



## THE DAY AFTER

### **THE DAY AFTER PROJECT: *Supporting a Democratic Transition in Syria***

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## Dedication

*We dedicate this work to Syria's fallen heroes and all those who struggled to achieve the Syrian revolution's goals of freedom, dignity, and democracy.*

*We vow to build a free Syria for our future generations and to uphold the revolution's goals, for which our martyrs have made the ultimate sacrifice.*



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## The Day After Project

### Executive Committee\*

Afra Jalabi	Rafif Jouejati
Amr Al-Azm	Rami Nakhla
Diaa Doughmash	Sadek Jalal Al-Azm
Emad Tinawi	Salam Kawakibi
Murhaf Jouejati	Wajdy Mustafa
Najib Ghadbian	

### Participants in the Working Groups\*

Abdulah Alsayed	Mahmoud Al-Hamza
Abdulrahman Alhaj	Molham Aldrobi
Ayman Al-Omar	Muna Jondy
Bassam Ishak	Mustafa Haid
Bassma Kodmani	Osama Kadi
Eiad charbaji	Oubab Khalil
Fares Helou	Radif Moustafa
Fawaz Tello	Radwan Ziadeh
Ferhad Ehme	Rajaa Al-Talli
Hammam Yousef	Sadiqu Al-Mousllie
Hozan Ibrahim	Sawsen Raslan
Husam Alkatlaby	Yasser Tabbara
Kamal Allabwani	

*\* Several members of the Executive Committee and participants in the Working Groups have requested that their names be withheld due to security concerns.*



## **The Day After: Supporting a Democratic Transition in Syria**

### **Foreword**

This document is the result of more than six months of deliberation and consultation among a diverse group of Syrians who are active in the revolution to bring down the regime of Bashar al-Assad and who seek to help Syria transition from dictatorship to democracy. The project was led by an Executive Committee whose names are listed on the preceding page. The Executive Committee identified and recruited additional participants, many of whom are also listed. For reasons of security, it is not possible to identify all of those who contributed their time and energy to this project. However, the participants represent a diverse and committed group of Syrian professionals, technical experts, political activists, attorneys, and academics. Our group included individuals associated with the Syrian National Council, the Local Coordination Committees, the Syrian Muslim Brotherhood, and other organized elements of the Syrian opposition. It also included many independents, and individuals who support the revolution but who are not affiliated with any specific leading opposition movement. The Executive Committee was determined to ensure that Syria's diversity was reflected in the composition of the group. Participants included Sunnis, Christians, Kurds, Alawites, and Druze; men and women; youth activists; and individuals with experience in the Free Syrian Army. Some of us are Syrians who have lived outside of Syria for long periods of time, some have fled recently as a result of the revolution, and some have remained inside the country. Our project's composition reflects Syria's diversity and demonstrates the potential of Syria's components to work together effectively toward a common goal.

The recommendations presented in this document are the result of intense and heartfelt discussions—sometimes heated ones. However, we strove to work in a spirit of collaboration and with a shared commitment to the success of the revolution and the importance of doing everything possible to place Syria on the path to democracy, stability, economic justice, and peace. Further, we tried to approach the task with humility. For the most part, we are not the ones struggling to survive against the brutal attacks of the Assad regime. We are not the ones on the front lines of the battles against regime forces. Although many of our participants have suffered grievous losses, both during the revolution and in the preceding period—including imprisonment, torture, exile, and being deprived of Syrian citizenship—we know that those inside of Syria today are playing the most important role in determining the country's future.

For this reason, we stress that this document is not a blueprint. It is not intended to set out recommendations that must be followed, or to suggest that it offers the only or the best way to move forward. Rather, we view this document as our collective contribution to an ongoing debate among Syrians—both inside and outside the country—about the most effective ways to manage the challenges that are sure to arise following the end of the Assad regime (which is an outcome that can no longer be in doubt). The principles, goals, recommendations, and findings presented in this document should not be seen as the last word, but as a starting point for discussions, debates, and disagreements. We hope that through vigorous debate the ideas presented in this document will be refined and improved for the benefit of all Syrians.

Finally, it is important to note that the contents presented here do not reflect the unanimous consensus of all project participants. Not every participant agrees with every recommendation made in the pages that follow. Some of the recommendations will be controversial. They may be seen as excessive and threatening by some, or insufficient by others. From our perspective, the important thing is that Syrians across the country (and in the Syrian diaspora) view this document as an important step toward a goal we all share: the liberation of Syria from the dictatorship of the Assad regime and its replacement by a truly Syrian democracy.

## Executive Summary

### The Day After Project: Vision, Goals, and Principles

#### The Challenges of Transition

Right now, Syrians are struggling to overthrow an authoritarian regime and secure the opportunity to live in a stable, peaceful democracy. But history (and recent experiences elsewhere in the Arab world) tell us that transitioning to democracy is difficult. Transitions that occur in the wake of armed conflict face daunting challenges. They must contend with the legacies of dictatorship, as well as the immediate consequences of violence—human, social, institutional, and economic—which vastly complicate, and often overwhelm, efforts to build and consolidate democratic institutions and norms in a post-conflict society.

Even under the most difficult circumstances, however, prospects for a successful transition improve when the effort is anchored in shared principles and a shared commitment to clearly defined goals. Transitions that are guided by an understanding of the pathway to be followed, agreed-upon principles, and a sense of common purpose are much better equipped to meet and overcome the inevitable challenges. In addition, transitions are more likely to succeed when they take into account the specific historical experiences of a country, including its social structure, cultures, and traditions. The odds of success increase when risks and challenges that may disrupt a transition are identified, strategies for mitigating them are developed, and sufficient flexibility is built into a transition plan to ensure that it remains relevant even under volatile and unpredictable conditions.

### The Day After Project: Background and Overview

The Day After project was established to contribute to a successful transition in a post-Assad Syria. We are a group of approximately 45 Syrians who represent the diversity of the opposition and who are leading an independent transition planning project with the facilitation of the U.S. Institute of Peace (USIP), in partnership with the German Institute for International and Security Affairs (SWP). From January to June 2012, we convened monthly to develop a shared vision of Syria's democratic future, define goals and principles of a transition, and prepare a detailed yet flexible transition planning document. Our deliberations were supported by leading international experts in transition planning,

We felt strongly that the document resulting from our work should not be seen as a blueprint, or a step-by-step guide to how a transition must be organized. Rather, we

hope the document will be seen as one contribution to a debate in which all Syrians have a right to participate. The document is not intended to tell a new Syrian government what it must do, nor to limit discussion and debate among Syrians about how they will shape their future. Rather, we hope that by offering recommendations and defining goals, principles, objectives, and strategies, the report will provide a starting point around which debate and discussion can be organized. We hope to advance the efforts of all Syrians to achieve the democratic future for which they are currently struggling against a brutal dictatorship.

The group focused its work in six issue areas: (1) rule of law; (2) transitional justice; (3) security sector reform; (4) electoral reform and forming a constitutional assembly; (5) constitutional design, and (6) economic restructuring and social policy. While each of the six working groups were guided by the needs of the specific issues on which they focused, all of the groups were guided by a shared commitment to clearly defined goals and principles, as set out below.

### **Core Principles and Goals**

The Day After project identified the following as goals that should guide the efforts of transitional authorities. We believe progress toward these goals will increase prospects for a successful post-Assad transition.

### **Key Goals of a Transitional Process**

- Develop, strengthen, and promote a new national identity;
- Foster unity among the many diverse components of Syrian society;
- Build consensus on the core values and fundamental principles of the nation as well as the new framework for governance;
- Establish citizenship and the equality of all citizens as decisive in relations between individuals and the state as opposed to sectarian, ethnic, or gender considerations;
- Establish Syria as a civil state in which the role of the security forces should be to protect the security and human rights of all citizens;
- Affirm that Syria must remain one unified state, with elements of decentralization that will allow for citizens' participation on all levels;
- Provide for economic governance that ensures social justice, human development, sustainable development, and the protection of national resources;
- Dedicate efforts to building trust between communities and groups;

- Break with authoritarian legacies by demonstrating a commitment to democratic principles and processes among political leadership and government;
- Educate and empower citizens on the principles and practice of democracy; and
- Increase the potential for a legitimate and effective governance and legal framework that consolidates rule of law in all domains.

### **Key Principles Guiding the Transitional Process**

The goals at the heart of Syria's revolution cannot be achieved by Syrian leaders on behalf of the people. They must be realized by the Syrian people themselves through a process of civic education, national dialogue, and public consultation that allows the people to express their fears, needs, and aspirations directly to their leaders and to each other. This process should be grounded in the following core principles:

- (1) Inclusiveness and Participation:** An inclusive and participatory transitional process is one that includes all components of Syrian society. Inclusion is achieved by encouraging public participation to the greatest extent possible. Participation is a natural and legitimate right of the Syrian people, both to express freely their opinions, interests, and preferences to a transitional authority, and to be confident that the authority will be responsive to and promote this inclusive participation.
- (2) Transparency and Accountability:** A transparent transitional process is one that is conducted in an open manner, through effective mechanisms for deliberation. Transparency is essential if Syrians are to be informed about, and help shape, a new Syria. Accountability of public officials ensures that the opinions and preferences of the Syrian public will be taken into consideration by the transitional authority.
- (3) Consensus:** We hold that transitional process decisions should reflect as broad a consensus as possible among all components of Syrian society. Decisions should be reached by deliberation, negotiation, and persuasion to the greatest extent possible. Along with inclusion, participation, transparency, and accountability, this guarantees that decisions made by transitional authorities reflect the interests and the aspirations of the nation, and not just one societal interest.

We recognize that working toward these goals and objectives may strain the capacities of Syrian society at times. The urgency of providing stability and security may sometimes be in tension with the demands for participation and transparency. We believe that it is important not to let the needs of the moment (and the flexibility

that the transitional authority will need to work effectively under difficult circumstances) erode its fundamental commitment to the goals and principles that will help build a democratic Syria in the post-Assad period.

### **Goals and Objectives of The Day After Project Working Groups**

- 1) Rule of Law:** The overarching goal of efforts designed to consolidate the rule of law in Syria are to transform Syria from a state governed by the arbitrary power of individuals to a state of law, in which no individual is above the law and all are subject to the protections and obligations of the law. In addition, rule of law activities are intended to ensure the administration of the regular justice system in the transition; to revoke jurisdiction from extraordinary courts; to address the limited capacity of the current justice system; and to prevent lawlessness, violence, and criminality during the transition. Further, efforts to consolidate the rule of law are expected to reflect the following requirements: (1) be consistent with international human rights norms and standards; (2) be legally certain and transparent; (3) are drafted with procedural transparency; (4) are drafted in a way that allows for participation in decision-making so that ordinary citizens can be involved in the process of law-making; and (5) be publicly promulgated.
- 2) Transitional Justice:** In keeping with international norms and standards, a transitional justice program in Syria should include processes and mechanisms that are restorative in nature, as well as retributive. Transitional justice processes in Syria should be designed to: (1) achieve justice for the victims of systematic human rights violations and past abuses; (2) create alternatives to violent forms of redress that will deepen conflict and social fragmentation; (3) provide some truth about the behavior of perpetrators and the experiences of victims; (4) provide mechanisms of accountability, transparency, and inclusion, preventing further abuses and restoring citizens' faith in state institutions (thus helping to strengthen the rule of law); (5) support the restoration of trust among citizens and the development of a new positive vision of Syria as a whole; and (6) provide for "social repair" for the victims, but also for the society at large in light of the collective impact of violence, repression, and authoritarianism over the past five decades.
- 3) Security Sector Reform:** Security sector reform must flow from democratic principles and accompany the organization of a democratic government. It is vital to the consolidation of a new democratic order, and it must be pursued simultaneously with efforts to provide for transitional justice and the rule of law. To advance this aim: (1) civil-military relations should be established in

line with democratic principles—i.e. the armed forces, law enforcement, and intelligence agencies will be led by and operate under civilian authority; (2) service in the security sector will be open to all Syrian citizens, regardless of their ethnic background and/or sectarian affiliation; (3) the main function of the security sector will be to provide an effective security environment for the Syrian people so as to enable citizens to exercise political, economic, social and cultural freedoms, while maintaining public order and defending the country's sovereignty and territorial integrity; (4) the security sector will be completely detached from politics; (5) at the same time, the government will provide for the professional development of the armed forces, intelligence services, and police forces.

- 4) Electoral Reform and Forming a Constitutional Assembly:** The goal of electoral reform is to support Syria's transition to a democratic political system, guided by a constitution that is democratic in character and that results from a democratic process. The new constitution will provide the foundations for the design of an electoral system in which public officials are chosen by voters through free, fair, and inclusive multi-party elections based on electoral laws, including regulations and procedures that ensure that all components of Syrian society are represented equitably and that citizens are able to hold public officials accountable for their actions. The criteria for designing an election system for a Constitutional Assembly should be somewhat different from the criteria for elections to a parliament in the future. This first legislature has the crucial task of overseeing the writing of a new Syrian constitution. In order to ensure that all relevant Syrian voices are represented in this founding document, inclusion must lay at the core of the mechanisms that lead to the drafting of the constitution. In the future, elections must also produce a parliament that is legitimate, that is representative, and that identifies with Syrians and their desires. Legitimacy will be based on democratic processes facilitating the inclusion of all significant voices, including national, ethnic, and religious minorities as well as women. Syrian elections must also nurture the embryonic party system and allow space for popular independents to contest and win elections.
- 5) Constitutional Design:** Syria's constitution-making process should be seen as an opportunity to develop, strengthen, and promote a national identity; foster unity; build trust; contribute to national reconciliation; and support a culture of democracy. To achieve these goals, the constitution-making process should incorporate the core principles of inclusiveness, transparency, participation, consensus, deliberation, and national ownership. The major elements of the process should include the following steps: (1) the 2012 Constitution should

be abolished and replaced with either an amended version of the 1950 Constitution or a new legal instrument to provide a legal framework during the transition; (2) the transitional legal framework should include fundamental rights and freedoms, transitional governance provisions, a roadmap for the negotiation and drafting of the permanent constitution, and agreed-upon constitutional guarantees that must be incorporated into the permanent constitution; (3) the constitution should be negotiated, drafted, and approved by a Constitutional Assembly, with additional consideration to using a national referendum for final ratification; (4) the Constitutional Assembly should be as inclusive and representative as possible, reflecting the diversity of Syria; (5) decisions by officials responsible for drafting the constitution should be transparent and should be achieved, as much as possible, by consensus.

- 6) Economic Restructuring and Social Policy:** Securing the dignity and freedom of the Syrian people will require the development of economic and social policies through transparent and participatory processes. With this in mind, key objectives of the transitional period should be: (1) addressing immediate social needs and providing relief with food, medicine, shelter, water, and energy; (2) starting to reverse the corruption and devastating effects of the political economy resulting from more than 50 years of Ba’thist rule; (3) reconstructing and redeveloping areas that have been shelled or otherwise damaged during the revolution; (4) stimulating the local economy in the areas of reconstruction and redevelopment by creating jobs and opportunities for entrepreneurship, while rebuilding social policies to provide appropriate economic and social protections for all Syrians; (5) encouraging macroeconomic stability through the adoption of effective mechanisms of economic governance, policy making, and oversight.



## Chapter 1. The Rule of Law

*During the transition, Syria will need to administer justice, begin to establish the rule of law, make a clear distinction from the previous regime, and lay the foundations for accountability and transparency. Issues addressed here include the role of rebel groups, release of political prisoners, management of public gatherings, and creation of mechanisms of oversight. All recommendations entail both practical steps and clear symbolic messages, as both are necessary to forge a new relationship between the state and society.*

### 1.1. Summary of Key Recommendations

- **Justice System and Laws:** Maintain the administration of justice during the transition. Ensure sufficient personnel for the justice system and safeguard them. Protect justice infrastructure and court records. Engage with revolutionary groups regarding their role in the administration of justice. Eliminate all extraordinary courts. Repeal laws that grant arrest and detention powers and immunity to intelligence agencies. Strategically repeal laws that violate judicial independence and human rights. Arrest persons accused of conflict-related crimes.
- **Prisons:** Inventory existing prisons and detention centers. Secure serious criminals. With the assistance of Detention Review Teams, release political prisoners and children. Safely detain persons arrested for conflict-related crimes. Assess prison infrastructure. Improve prison conditions to meet basic human rights standards. Clarify and unify management of prisons under the Ministry of Justice.
- **Crime:** Transitional periods are often threatened by crime: transnational organized crime syndicates may smuggle drugs, persons, and weapons; rebels and victims may undertake revenge attacks; spoilers may attempt to destabilize the transition; and traumatized individuals are more apt to act violently. Identify existing capacity to handle organized crime. Ensure security for judges trying serious criminal cases. Launch a broad-based public campaign to discourage revenge attacks. Monitor public gatherings where spoilers may be present. Encourage local strategies to avert crime and domestic violence.
- **Oversight:** Establish mechanisms of oversight and monitoring of the justice system to improve functioning and enable transparency and accountability. Independent monitoring mechanisms can include Rule of Law Committees at the national, regional, and local levels, as well as readily identifiable monitors who will attend public gatherings and visit police stations and prisons. Channels of communication between these committees, monitors, and the

formal justice system will facilitate reporting, early warning, opportunities for mediation and redress, and accountability.

- **Public Gatherings:** Large public gatherings—whether of celebration, political expression, or protest—are likely during the transition. Establish ground rules for public gatherings. Train police in proper crowd control techniques to prevent violence. Ensure the presence of independent monitors.
- **Trust and Legitimacy:** Raise awareness of a culture of human rights and the rule of law. Demonstrate the transitional government’s commitment to the rule of law. Communicate about the transitional government’s rule of law initiatives. Seek input from the public at large and local organizations. Publicize successes and positive developments. At each step, act with inclusion, participation, transparency, and accountability.

