedures of this court.[11]

Military field courts were established by Legislative Decree No. 109 in 1968, Article 1 of which states that one or several courts are established under the name "military field courts," with jurisdiction over offenses pertaining to the military committed during war, military operations, or in affiliation with the enemy. The court's jurisdiction has been in effect since June 1967. Article 5 allows for this court to bypass standing laws, and, according to Article 6, its decisions are final and not subject to challenge or appeal. Death sentences must be approved by the president of the republic. Other sentences are approved by the minister of defense.[12] These courts played a major rule in the conflict between the government and the Muslim Brotherhood in the 1980s. Several trials were held in the cities of Hama, Idlib, Jisr Ash-Shugur, and Palmyra's infamous prison, Tadmour. In these examples, death sentences were issued collectively and carried out immediately with the approval of neither the president nor the minister of defense.[13]

Military tribunals: Other than the above-mentioned exceptional courts, Legislative Decree 87, passed on October 1, 1972, regulates the establishment of military tribunals in special circumstances. Accordingly, the deputy commander in chief, branch commanders, brigade commanders, and commanders of besieged units may form military tribunals with jurisdiction over crimes pertaining to the military both inside and outside Syria. Such a tribunal comprises three officers, one of whom serves as head of the court. These courts do not require general prosecution or investigation. The military personnel are referred to said court by a military order from the entity that established the court. This court is not bound by the military penal code or standing laws. Its sentences are issued independently and are implemented after approval of the establishing military body.[14]

The Economic Security Court was established with jurisdiction over crimes and misdemeanors stipulated in Economic Penal Code No. 66/37 and its

amendments. This court was annulled by Legislative Decree No. 16, dated 2004-2-14, and its cases were transferred to the competent legal authority.

Judicial committees may be formed for specific cases or subjects, like the committee for specifying agricultural workers' wages in Damascus, the committee of layoffs, the disambiguation committee, and the realty committee.

THE INDEPENDENCE OF THE JUDICIARY UNDER THE RULE OF AL-ASSAD

On the Separation of Powers

Several Syrian constitutions endorsed the principle of the separation of powers, including the constitutions of 1928, 1950, 1953, 1962, and 1964. However, the 1958 constitution did not recognize the judiciary as a separate power, unlike the legislative and executive branches. As for the 1969 constitution, it termed all the branches of the state "governing institutions."[15]

The first section of this chapter stipulated that the 1973 and 2012 constitutions divided the state's powers between legislative, executive, and judicial authorities. Articles 131–38 regulated judicial authority. Article 131 stated that "the judicial authority is independent. The President of the Republic guarantees this independence with the assistance of the Supreme Judicial Council." Article 133 stated that "(1) the Judges are independent. They are subject to no authority except that of the law.[16] The honor, conscience, and impartiality of judges are guarantees of public rights and freedoms." To regulate the functioning of the judiciary, the Judicial Authority Law was issued by Legislative Decree 98 in 1961.

However, there is a clear discrepancy in the constitution inconsistent with the principle of the separation of powers. The constitution has allowed for the legislative and executive branches' powers to detract from the judiciary, which is contradictory to the principle of the separation of powers. Some of the executive powers detracting from the judiciary include:

1. Article 91, which states: "The President cannot be held responsible for actions pertaining directly to his duties, except in the case of high treason. A request for his indictment requires a proposal of at least one-third of the members of the People's Assembly and an Assembly decision adopted by a two-thirds majority in an open vote at a special secret session. His trial takes place only before the Supreme Constitutional Court." This clause is contradictory to the separation of powers principle, given that Article 139 of the constitution states: "The Supreme Constitutional Court is composed of five members, of whom one will be the Head of the Court, and all of whom are appointed by the President of the Republic by decree." Because the head of the executive branch (i.e., the president) is the one who appoints the Supreme Constitutional Court's members (a judicial authority), the president of the republic and his administration are constitutionally protected from legal responsibility, which is a clear breach of the right to litigation and accountability.
2. Article 131 of the constitution states: "The judicial authority is independent. The President of the Republic guarantees this independence with the assistance of the Supreme Judicial Council," which contradicts the text of Article 132: "The President of the Republic presides over the Supreme Judicial Council. The law defines the method of its formulation, its powers, as well as its internal operating procedures," which calls into to question the mechanism by which the separation of powers is kept intact if the head of the executive branch is also the head of the Supreme Judicial Council.[17]

There is a clear discrepancy in the constitution inconsistent with the principle of the separation of powers.

3. Article 111 of the constitution gives the president of the republic the right to assume legislative authority whether the People's Assembly is in session or not. Despite this, clause 3 of this article allows the People's Assembly to abolish said legislation or amend it, but without retroactive effect. What would be the case if the above-mentioned laws have violated other articles of the constitution and caused damage, for which the executive authority must take responsibility? This constitutes a clear breach of the judiciary function by both the executive and the legislative authorities. Clause 4 of the same article allows the president to assume absolute legislative powers in interim periods between assemblies. This legislation is not referred to the People's Assembly, and its validity in terms of amendment or abolishment is the same as that of existing laws.[18]
4. Article 144 states that "the Supreme Constitutional Court determines the validity of the special appeals regarding the election of the members of the People's Assembly and submits to it a report on its findings." Yet Article 62 has transferred this right to the legislative authority, because it states: "The People's Assembly rules on the validity of the membership of its members if it is challenged in light of investigations undertaken by the Supreme Constitutional Court within one month of the Assembly's notification of the Court's verdict. A member's membership in the Assembly is invalidated only by a majority vote of its members." This renders the Supreme Constitutional Court's findings useless, and allows for the legislative authority whose members are challenged for validity, to determine its own validity of membership.[19]
5. Article 145 states that the Supreme Constitutional Court investigates and determines the constitutionality of laws in accordance with the following:
    a. If the president of the republic or a quarter of the People's Assembly members challenge the constitutionality of a law before its promulgation, the promulgation of such law is suspended until the court makes a decision on it.
    b. If a quarter of the People's Assembly members object to the constitutionality of a legislative decree, within fifteen days of the date of the assembly session, the Supreme Constitutional Court must decide on it within fifteen days from the date the objection was filed with it.