### Goals, Principles, and Guidance

Establishing the rule of law is one of the fundamental goals of the revolution. The rule of law means that all are equal before and accountable to the law. This applies to individuals, institutions, public and private entities and the state itself. Transparent processes, clear norms, and established structures hold the population and public officials legally responsible for their actions.

The rule of law is not limited to the structure and operation of the formal justice system. It also characterizes relations between state institutions and between the state and the populace. All these relations should feature transparency and accountability. In addition to the constitution and the courts, the rule of law includes a role for independent monitoring mechanisms and public oversight. Further, it entails a popular political culture that recognizes the equality of all, accepts the legitimacy of the law, and expects accountability from everyone. (For resources regarding the rule of law, see Selected Resources.)

*In addition to the constitution and the courts, the rule of law includes a role for independent monitoring mechanisms and public oversight.*

In all its deliberations regarding the goal of establishing a rule of law in Syria, The Day After project adhered to several core principles.

*Principle 1. Local ownership.* Decisions over the content and shape of the rule of law reforms should be in the hands of national stakeholders. Both the immediate relevance and the long-term sustainability of efforts to establish the rule of law

depend upon the meaningful involvement and control of the program by Syrians. No model, no matter how perfect in theory or successful in practice elsewhere, can succeed in Syria if it is imposed from outside.

*Principle 2. Participation and inclusiveness.* The rule of law applies to all, and thus all should be involved in building it. All components of society should be included, with particular attention to historically excluded or disempowered groups. When fateful decisions are being made about particular groups—such as victims of human rights abuses, former revolutionaries, or members of groups that have been discriminated against or whose input has been limited on the basis of their collective identity (ethnic, religious, sectarian, gender, etc.)—*diverse* representation from these groups should be included in the process. All mechanisms for establishing the rule of law should include affected stakeholders.

*Principle 3. Transparency and openness.* Ample public oversight and monitoring mechanisms of the justice system and effective communication by the transitional government to keep the public informed will facilitate building the rule of law, enable accountability, forestall abuses, and help to instill trust and legitimacy.

*Principle 4. Process.* The rule of law is an aspirational concept, one that all democratic states continually strive to realize. Making progress, particularly in a country that has been dominated by a repressive regime, will take time. While initial steps are paramount, the entire transformation of a political system and culture will take many years. As with any process, it is also dynamic, requiring reassessments and adjustments along the way. Those adjustments should take into account the reality of the local context. Finally, the process itself matters. Outcomes of accountability and transparency, which are key to the rule of law, can only be achieved if the process of achieving them is itself transparent and inclusive.

Beyond these overarching principles, The Day After project also sought to identify some helpful guidance for the transition period. In our deliberations, we were deeply mindful of uniqueness of the Syrian context and the imperative of local ownership—while also reviewing and learning from the experience that has accumulated over the last fifty years among transitional states seeking to consolidate peace after conflict and to establish the rule of law after a repressive regime. (For resources on the experiences of other transitional states, see Selected Resources.)

*Guideline 1. Provide strong leadership and create coalitions of change nationally and locally.* Strong national and local leadership will be necessary to model the rule of law, perhaps especially with regard to the treatment of those who have committed conflict-related crimes. At the same time, the transitional government should also

build inclusive coalitions of change. These coalitions can serve as channels of communications and consultation; generate positive state-society relations, create opportunities for stakeholder input; and protect the transitional government from isolation, elite capture, or scapegoating for unpopular decisions.

*Guideline 2. Develop Syrian solutions rather than imposing plans.* The adoption of centrally-devised plans, standardized technical approaches, or foreign models should be avoided. While much can be learned from shared international wisdom and experience, foreign models should not be followed without further attention to the Syrian context; nor should it be assumed that one approach will be appropriate for the entire country. Strategies for implanting the rule of law should be developed through participatory processes that permit local and regional variation, and that can adapt to changing circumstances.

*Guideline 3. Undertake both technical and social approaches.* A functioning justice system needs to be technically sound. This includes drafting laws, building courthouses, updating technologies, and training personnel. A focus on technical improvements should be balanced by ample attention to the social aspects of the rule of law. This includes practicing inclusivity and transparency so as to build relations of confidence and trust so that citizens know the law applies to all, consider it safe to enter police stations and courthouses, trust the justice system personnel they encounter, and are ready and willing to serve as monitors and offer input. Both technical and social approaches are necessary to establish and sustain the rule of law.

*Guideline 4. Deliver early results while avoiding haste.* Because trust in the state is so low after repression, and chaos is often rampant during conflict, the transitional government should deliver some early tangible results in the justice sector. This will signal a distinctive break with the repressive past and mark a clear discontinuity with the previous regime, thereby gaining the public's confidence. Such measures might include closing notorious prisons, detaining high-profile perpetrators and holding them safely for prosecution, or placing members of formerly excluded groups in key positions in the transitional government. Consultations with constituencies in Syria will suggest which early measures are most likely to build public confidence in the character and capacity of the transitional government. Genuine transformation of state institutions and shared political culture also takes time. Attempting too much change too quickly can backfire, as the capacities of the state can become overburdened, and expectations are raised and then left unmet, eroding public confidence. Accordingly, major changes should be incremental and sequenced, pursued only when the will, resources, and capacity to implement them are present. Any steps toward progress should be celebrated along the way; inevitable setbacks

should be viewed as learning experiences. The rule of law is a long-term endeavor, a work in progress that all democratic societies seek to sustain.

## 1.2. Context

The rule of law has been almost completely eroded in Syria by the Assad regimes. The justice system has been severely weakened and distorted. Its institutions have been subject to capture, its personnel politicized, its laws manipulated, its formal civilian courts sidelined by extraordinary courts, its prisons kept secret, and all these failings cloaked with impunity.

The institutions of the justice system in Syria, like much of the state apparatus, have been required to operate in the interests of the regime. With the President as head of the Supreme Judicial Council, responsible for the appointment, discipline and dismissal of the judiciary, the judiciary has had no independence. Although according to Syrian law judges may not be involved in politics, in practice judges have been selected from among members of the ruling Ba'th Party. Beyond these challenges, judges are greatly overburdened, with a shortage not only of judges but also of prosecutors and lawyers for handling the volume of cases before the courts. The regime has also severely curtailed the functioning of bar associations, which may be dissolved at the regime's discretion.

*Another egregious aspect of the Syrian justice system is the multiplicity of extraordinary courts. Military courts try both military personnel and civilians, and security courts try political cases.*

Syrian law currently contains many sweeping categories of offenses that criminalize dissent and opposition, violating fundamental human rights. Among these are Article 285 of the Syrian Penal Code, which makes it a crime to “weaken national sentiment” (a provision that has been used to prosecute and imprison human rights activists who have criticized the government); Article 298, which criminalizes “inciting sectarian tensions”; Article 278, which criminalizes “acts, writing or speech unauthorized by the government that exposes Syria to the dangers of belligerent acts or that disrupts Syria's ties to foreign states”; and Article 267, which criminalizes writings intended “to cut off part of the Syrian land to join it to another country.” Law No. 49 of 1980 also allows for the death penalty for membership in the Muslim Brotherhood. Contrary to international human rights standards, this law has retroactive effect.

Another egregious aspect of the Syrian justice system is the multiplicity of extraordinary courts. Military courts try both military personnel and civilians, and security courts try political cases. On the basis of Legislative Decree No. 51 of 1962,

jurisdiction to try civilians for criminal acts was granted to military courts. Decree No. 6 of 1965 established exceptional military courts, separate from the military justice system, to try political cases. That decree made any act of opposition illegal and allowed prosecution and the imposition of the death penalty for vague crimes such as “opposing the unification of the Arab states or any of the aims of the revolution or hindering their achievement.” Decree No. 109 of 1967 created Military Field Tribunals, which could be established anywhere during war or other military operations. Military Field Tribunals have been used to try Syrian civilians seen as opposing the regime. They do not follow ordinary criminal procedures and are often conducted in secrecy without any due-process guarantees. The Supreme State Security Court was later created to handle cases deemed to concern state security. While that court was dismantled in April 2011, the secretive military courts and the Military Field Tribunals continue to operate with jurisdiction over civilians.

Prisons and detention centers are similarly secretive and have multiplied far beyond the Ministry of Justice. Each of Syria’s many overlapping intelligence agencies (the Military Intelligence Service, the General Intelligence Directorate, the Air Force Intelligence Directorate, and the Political Security Directorate) maintains a network of prisons and detention centers, many of them secret (see Chapter 3). They are located in all cities and many villages across Syria, some in the basement of intelligence service buildings and others in makeshift facilities within schools and public buildings. While the intelligence agencies work closely with the security courts and military courts, they have also held political prisoners indefinitely without trial. The numerous reports of egregious human rights violations committed in these secret prisons by agents of the intelligence services include torture, rape, and extra-judicial executions.

*The laws providing impunity to state officials make a mockery of the rule of law, as they pretend to legally establish that which violates the core concept of accountability. For example, Article 16 of Legislative Decree No. 14 of 1969 provides that no legal action can be taken against any employee of the General Intelligence Directorate for crimes committed in the course of duty.*

Impunity cloaks all these violations. The laws providing impunity to state officials make a mockery of the rule of law, as they pretend to legally establish that which violates the core concept of accountability. For example, Article 16 of Legislative Decree No. 14 of 1969 provides that no legal action can be taken against any employee of the General Intelligence Directorate for crimes committed in the course

of duty. Under Legislative Decree No. 69 of 2008, no lawsuit may be filed before courts against members of the police, customs police, or political security without the prior permission of the army commander.

Finally, there are the Shabiha: entirely outside the justice system but entirely relevant to the context of justice and the rule of law in Syria. These armed groups have their origins in criminal enterprises and networks that worked on behalf of the regime well before the uprising. Since the uprising, they have transformed into brutal paramilitary groups violently repressing the opposition. The Shabiha have been implicated in gross human rights abuses and extra-judicial execution, including the killing of children in the Houla massacre in May 2012 (see Chapter 3).

### **1.3. Challenges and Risks**

This context of captured institutions, politicized personnel, laws that violate human rights, extraordinary courts, secret detention centers, and impunity—in short, a severely weakened and compromised civilian justice system—is one of the deepest challenges for the justice sector in the transition. It presents a very weak base from which to build the rule of law. The transitional government will inherit a situation where the state apparatus may not function, where many violations of human rights (e.g., detention of political prisoners) call for immediate redress, and where the population is right to be distrustful. Further, the course of the revolution and conflict prior to the transition will raise other challenges. The Day After project cannot predict with any precision the nature of the regime change or the conditions just after. Nonetheless, it can anticipate, and then recommend contingency plans to address, the following challenges.

*Challenge 1.* The existing justice system is weak, while the need for justice during the transition will be great. The transitional government must immediately cease human rights violations of the previous regime, fill a justice vacuum and avoid chaos during the transition, and prepare to bring to justice those who committed conflict-related crimes. Specific challenges include:

- The perceived and real lack of independence of the justice system;
- The existence of extraordinary courts, which violate the rights of Syrians and lack legitimacy;
- The insufficient number and capacity of personnel in the justice system, the concern that many personnel will not return to work in the transition, and the need to protect them from possible retaliation (if identified with the regime) or from public pressure that they exact vengeance from regime figures;

- Damage to or destruction of infrastructure and records, including records needed to vet prisoners and prosecute those who have committed human rights abuses and conflict-related crimes;
- The possible involvement of armed revolutionary groups in the administration of justice;
- The existence of laws that violate human rights;
- The imperative of arresting and securely detaining persons who have committed conflict-related crimes.

*Challenge 2.* Prisons in Syria are difficult to count, detain many people wrongfully, and provide abysmal conditions. Specific challenges include:

- The existence of secret prisons and detention centers, and the multiple lines of control through various ministries, armed forces, and intelligence agencies;
- The intentional release or the escape of serious criminals during the transition, who may be a destabilizing element by perpetrating further crimes and committing acts of violence;
- The detention of political prisoners who have been held together with common criminals, thus requiring some review process;
- The detention of children in inhumane conditions;
- The high number of pre-trial detainees and inhumane prison conditions, calling for immediate redress;
- The imperative to detain persons accused of conflict-related crimes and human rights, who will need to be held securely, in accordance with international human rights standards, and protected from retaliation.

*Challenge 3.* Serious crime may well escalate during the transition (as it has in other transitional states), undercutting the consolidation of peace, security, and governance. Specific challenges include:

- Transnational organized crime engaged in trafficking drugs, people, and weapons (to, from, or through Syria), including the continued activity of regime figures and of organized crime groups who supported the revolution (e.g., by supplying arms);
- Revenge attacks against those seen as loyal to the regime;
- A rise in domestic violence and other violent crime, linked to widespread trauma experienced by the population;
- The possibility that former regime elements will engage in crime so as to destabilize the transition and foment sectarian tension.



*Challenge 4.* Mechanisms of oversight and monitoring have been lacking, whether for elements of the formal justice system or the parallel system operated by the military and security agencies. To date, justice and security actors have operated with impunity. Specific challenges include:

- The need to invent a system of oversight, as none now exists;
- The imperative of monitoring armed rebel groups, who may continue to operate during the transition, including exercising some functions of the justice system (e.g., making arrests and detaining prisoners) or engaging in revenge attacks;
- The need for mechanisms to respond to reports of abuse, so that monitoring has consequences.

*Challenge 5.* Large public gatherings will probably be common during the transition, whether to celebrate the end of the regime, affirm or protest aspects of the transition, or express political support or opposition. Public gatherings are welcomed, but must be managed carefully. Specific challenges include:

- In the wake of the suppression of freedom of assembly, Syrian society and justice agents lack a set of ground rules for public gatherings, or the techniques to manage them to maintain peace;
- Spoilers may seek to incite violence at public gatherings, to destabilize the transition.

*Challenge 6.* The justice system lacks legitimacy and public trust. The relationship between state and society has been fundamentally broken. Even as the transition faces other immediate challenges, it will need to repair that relationship. Specific challenges include:

- Popular distrust and suspicion of the state, which may carry over to the transitional government;
- Lack of a heritage of transparency and accountability among those occupying roles in the transitional government and among the populace.

## **1.4. Detailed Strategies and Recommendations**

The precise conditions of the transition cannot be known. The challenges can nonetheless be reasonably anticipated and preparatory steps and contingency plans recommended for meeting them. The strategies suggested here were developed by The Day After project through in-depth discussions with Syrians inside and outside the country. We have benefited from technical advice, historical reflection, and

contextual study. We were also been informed by the strategies pursued—and failures experienced—by other transitional states (see Selected Resources). They further recognize the limited resources available, whether human, financial, or political. Where possible, timeframes for the strategies are suggested: prior to transition, immediate priorities once the transition occurs, and during the first few months of the transition period.

The strategies here require action, yet they often do not specifically designate a responsible actor. Just as the exact conditions of the transition cannot be foretold, so the shape, composition, purview, and exact powers of the transitional authority is yet to be determined. We recommend these strategies as appropriate to whatever body is duly vested with authority during the transition.

Finally, while offering these recommendations, we also emphasize that any strategies pursued should align with the overarching principles expressed above. Syrian stakeholders should have local ownership of all strategies; strategies should be defined with sufficient participation and inclusivity; decisions and implementation should be transparent; and the whole undertaking should be appreciated as a process that will unfold over time, require adjustments, and should itself embody the spirit of the rule of law.

*Strategy 1: Administer justice during the transition.*

a) Abolish extraordinary courts; revoke arrest and detention powers of security services; revoke immunity of security services.

### **Immediate priorities**

- Abolish all extraordinary and exceptional courts. Repeal laws that grant jurisdiction to military courts (under Legislative Decree No. 51 of 1962), and Military Field Tribunals (under Legislative Decree No. 109 of 1967) to prosecute and try civilians.
- Repeal laws that provide powers of arrest and detention to the various intelligence services in Syria, including the Military Intelligence Service, the Political Security Directorate (which has an office in all civilian prisons), the Directorate General of Intelligence Services, and the Directorate of Air Force Intelligence Services.
- Repeal legislation such as Legislative Decree No. 69 of 2008, which provides immunity from prosecution to political, security, police, and customs officials for crimes committed while on duty.

b) Ensure sufficient personnel and capacity; restore judicial independence.

**Prior to transition**

- Compile a list of employees of the justice system (judges, prosecutors, prison officials, and police officers) and the Ministry of Justice. Use existing files, if they can be located.
- Identify current justice personnel who are “change agents” working in favor of the rule of law who can lead the justice system in the transition.
- Gather data from the Central Bank, Ministry of Finance, and Ministry of Justice to facilitate payment of justice personnel during the transition. As the transition proceeds, confirm that pay is provided only to those personnel actually working, and not to all those who remain on the roster.
- Undertake consultation and draft a plan to establish a new Ministry of Justice on Day One.

**Immediate priorities**

- Conduct outreach efforts and media campaigns to encourage personnel working in the regular justice system (but not the parallel system of military courts and intelligence services) to return to work. (Regarding agents in the military and security apparatus, see Chapter 3.)
- Leave existing personnel in the regular justice system in place during the transition. (Regarding the vetting of justice personnel, see Transitional Justice.)
- Provide targeted capacity development for certain justice personnel, e.g., training in criminal investigation and preservation of evidence for police and prosecutors, or training on the conduct of war crimes trials for judges.
- Reinforce both the independence and security of judges. Amend the Judicial Authority Law of 1961 to revoke the supreme authority of the executive to lead the judiciary; enforce the provisions that require judges to refrain from involvement in politics. (Regarding the separation of powers and the distinct branches of government, see Chapter 5.) To protect judges from outside influence and intimidation, ensure the security of courthouses and close protection of judges.
- Encourage communication and coordination between the various ministries concerned with the administration of justice and public order, including the Ministry of Justice and the Ministry of the Interior. Consider establishing a coordination group that meets regularly during the transition.