    But Article 135 states that the members of the Supreme Constitutional Court are appointed by the President of the Republic, who is also the head of the executive authority, which means that the authority that issues laws and decrees is the same authority that—in effect—decides its constitutionality.
6. Article 153 states: "Legislation in effect and issued before the proclamation of this Constitution remains in effect until it is amended so as to be compatible with its provisions," which allows for the concurrent existence of two contradictory legal texts until one is amended, and without a clear definition of a bounding time table of amendment. Furthermore, the contradictory legislation could be unconstitutional according to the constitution in effect, which was precisely the case with the Emergency Law. The state of emergency was declared by Decree 2 of the Revolutionary Command Council on March 8, 1963, which was an incompetent authority. The state of emergency was declared in a manner inconsistent with the Emergency Law itself, which states: "
    a. A state of emergency can be declared by a council of minister's decree in a session presided over by the President, with a 2/3 majority vote, and this decree is referred to the People's Assembly on its first session.
    b. The decree decides the rules and measures allowed for the martial governor stipulated in Article 4, notwithstanding provisions of Article 5. This contradicts the provisions of the 1973 constitution currently in force, and in particular Article 101, which states: "The

> President of the Republic can declare and terminate a state of emergency in the manner stated in the law."

The state of emergency was never referred to the People's Assembly, which rendered its continuation unconstitutional, and was inconsistent with international human rights—in particular the International Covenant of Civil and Political Rights ratified by Syria on April 21, 1969. The state of emergency allowed the executive authority and security services to control, hinder, and interfere with the judicial authority. A clear example of this was the establishment of a Supreme Court of State Security by Decree 47 of 1968, which was issued by the martial governor in power because of the state of emergency, which rendered his decisions null and void constitutionally. Another example is Law 49 of 1980, which allows for the execution of any member of the Muslim Brotherhood in retroaction, which is contradictory to the constitution of 1973, and contradictory to all national laws and international conventions.[20]

On Equality Before the Law

Contradicting the principle of the unity of jurisdiction. This principle mandates litigation before a unified court system, with no special or exceptional courts for certain individuals, groups, or social classes.[21] The Syrian constitution of 1973 specified three types of jurisdiction: regular jurisdiction, including religious courts; administrative jurisdiction, represented in the Council of the State; and constitutional jurisdiction, represented in the Supreme Constitutional Court. Although Article 135 of the constitution states: "The law organizes the judicial system along with its categories, types, and grades of judges. It also defines the regulations pertaining to the jurisdiction in the different courts," it did not explicitly allow for any exceptional courts. Despite this, the executive authorities have established several exceptional courts listed above in this chapter. Hence, the establishment of such courts is a clear breach of the constitution, which declares the judicial authority the sole entity responsible for establishing justice independent of other authorities, which was abundantly clear in Article 135. Establishing such courts detracts from the judicial authorities' jurisdiction. Further, detracting from this jurisdiction is a clear breach of Article 14 of the International Covenant on Civil and Political Rights, as well as Article 3 of the Basic Principles on the Independence of the Judiciary.[22]

Violations of the Law of the Principle of Unity

The Law of the Principle of Unity means that, in a specific legal conflict, the applicable law should be presented before the court system in terms of penalties or litigation procedures. The Supreme Court of State Security is the clearest example of the breaching of this principle. According to this court's law, it has jurisdiction over offenses stipulated in Article 3 of its predecessor, the Exceptional Military Tribunal Law. These offenses are referred to the court by a decree from the military governor or his deputy, and this referral is not obligatory, hence the case may still be reviewed under regular jurisdiction. This leads to:

1. The investigating authorities in regular jurisdiction are investigation judges and, while under jurisdiction of the Supreme Court of State Security, the authority is the general prosecutor, who is a charging authority.
2. The decisions of judicial authorities are subject to challenge by means of appeal to investigation and referral judges' decisions, while the Supreme Court of State Security's decisions are final.
3. Courts' decisions can be challenged according to the Law of Basic Penal Trials, while decisions of the Supreme Court of State Security cannot be challenged. Breaching the principle of the unity of the law exists in other texts besides the law of the Supreme Court of State Security.[23]

The preceding paragraphs have demonstrated that the legislator has made a clear distinction between offenses committed by civilians, military, and judiciary workers, breaching the principle of unity before the law. This constitutes an unconstitutional right not applied to other public servants, because these laws are applied to offenses related to the post, while other texts include all offenses regardless of the official

post. Furthermore, prosecution must be enacted with permission, while for a normal public servant just a legal motion is enough for prosecution.[24]

On the Independence of the Judicial Authority

Independence from the legislative authority. As stated above, Article 135 of the constitution dictates that the law regulates the functioning of the judicial authority, which means organization and assigning responsibilities to different courts, the entirety of which constitute full jurisdiction to the judiciary. This means that the legislator (1) cannot deny the judicial authorities a part of their rights and transfer it to a nonjudicial authority in the process of regulating their functions. Such a transfer would be unconstitutional. (2) The legislator cannot deny anyone the right to litigation.[25] The reality is that legislative authority has detracted from the judicial powers in several laws, which caused the judicial authority to lose its independence, and, consequently, the following situations come into play.