**First few months**

- Conduct a full assessment of the capacities of justice sector personnel. Incorporate a public perception survey, so that Syrian citizens can provide input regarding the obstacles and challenges they face, specifically concerning performance and capacities of justice personnel. In reviewing options for capacity development, identify the needs of the Syrian context (and training relevant to that context), rather than selecting among foreign models or approaches.
- Conduct a full assessment of the justice system. Incorporate nationwide public perception surveys to ascertain the problems the public has with the justice system and to learn what sort of system it would like in the future. Assessment and surveys can inform a national strategic planning process to address the long-term reform of the justice system.

c) Protect records and infrastructure.

**Prior to transition**

- Raise awareness among local groups in Syria about the importance of safeguarding records and critical justice infrastructure, so that all current prisoners can be handled justly, so that regime figures accused of conflict-related crimes can be prosecuted, and so that the administration of justice can go forward in the transition.
- Identify critical infrastructure and sites (e.g., Central Bank, state courts, other courts, prisons, detention centers, and security branch facilities) to ensure they can be safeguarded during the transition. Identify key records (e.g., criminal records, and statistics) and where they are stored (e.g., prisons, police stations, government offices) so they can be protected and preserved.
- Give local groups in each city and village a list of the critical infrastructure and location of records so they can assign people to protect them in the transition until public order can be restored.

**Immediate priorities**

- Assess and analyze the condition of justice infrastructure (e.g., damage to police stations and prisons) and the potential cost of repair.
- Allot an emergency budget to begin immediate priority rehabilitation of critical justice infrastructure elements (including prisons, courts, and police stations) to ensure they meet basic human rights standards and enable the functioning of the justice system.

d) Engage with revolutionary groups.

The Day After project could not come to a shared expectation regarding revolutionary groups, including the Free Syrian Army (FSA) and other armed opposition groups. A minority of members expect armed revolutionary groups to lay down their weapons and abide by the administration of justice as practiced by the transitional government. However, the majority of members anticipate that armed revolutionary groups will remain active and assume some role in the provision of security and administration of justice. The following strategies address that contingency.

We do agree that any engagement with revolutionary groups should be conducted with openness, transparency, and the utmost respect, acknowledging the key role they have played in the revolution and encouraging an honorable role in the transition. Consultations with revolutionary groups should address strategies, laws, and initiatives, so as to ensure they are closely involved in, cooperate with, and support the transitional government. Failure in this regard can result in reversion to violence.

### **Prior to transition**

- Map the Free Syrian Army and other armed opposition groups (e.g., sectarian groups), including their organizational structure, leadership, support, resources, motivations, methods and tactics, and relationships with other internal and external actors.
- Initiate a dialogue with the Free Syrian Army and other armed opposition groups about their possible role in the transition, and what preparation they would need to be able to fulfill that role.
- Engage with the political command of the Free Syrian Army and other revolutionary groups to develop strategies to hand over the administration of justice and provision of security in the transition. Strategies should reflect the mapping of armed opposition groups and should realistically address local justice and security contexts.

### **Immediate priorities**

- If revolutionary groups are involved in the administration of justice during the transition, work with them to agree on the basic human rights standards by which they will abide. Laws may need to be amended to grant them certain limited arrest powers, otherwise the prosecution of individuals for conflict-related crimes may be jeopardized.

- Create an oversight entity to monitor the involvement of revolutionary groups in the administration of justice and document and report any violations (see Strategy 4, below).

**First few months**

- Create strategies for the disarmament, demobilization, and reintegration of members of armed groups, recognizing the importance of understanding the specific groups and their contexts before formulating appropriate strategies. Some may be integrated into the police, military, or other ministries (see Chapter 3).
- Develop a law or regulation requiring registration of weapons and permits to possess weapons (see Chapter 3).

e) Begin to bring law into compliance with fundamental human rights.

**Prior to transition**

- Establish a legal committee to review existing laws and make recommendations of which laws to amend or repeal in the first months of the transition. The committee should be multidisciplinary, including lawyers and others knowledgeable of the law and also civil-society actors. The committee should consult broadly with civil society.

**Immediate priorities**

- Repeal key laws that violate fundamental human rights, such as freedom of expression and association, and laws that criminalize political opposition. This is both practically imperative and symbolically valuable, as it signals a distinctive break with the previous regime and builds confidence in the transitional government.

**First few months**

- The legal committee should consider broader challenges by analyzing the full body of the law, comparing it with international human rights standards (e.g., the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the Convention on the Elimination of Discrimination against Women, etc.) and international criminal law standards (e.g., the UN Convention against Organized Crime, the UN Convention against Corruption). It should also consult with stakeholders in Syria, from justice officials to civil society groups and

the public at large. This will provide the groundwork for future substantial legal reform.

f) Arrest, prosecute, and try persons accused of conflict-related crimes or human rights abuses.

Whatever the overall approach of transitional justice, it will likely include some role for the regular justice system in prosecuting persons accused of conflict-related crimes (see Chapter 2). It is important that the treatment of accused persons is humane and meets basic human rights standards.

### **Prior to transition**

- Identify the names of those suspected of having committed human rights violations during or prior to the revolution. This could be done through existing networks (e.g., Local Coordinating Committees).
- Gather and preserve evidence of crimes such as war crimes or torture for future prosecutions.

### **Immediate priorities**

- Ensure that the scenes of crimes or human rights abuses (e.g., torture centers, mass graves) are safeguarded and protected so that evidence is not disturbed or destroyed.

### **First few months**

- Cooperate with the initiatives taken toward transitional justice so that the regular justice system can play its part in this process (see Chapter 2).

*Strategy 2: Address detention and prison issues.*

a) Unify authority over and management of prisons; ascertain the number, locations, and conditions of prisons.

### **Prior to transition**

- Create an inventory of all prisons now operating, including secret prisons. Gather information on location and conditions, through networks on the ground in Syria.

**Immediate priorities**

- Close the most notorious prisons where egregious human rights violations have occurred.
- Place all prisons under civilian rather than military control, and under the authority of the Ministry of Justice.

**First few months**

- Conduct a prison infrastructure assessment to determine requirements for immediate and long-term repair of facilities.
- Dedicate an emergency budget to rehabilitate prisons so as to meet basic international human rights standards (see below).

b) Avert the release or escape of serious criminals.

**Prior to transition**

- Work with current prison officials who oppose the regime on how to avert the release of serious criminals.
- Obtain a list of prisoners convicted of serious crimes and identify the most dangerous.
- Determine where the most serious criminals are being held (e.g., two wings of the prison in Central Damascus).
- Develop a plan to prevent the escape of serious criminals in the initial chaos of regime collapse.

**Immediate priorities**

- Enact the plan to prevent the escape of serious criminals, including the guarding of prisons when regime forces flee.
- Safeguard prison records. If serious criminals do escape or are released, records will facilitate their recapture.

**First few months**

- If serious criminals are released by the Assad regime, consider offering incentives (such as reduced prison sentences) for them to hand themselves in.



c) Release political prisoners.

**Prior to transition**

- Create a comprehensive list of political prisoners. Gather information from existing networks (e.g., Local Coordinating Committees), reports by local and international non-governmental organizations, and the families of political prisoners. Compile contact information of families, so release of political prisoners can be communicated to them directly and immediately.
- Prepare to assemble Detention Review Teams. They should include a reputable judge, prosecutor, lawyer, and civil society representatives.

**Immediate priorities**

- Send Detention Review Teams to each of the prisons and places of detention identified to release political prisoners, using the lists of political prisoners compiled. If an individual is not on the list but may be a political prisoner, the Detention Review Team will review the criminal record or file and interview the individual to determine release.
- Establish mechanisms for families of political prisoners to communicate with Detention Review Teams and learn the results of reviews.

d) Release imprisoned children.

The Day After project recommends that all children (meaning individuals under the age of eighteen) be released from prison, whether they are political prisoners or children in conflict with the law. This is because prison conditions in Syria are so bad that it is inhumane to keep children imprisoned. Further, children housed with adult prisoners (as is the case in Syria) risk both “criminal contamination” and abuse at the hands of adult prisoners. Under international human rights law, detention of a child is considered a measure of last resort.

**Prior to transition**

- Create a comprehensive list of children in prisons. Gather information from existing networks (e.g., Local Coordinating Committees), reports by local and international non-governmental organizations, and the families of children. Compile contact information of families, so children can be released to their care.
- Devise a strategy for the release of children from prison. This merits careful consideration, including transportation to reunite families and provision for

children whose families cannot be identified or found. Special care should be taken so that children are not further harmed, traumatized, or ostracized upon release.

e) Review pre-trial detainees and improve prison conditions.

In one scenario outlined above, the regime may release large numbers of criminals or they will escape, leaving prisons relatively empty. In another potential scenario, the transitional government will inherit prisons crowded with convicted persons and also pre-trial detainees who have already been held for extended periods.

### **Immediate priorities**

- Send Detention Review Teams (see above) to prisons to determine whom to release, including pre-trial detainees who have already served longer than the maximum sentences they would have received if convicted.

### **First few months**

- To reduce the prison population, consider providing amnesty or pardon for lesser crimes.
- Assess prison conditions with the involvement of both local and international prison experts. Identify quick impact interventions that can redress current human right deficits. Key issues include ensuring adequate food, water, accommodation, sanitation and medical care. Provide an emergency budget to implement these interventions.
- Arrange for oversight of prisons to ensure that prison facilities meet human standards and that the rights of detainees are protected during the transition (see Strategy 4, below).

f) Detain persons accused of conflict-related crimes or human rights abuses.

### **Prior to transition**

- Decide where individuals who are accused of conflict-related crimes or human rights abuses will be held in detention around the country. As these locations could be subject to attack, they must be duly guarded. Oversight should also ensure that guards do not violate the human rights of the prisoners (see Strategy 4, below).

*Strategy 3: Prevent serious crime in the transition.*

All countries struggle to address serious crime. In transitional states, serious crime can be particularly destabilizing, sparking renewed violence and interrupting the consolidation of peace. Further, in post-conflict states, crime often increases, as experienced criminals and transnational organized crime take advantage of any chaos and disruption, and as individuals traumatized by the experience of violence are themselves more prone to violence. Combating serious crimes should be high on the policy agenda of the transitional government.

a) Identify capacity to address transnational organized crime.

**Prior to transition**

- Identify existing capacity and legal mechanisms to investigate and prosecute serious crimes, such as trafficking in drugs and people, committed by transnational organized crime syndicates. Given the multiplicity and secrecy of the current justice and security apparatus, it is not clear which branches are handling serious crimes and whether they will be operational in the transition. Consider establishing a Serious Crimes Unit in the Ministry of Justice to coordinate with the Serious Crimes Unit in the Ministry of the Interior (see Chapter 3).

**First few months**

- Conduct a strategic threat assessment to ascertain the scope and level of criminality in Syria and its regional implications. Shortcomings in handling serious crime, particularly transnational organized crime such as trafficking in drugs, people, and weapons, should be identified, so they can be addressed in medium- and long-term reforms.
- Ensure security of judges, lawyers, and prosecutors involved in trying cases of serious crimes, as they may be in danger of intimidation, injury, or even death.

b) Avert revenge attacks and other forms of criminality.

**Prior to transition**

- Prepare public message campaigns to avert revenge attacks and other forms of criminality. Assure victims and their families that martyrs will be honored and justice will be served (see Chapter 2). Direct substantial attention to preventing domestic violence.

**Immediate priorities**

- Broadcast messages to avoid revenge attacks, domestic violence, and other forms of criminality. This should involve government actors, individuals of moral authority, popular and local figures, religious leaders, non-governmental organizations, local civil society groups, and media outlets.

c) Develop local strategies to prevent crime.

**First few months**

- National and Local Rule of Law Committees (see Strategy 4, below) should address the problem of serious crimes. We concluded that it is unwise to create a universal counter-crime strategy for all of Syria and suggest that local strategies be developed.
- Involve local civil society organizations and non-governmental organizations in implementing strategies to deter crime and domestic violence which may increase as a result of trauma (see Chapter 2). Take steps to protect victims (e.g., create women's shelters).

*Strategy 4: Establish interim mechanisms for monitoring and oversight.*

Interim mechanisms of oversight should be established immediately in the transition to oversee the administration of justice and allow for prompt impartial investigation of critical local incidents involving justice actors. This will be a strong symbol of a new culture of accountability. The interim mechanisms would be in place during the transition. These mechanisms should include civil society so as to demonstrate the key role civil society plays in promoting the rule of law, and to enable all political parties and civil society to learn about the operation of the justice system and appreciate the priorities for long-term reform. Thus, The Day After project advocates utilizing already existing strong networks and local groups in civil society to form National, Regional, and Local Rule of Law Committees, as well as Rule of Law Monitors.

**Immediate priorities**

a) *Form a National Rule of Law Committee.*

Form a National Rule of Law Committee made up of representatives of political parties, the justice and security systems, civil society, and human rights groups. The National Committee should be as inclusive and representative as possible. The

committee should be chaired by a high-profile individual who is regarded as credible by all sides. If this is not possible, the chair should rotate.

The committee should devise and propose strategies for building the rule of law during the transition, receive updates from local committees on problems with the justice system or performance of agents in the justice system (including issues regarding the administration of justice by opposition groups), receive reports of disputes between political parties or opposition groups and the justice sector, and help formulate plans to ensure the peaceful and proper conduct of Syria's first democratic elections for the formation of a Constitutional Assembly. The committee can make explicit recommendations and encourage the transitional government to take action to resolve the issues.

The terms of reference for the National Rule of Law Committee should be agreed to by all parties. We propose the following:

- Consult widely with all stakeholders on rule of law issues;
- Formulate an overall strategy for the rule of law sector in the transition;
- Review all major operational plans of justice actors during the transitional period;
- Agree on a code of conduct for rule of law actors during the election;
- Facilitate the formulation of a plan to secure the country's first democratic election, including reviewing plans prepared and presented to the committee by security forces;
- Receive complaints from citizens across the country regarding cases of abuse by justice personnel and agree on actions to respond to such cases;
- Receive reports from independent monitors (see below) as well as other international or regional monitors;
- Resolve disputes between political parties and the security forces, and between elements of the security forces;
- At the request of the transitional government, investigate incidents of political violence during the transition and provide recommendations on how to prevent these in the future;
- Coordinate the establishment and functioning of Rule of Law Committees at the regional level, including receiving regular reports; and
- Resolve disputes referred to the Committee from Regional Rule of Law Committees.

*b) Form Regional Rule of Law Committees.*

Form Regional Rule of Law Committees made up of representatives of political parties, the justice and security systems, civil society, and human rights groups in Syria's different regions, to be chaired by independent persons of integrity. These committees should oversee and coordinate the work of Local Rule of Law Committees, receive reports from independent monitors (see below), and decide on appropriate courses of action. Further, the Regional Committees should report regularly to the National Rule of Law Committee regarding progress and challenges, and particularly provide forewarning of anything that could seriously disrupt peace, security, and the rule of law during the transition.

The terms of reference for the Regional Rule of Law Committees should be agreed to by all parties. We propose the following:

- Consult widely at the regional level with all stakeholders on rule of law issues;
- Coordinate the establishment and functioning of Local Rule of Law Committees;
- Agree on regional strategies to ensure justice and the rule of law, including negotiating between different actors to ensure full participation in these strategies;
- Resolve disputes between different political groups and actors and agents of the justice and security systems, and between elements of the justice and security system, when they have an impact on the region in question;
- Facilitate regional security arrangements for elections, including reviewing plans prepared and presented to the committees by the security forces and other actors;
- Address disputes or complaints that cannot be resolved at local level and provide recommendations on how to prevent these in the future;
- Receive briefings from independent monitors (see below) and decide on appropriate courses of action;
- Report regularly to the National Rule of Law Committee regarding progress and challenges, and particularly provide forewarning of anything that could seriously disrupt peace, security, and the rule of law.

*c. Form Local Rule of Law Committees.*

Form Local Rule of Law Committees made up of representatives of political parties, the justice and security systems, civil society, and human rights groups at the local level. Local committees should include representatives from armed revolutionary

groups as much as possible, to ensure their inclusion and participation, and thus acceptance of and commitment to any agreements made by the committees. Local committees should be chaired by prominent and trusted local individuals of high integrity.

Local Rule of Law Committees should have day-to-day contact with the justice sector at the local level. They should oversee justice-sector actors, including those from armed revolutionary groups, operating at the local level. The committees should also lead the development of local security pacts and mediate conflicts between groups (e.g., rival opposition groups).

The terms of reference for the Local Rule of Law Committees should be agreed to by all parties. We propose the following:

- Agree on a local strategy or pacts to ensure security and the rule of law, including negotiating with different actors to ensure full participation in the strategy;
- Resolve disputes between different political groups and actors and agents of the justice and security forces, and between elements of the justice and security systems;
- Facilitate local security arrangements for the election, including reviewing plans presented to the committee by the security forces and other actors;
- Receive complaints of abusive actions by justice and security actors, and if possible provide some redress or response to these claims;
- Refer complaints that cannot be resolved locally or are of a particularly serious nature to Regional Rule of Law Committees;
- Report regularly to the Regional Rule of Law Committee as to progress and challenges in rule of law, and particularly provide forewarning the Regional Committee of issues that may seriously disrupt security and the rule of law.

*d) Establish independent Rule of Law Monitors.*

We envisage Rule of Law Monitors as neutral actors drawn from civil society. Monitors should be established very quickly based on existing networks, such as the Local Coordinating Committees. They should be vetted through a system established by the National and Regional Rule of Law Committees.

Monitors will operate at the local level, directly observing the activities of justice system actors. For example, monitors should attend public gatherings, visit police stations and detention centers, and be present at trials. They should receive basic training as to their responsibilities in maintaining and reporting on the rule of law.

They should carry clear identification as Rule of Law Monitors, be readily identifiable as such (e.g., wearing distinctive dress), and should pride themselves on their neutrality and commitment to the rule of law.

Any disputes or abuses that monitors report should be examined and investigated—otherwise monitoring carries little weight. Serious incidents should be referred to specific sub-committees of the National and Regional Rule of Law Committees, established to investigate abuses.

The terms of reference for the Rule of Law Monitors should be agreed to by all parties. We propose the following:

- Maintain a presence in sensitive areas and at events where rule of law and security may be threatened;
- Be a neutral source of information as to conditions and activities of rule of law institutions, including at public gatherings;
- Report this information to Local Rule of Law Committees and in serious cases to Regional Rule of Law Committees;
- Initiate negotiations to resolve disputes between justice, security, and political actors before those disputes escalate;
- Monitor elections, building public confidence that rule of law and security will be maintained.

*Strategy 5: Manage public gatherings.*

a) Establish shared rules for engaging in public gatherings and ensuring safety.

### **Immediate priorities**

- Train the police responsible for public order in crowd control and tactical approaches consistent with international human rights law.
- Create ground rules for any group organizing or engaging in a public protest or gathering. The National and Local Rule of Law Committees should be involved in this.
- Ensure that independent monitors are present at public gatherings. The monitors should be drawn from the independent monitoring mechanism discussed above.



*Strategy 6: Build trust and legitimacy in the justice system.*

The transitional government will need to take concerted steps to build confidence and trust in itself, in the justice system, and in its ability to deliver rule of law results. Transparency is key, as is providing clear signals of a distinctive break with the past. Inclusion of civil society and local leaders and adoption of local-level initiatives are also essential during the transition, so as to begin to create a new relationship between state and society.

a) Raise awareness of a culture of respect for human rights and rule of law.

- The transitional government should raise awareness among both the Syrian public and among state actors about a culture of human rights and the rule of law. It should make clear that the state has a monopoly on the use of force, that individuals should not resort to violence, and that everyone is equal before the law. Specific messages should be directed to police, military, and security forces to underscore that they do not have impunity and that they serve and protect the public. Messages should also highlight the rich cultural diversity and heritage of Syria, focusing on equality of all groups, co-existence, and tolerance.
- Media, civil society groups, non-governmental organizations, religious leaders, and local leaders should all be enlisted in awareness-raising efforts.

b) Communicate about progress in establishing the rule of law.

- The transitional government should publicize rule of law initiatives and update the public daily about what it is doing to promote the rule of law. National and Local Rule of Law Committees should also provide public reports on their activities. Positive developments, at both national and local levels, should also be publicized through government announcements, media, and existing networks such as the Local Coordinating Committees.
- The transitional government should also communicate to the international community and regional neighbors about its commitment to the rule of law, and indicate that the transitional government welcomes international cooperation to assist in national efforts.

c) Seek input and feedback from the public.

- The transitional government should gather input and comment from Syrian citizens. Feedback mechanisms are crucial. Feedback and input can be received from the population through nationwide, regional, and local dialogues;

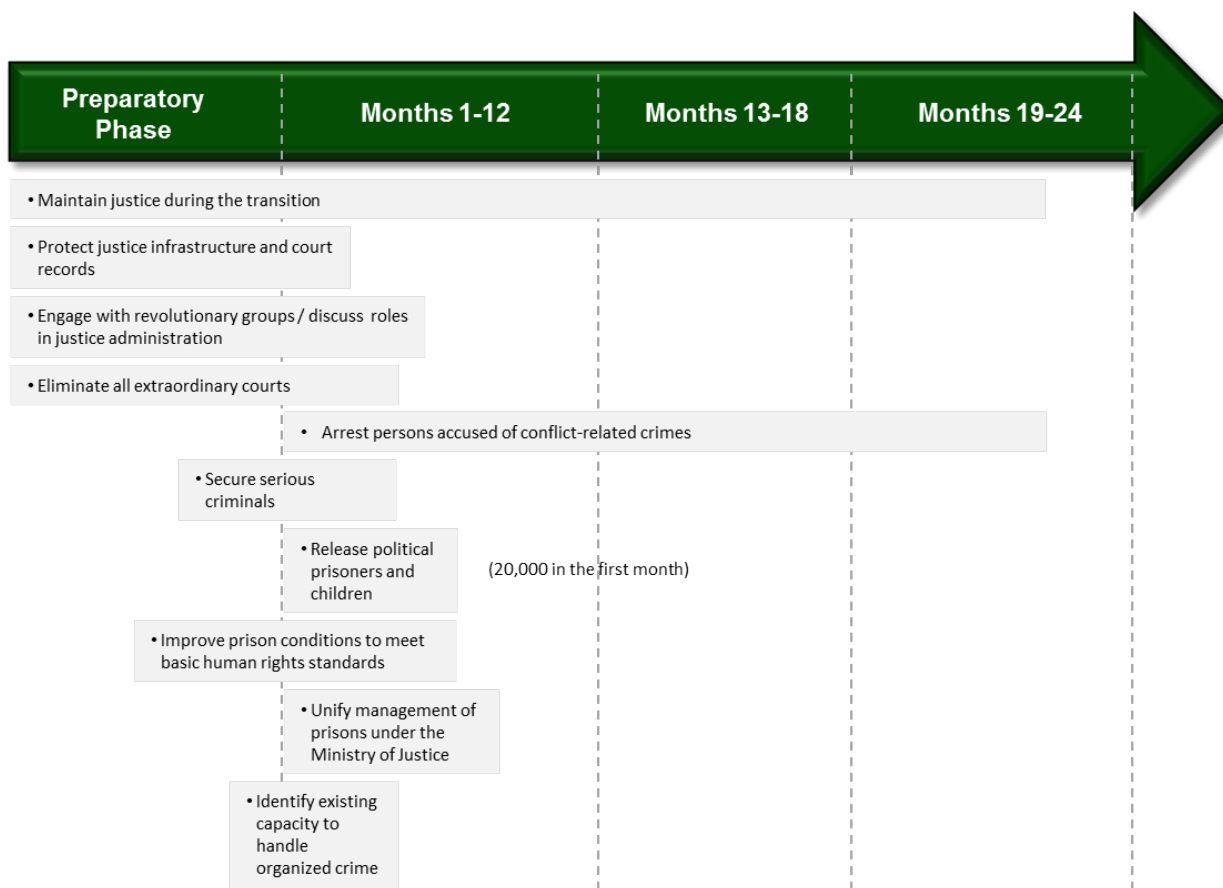
consultative forums such as national and local committees; and polling through social media. Consultation efforts should draw upon networks that existed prior to the transition and that are already well-established (e.g., community councils).

- Any new laws should allow time for civil society groups and members of the public to comment. Develop a system for receiving public input on inputting on draft laws.

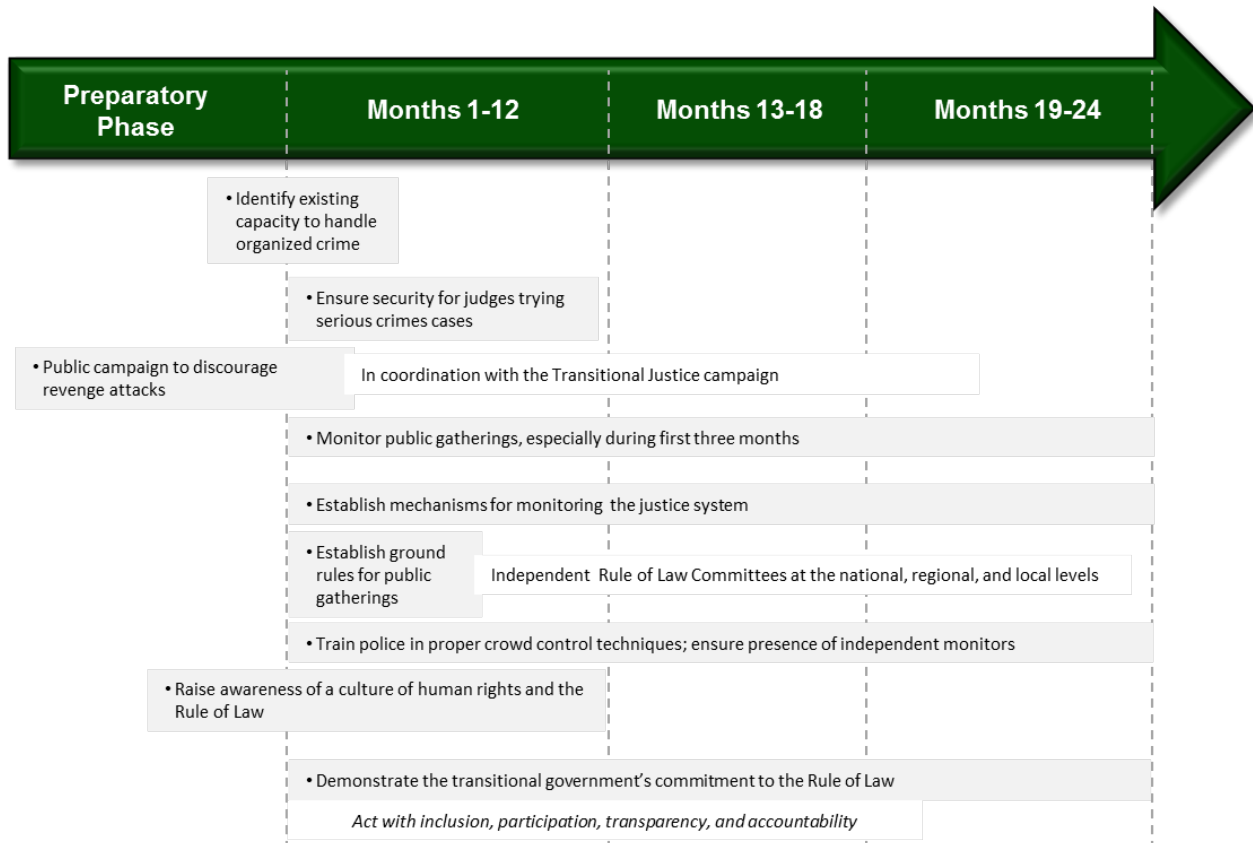
### 1.5. Timeline to Implement

Figures 1-1 through 1-2 depict notional timelines to implement Rule of Law recommendations.

**Figure 1-1: Notional Timeline for Justice System, Laws and Prisons**



**Figure 1-2: Notional Timeline for Crime, Oversight, Public Gatherings, and Trust and Legitimacy**



## 1.6. Selected Resources

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## Chapter 2. Transitional Justice

*Syria has been burdened with many decades of repressive rule and now confronts the turmoil and violence of the revolution. This has resulted not only in a broken state system and illegitimate institutions, but also widespread trauma and social fragmentation. Without attention to justice for the victims of abuse, to truth for those who have suffered during Ba’thist rule and the revolution, and to reconciliation among communities divided by conflict, Syria’s transition will be less likely to succeed, and the necessary processes of healing will be incomplete. The strategies proposed here integrate formal and informal methods to bring perpetrators to justice and enable Syria’s national reconciliation. They ensure Syria’s control of the transitional justice process while providing opportunities for international input and support.*

### 2.1. Summary of Recommendations

- Immediately establish a Preparatory Committee on Transitional Justice to develop and begin to implement a strategy of transitional justice; prepare to safeguard records and documentation; begin public messaging and outreach to avoid revenge attacks and raise awareness of transitional justice mechanisms; anticipate international interest; consider appropriate frameworks to coordinate and integrate the variety of transitional justice mechanisms; and prepare personnel who will be engaged in transitional justice institutions.
- Once the transition occurs, transform the Preparatory Committee into an independent National Committee for Transitional Justice with a mandate to coordinate and oversee the transitional justice agenda at the national level; ensure the integration, coherence, and consistency of its different elements; harmonize initiatives; and address any disparities in policy formulation and implementation.
- Establish a Special Criminal Court as an ad-hoc independent judicial body within the Syrian judicial system, in accordance with international standards and under the sovereign control of Syria, to prosecute high-level figures such as senior officials of the Assad regime, members of the Assad family, and their senior associates.
- Prosecute lower-level figures through normal judicial procedures and accepted para-judicial processes.
- Provide conditional amnesty and careful vetting rather than a general amnesty or broad lustration (mass disqualification of those associated with the regime).
- Create a Commission of Inquiry to engage in a broad and inclusive process of truth-seeking, establishing a shared account of recent Syrian history. Under this commission, one sub-commission will be historical, addressing the period

prior to the revolution; a second sub-commission will address the period of the revolution itself.

- Provide a system of reparation in a variety of forms, including material and symbolic compensation, restitution, rehabilitation, guarantees of non-recurrence, and official apologies.
- Enable long-term national reconciliation through history education, memorialization, psycho-social support, and national dialogue and outreach.

### Goals, Principles, and Guidelines

The broad goal of transitional justice is to address the legacies of past large-scale abuses. Transitional justice aims to reestablish accountability and achieve reconciliation. It includes all victims, holds all perpetrators accountable regardless of identity, and provides for equal treatment of all in its procedures and processes. Its processes are both retributive and restorative, rebuilding citizens' confidence in state institutions and trust in each other.

In post-Assad Syria, the goals of transitional justice are to:

- Achieve justice for the victims of systematic human rights violations and past abuses, establishing an alternative to extra-legal forms of redress that could exacerbate conflict and social fragmentation;
- Provide some shared truth about the behavior of perpetrators and the experiences of victims;
- Establish varied mechanisms of accountability, transparency, and inclusion, preventing further abuses and restoring citizens' confidence in state institutions, contributing to the consolidation and legitimacy of the rule of law and of democratic institutions;
- Restore civic trust and construct a new positive narrative for Syria as a whole;
- Enable the healing and recovery of individual victims and of society at large, in view of the collective impact of violence, repression, and authoritarianism.

In developing the overarching goals for transitional justice and defining specific recommendations, The Day After project held to three overarching principles:

*Principle 1. Multiplicity of Mechanisms.* There is no single one-size-fits-all approach to transitional justice. Multiple mechanisms and varied approaches are appropriate, and the process should be adapted to the Syrian context. Rather than all-inclusive prosecutions or sweeping amnesties, transitional justice rightly employs a full range of mechanisms. These include prosecution of those responsible for crimes; fact-

finding and truth seeking; non-prosecutorial mechanisms of accountability; reparations; national consultations; memorialization and history education; and restorative measures that include psycho-social support.

*Principle 2. Sovereignty and Legitimacy.* Transitional justice in Syria must be consistent with internationally accepted norms and standards, especially with respect to prosecution of those responsible for crimes, and how to address gender-based violence. At the same time, it must address and incorporate national and local conditions and contexts and integrate culturally-appropriate norms of justice and reconciliation. Further, we understand that at each point in the design of a transitional justice framework, choices will be required that will affect the legitimacy and credibility of the process. These choices must emerge through a process of dialogue and consultation with the Syrian public and be made explicit. The political consequences of those choices must also be appreciated at each stage of the process.

*Principle 3. Prompt and Long-term Justice.* A key feature of justice is its promptness. In the context of regime change, transitional justice should meet urgent demands for immediate accountability, assist in restoring the rule of law, and signify a distinctive break with the past regime. Another key feature of transitional justice is that that it is a long-term process. The healing of victims, the restoration of confidence and civic trust, and the reparation of society occur over an extended period. The goals of transitional justice thus entail both a set of explicit finite tasks to be accomplished with urgency, and the cultivation of ongoing political, cultural, and psycho-social processes.

The Day After project thus offers the following more precise guidelines for pursuing transitional justice in Syria:

*Guideline 1.* National ownership of a transitional justice process, placing national sovereignty and Syrian interests at the center of the process. Foreign expertise will be called upon, when needed, with full respect of Syrian sovereignty.

*Guideline 2.* Active and inclusive participation of all Syrians, through local-level bottom-up processes; this means that, while a national framework and overall mechanisms will be provided, they will find diverse expressions at the community level, with the full inclusion of local-level initiatives and resources.

*Guideline 3.* Awareness and respect for the religious, sectarian, and cultural diversity of Syrian society.

*Guideline 4.* Acknowledgement and full respect for the diversity of individual circumstances and experiences and of the nature of violations, within a national process. Recognition that sectarian and other identities are not an indicator of the status of individual Syrians as victims or perpetrators.

*Guideline 5.* Flexibility and creativity in selecting approaches and tools to accommodate the Syrian context and the different needs of Syrians in the post-Assad period.

*Guideline 6.* Engagement of various components and levels of government and civil society in an effective partnership, to fully contribute to the strengthening of institutional legitimacy.

*Guideline 7.* Transparency and credibility of the process.

*Guideline 8.* Emphasis on constructive and healing approaches in achieving justice and mending any tears in the Syrian cultural and religious tapestry as a means to restore values of personal dignity, citizenship, and the restoration of faith among Syrians in justice and rule of law.

## **2.2. Context**

Whenever and however regime transition occurs, Syria will confront twin legacies. One is the long history of abuse that dates back to the seizure of power by the Ba’th Party in March 1963. The other is the abuses committed during the period of the revolution, which began in March 2011. In both periods, human rights abuses have been committed by subsequent Assad governments and by their opponents, with the state bearing a greatly disproportionate share of responsibility for violations. As noted in the *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic* established by the UN Human Rights Council, “the [Syrian] government has manifestly failed in its responsibility to protect its people. Since November 2011, its forces have committed more widespread, systematic and gross human rights violations. Anti-government groups have also committed abuses, although not comparable in scale and organization to those carried out by the State” (p. 1, see full citation in Selected Resources below). Both periods must be addressed in a process of transitional justice.