Denying the right to litigation: The 1973 constitution stated in Article 25 that "the supremacy of law is a fundamental principle in the society and the state." Article 28-4 stated that "the right of litigation, contest, and defense before the judiciary is safeguarded by the law." This means that the right of litigation is a constitutional right, not a legislative one. Thus the legislative authority cannot constrain or deny it via legislation. Some examples of laws that denied the right of litigation—and are thus unconstitutional—are as follows.

- Legislative Decree 64, of 2008, which excludes offenses committed by police, political security, and customs' officials, from the normal judiciary's jurisdiction. The decree gives them immunity by making their offenses under military jurisdiction, and limiting the right of requesting legal motion to the minister of defense, which contradicts Articles 28 and 131 of the constitution.
- Article 53 of the Military Penal Code does not allow prosecuting anyone under military jurisdiction without prosecution orders issued by the "competent entity" (which is the military administration in this case), according to the rank and post of the military person being prosecuted.
- Article 114 of the Judicial Authority Law, which states:
  - Offenses committed by judges can only be prosecuted by the general prosecutor with the permission of a committee composed of the president of the Court of Cassation and two of its senior counselors, or upon the request of the Council when a disciplinary proceeding concludes that there is a legal offenses.
  - The general prosecutor may refer the case to the above-mentioned committee or to the audit district. A judge accused in a penalizing offense is referred to the Court of Cassation for trial according to the law.
- Article 8 of the Supreme Constitutional Court law, which states "the president and members of the court are prosecuted according to the regulations of prosecuting judges."

Derogating judicial immunity. Above, this chapter stipulated the legal regulations for judicial immunity. In reality, there are several violations that derogate this immunity and render it meaningless. Several legislative decrees have been issued that are inconsistent with the Syrian constitution and the Judicial Authority Law; for example: "Transfer immunity is suspended in the case of promoting judges, and in the case of judges who have spent three years or more in their posts when necessary." This means that transfer immunity is theoretical because it is transient and impermanent. Previous legislations of judicial authority did not allow transfer of judges with their written consent, even in the case of promotion (Article 79 of Decree 80, 1947). The current legislation allows for transferring trial judges to prosecution and vice versa by a decree from the minister of justice with the approval of the Supreme Judicial Council of State without the judges' consent (Article 83).[26] Thus, judicial immunity is devalued and retractable. Further examples include:

- Legislative Decree No. 40, May 29, 1966, which allows the council of ministers to recess for 24 hours, and for undisclosed reasons, to retire judges from service or transfer them without justification. These decisions were not eligible for any kind of appeal or legal challenge, and were not subject to the jurisdiction of the Council of State or the Court of Cassation or any other legal or administrative entity. According to this decree, the prime minister retired twenty-four judges from their posts without divulging the reasons, including Abdul-kader Al-Aswad, Haitham Al-Maleh, and Aly Al-Tantawy.[27]
- Legislative Decree No. 32, dated February 6, 1968, allowed the executive authority to retire any employee that was either older than fifty-five years or had completed thirty years of service, at the behest of the minister concerned.
- Decree 95, dated October 3, 2005, revoked dismissal immunity for 24 hours, according to which eighty-one judges were dismissed by the cabinet without divulging the reasons, and without any right to appeal or legal challenge, in clear contradiction to the Syrian constitution and the Judicial Authority Law; both of which clearly state the range of penalties applicable to judges—starting with reprimanding, and increasing to the suspension of salary, the delay of promotion, and, finally, dismissal. Further, the judges should have been referred to a legal entity if the reasons for dismissal had a legal foundation.[28]
- Article 64 of the Council of State law, which is in charge of administrative jurisdiction, states:[29] "Members of the council with the degree of an assistant counselor and above are protected from dismissal. Deputies are protected from dismissal once they have completed three consecutive years in their post or a similar post with the same immunities. They further enjoy all privileges and immunities of judges. Said deputies can be dismissed by a presidential decree if they lost the credibility for the post, with the consultation of the committee of discipline and plaints and after hearing their statements. Other members of the council may be dismissed from their posts by a presidential decree with the consultation of the aforementioned committee of discipline and plaints."

Annulling and delaying the enforcement of sentences. Here are some examples of annulling and delaying the enforcement of sentences, notwithstanding other cases that could not be described in detail. These cases are examples of the violation of judicial independence by the executive authority and security services.