*Virtually every Syrian has been subject to the systematic repression practiced by the Syrian government since 1963, including routine and wide-ranging violations of basic human rights.*



Virtually every Syrian has been subject to the systematic repression practiced by the Syrian government since 1963, including routine and wide-ranging violations of basic human rights. This extends from the violation of basic civil and political rights, such as freedom of expression and assembly, to the violation of social and economic rights, including the expropriation of private property. Some of these violations have been formalized in official decrees, for example establishing the death penalty for membership in the Muslim Brotherhood (see Chapter 1). Other abuses have been committed by non-state actors operating in collusion with state officials, such as the loyalist militias known as the Shabiha. Although active beforehand, the Shabiha have been particularly involved in the violent suppression of protests and in sectarian killings since March 2011.

Abuses by the government and its agents have targeted certain groups and individuals because of their political orientation, ethnicity, or religion. These groups and individuals include the members of political parties and movements banned by the Syrian government, such as the Syrian Muslim Brotherhood and communist parties, as well as individuals suspected of anti-regime activities or sympathies; tribal groups; ethnic minorities such as the Kurdish population of Syria; and religious minorities such as the Assyrian and Yezidi communities.

The prominence of Alawites in positions of power in the Syrian government since the mid-1960s has given an enduring sectarian aspect to the abuses committed by the regime, including during the extended conflict with the Syrian Muslim Brotherhood. This culminated in February 1982 with a massacre in Hama in which tens of thousands of civilians were killed by government forces. Sectarian identity is also a significant factor in abuses committed by the regime's opponents against Syrian Alawites. The Day After project wishes to stress, however, that sectarian and other identities are not an indicator of the status of individual Syrians as victims or perpetrators. Many Alawites have been victims of human rights abuses. Individual Sunnis, Kurds, and members of other communities often viewed as victims may have been complicit in the government's abusive practices.

### **2.3. Challenges**

Specific challenges to the implementation of transitional justice in Syria will be profoundly influenced by the process and nature of regime transition. Key variables include how long the current government remains in power, how a transition occurs, and whether international intervention contributes to the fall of the Assad regime. A negotiated transition that is concluded within a limited period of time may leave a more benign set of conditions in its wake than a transition that follows a prolonged period of armed conflict and regime collapse. Alternately, a negotiated transition that

includes some form of amnesty for Bashar al-Assad and other senior regime figures will undoubtedly diminish prospects for accountability and justice. For this reason, The Day After project opposes amnesty as an element of a negotiated transition.

Under any plausible scenario of regime change, efforts to achieve transitional justice will face the following general challenges:

*Challenge 1. Divided society.* The revolution that began in March 2011 has exacerbated sectarian and regional tensions in Syria, deepening social divisions and creating significant potential for prolonged social violence following a transition. Such an environment will require a sustained commitment from a new government to the principles of fairness and equality in treating all victims and all perpetrators according to internationally accepted norms and standards. It will also require a commitment to the prevention of violence and a process of transitional justice that addresses the divisive effects of the revolution on Syrian society, as well as long-term national reconciliation.

*Challenge 2. Insufficient resource base.* International sanctions have severely disrupted the functioning of the Syrian economy and eroded the resource base on which a post-Assad authority will depend to implement a process of transitional justice. Securing the resources needed to implement a comprehensive, integrated transitional justice process will raise other issues for a post-Assad government to contend with. For example, access to international funds may require that a transitional authority agree to forego the death penalty as a condition for the release of funds needed to sustain a locally-managed process of transitional justice.

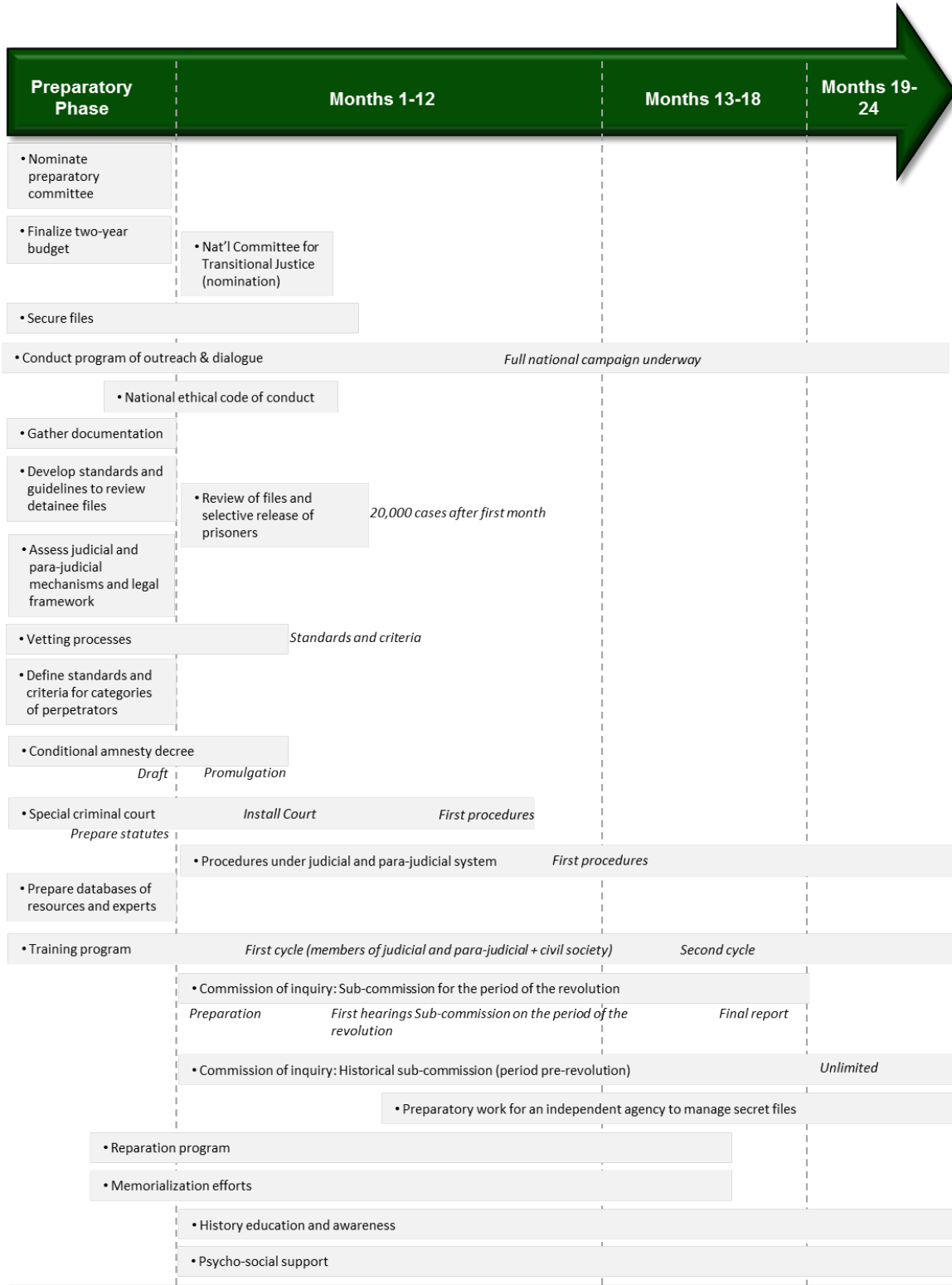
*Challenge 3. Limited capacity and compromised legitimacy.* Public institutions, including judicial and prosecutorial institutions, have been captured by the regime and used in its campaigns of repression. Many public officials and employees have either been involved or complicit in the regime's abuses. They have also had little relevant professional training—for example, in gathering evidence rather than forcing confessions. As a result, the capacity and legitimacy of existing institutions and personnel to implement a process of transitional justice that meets international norms and standards is uncertain. The view of The Day After project is that sufficient national capacity does exist in Syria to undertake many elements of a transitional justice process, while recognizing that an effective and transparent vetting process of public officials will be needed. The Day After project also suggests that a post-Assad government remain open to an international role in the implementation of a transitional justice framework. The boundaries and conditions for such a role are included in the plan that follows.

*Challenge 4. Urgent demand for accountability.* Following a transition, the demand for justice and accountability from victims will be very high, placing a new government under significant pressure to respond quickly, despite a lack of resources and limited state capacity. Moreover, victims are likely to seek immediate redress for both recent and historic abuses, and for all categories of abuses, ranging from extra-judicial killings, torture, and imprisonment to rape, denial of citizenship, and economic and cultural crimes. Managing expectations and taking victims' views into account in the design of a transitional justice framework will be essential for its credibility and legitimacy.

## **2.4. Detailed Strategies and Recommendations**

A timeline for the strategies elaborated below is provided in **Figure 2-1**.

**Figure 2-1: Transitional Justice Timeline**



## **I. Strategies Prior to Transition**

The Day After recommends that the strategies listed here be undertaken immediately, prior to regime change, as preparatory to the transitional justice process.

*Strategy 1. Create a Preparatory Committee for Transitional Justice.*

- As soon as possible, a Preparatory Committee should be formed to undertake the practical steps suggested below. This committee should include respected figures from different components of society and experts from different fields relevant to the transitional agenda (law, community mobilization, communication, information technology, etc.). For this preparatory phase, individual competencies should be a key criterion in forming the committee. A certain level of representation will also be important to ensure support for the transitional justice program from diverse communities and to undertake an effective outreach effort during the preparatory phase.
- This Preparatory Committee will be replaced immediately following a transition by a National Committee for Transitional Justice (NCTJ), see below, with a transfer of all relevant resources and documentation.

*Strategy 2. Prepare to safeguard and assess information.*

- Prepare a contingency plan to safeguard and secure the files and documentation accumulated by the current security apparatus, as well as official documents, such as property registers, judicial registers, and civil records. Contact individuals within the current apparatus to support implementation of the contingency plan, including by making copies of files. The contingency plan should include the protection of buildings that contain relevant documents. Although the first few days of any transition will be crucial for that protection, incidents already registered in some regions show that this imperative should be considered as an urgent priority.
- Immediately start gathering and organizing the information relevant for the transitional justice process accumulated during the revolution. Assess the quality of the documentation (including information that could later serve as legal evidence). Regarding human rights violations, this should be done in collaboration with other projects such as the nongovernmental Syrian Justice and Accountability Center.
- Work with counterparts in the rule of law and security sector reform to gather information and develop documentation for a vetting process of regime figures (see Chapters 1 and 3).

- Work with counterparts in the rule of law and security sector reform to create standards and criteria for different categories of perpetrators and direct them to different judicial and non-judicial processes (see Chapters 1 and 3).

*Strategy 3. Start public messaging and outreach.*

- Prepare a public message campaign to raise awareness of the existence of alternatives to revenge and contribute to the development of strategies to prevent violence, connecting with and supporting groups that are already working on these issues. Begin outreach efforts and the diffusion of the concepts, goals, and principles of transitional justice and their discussion in local contexts. Start a national dialogue so that the diversity of circumstances and perspectives can be fully taken into account in the development of the transitional justice agenda, including in the wording and labeling of the different initiatives.
- Nominate “regional ambassadors” in different Syrian regions to convey the concept of transitional justice and mobilize local activist networks even prior to the fall of the regime.. Also identify key figures of cultural authority and key civil society organizations sympathetic to this initiative to help raise awareness.
- Outreach efforts should target groups that might be expected to endorse the principles of transitional justice as well as those who are likely to reject them. It will be particularly important to engage local religious and women’s groups to assist in outreach and dissemination efforts and to support the restorative and healing aspects of a transitional justice process. All the different parties involved in the Syrian opposition should also be addressed. Such inclusivity will help ensure the legitimacy and authority of the future NCTJ (see below).
- Draft a National Ethical Declaration (Code of Conduct) to help establish standards and principles for a transitional justice project. Seek the endorsement of this declaration from all components of Syrian society.

*Strategy 4. Consider how to integrate judicial, para-judicial, and non-judicial institutions and processes.*

- Work with appropriate counterparts in the field of rule of law and the security sector to assess existing bodies and national institutions that may have a role in transitional justice. This may include the existing formal system, as well as informal and traditional mechanisms.

- Work with appropriate counterparts in the field of rule of law and the security sector to assess the legal framework that can be applied in judicial processes as well as individual laws that would require revision.
- Work with appropriate counterparts in the fields of rule of law and security sector reform to create the standards and criteria to establish different categories of perpetrators and direct them to different judicial and non-judicial processes.
- Interact with those involved in traditional or popular justice mechanisms, including the revolutionary courts, regarding what role they might play in the transitional justice process.
- Start the design of activities, projects, and initiatives that present alternative and complementary approaches to justice and that emphasize healing, restoration, and constructive alternatives to vengeful and punitive measures. This may include theatre, art, and different memorialization endeavors.
- Assess and discuss the political consequences of the different possible combinations of judicial and non-judicial processes that will be proposed for implementation.

*Strategy 5. Anticipate international interest.*

- Discuss the degree of international engagement that might be needed and assess the possible consequences of such engagement, including the potential loss of national control in the event that international judicial bodies become involved in prosecution. Advise the Syrian opposition on how to handle international demands regarding transitional justice and make recommendations regarding strategies for responding to such demands.

*Strategy 6. Prepare personnel and local partners.*

- As soon as possible, create a secure database of local, regional, national, and international non-governmental organizations and experts, including their respective capacities and resources in the field of transitional justice. This should include individuals who are part of the current regime but who could be of help in facilitating and implementing the transitional justice process.
- Start to develop a training program for the staff of Syria's formal judicial system and the members of the informal para-judicial system active across the country. All training should be in coordination with the rule of law program so that it contributes to the long-term objective of strengthening rule of law.
- In coordination with other related efforts such as the Syria Justice and Accountability Centre (see Selected Resources), support the training and

preparation of grassroots groups and actors who will be involved in transitional justice to ensure their capacity to effectively manage information, documentation, and evidence. Training should provide familiarity with internationally accepted guidelines and standards for the collection, organization, and storage of data relevant for future transitional justice efforts.

*Strategy 7. Prepare for the National Committee for Transitional Justice.*

- The National Committee for Transitional Justice will replace the Preparatory Committee immediately following regime change. Prepare the constitution of the National Committee for Transitional Justice as well as the organization of its secretariat.
- Prepare a budget for an initial two-year phase of the full transitional justice process, in coordination with appropriate counterparts in the economic field. Secure the commitment of any future authority that the transitional justice process will be included in the annual national Syrian budget and therefore funded on a stable, long term basis appropriate to the importance of this process for national reconstruction and the consolidation of rule of law.

## **II. Immediate Priorities**

*Strategy 1. Establish the National Committee for Transitional Justice.*

The Day After project recommends the creation of a National Committee for Transitional Justice (NCTJ) by decree of a transitional authority, as its creation will precede the election of a new parliament. This committee will be in charge of the transitional justice agenda and will have full authority and independence in its decisions and operations.

The members of the NCTJ will be nominated by different components of Syrian society. The following sectors and components should be represented: figures of cultural authority (religious leaders, respected cultural figures, artists, and writers); representatives of civil society groups (including youth and women organizations); and human rights organizations. One member of the NCTJ should be from the security sector (with appropriate standing and a strong public reputation for integrity) and a second member should be from the judicial sector to ensure smooth coordination with the authorities of those two sectors as well as the coherence of the transitional justice process. The method of nomination to the NCTJ should be discussed and finalized during the preliminary phase.

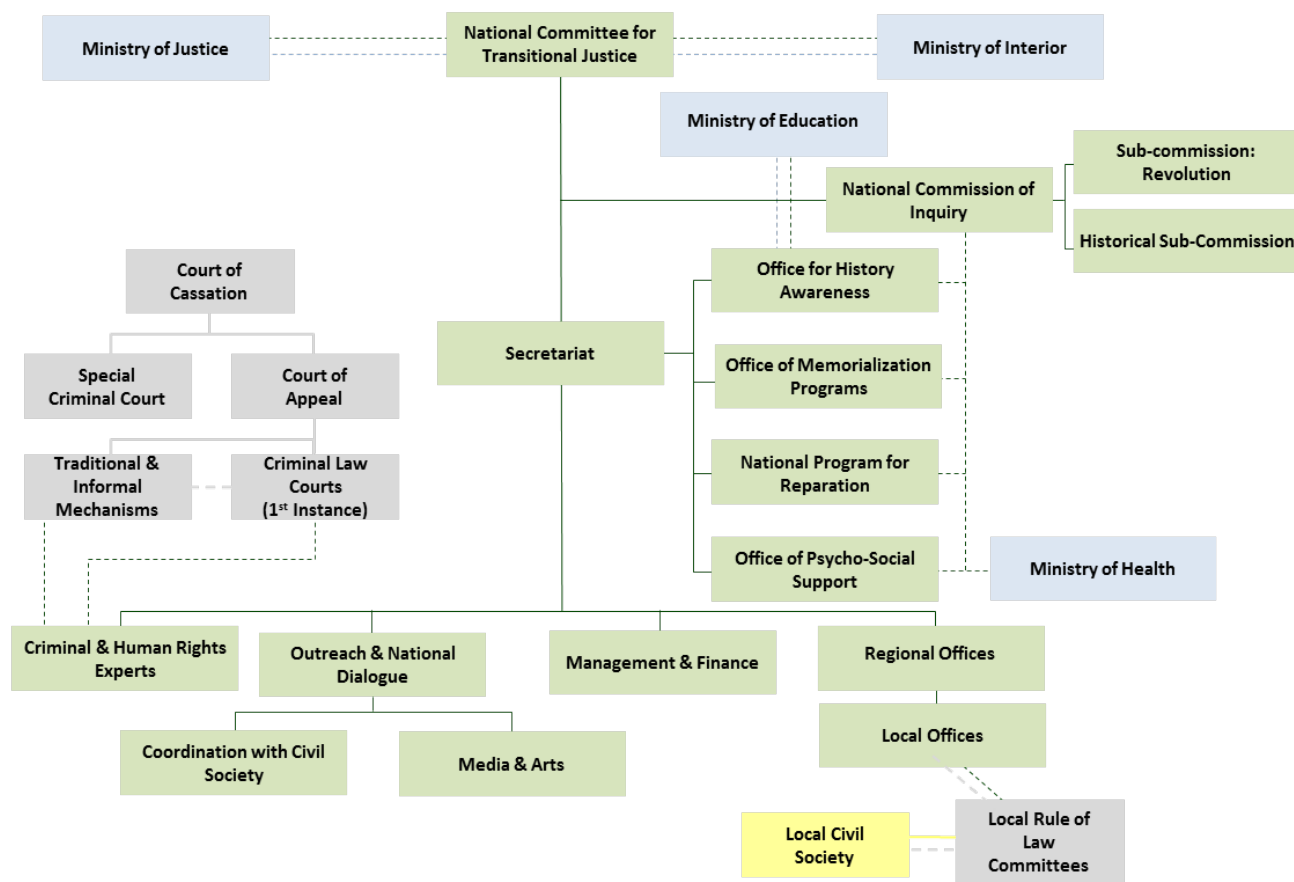


The mandate of the NCTJ will be to coordinate and oversee the transitional justice agenda at the national level; ensure its integration, coherence, and consistency; harmonize initiatives, and address any disparities in policy formulation and implementation. The committee should coordinate with relevant ministries and authorities and be a trans-disciplinary team supporting everyone involved in the transitional justice agenda.