The case of Beirut Declaration detainees, which is briefly illustrated here, emphasizes the subject of the report represented in the legal situation of Michel Kilo. The events transpired after the arrest of the Syrian writer Michel Kilo, president of the Horreyat Center for Defending Journalists' Rights, and a member of the Civil Society Revival Committee in Syria. He was arrested on April 14, 2006, by internal security forces along with nine other individuals: Mahmoud Marey, Ghaleb Amer, Safwan Tayfour, Nedal Darwish, Mahmoud Eissa, Mohamed Mahfouz, Soleiman Alshamr, Khalil Al-Hussein, and Anwar Al-Bunni. This was due to their signing of the Beirut-Damascus Declaration, signed by 134 Syrian intellectuals, which called for mending Syrian-Lebanese relations, defining the Syrian-Lebanese borders, and exchanging diplomatic representation.

On October 19, 2006, a Damascus referral judge ordered the release of Kilo, after previously having released Eissa, Mahfouz, Al-Shamr, and Al-Hussein. The general attorney denied receiving the release document, despite the receipt confirming it was issued, and despite the fact that Kilo was notified in prison of his release. After the general attorney denied the release, an investigation judge issued a decision on October 21, 2006 (a day off), referring the case to the referral judge who had previously released Kilo. Consequently, on October 22, the referral judge accused Kilo of "demoralizing national sentiments," along with other infractions, and annulled the previous release of Eissa, Mahfouz, Al-Shamr, and Al-Hussein, which had been issued a month earlier. They were consequently rearrested; and Eissa was arrested even before the decision of arrest was issued. Decree 58 of 2006, which included amnesty for offenses

committed before December 28, 2006, was applicable to two of the offenses for which Kilo was charged. He was tried according to the provisions of articles 285 and 307 of the Penal Code.

On May 13, 2007, the Second Criminal Court of Damascus sentenced Kilo to three years in prison for "weakening the national sentiment," according to Article 285 of the Syrian Penal Code, and to three months' imprisonment for provoking sectarian intolerance according to Article 307 of the Syrian Penal Code. The higher sentence was applied. The court further sentenced the political activist Eissa to three years' imprisonment for "weakening the national sentiment," and found him not guilty of provoking sectarian strife and subjecting Syria to hostile activities, according to Article 278 of the Syrian Penal Code.

On November 2, 2008, the Criminal Chamber in the Court of Cassation issued a decision granting Kilo and Eissa amnesty and ordering their immediate release. However, the board of the Court of Cassation accepted the appeal of the general prosecutor on November 4, 2008, and annulled the decision issued by the criminal chamber, in a clear breach of the law. This is because the general prosecutor is not competent to initiate legal motion of appeal according to Article 11 of Criminal Trials' Basic Law. Article 490-a of civilian trials law states: "Cases filed against general prosecution representatives and Court of Cassation judges are referred to the board of Court of Cassation," meaning that the general prosecution is accused before the board and not a plaintiff.[30]

Another example of annulling and delaying the enforcement of sentences is the case of Aly Al-Shahaby. The president of the republic issued Legislative Decree 58 in 2006, which included amnesty for several offenses committed before December 28, 2006, and included most offenses stipulated in articles 287 and 288 of the Penal Code. Article 436 of the Criminal Trials Law states that "public right of litigation is annulled by general amnesty, and the same court of competence has jurisdiction of reparation motion." Shahaby was prosecuted according to articles 287 and 288. On January 7, 2007, a fourth investigation judge in Damascus issued a decision concluding that Shahaby's offenses were included in the above-mentioned general amnesty. He consequently sent a notification of this amnesty to the Damascus Central Prison, yet this decision was not enforced.[31]

A third example of annulling and delaying the enforcement of sentences is the trial of two former members of Parliament, Riad Seif, and Ma'moun Al-Himsy. The board of defense requested motion documents, but the request was delayed for several sessions. When the documents were provided, the defense presented its case, which was rejected by the court. This convinced the defense that the court was not impartial, and consequently it withdrew from the trial. Despite this, the court sentenced Al-Himsy to a penalty without defense or legal representation. A new defense joined the trial and appealed to the Court of Cassation, which confirmed the sentence of the criminal court. After the defendants had served three-fourths of their sentences, a plea was submitted to relieve the remaining time according to Article 172 of the Penal Code, but it was rejected by the court on the grounds that good conduct was not proven.[32]

Still another example of an executive authority interfering with judicial sentences—especially when the state is a party of the case—is Official Letter No. 1/5687, dated June 24, 2004, sent by the prime minister to the Syrian Commercial Bank's General Administration Department:

> We were informed by the Military Housing Organization by letter (6095) dated 6/24/2004 that the Syrian Commercial Bank, Aleppo branch froze two amounts in the organization's account upon executive requests to enforce legal sentences. Because the subject is under the central organization for supervision and audit's consideration, we request that you order the aforementioned branch and other branches to suspend freezing the organizations' asset for issues still under investigation by the central organization of supervision and audit.

The prime minister has also formed a committee to decide the validity of final decisions submitted to executive districts before enforcement upon state organizations. Further, the legislative district of the minister of justice decided that a minister abstaining from complying to a sentence is accountable only to the president of the republic.[33]

Article 66-2 of the Judicial Authority Law, currently in action pertaining to decisions taken by the Supreme Judicial Council, states that "decisions pertaining to the appointment, promotion, transfer, discipline, dismissal, retiring, and accepting resignations of judges are implemented by a decree issued by the Minister of Justice." This decree must be signed by the minister of justice, the prime minister, and the president of the republic. A refusal to sign by any of the three will block the implementation of the Supreme Judicial Council's decision.