The NCTJ will be assisted by a Secretariat (see **Figure 2-2**) including experts and support teams in the following fields:

- Legal/judicial, criminal, and human rights investigation
- Psychology, trauma, and social work
- History and memory
- Outreach and education
- Media and arts
- Coordination with civil society
- Management and finance

**Figure 2-2: Transitional Justice Organizational Chart**



We also recommend that the NCTJ open local offices to be singular and accessible interfaces with the public, so that individuals need not visit several offices to find information or offer input on reparations, commissions of inquiry, etc. To support their work, these local offices can rely on volunteers and civil society networks. The NCTJ will act locally in partnership with existing networks identified during the preparatory phase as well as the Local Rule of Law Committees (see Chapter 1).

**III. First Few Months of the Transition**

*A. Bring perpetrators to justice: special, regular, and para-judicial processes.*

Prosecution of those responsible for committing serious violations of human rights is a central component of transitional justice processes and a necessary step in responding to demands for accountability and justice. Indeed, international law now holds that the investigation and prosecution of systematic, gross violations of human

rights is a binding obligation of states. The integrity and legitimacy of prosecutions require that they comply with international legal standards.

Prosecutorial initiatives are often the most visible and symbolically significant element of a transitional justice process. How a post-Assad government handles the prosecution of those responsible for gross, systematic violations of international humanitarian and human rights law will have an important influence on the broader success of Syria's transition. However, there are limits to the number of individuals whose cases can be handled efficiently and effectively through special courts or criminal prosecutions. Therefore, the Day After project recommends a range of prosecutorial initiatives, including a Special Criminal Court for leading officials of the Assad regime, normal criminal proceedings, as well as mediation and informal/traditional mechanisms.

The timing and sequencing of judicial proceedings deserve specific attention. A post-Assad government will confront an outpouring of popular demand for accountability and justice. It will also face international pressure to respond quickly to its obligation to investigate and prosecute serious violations of international human rights and humanitarian law. Yet it may not possess the means to respond these expectations. There are also risks to the stability, functioning, and consolidation of a democratic political order from judicial proceedings that would extend to large segments of Syrian society. It will be critical for a post-Assad government to maintain a balance among these competing pressures.

The Day After project therefore recommends that the establishment of a Special Criminal Court be the top priority of a transitional justice framework. It recommends that the investigation and prosecution of violations committed by individuals whose cases do not fall within the mandate of this ad hoc tribunal, but which are of a severity that warrants prosecution, be addressed as quickly as possible. It also recommends that the full range of non-judicial mechanisms and processes suggested in the present plan be established alongside of judicial proceedings, and on a timetable that respects the rights of all. Those mechanisms should be considered as simultaneous processes that complement each other and will help in managing the multiple pressures that will emerge during the transition period.

*Strategy 1. Establish a Special Criminal Court.*

The Day After project recommends the establishment of a Special Criminal Court by a new Syrian government or transitional authority. The court will function as an ad-hoc independent judicial body under the Syrian judicial system. Its mandate would extend

only to senior officials of the Assad regime, members of the Assad family, and their senior associates.

The exact number of individuals to be tried by the Special Criminal Court remains to be determined. The criteria and standards for additional categories of perpetrators will be developed by the Preparatory Committee described above. Prior to a transition, the Preparatory Committee will gather information and develop documentation for the identification of judges of integrity who could be in charge of special prosecutions as well as the establishment of a vetting process to ensure the integrity and competence of judicial personnel. The Preparatory Committee will further review existing criminal law and assess its applicability for judicial proceedings that meet international norms and standards (see Chapter 1).

The Day After project considered several elements when making the recommendation for a Special Criminal Court:

- Satisfy international norms: A Special Criminal Court is consistent with international norms and standards, according to which states have the primary responsibility to prosecute serious violations of international humanitarian law and gross violations of international human rights. The importance of the location of the tribunal in the country where the crimes have been committed has also been highlighted by other countries' experiences.
- Maintain sovereignty: The Day After project considers the Syrian judicial system to possess sufficient capacity to guarantee fair proceedings, in conformity with international norms and standards, provided the Preparatory Committee can design an adequate vetting and selection process. The Day After project further stresses the importance of preserving full Syrian sovereignty over all judicial processes and therefore does not recommend an international tribunal or hybrid court. This is of both functional and symbolic importance. It will demonstrate to Syrians and the international community the ability of the new Syrian state to function legitimately and fairly. This will also ensure that whatever happens at the level of Special Criminal Court remains connected with the national legal system. International support for judicial proceedings will be welcome as long as that support can maximize the legitimacy and efficiency of the national processes and benefit the entire system.

However, we recognize that the scope of international involvement will be influenced by the conditions of the transition, including the state of Syria's justice sector at the moment of transition. Even if international actors do not intervene directly, they may impose conditions on the proceedings of a Special Criminal Court, especially if

international funds are required to support its work. Conditions may include elimination of the death penalty, and the appointment of international experts to the Special Criminal Court.

- Avoid overburdening the justice system: The need for an ad-hoc tribunal to focus only on those who bear the greatest responsibility has been shown in other countries. A Special Criminal Court will require judicial processes that can be completed within a relatively short period of time and at a limited cost, conducted by judges who can work under severe pressure. The Special Criminal Court will also avoid the overburdening of Syria's existing judicial system.
- Strengthen the rule of law: While the Special Criminal Court will be ad-hoc, to undertake the sole task of prosecuting top-level perpetrators, it will in no way be a tribunal of exception. The Special Criminal Court will operate entirely under Syrian law, appropriately revised in keeping with principles established in Chapter 1

*Strategy 2. Conduct regular judicial and para-judicial processes.*

Perpetrators whose crimes will not fall under the jurisdiction of the Special Criminal Court will fall under the jurisdiction of the existing Syrian judicial system (see Chapter 1).

The Day After project also recommends integrating existing para-judicial processes into the transitional justice system, including traditional and informal local mechanisms. These may provide frameworks to address local legacies of violence and deal with low-level perpetrators. Combining elements of retributive and restorative justice, these mechanisms would help hold low-level perpetrators accountable for past abuses while potentially imposing non-criminal, community-oriented penalties, such as monetary compensation or community service. Local practices generally have a strong focus on rebuilding social relations in a community, but also include elements of retribution, acknowledgement of wrongdoing, compensation, forgiveness, and reconciliation. Last but not least, their integration into the transitional justice process would help to avoid overwhelming the formal judicial system. Specific attention should be paid to the revolutionary courts put in place under the leadership of local elders. Although they have generally handled civil matters, some have also dealt with criminal and human rights violations.

The NCTJ will assess the potential use of all those processes region by region, area by area. The diversity of existing para-judicial and reconciliation processes should be

fully respected, under the common umbrella of the rule of law. Part of the assessment will aim at guaranteeing the full respect of international human rights norms.

To maximize the contribution of these diverse mechanisms, The Day After project recommends that they be monitored by the Local Rule of Law Committees (see Chapter 1), in close collaboration with the NCTJ. Seminars and training programs common to staff of the formal judicial system and these informal para-judicial mechanisms should also be organized by the NCTJ, in collaboration with the Ministry of Justice. This will facilitate the cooperation and complementary nature of the different mechanisms.

Consistent with existing Syrian law, ordinary citizens as well as the state will be able to refer cases to mediation and other customary para-judicial mechanisms. Conversely, any party will be able to access the formal justice system if a decision made through a para-judicial process is considered unacceptable.

*Strategy 3. Provide conditional amnesty and selective lustration.*

The Day After project recommends the application of a conditional amnesty. Those responsible for crimes and serious violations of international human rights and humanitarian law should be excluded from any amnesty. This should include in particular all cases of rape, torture, and killing. Explicit criteria will be developed by the Preparatory Committee, as it establishes criteria for the different categories of perpetrators.

The Day After project also recommends the careful exercise of selective lustration, rather than broad-brush processes of lustration such as those applied in Iraq following the invasion that overthrew the regime of Saddam Hussein.

## **B. Truth-Seeking, Reparation, Reconciliation: Non-Judicial Processes**

*Strategy 1. Establish a Commission of Inquiry.*

The Day After project recommends the establishment of a Commission of Inquiry to seek shared truth about past abuses and patterns of violence. The commission should be empowered to collect statements from victims and witnesses, undertake research, establish and maintain an effective national documentation system, hold public hearings, engage Syrians in dialogue processes and consultations, and employ other appropriate mechanisms and procedures to establish and make available to the public facts concerning past violations of international and Syrian human rights and humanitarian law. The exact functionality, forms, and mandates of the Commission

will be decided by the Preparatory Committee. The Commission of Inquiry should be under the direct supervision of the NCTJ.

The Day After project recommends that two sub-commissions be formed under the authority of the Commission of Inquiry, working in parallel and starting their work at the same time, with their own personnel and resources. One will be historical, addressing the period prior to the revolution; the other will address the period of the revolution itself. This will permit flexibility in exploring the different periods of violence, and help ensure that all Syrians feel they are heard.

The Day After project recommends that both sub-commissions focus on the following:

- Capturing the diversity of local histories in a dynamic and participatory fashion, supported by the presence of local transitional justice offices which will work in collaboration with local civil society networks and Rule of Law committees.
- Identifying the historical, structural, and institutional factors that allowed the development of a violent and repressive regime, as well as the socio-economic dimensions of that repression (including the violation of property rights).
- Contributing to a new forward-looking sense of citizenship among all Syrians, emerging from a shared history and a process of national reconciliation, so that all the different components of Syrian society can embrace a shared future.
- Capturing the history of the revolution and of previous episodes of resistance against the regime in addition to the history of repression and abuse, so that it may become part of a new common narrative, strengthening solidarity and the social capital developed in the course of the revolution.
- Publicly disseminating the results of this work, expressing the principles of transparency, participation, and accountability.

As part of the inquiry process, preparatory work should be undertaken for the future establishment of a special independent agency to manage and make public the files of the internal security services, on the basis of appropriate legislation such as the law passed by unified Germany following the collapse of East Germany.

*Strategy 2. Provide reparation.*

The Day After project endorses the principle that reparation is a right of Syrian victims of serious abuses of international human rights and humanitarian law. It also acknowledges the potential value of reparation as a means of reconciliation in a cultural context that has long accepted compensation for death or injury as a way to satisfy the claims of victims and/or their families.

Reparation may take many forms. Financial compensation is only one. A wide array of other mechanisms is available to acknowledge, apologize, and compensate for particular wrongdoings. Reparation programs should provide a combination of material and symbolic benefits to victims. These may include financial compensation (such as funds for widows and orphans), pensions, educational scholarships, and the provision of psycho-social support. Symbolic measures include official acknowledgement of and apology by the Head of State in the name of Syrian society for the wrongs committed against victims, as well as memorialization initiatives.

More specifically, reparation should include a combination of:

- *Restitution.* The goal of restitution is to reestablish the victim's status quo ante. Measures of restitution can include the reestablishment of rights, such as liberty and citizenship, as well as the return of property (lands, businesses, etc.).
- *Compensation.* Compensation is usually thought to involve providing an amount of money deemed to be equivalent to every quantifiable harm, including economic, mental, and moral injury.
- *Rehabilitation.* This includes measures such as necessary medical and psychological care, along with legal and social support services.
- *Satisfaction and guarantees of non-recurrence.* These particularly broad categories include such dissimilar measures as the cessation of violations; verification of facts, official apologies, and judicial rulings seeking to reestablish the dignity and reputation of victims; full public disclosure of the truth; search for, identification, and presentation of the remains of dead and disappeared persons; the application of judicial and administrative sanctions for perpetrators; as well as measures of institutional reform, all with the aim of providing some promise that such atrocities will not recur.

From this perspective, the entire transitional justice agenda should be directed toward providing reparation. However, designing and implementing reparation programs in the context of a post-Assad Syria will face substantial challenges. The Day After project notes a number of concerns regarding reparation:

- *Individual versus collective reparation.* The reparation process could become divisive if it focuses solely on the harm suffered by individual victims, in a context in which Syrian society as a whole can be said to have experienced harm as a result of the repressive and arbitrary practices of the Assad regime. The Day After project therefore stresses the importance of collective and symbolic reparation such as public apologies, memorialization and



commemoration of victims, and the creation of museums, among others. The Day After project recommends that community-oriented economic, service, and reconstruction programs be made available as potential modes of reparation in appropriate cases. Close collaboration with a future Ministry of Economy (as well as the Ministry of Education for educational scholarships) will be essential. Symbolic measures at the community level should also be available as options, including the use of public apologies, commemorations, and local museums, among others.

- *Hierarchy of victims.* Certain categories of victims may seek privileged standing in a reparation process, based on the perceived severity of the harm they have suffered. In any context, the technical and political process of defining victimhood is highly contentious and potentially destabilizing; this is certainly true for Syria. In other transitional justice settings, challenging questions have included deciding whom to compensate, how much compensation to award, what kinds of harms to cover, how to quantify or compare harm done, and how to distribute compensation. In many cases, reparation policies have caused feelings of frustration among victims and their relatives. The Day After project recommends that the criteria used to distinguish between different categories of crimes also be applied in making these determinations: all those whose cases will have been subject to prosecution will have the right to individual compensation, based on a court decision. Cases subject to mediation or para-judicial processes will follow the decisions made by those mechanisms.
- *Insufficient resources.* It will be difficult to secure the financial resources needed to provide monetary compensation to the large number of victims of Syrian governments extending back, potentially, over a period of several decades. The Day After project recommends the creation of a special state trust fund to finance the reparation program. Efforts should be undertaken early on to secure funds from international donors (including for the financing of community programs). A special national tax could be imposed to finance this long-term effort essential to the reconciliation of Syrian society.

### *Strategy 3. Develop history education.*

The Day After project recommends that the NCTJ establish an office to develop history education and awareness, in coordination with the Ministry of Education. History education, including the development of new curricula and textbooks, is an important dimension of any transitional justice process. History education can transmit ideas of citizenship; promote tolerance and inclusivity; teach nonviolent means of conflict resolution; and help students articulate, accommodate, and accept differences between and within groups (see Selected Resources). History education occupies a

singular place in the reconciliation process because it is so extensive, reaching all citizens, extending into local institutions such as schools, and addressing the youngest generation.

Specifically, the history education team should:

- Work in close collaboration with the teams in charge of supervising judicial and para-judicial processes and the commissions of inquiry to ensure that their findings are integrated into history textbooks and teaching materials.
- Support an initial revision of textbooks and curricula (pending the production of additional historical material) to see that they promote a greater mutual understanding of cultural and identity difference within a broader framework of tolerance, and support the development of skills, values, norms, attitudes, and behaviors that encourage respect for human dignity and diversity.
- Organize, in collaboration with the Ministry of Education, seminars with teachers to ensure, beyond the curricular reform, pedagogical reforms that reflect the values of a new Syrian society.
- Facilitate and support the organization of debates on transitional justice issues in the national education system.
- Facilitate the participation of civil society in discussions about history and history education.
- Facilitate contact with international networks and as well as international exchanges on issues of educational reform.

#### *Strategy 4. Develop memorialization.*

The Day After project recommends that the NCTJ establish an office to develop and support memorialization efforts to preserve and honor the memory of events and people. These might include memorials, sites of memory, museums, commemorative days, and celebrations, as well as the renaming of public facilities, streets, and places in the names of victims. Memorialization plays a role in reconciliation by officially acknowledging the experiences of victims while accounting for a variety of perspectives. Memorialization can also help prevent a recurrence of abuses by serving as a permanent reminder of the past. Further, as noted above, memorialization is also a form of symbolic reparation. Thus, memorialization is an important part of a transitional justice process.

Some key principles should guide the organization of this work:

- Attention should be paid to the full range of initiatives, whether national or local, formal or grass-roots. Memorials that contribute to national

reconciliation may range from national memorials and formal museums and monuments that evolve over years, to community memorials and ephemeral collections of condolence notes, flowers, and pictures of victims at sites where they died or vanished.