Independence from Executive Authorities

Constitutional and legal texts regulate the judicial authority. However, the administrative and fiscal dependencies between the executive and judicial authorities clearly show that the independence of the judiciary from executive authorities is practically impossible, thus allowing for interference and control by the executive authority by the minister of justice in the functions of the judicial authority, particularly in appointing, promoting, dismissing, reprimanding, retiring, and accepting judges' resignations, which breaches the Syrian constitution.

The previous Judicial Authority Law No. 56 of 1956 preserved the independence of the judiciary in Syria by mandating the Supreme Judicial Council to all decisions pertaining to judges. The council was previously composed only of seven judges, consisting of the president of the Court of Cassation, who served as chairman; his three deputies, who served as members; the secretary general of the Ministry of Justice; the president of Damascus Court of Appeals; and the most senior counselor of the Court of Cassation. The minister of justice was only notified of the decisions to implement them. Conversely, the new Judicial Authority Law No. 98 of 1961, and its amendments, have allowed the minister of justice to directly interfere with the judges and the judiciary. This is clear through the judicial authority law itself and through several decrees:

Legislative Decree No. 120, dated September 11, 1962, established a special Council for Public Prosecution headed by the minister of justice, with the membership of the Ministry of Justice as secretary general, general prosecutor, general attorney, and the head of the Legislation Department. This decree granted the Council of Public Prosecution all the powers of the Supreme Judicial Council in terms of promoting, dismissing, reprimanding, retiring, or accepting the resignations of only prosecution judges. Court judges remained under the jurisdiction of the Supreme Judicial Council. On February 14, 1966, Decree 24 was issued, abolishing the Council of Public Prosecution and transferring its powers back to the Supreme Judicial Council after amending the structure of its members. According to Article 65 of the Judicial Authority Law, the council comprises the president, delegating the minister of justice as a chairman, and the membership of the president of the Court of Cassation and his two senior deputies, the deputy minister of justice, the general attorney, and the head of the judicial audit district. Of the seven members, three directly report to the minister of justice: his deputy, the general attorney, and the head of the judicial audit district. Thus, the majority in the council fall under the control of the minister of justice, giving the executive authority the upper hand in the council's matters (see the discussion above in this chapter of the powers of the Supreme Judicial Council).

Consequently, the judiciary cannot be an independent authority when the head of the executive branch (the president of the republic) also heads the Supreme Judicial Council. Further, Article 131 of the constitution is thus rendered meaningless, because the independence of the judiciary is provided for by the constitution and does not need safeguarding by the president. This text is thus used as a pretext for interfering with the judiciary and controlling it through interference with the composition of the Supreme Judicial Council.[34]

Decree 23, dated February 14, 1966, gives the minister of justice the power to appoint and transfer court and prosecution judges of all ranks and degrees, and appoint members of government legal districts, for a duration of six months. This breaches Article 70-5 and Articles 72, 93, and 94 of the Judicial Authority Law.

The Judicial Authority Law, in Article 14-1, mandates to district audit judges—who report to the

minister of justice, according to Article 12—the task of safeguarding the independence of the judiciary from any external influence. This mandate is within the jurisdiction of the Supreme Judicial Council, according to Article 67-3. This allows the executive branch to intimidate judges if the executive authorities are displeased with them. The executive authorities are in effect the only entity that has control over the judges' affairs in terms of accountability, appointment, promotion, and dismissal, making judicial decisions biased and enforced.

Legislative Decree No. 50, dated October 25, 1961, attached the Council of State (administrative jurisdiction by Article 138 of the constitution) to the Council of Ministers by Article 1 of the Council of State law. Thus the prime minister, who has executive and administrative powers according to Article 115-1 of the constitution, also has power over this judicial authority and its members in terms of appointment, promotion, reprimanding, and dismissal. Further, the salaries of Council of State judges and workers are paid from the Council of Ministers' budget. This entails subjecting judges to the unified labor law and treating them in the same way as all public servants in terms of salary and official post.

On the Impartiality of the Judiciary

Article 81 of the Judicial Authority Law states: "Judges are not permitted to express political opinions or be involved in politics." The Military Penal Code prohibits military personnel joining political parties or involvement in politics. In Articles 147 through 150, penalties ranging from six months' to ten years' imprisonment are applicable to breaking this law, including military judges.

This text contradicts Articles 8 and 9 of the basic principles on the independence of the judicial authority, which states:

> Article 8: According to the Universal Declaration on Human Rights, members of the judicial authority have the freedom of opinion, expression, assembly, and association, withstanding the proper conduct that is consistent with the honor, integrity, and independence of the judiciary. . . .
>
> Article 9: Judges are free to form and join judges' associations and other organizations to represent their interests and further their training and protect their judicial independence.

The preceding clauses show that not having political inclinations is a necessity for impartiality and integrity. Yet that does not mean depriving judges from expressing their opinions on general matters like any other citizen.[35]

The facts are completely different. Although none of these laws have been abolished, the authority has been implementing a policy of maintaining an "ideological army," whose officers and soldiers solely follow the Ba'ath Party. Since 1965, this policy has caused a great tragedy in the military courts, which have been headed by Ba'ath Party loyalist officers. These courts have issued death sentences, life sentences, and imprisonment sentences without any regard to legal procedures. Further, all legal sources in Syria confirm that no non-Ba'athist judge has been appointed in Syria in the last twenty years. There is a deliberate policy of having complete party domination over judges and prosecution attorneys; thus, it can be said that it is a "jurisdiction of instructions."[36] Further, Ba'athist judges hold their Ba'ath Party meetings in the Justice Palace in Damascus; a chamber is reserved for their party activities, as well as a hall for party celebrations.

The Competence of Judges and Their Selection Process

Despite the establishment of a Judicial Institute for training judges for two years before their becoming magistrate judges (Legislative Decree No. 42 in 2000), the level of competence and qualification of judges has remained unaffected. Applicants to the institute are accepted based solely on their grades, which is not the only qualifier of academic and legal competence. Further, this institute is run by the Ministry of Justice and not the Supreme Judicial Council, which in turn leads to interference in the acceptance process by the executive authorities and security services. Observations on this situation include:

1. The large number of lawsuits presented to a judge in a single day. A legal assistant stated that "over two hundred lawsuits are considered daily, some of them submitted over five years ago without conclusion. The same applies to the Supreme Administrative Court, which is headed by the chairman of the Council of State and counselors from the Council of State. This court alone is responsible for over fifteen thousand lawsuits per year. When the court is in session and the chamber is full of lawyers and claimants, you can see over four hundred files on the bench, and many lawsuits are postponed for over three months."[37]
2. It is worth noting that the judges often arrive at court very late. Further, the judge may not take the bench until 12:00 p.m., plus time spent socializing with colleagues. This means that the judge serves for less than half the time required by the post, which consequently causes delays in holding sessions.
3. Article 119 of the Judicial Authority Law states: "Judges are required in legal proceedings and official occasions to wear the uniforms and badges described by the Minister of Justice's decree with the Supreme Judicial Council's consultation." It is obvious that most judges do not comply with this legal text, which causes confusion in sessions. A party of the case may mistake the legal assistant for the judge, which leads to bribery in many cases, especially when the assistant impersonates the judge if he is absent for a while. The judge cannot be distinguished in a crowded court room that detracts from the judges' prestige.
4. Bribery is a known and dangerous phenomenon within the judicial institution and is a result of paltry salaries and the low socioeconomic status of judges. This corruption has supported the layman's belief that a lawyer is unnecessary because they can spare the legal fees and pay the judge directly. This has led to the existence of middlemen in the courthouse. A legislative decree was issued to raise the cost of legal stamps (which are attached to any legal document submitted to judges) from 50 to 100 Syrian liras with the pretext of combating corruption and improving the status of judges. This is a new insult to the judiciary because it requires claimant citizens, seek their rights, to improve the financial status of the judiciary, relieving the government of this basic duty.[38]
5. The unnecessary transfer of judges from one court to another, and from civil courts to criminal courts and vice versa, has led to the lack of experience and knowledge of certain specialties among judges, especially in first-instance courts. This has led to several mistakes in sentencing, which forces wronged claimants to rely on the Court of Appeals or the Court of Cassation, and drags out the litigation process, increasing legal fees for the claimants.

THE STATE OF THE SYRIAN JUDICIARY DURING THE REVOLUTION

Since the start of the Syrian uprising in March 2011, the Syrian judiciary has utterly failed to maintain even a minimum of independence and impartiality. Thus the judicial authority, within its existing framework and structure, remains, from the standpoint of the Syrian people, an institution affiliated with the authority of the executive branch and its figures. In 2012, the Syrian government lifted the state of emergency, which was a cover used by the authorities to facilitate circumvention of the constitution and laws. Yet the judicial branch has still failed to hold the executive branch, the security forces, and the militias supported by the Syrian government, al-Shabiha, accountable for their crimes. The judiciary has also neglected to release political prisoners and prisoners of conscience and has failed to hold even one individual accountable for the serious violations that have occurred in Syria, many of which have been deemed war crimes and crimes against humanity, according to the reports of the Independent International Commission of Inquiry on Syria.[39]

This sums up the status of the Syrian justice system in the eyes of many of the Syrian people. Nevertheless, hundreds of judges have made an effort to achieve justice by exercising their limited authority to assist

many of those who have been wrongfully accused and detained in Syrian prisons. Also, hundreds of Syrian lawyers have crossed the Syrian regime's red lines in order to defend thousands of the accused.

With the continued escalation of the armed conflict in Syria, and the growth of areas where state-run institutions are no longer functioning, the presence of a judicial system that could implement some form of security and accountability in these areas has become an absolute necessity. However, the growing chaos, the absence of an organized political authority, the regime's constant bombardment of liberated areas, and the resulting mass exodus of defected members of the judiciary have become considerable obstacles to establishing a judicial structure in the liberated areas. Nevertheless, lawyers, judges, notable figures, university professors, and religious scholars have managed to make some organized efforts to fill the judicial void, despite a complete lack of resources.

The most notable flaw in the fledgling judicial systems established in the liberated areas is that they often perform a legislative function. Additionally, many inexperienced volunteers are taking up critical judicial duties in passing judgments. Some rumors have suggested that new judges have received only a week of training before being seated at the head of a court. Another flaw in these judicial systems is that the judges sometimes insist on ignoring current Syrian law, despite the dangerous impact this could have on the judicial system.