- In all cases, close attention should be paid to the processes by which memorialization is undertaken, so that different interests, points of view, and perspectives are fully respected and considered. Public awareness and education programs will be crucial in helping to create meaning, ownership, and recognition.
- Different types of artistic endeavors, such as theatre and oral histories, dance and music, painting, photographic and artistic exhibitions, and radio and television productions should be encouraged and supported to contribute to the remembrance of the past, the truthful rewriting of Syrian history, and critical engagement with the past among Syrian citizens.

*Strategy 5. Provide psycho-social support.*

The individual and collective consequences of trauma need to be addressed. Experiences in other settings have shown a connection between the experience of trauma and the capacity to fully participate in a transition. It has also highlighted the collective impact of trauma. Therefore, psycho-social support should be considered an integral part of the social repair of Syrian society.

The Day After project recommends that a transitional government provide both adequate personnel and means to support psycho-social support across the country, with a diversity of services accessible to the Syrian people. We also recommend that the NCTJ establish an office responsible for psycho-social support services, in coordination with the Ministry of Health.

Particular attention should be given to avoiding the re-traumatization that can occur with the use of some of the mechanisms of transitional justice, including in the course of public recounting of abusive acts by perpetrators or victims. It is also essential to prevent a cycle of trauma for people who have been at the forefront of the opposition's struggle. These individuals may experience acute forms of post-traumatic stress disorder, with the risk that they are no longer available just as society needs their participation and leadership.

*Strategy 6. Engage in national dialogue and outreach.*

In keeping with international norms and experience, The Day After project supports the development of mechanisms and procedures to ensure broad public participation

in the identification of needs and priorities, and in shaping the design of a transitional justice process, region by region, locality by locality. Different channels and mechanisms—including the media, the educational system, and various modes of artistic and cultural expression such as theatre, music, and visual arts—will enable the active involvement of all components of Syrian society. The Day After project recommends that a program to support such activities be established promptly, with a dedicated team and budget for its implementation.

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## Chapter 3. Security Sector Reform

*A reformed security sector will provide security for all citizens of Syria so they may exercise their political, economic, social and cultural freedoms. Transparent and accountable security institutions under civilian control will maintain public order and defend Syria's sovereignty and territorial integrity.*

### 3.1. Summary of Recommendations

#### **Prior to the transition:**

- Build trust between the political leadership of opposition groups and the Free Syrian Army.
- Initiate efforts to improve command and control among armed opposition groups, ensure their compliance with human rights standards, and establish their acceptance of civilian authority.
- Conduct a preliminary vetting of retired and active high-ranking officers in the armed forces and police to identify trustworthy individuals who might take leadership roles in security sector reform.
- Prepare for the establishment of a transitional security force based on the Syrian National Police and other resources, including members of the armed and unarmed opposition.
- Create a committee to prepare and oversee the process of security sector reform in the transition period.

#### **Immediate aftermath and short-term priorities (1 week-14 days):**

- Maintain public order and provide security via a transitional security force that works closely with unarmed civilian groups at the neighborhood level.
- Appoint a credible army commander and return the army to barracks and bases. Reassure officers that the objective of security sector reform is to build a professional army.
- Abolish the existing intelligence services.
- Secure major conventional and nonconventional weapons; collect heavy and medium weapons; secure stockpiles of small weapons.
- Address armed groups by arresting, disarming, and detaining all those who have committed crimes against civilians. Dissolve non-state militias. Vet members of the Free Syrian Army and other armed groups.

**Medium-term measures (1 ½-2 months):**

- Maintain public security.
- Vet ranking officers in the armed forces.
- Identify, arrest, and detain for prosecution former regime officers responsible for human rights abuses.
- License personal small arms.

**Long-term reforms (12 months-end of transitional period)**

- Reform the governance of the armed forces.
- Reconstitute the armed forces on the basis of democratic principles.
- Integrate appropriate elements of the Free Syrian Army into the armed forces.
- Reform the governance of the national civilian police.
- Professionalize the national civilian police.
- Integrate armed civilian groups into the police as appropriate.
- Establish a new internal intelligence service.
- Establish a new external intelligence service.
- Establish new military intelligence departments.

**Goals and Objectives**

The people of Syria expect their new democratic leaders to provide security for all citizens and to replace the repressive and opaque security apparatus of the Assad regime with open, transparent, and accountable security institutions under civilian authority. The paramount function of these institutions is to furnish the security environment that all citizens need to exercise their political, economic, social, and cultural freedoms. Security institutions should respect human rights, maintain public order, and defend Syria's sovereignty and territorial integrity.

While it involves many organizational changes and practical improvements, security sector reform is above all else a matter of governance. It consists of transferring control of the security forces to the people and their representatives. Security sector reform must flow from and is directly related to the establishment of democratic principles and the organization of a democratic government. Security sector reform is thus a vital component of a new democratic order, to be pursued simultaneously with efforts to provide for transitional justice and the rule of law.

Security sector reform is an imperative for Syria's transitional government and a major factor in establishing the legitimacy of the new order and winning the

allegiance of the populace. The transitional government's credibility will be directly linked to its ability to launch a reformed security sector as a pillar of the new democracy.

Security sector reform will involve achieving the following objectives:

*Objective 1.* Provide effective security for all citizens of Syria so they may exercise their political, economic, social, and cultural freedoms while maintaining public order, respecting human rights, and defending the country's sovereignty and territorial integrity.

*Objective 2.* Establish civil-military relations in line with democratic principles. The armed forces, law enforcement, and intelligence agencies must be led by and operate under civilian authority.

*Objective 3.* Open service in the security sector, including the armed forces, law enforcement and intelligence agencies, to all Syrian citizens regardless of their ethnic background and/or sectarian affiliation. This may include former members of the existing security agencies and the armed opposition, following proper vetting and reintegration procedures.

*Objective 4.* Detach the security sector from politics completely, so as to prevent factionalism within that sector. The security sector should serve the interests of the nation rather than the interests of any party, sect, or faction.

*Objective 5.* Entrust a reformed security sector with the defense and protection of the entire citizenry, without exception, from internal and external threats.

*Objective 6.* Provide civilian and military personnel of the security sector with professional training and development and the well-being they rightly deserve. This should include training in human rights as well as technical skills in such areas as criminal investigation and crowd management.

### **3.2. Context**

In the decades since the Ba'th Party seized power in 1963, Syria's security sector has become integral to the functioning and maintenance of its successive regimes. Under the Ba'th, Syria has acquired a well-deserved reputation as a Mukhabarat State: a state and society dominated by vast, overlapping internal security agencies that operate with near absolute impunity and with complete disregard for the rights and dignity of the Syrian people. Through extensive networks of informers, surveillance, and the routine use of repression, the internal security apparatus of the Assad regime

has been principally responsible for maintaining the wall of fear on which the regime's survival has depended. In doing so, it has been implicated by international organizations such as Human Rights Watch in serious and systematic abuses of human rights, including arbitrary detention, torture, and extrajudicial executions. Since the start of the Syrian revolution in March 2011, internal security agencies have become increasingly prominent and brutal in their defense of the Assad regime, constituting a central link between the regime and non-state militias known as the Shabiha.

In addition to the internal security apparatus, Syria's security sector also includes the armed forces. Until 2000, when Bashar al-Assad succeeded his father, Syria's Ba'athist leaders had all risen to power through careers in the military. Under their tutelage, Syria's armed forces grew dramatically, consuming almost 6 percent of GDP annually in the mid-2000s. While the military underwent a process of professionalization during the period of Hafiz al-Assad's presidency (1970-2000), it continued to be seen as an extension of the ruling party and the regime, with little autonomy in terms of appointments, promotion, or decision-making, and with greatly disproportionate representation of members of the Alawite minority in key positions.

*Through extensive networks of informers, surveillance, and the routine use of repression, the internal security apparatus of the Assad regime has been principally responsible for maintaining the wall of fear on which the regime's survival has depended.*

Links between the regime and the military have been institutionalized in the formation of units such as the infamous 4th Brigade, under the control of Bashar al-Assad's brother Maher al-Assad, and the Republican Guards, charged with defense of the regime. Since March 2011, these loyalist units have been heavily involved in repression of protests and violent attempts to suppress the opposition.

The regime's violent suppression of peaceful protest has set in motion a series of problematic consequences, including:

- Transformation of a peaceful protest movement into one dominated by armed struggle as a reaction to extreme regime violence;
- A Free Syrian Army to a large degree made up of civilians and a smaller proportion of defectors, that is increasingly well organized but still lacks central command and does not control all rebel forces, including Jihadist elements;



- The regime's loss of control of some areas, where some state functions (including the provision of security) are being met by local revolutionary councils;
- An increasing reliance of the regime on armed thugs (Shabiha) to repress the uprising and exacerbate ethnic and sectarian divisions;
- Gross, systematic human rights violations committed by the regime forces with episodic instances of abuse committed by the armed opposition;
- An increase in ethnic and sectarian violence.

### **3.3. Challenges**

The large scale and extensive scope of the security sector in Syria, the legacies of its role in the repression of Syrian society, and its responsibility for much of the violence that has accompanied the Syrian revolution, pose major challenges to the success of a transition to democracy in a post-Assad Syria and underscore the importance of security sector reform as a centerpiece of such a transition. Other challenges depend on when and how the regime falls, particularly how prolonged and widespread the fighting is.

Immediately after the fall of the Assad regime, the transitional government will likely encounter urgent security challenges, including:

1. Civil disturbance; looting; revenge attacks;
2. Attempts by the current 4th Armored Brigade and Republican Guard to regain power and reinstall the Assad regime;
3. Attempts by regime remnants, including the Shabiha and other pro-regime paramilitary groups, to retaliate by using conventional and non-conventional weapons;
4. Attempts by regime remnants, including the Shabiha and other pro-regime paramilitary groups, to destabilize the situation, including the use of improvised explosive devices (IEDs), car bombs, etc.;
5. Attempts by regime remnants and Ba'th Party militias to fight using arms caches stored in Ba'th Party buildings and those of affiliated political parties, organizations, and other entities;
6. Attempts by unauthorized armed groups, spoilers, and organized crime to exploit potential chaos for private gain;

7. Attempts by regime remnants to create an armed conflict with Israel through army divisions along Syrian-Israeli border.
8. The rise of private militias from armed opposition groups who refuse to come under the unified control and civilian authority of the transitional government, as political rivals for control of the state.

### **3.4. Detailed Strategies and Recommendations**

To tackle the challenges and risks in the security field and achieve the above mentioned goals and objectives, The Day After project recommends the adoption of the following sequenced pragmatic plan.

#### **Prior to Transition**

Steps to be taken in advance of regime change:

1. Build trust between the political leadership of opposition groups and the Free Syrian Army through regular communication;
2. Initiate efforts to improve the command and control of armed opposition groups, ensure their compliance with human rights standards, and establish their acceptance of civilian authority;
3. Create an oversight committee to prepare and manage the reform of the security sector in the transition period. The committee might be made up of opposition civilians and members of the FSA, and be expanded to include trustworthy members of the police and the armed forces after the regime change.
4. Conduct a preliminary vetting of retired and active high-ranking officers in the army and police to determine who has not been involved in repression and is trustworthy, and who has been involved in repression;
5. Prepare for the establishment of a transitional security force based on Syrian National Police and other existing resources. This should include preparation for training in crowd management and professional criminal investigation (see Chapter 1);
6. Train military and police officers to take leadership roles in security sector reform;
7. Identify the cost of each of the steps of security sector reform;

8. Identify international resources for training and capacity building of security forces including institutional development.

**Phase I: Immediate priorities and short-term measures (1 week-14 days)**

Immediately after the collapse of the Assad regime and in the short term (1 week-14 days), the main objective of measures proposed is to (re)impose order, provide security to Syrian citizens, and instill confidence in the transitional government. Strategies and specific steps include:

Strategy 1. Maintain order and provide security.

- Entrust security to a transitional security force based on the Syrian National Police. This force will work to reestablish and maintain order, prevent vengeance attacks, protect strategic national assets and infrastructure in major cities, etc.
- The transitional security force will work closely with unarmed civilian groups to provide neighborhood security. Its activities will also be monitored by Rule of Law Monitors (see Chapter 1).

*Strategy 2. Address existing formal security apparatus.*

- Appoint a credible army commander. Withdraw the Syrian Army from towns and cities and relocate to bases and barracks in their pre-revolution positions.
- Reassure army officers that the objective is to build a patriotic and professional army and that their professional interests (such as budgetary needs, salaries, improvement of housing, etc.) will be heeded.
- Abolish existing intelligence services, collect their weapons, close their facilities, and arrest their key leaders. Members of the intelligence services will receive neither a blanket amnesty nor blanket lustration (See Chapter 2).

*Strategy 3. Secure weapons.*

- Secure conventional weapons (e.g., surface-to-surface missiles) and non-conventional weapons of mass destruction (e.g., chemical weapons).
- Collect heavy and medium weapons (including rocket-propelled grenades, mortars, shoulder-fired anti-tank missiles, etc.).
- Secure weapons stockpiles that exist in buildings controlled by the Ba'th Party and its affiliated political parties and popular organizations.

*Strategy 4. Arrest perpetrators and initiate the disarmament, demobilization, and reintegration of armed actors.*

- Arrest, disarm, and detain all those who have committed criminal acts against civilians, including key members of the Shabiha, Ba'th Party militias, and other paramilitary groups (See Chapter 1 regarding their safe detention; see Chapter 2 Justice regarding their prosecution).
- Disarm and dissolve all special armed political units that currently operate in universities, syndicates, and other Ba'th Party organizations, etc.
- Deny escape to regime remnants and other wrongdoers by closely monitoring borders, ports, and airports.
- Vet FSA personnel according to international practice. Identify and separate opportunists.

### **Phase II: Medium-term measures (1½ month-2 months)**

In the medium-term (1½ month-2 months) the objective of proposed measures is to stabilize the transitional government and lay the foundations for security sector reform. Strategies and specific steps include:

*Strategy 1. Vet ranking officers in the armed forces.*

Vetting should be undertaken according to internationally accepted norms and standards, and aim to ensure a commitment within the armed forces to democracy and to the civilian authority of the transitional government.

*Strategy 2. Identify, arrest, and detain perpetrators of human rights abuses.*

Organize a nationwide campaign to identify and arrest former regime officers responsible for atrocities and human rights abuses. Detain them in secure locations, as they may be subject to revenge attacks (see Chapter 1). They will be prosecuted in courts of law (see Chapter 2).

*Strategy 3. License personal small arms.*

Small arms may be possessed but must be licensed.

*Strategy 4. Maintain public security.*

The transitional security force should give particular attention to large public gatherings as the transition proceeds. The transitional security force should also work with the oversight of Rule of Law Monitors (see Chapter 1).

**Phase III: Long-term measures (12 months/end of transitional period)**

In the long-term (12 months or until the end of the transition period), the main objective is full reform of the security sector. This will include restructuring and transforming the armed forces into a professional army under civilian control. It will also involve consolidating a new civilian national police force and establishing new intelligence agencies. Strategies and specific steps include:

*Strategy 1. Reform the governance of the armed forces.*

In keeping with democratic norms, the armed forces should be subject to civilian authority. The transitional government should establish the Syrian Armed Forces as the guardians and protectors of Syria's sovereignty and territorial integrity. As such, the Syrian Armed Forces will dedicate themselves solely to the provision of security against external threats and enemies.

Depending on the type of political system Syria adopts following the collapse of the Assad regime (presidential, parliamentarian, etc.), the President/Prime Minister will be Commander-in-Chief of the Armed Forces and the ultimate authority on defense policy. The respective heads of the Armed Forces (Chief of Staff of the Army, Navy, and Air Force) will report to the President/Prime Minister through the Minister of Defense. The Minister of Defense will be a civilian official responsible for the formulation and implementation of defense policy and the overall management of the Armed Forces (the Minister of Defense will work through the individual heads of the Army, Navy, and Air Force).

The Day After project recommends the following specific measures regarding governance of the armed forces:

- The Transitional President/Prime Minister should appoint the Transitional Minister of Defense (civilian) and Transitional Chiefs of Staff (military officers). Given the political culture in which Syrians are embedded, the position of Minister of Defense could be entrusted to a respected senior retired officer, but only during the transitional period.
- The MOD and military budgets will be proposed by the President/Prime Minister and approved by the Transitional Assembly/Parliament.
- The Chiefs of Staff of the armed services (army, navy, air force) should be nominated by the President/Prime Minister and confirmed by the Transitional Assembly/Parliament.

- The Minister of Defense, the Chiefs of Staff, and their senior subordinates will keep the Transitional Assembly/Parliament informed of important policy decisions.

*Strategy 2. Reconstitute the armed forces.*

The size of the army should be determined by the national civilian leadership according to the requirements of military strategy and assessments of the foreign threat. A decision on military service should be made by the elected Parliament. Until such decisions are made, compulsory service should be suspended.

Given the history of the armed forces under the Ba'th, members of the armed forces should be provided not only technical training, but also training regarding professionalism, rule of law, respect for human rights, accountability, and civilian authority.

*Strategy 3. Integrate FSA personnel into the armed forces or police.*

Following established international practices, members of the FSA should have access to a program of disarmament, demobilization, and reintegration. As appropriate, its members should be integrated into the Syrian armed forces or the police.

*Strategy 4. Reform the governance of the national civilian police.*

The transitional government should elevate the Ministry of Interior to a place of primacy in the security structure of the state and establish a National Civilian Police Force (NCPF) to enforce the rule of law and to protect citizens, including ensuring their basic human rights. The NCPF will be responsible for maintaining public order and controlling crime, working closely with the Ministry of Justice, and investigating magistrates. The head of the NCPF should report directly to the Minister of Interior and be responsible for day-to-day police operations and citizen security. The Minister of Interior will provide for a modern, efficient police force based on democratic principles and with a suitable institutional framework to ensure the development of a professional police cadre.