The Sharia Commissions

Sharia Commissions were initially established in various towns and cities across liberated Syria to settle disputes between armed battalions. The commissions' members generally consist of religious scholars and social figures trusted by the local community. These commissions were formed because of the urgent need to find some form of a judicial system that could gain the trust and support of both local civilians and members of the armed opposition. However, with time, these commissions began to interfere in civilian, personal status, and criminal cases. Despite this, many judges and lawyers joined the Sharia Commissions to support their credibility. Additionally, many rebel battalions, particularly Islamist battalions (including extremist groups, such as Jabhat al-Nusra), served these commissions to enforce their rulings. This contributed to the perceived legitimacy of the commissions in the areas where they operated.

Nevertheless, the greatest flaw in the Sharia Commissions is the absence of a legal basis for passing judgments. The Sharia Commissions ignore Syrian law for two reasons: first, because of the public's rejection of any symbol of the Syrian regime; and second, and more prominently, because this is the desire of the armed parties that support these commissions. The main and only "legal" reference for the Sharia Commissions remains Sharia law. However, the primary problem with implementing Sharia law lies in its nature. Sharia law is not based on specific and detailed rules made by specialists and scholars. Rather, it consists of general legal jurisprudential frameworks that differ from one jurisprudential sect to another. This opens the door for personal views in passing sentences and judgments, which can create doubt regarding the professionalism of the judicial system and the possibility of taking over the legislative branch.

Recently, these commissions resorted to depending on the United Arabic Law Code, which was a legal system project that came into existence in 1996 whose main source was Sharia law. The Arab League tried to use this project to unify the criminal law code in member states, but it was unsuccessful due to the rejection of the law code by some of its members.

The United Judicial Council

In some of the liberated areas of the countryside of Aleppo, defected judges convinced select Free Syrian Army groups to cooperate with them in order to enable a limited judiciary—known as the United Judicial Council—to function, using the same judicial procedures practiced by the Syrian regime's judicial authority. This council has managed to fill much of the judicial void. It has also played a significant social role because it draws on religious scholars who have become popular with the increasing numbers of fighters, arms, battles, and casualties, which have caused a big social shift toward religiosity. The

council uses the United Arabic Law Code as its legal basis due to the Syrian people's rejection of the Syrian regime's laws.

Additionally, the United Judicial Council has successfully established a Judicial Inspection Department, is currently attempting to establish a Court of Cassation, has activated the role of notaries, has created an office to register the death and birth cases, has formed a media center, and maintains separate prisons for civilians, armed combatants, women, and minors. The council is also trying to prepare a 100-member police force; currently, the council has 30 to 40 people guarding the court building.

The United Judicial Council's jurisdiction includes the liberated areas in Aleppo city, most of Aleppo's suburbs, Al-Bab suburb, Jabal Al-Turkman, and some parts of Idlib's suburbs. The council has 138 judges, including 12 former regime judges. The rest are experienced lawyers or religious scholars who graduated from Sharia universities with some legal background. However, these lawyers and religious scholars do not serve as judges and play only an advisory role in the council.

The council uses its personal relationships with trusted social figures for carrying out judicial sentences. Many of the members of the council who are not judges claim that their presence on the council is temporary—they will only remain until a qualified individual can replace them. Nevertheless, the biggest challenge for the council are the Sharia Commissions, which have the backing of Jabhat al-Nusra and a number of other militias. And, despite the Sharia Commissions' extreme sentences, the United Judicial Council has made every attempt to cooperate with the Sharia Commissions to avoid a direct confrontation between the two groups.

The Independent Judicial Council

The Independent Judicial Council is currently being established. It will consist of twenty-seven defected judges. This council has a seven-member board, with each member playing a specific function. The council is trying to operate in the form of courts in the liberated areas and is currently preparing to start operating in Rankoush, Idlib. The council previously conducted a competition for choosing a local brigade to serve as a judicial police force; several brigades showed interest in serving an enforcement role for the council. The council is currently trying to establish a number of courts in Idlib's suburbs. However, it still needs financial support and legal professionals. Most of the council's current members have fled Syria, leaving the council with very limited influence and capabilities inside the country.

The People's Houses

The People's Houses are social councils that play a judicial role in liberated areas dominated by Kurds. These councils were established following the regime's withdrawal from Kurdish areas, including Ifreen, Qamishli, and Tal Abyad. A group of lawyers and jurists established the People's Houses to fill the judicial vacuum without replacing the judicial branch. These houses have played a positive role in managing those areas and minimizing chaos. The People's Houses are affiliated with the Kurdistan Democratic Party of Syria.

ENDNOTES

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Recommendations

1 The Syrian Expert House (SEH) recommends the immediate holding of an inclusive judicial conference that would assist in uniting and coordinating the judges' (and affiliated actors') efforts in the liberated areas during the transitional period. This can be achieved by drafting a unified criminal law code and encouraging exiled or displaced judges to return to their posts. This unity conference will focus discussions about judicial challenges in the liberated areas and should be held before the complete collapse of the regime in order to minimize chaos and preempt non-Nationalist actors from gaining a foothold in the liberated areas.

2 Defected Syrian judges should be supported in their attempts to establish civil committees similar to "judges clubs" formed in Egypt and Tunisia.

3 Following the collapse of the Syrian regime and after the formation of a transitional government, the transitional government must immediately suspend the 2012 constitution and activate the 1950 constitution, in addition to adopting a constitutional declaration based on the 1950 constitution. This constitutional declaration would outline the limits of the transitional government's powers and define a timeline for the holding of Constituent Assembly elections. The constitutional declaration will necessitate the suspension of all the laws that conflict with the 1950 constitution, requiring the formation of a committee to study which laws will need to be repealed.

4 During the period after the fall of the regime but before the election of the Constituent Assembly, Syria will need several legal workshops, which should be conducted by legal experts and specialists in various areas of law, along with social figures and politicians to assist the transitional government in adopting legislation that would ensure public order and the rule of law in Syria.

5 As soon as the Constituent Assembly—which would write the final form of the constitution that would be subject to a referendum—is elected, it will play a key role in the Syrian political scene as the authorized, valid entity to legislate. Likewise, the judicial law must be considered one of the most important laws that should be adapted; however, it must be a modern law that would grant the judiciary its full independence and give the people the impression of confidence and trust in the state's judicial branch.

As mentioned above, to ensure justice and fairness within the Syrian judiciary, legal and judicial reform must be conducted simultaneously and as early as possible. Therefore, the SEH recommends the following measures.

Legal Reform

The future transitional government should adopt a decree to repeal the following laws:

1. Revolution Protection Law
2. Summary Trial Law
3. The General Intelligence Administration Law
4. Law No. 49 of 1980
5. Counter-Terrorism Law
6. State of Emergency Law
7. Judicial Authority Law
8. Procedural Law

Additionally, the SEH recommends the formation of a committee responsible for researching and nominating additional laws that should be repealed.

Judicial Reform

1 The SEH recommends that the judicial councils in the liberated areas adopt a common code of conduct, forbidding the councils from performing any legislative role.

2 The legislators and the Constituent Assembly must ensure the full independence of the judicial branch.

3 The SEH suggests conducting legal workshops to develop a new and modern body of law for the judiciary, in addition to other laws that would ensure the fairness, impartiality, and independence of the judicial branch, thus restoring the faith of the people in the Syrian judiciary.

4 There needs to be a commitment to judicial unity principles and to abolishing the unconstitutional exceptional courts (the Supreme State Security Court, special committees, and field-courts)—and also to repealing any laws that disable the right to litigate, whether the litigated party is an individual, a private company, or a public institution. Additionally, the principle of legal equality must be respected, meaning that the military justice laws should be modified to apply solely to military personnel and military cases, leaving the other cases for the ordinary civilian courts.

5 The separation of powers principle must be respected. The judicial authority law should be modified to include the restructuring of the Supreme Judicial Council in order to limit membership exclusively to judges. Also, judges must select the head and members of the council. The powers granted to the Supreme Judicial Council should be exclusive to the council and not also granted to the Ministry of Justice. The Supreme Judicial Council must be the only entity to handle the affairs of the judiciary. The judicial branch must be completely independent from other state institutions, in addition to overseeing all other judicial agencies (e.g., the State Council, the Supreme Constitutional Court, and Property Courts). This should also apply to the Judicial Inspection Department, which must fall under the authority of the Supreme Judicial Council and should be empowered to actually exercise control over members of the judiciary, ensure accountability, and issue the appropriate legal punishments against violators.

6 The Constitutional Court should be amended so that it can perform its function of determining the constitutionality of laws—and also issue legislation giving ordinary courts the right to address the constitutionality of laws, even by objection. Additionally, unions and organizations should be given the right to challenge the constitutionality of laws.

7 The process of training and selecting judges must be done carefully. The appointment of judges could be conducted through a competitive selection process based on the sound ethics and legal qualifications of the candidates. The final decision in appointing judges must be referred to the Supreme Judicial Council. The Judicial Institute must also be affiliated with the Supreme Judicial Council to ensure the independence of the judiciary. The chairman of the Judicial Institute, instead of the minister of justice, should be the vice president of the Supreme Judicial Council, and any overlap (whether administrative or financial) between the judiciary and the executive branch must be prohibited. The judicial branch should have an independent budget, special attention should be paid to modernizing Syria's courts, and increasing the number of judges should be a priority.

8 To maintain the impartiality of the judiciary, Article 81 of the Judicial Authority Law—which prohibits judges from expressing any political opinions or views, working in the field of politics, or joining any political party or entity—should be activated.

9 Out-of-date laws and legislation must be amended and modernized to accurately reflect new developments in Syria's social and legal context. Examples include the Penal Code, the Civil Law, the Code of Civil Procedure, the Code of Criminal Procedure, the Personal Status Law, and the Evidence Act.

10 Final judgments of the judiciary must be respected; the implementation of decisions

must not be disrupted under any pretense, whether political or nonpolitical.

11 The training and capacity building of judges must be carried out deliberately, with consideration of the standards of scientific competence and legal experience. Whether for joining the Judicial Institute or for a job appointment in the judicial field, the process must be completely under the supervision of the Supreme Judicial Council, without any interference by any third party. Also, the socioeconomic status of judges must be made commensurate with the nature of the profession and the state of the economy—to the point that judges will be capable of maintaining their independence and avoiding resorting to illegal ways to secure their needs. Care should be taken to maintain the cleanliness and presentability of all the Syrian courts.

12 Transparency must be a high priority, and thus nongovernmental organizations that focus on human rights and official, independent media must be allowed to operate freely without any interference. This must particularly hold true for instances where organizations are reporting rights violations that have occurred within the judicial system.