In addition to the NCPF, the Ministry of Interior will include a Major Crime Bureau, which will be responsible for conducting investigations (in cooperation with the Ministry of Justice) of organized criminal activity including the trafficking of narcotics, weapons, people, and nuclear materials. The Major Crime Bureau will also be responsible for conducting investigations (in cooperation with the Ministry of Justice) of crimes of terrorism and subversion. The director of the Major Crime Bureau will report directly to the Minister of Interior.

The Ministry of Interior will also house other civilian security functions, as required, such as border police, customs police, and immigration authorities.

The Day After project recommends the following specific measures regarding governance of the national civilian police:

- The Transitional President/Prime Minister should designate the Transitional Minister of Interior (civilian); the Minister will be confirmed by the Transitional Assembly/Parliament. The Interior Minister will appoint the Chief of the Civilian Police and the Chief of the Major Crime Bureau;
- The police budget will be proposed by the Minister of Interior (MOI) in consultation with the President/Prime Minister and approved by Transitional Assembly/Parliament;
- The Transitional Minister of Interior, Chief of NCP and the Chief of the Major Crime Bureau will keep Parliament informed of major policy and operational issues.

*Strategy 5. Reconstitute and professionalize the national civilian police.*

Following proper vetting, members of armed opposition groups and of unarmed civilian groups may be integrated into the NCPF.

Given the history of the police forces in Syria, their reform should include training in a range of professional skills such as criminal investigation and nonviolent crowd management, as well as instruction regarding human rights, rule of law, , accountability, etc.

*Strategy 6. Reorganize the intelligence services.*

The transitional government should abolish the existing intelligence apparatus and establish new intelligence services (external intelligence and military intelligence). The functions of internal intelligence will be housed in the Major Crime Bureau of the Ministry of the Interior. The new intelligence services will not interfere in political affairs and will be led by civilian directors. The reorganization of the intelligence apparatus will reduce the number of existing personnel.

Rehabilitation and vocational training will be offered to personnel released as a result of the downsizing with the aim of reintegrating them into society.

*Strategy 7. Establish a new external intelligence service.*

The transitional government should establish a National Intelligence Agency (NIA) to conduct research, analysis, and foreign intelligence operations. This agency's mission should be apolitical and concerned exclusively with the assessment of threats from abroad. The NIA will provide the transitional leadership (including the leadership of the armed forces) with actionable intelligence as required. External operations can be carried out only with the express authorization and oversight of the President/Prime Minister.

The Day After project recommends the following specific measures regarding the external intelligence service:

- The Transitional Chief of the NIA will be nominated by the President/Prime Minister in consultation with Parliament;
- The NIA budget will be proposed by the President/Prime Minister and approved by Parliament;
- The Transitional Chief of NIA will keep Parliament informed of major policy and operational issues.

*Strategy 8. Establish new military intelligence departments.*

The Minister of Defense in the transitional government should establish military intelligence departments within the various armed services (Air Force, Army, and Navy). These units should provide research, analysis, and operational intelligence to the armed services. These departments should be apolitical and charged exclusively with assessment of tactical intelligence directly related to operations of the respective branch and the assessment of military-related threats. The departments should provide the civilian and military leadership of Syria with actionable intelligence as required. Military intelligence units should not be involved in internal security, which will be the responsibility of the Ministry of Interior.

The Day After project recommends the following specific measures regarding the military intelligence departments:

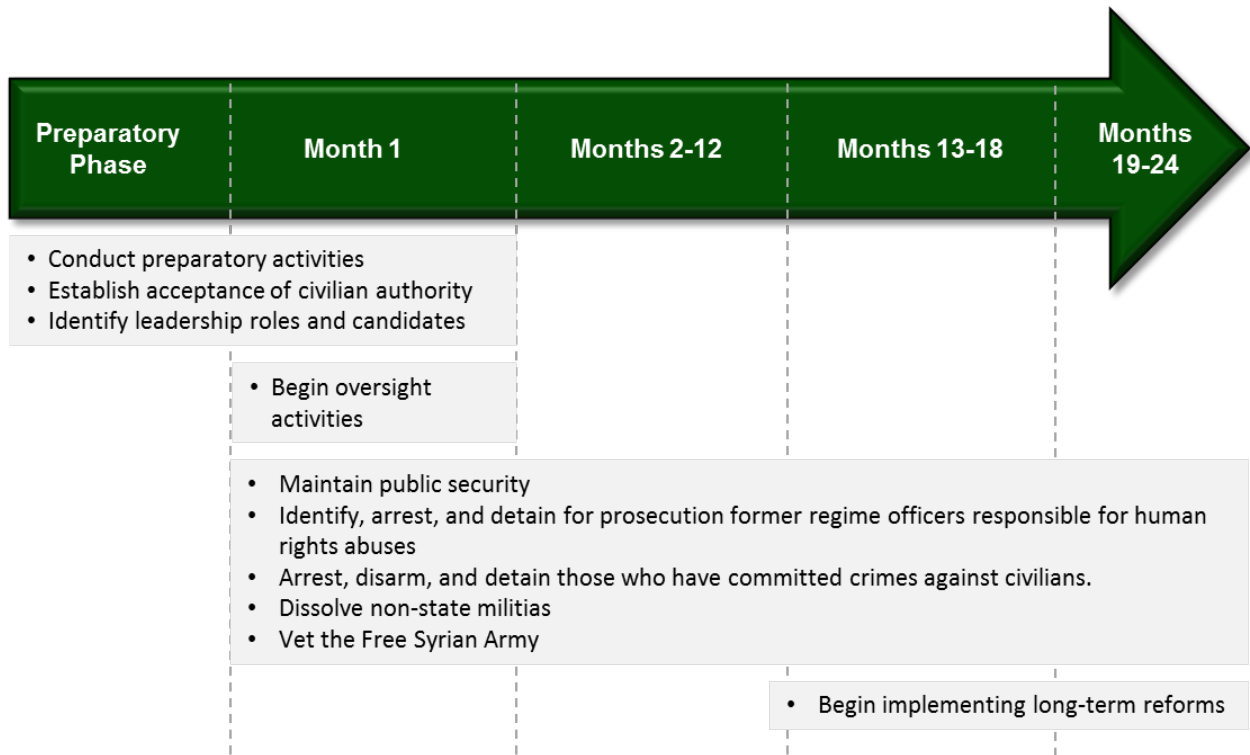
- The heads of the military intelligence departments should be named by the Minister of Defense in consultation with the chiefs of the armed forces;
- The funds for these departments should be included in the regular Defense Ministry budget.



### 3.5. Timeline to Implement

Figure 3-1 depicts the notional timeline to implement Security Sector Reform.

**Figure 3-1: Timeline to Implement Security Sector Reform**



### 3.6. Selected Resources

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## Chapter 4. Electoral Reform and Forming a Constitutional Assembly

*Selecting the Constitutional Assembly that will draft a new founding document for Syria requires electoral reform. Particularly for this body, inclusiveness is paramount, as all Syrians should be represented in the assembly that will so profoundly shape Syria's future state and society. For the election of a Constitutional Assembly, these recommendations are designed to ensure inclusiveness. For subsequent elections, the reforms recommended here may be refined or elaborated on.*

### 4.1. Summary of Recommendations

- Adopt an electoral system to seat a highly inclusive Constitutional Assembly that will represent all components of Syrian society in the drafting of a new constitution. This may include elements of single-member districts (SMDs) and proportional representation (PR) systems.
- Form an independent Higher Election Committee to oversee the constitutional assembly elections as a whole, including preparation, voting, counting ballots, publishing and certifying results, and investigating complaints. The Higher Election Committee will oversee Provincial Committees and Election Committees.
- Review electoral district boundaries and propose adjustments if required.
- Establish explicit eligibility criteria for candidates and voters.
- Immediately begin to develop proposals for a new political party law to regulate the registration of parties competing for office.
- Accredite domestic, regional (Arab), and international observers to monitor the election process from beginning to end.

### Goals, Objectives, and Principles

#### Goal: Electoral Reform

The goal of electoral reform is to support Syria's transition to a political system in which public officials are chosen by voters through free, fair, and inclusive multi-party elections. Electoral reform is intended to establish laws, regulations, and procedures that create opportunities for all components of Syrian society to be represented equitably in political institutions, and that ensure citizens can hold public officials accountable for their actions. Electoral reform is further intended to provide all Syrian citizens with opportunities for political participation, regardless of minority status, ethnic origin, sectarian membership, gender identity, or any other past norm of exclusion. Political participation means not merely the right to vote, but also

opportunities to hold leadership positions, organize political parties and other forms of political associations, and exercise freedoms of expression and assembly.

**Objective: Election of a Constitutional Assembly**

The immediate objective of electoral reform is to enable the direct election of a Constitutional Assembly. Such a body will be elected at the appropriate point in the transition process. The criteria for designing an election system for a Constitutional Assembly may be somewhat different from the criteria for future elections to a national parliament. This first legislature has the unique and crucial task of drafting a new constitution for Syria. This will be the founding document that defines the nation in its entirety, including all its diverse peoples. The constitution articulates the relationship between citizens and their government, and among citizens themselves.

**Principle: Inclusion**

In all our deliberations, the Day After project addressed how to constitute a new Syrian political order characterized by accountability, transparency, participation, and inclusiveness. That final principle merits further emphasis in the design of the electoral system that will enable the election of a Constitutional Assembly during the transition. Two aspects may be highlighted.

First, inclusion must be at the core of the mechanisms that lead to constitutional drafting. The document that defines the nation must genuinely include the nation. All components of the population should therefore be fairly represented in the assembly that will draft this founding document. Electoral reform should thus ensure that, for the Constitutional Assembly, all components of society are fairly represented. This will be central to the Constitution's acceptance and legitimacy.

Second, the principle of inclusion also deserves specific emphasis because of the post-revolutionary moment. Uprisings are periods of flux, when many social barriers are broken and cultural norms become fluid. Previously excluded groups and individuals take on new roles, fulfill functions they were previously prohibited from, and exercise leadership. Such periods of rupture are opportunities. Too often in the transitions that follow, however, new actors are once again marginalized and divisive group identities are reproduced in the effort to establish a new system. An electoral reform that enables a highly inclusive Constitutional Assembly will help Syrians avail themselves of this post-revolutionary moment, to create a Syria that upholds some of the new social relations and opportunities that have emerged as repressive and exclusionary norms and practices have toppled.

## 4.2. Context

Fifty years have passed since Syrians last experienced free elections. Since the Ba'th Party seized power in March 1963, political participation has been sharply constrained. Under non-democratic constitutions, Syria became a single-party state with a dominant executive and a subservient parliament. The constitution mandated that the Ba'th Party receive a majority of parliamentary seats. It reserved a majority of those seats for representatives of select social sectors. The establishment of political parties was tightly restricted and political activities subject to surveillance, regulation, and repression. Individuals and groups viewed by the regime as suspect or disloyal, including hundreds of thousands of Syrian Kurds, were stripped of their citizenship and their right to participate in political life. Elections, most often in the form of referendums, served merely to validate Ba'thist authority.

With the consolidation of authoritarianism in Syria during the long tenure of Hafiz al-Assad (1970-2000), electoral life in Syria became increasingly stunted and the actual exercise of political power diverged significantly from the rules set out in Syria's constitution. By 2011, when Syria's revolution began, the country's leaders exercised virtually unconstrained authority over Syrian society and economy. Elections had little impact on the distribution of political power. Parliament was moribund. It played no meaningful role in policy making and exercised no meaningful oversight over the conduct of the executive, the use of public funds, or the activities of the armed forces and security apparatus.

*Public accountability has been nonexistent, a culture of impunity has prevailed, and abusive practices by officials have been widespread.*

In this authoritarian regime, officials have wielded power arbitrarily. They have not been subject to the checks and balances provided by legislative oversight. Public accountability has been nonexistent, a culture of impunity has prevailed, and abusive practices by officials have been widespread. Public interests and resources have been routinely subordinated to the private interests of powerful individuals. Citizens have lacked meaningful opportunities for political participation and been denied the right to organize politically. Political speech has been repressed. Citizens who have dared to speak out have been subject to harsh penalties, including imprisonment, torture, and in some cases execution. Many components of society have been excluded from participation and leadership on the basis of their ethnic, sectarian, religious, or gender identity.

### 4.3. Risks and Challenges

In the near term, Syria's legacy of authoritarian rule poses significant challenges to the effective implementation of a democratic electoral system.

*Challenge 1. Weak or nonexistent electoral infrastructure.*

Syria lacks much of the basic legal and bureaucratic infrastructure needed to conduct and oversee democratic elections. While existing law contains some elements that can be carried over into a new electoral system, comprehensive review and extensive revision of existing laws will be required. This includes the development of a new political party law, the creation of appropriate election oversight bodies, and the introduction of regulations to ensure the independence of electoral bodies and processes.

Ensuring that these requirements are addressed promptly and professionally will be critical to the success of a transition. Yet at a moment in which the Syrian justice sector will confront enormous demands, its limited capacity may impede timely development of the legal underpinnings required for a democratic electoral system. Adequate financial resources need to be made available to the election commission to be able to administer a credible general election.

*Challenge 2. Absence of political parties.*

Other than the Ba'th Party, which operates as a massive patronage machine in which loyalty is exchanged for access to economic, professional, and social opportunities, Syria possess very limited experience in the formation and development of democratic political parties.

Significant resources and expertise will required to support the development of new political parties, and to build the capacity of existing parties—other than the Ba'th Party, the fate of which will remain to be determined during the transition (see Chapter 2).

*Challenge 3. High public expectations.*

In recent years, access to international media has given Syrians some familiarity with electoral processes. Like their counterparts in other post-authoritarian regimes, Syrians view democratic elections as a critical means for producing legitimate decisions and governing bodies. As a result, the transition to a post-Assad Syria can be expected to produce great popular demand to hold elections as quickly as possible.

Managing these demands, ensuring that the appropriate legal and bureaucratic structures are in place to respond to them, and providing Syria with nationwide training and capacity-building programs to educate citizens about new electoral arrangements will be critical in overcoming Syrians' lack of experience with democratic practices. In particular, educational programs will need to address the legacies of Ba'thist rule that reinforced negative perceptions of political parties as undermining social unity, contributing to social conflict, and representing the narrow interests of individuals.

*Challenge 4. History of exclusion and marginalization.*

Syria has had a long history of marginalizing and repressing out-of-favor communities, both minorities and majorities. People have been excluded from participation, from leadership, even from citizenship, on the basis of ethnic, sectarian, religious, gender, or political identity.

The transition to democracy and the crafting of new democratic arrangements will need to rectify these past injustices. It will also be essential to protect previously advantaged minorities from being excluded and repressed under the new political system. Electoral and constitutional design mechanisms that have inclusion at their core will help ensure Syria emerges as a just and democratic state.

## **4.4. Detailed Recommendations**

### **I. An Electoral System for a Constitutional Assembly**

#### *1. Options for an Electoral System*

In some ways, the next step seems simple: hold democratic elections. But just as democratic governance can take many forms (e.g., presidential, parliamentary), so democratic elections can be organized in many different ways and according to different systems (e.g., single-member districts, proportional representation). The Day After project reviewed many different democratic electoral systems and hybrid systems, in different settings and contexts. Some of these are elaborated below. The recommendations which follow present several options and the justifications for them.

In single-member district systems, relatively small districts are represented by a single member, and the candidate with the most votes wins. This is also referred to as plurality-majoritarian, winner-take-all, and "first past the post." The advantage of such systems is that they may facilitate strong links between citizens and their elected representatives, as voters elect local candidates familiar with local issues and are able

to hold them accountable for their performance (by not returning them to office). SMD systems also create opportunities for popular independents to contest and win election alongside established political parties. Finally, SMDs allow an ethnic, sectarian, or other type of minority to elect candidates of their choice if the minority is geographically concentrated, thus constituting a majority within an electoral district.

A proportional representation system, in contrast, allocates the seats in multi-member districts according to the proportion of votes received by the various parties running lists of candidates (e.g., if a party wins 40 percent of the votes in a district, it gains 40 percent of the seats in that district). A PR system will allow for minorities to win seats and be represented regardless of whether they are geographically concentrated (as widely dispersed members of a minority can vote for a party list). It can diversify an elected assembly to include an array of communities and ideologies. It can facilitate the election of women or other individuals traditionally barred from leadership positions, as they can be included on party lists. PR systems can also nurture embryonic party systems. Finally, they can encourage voters to look beyond parochial concerns and focus on national questions.

Both systems have advantages, and many countries adopt a mixture of the two. A mixed system may be best for Syria. The options presented below explore a few different variations. If appropriately designed, mixed systems can maximize both geographic and ideological representation, provide minorities with representation, overcome the exclusion of women, and ensure that a single party or movement is not able to govern alone without the support of a majority of the electorate.

The options described below refer to a Constitutional Assembly of 300 members. The current Syrian National Assembly has 250 members. When compared to other national assemblies in countries of a similar size, this could comfortably be increased to 300 members. Further, Constitutional Assemblies are often larger than future legislatures because inclusiveness is a paramount principle for the assembly drafting a founding document, as discussed above. A Constitutional Assembly of 300 members would imply one member for each 73,000 Syrians or 35,000 voters.

**Option 1: A Mixed System of proportional representation and single-member districts (63%:32%:5%)**

- 190 members elected by proportional representation in 14 provinces based on population share with the requirement that all provinces receive a minimum of 2 PR seats.



- 95 members elected from 95 single-member districts. Districts drawn on the basis of population size, geography, and communities of interest, with number of registered voters not deviating from the mean more than 20 percent.
- 15 reserved seats awarded to the highest-polling candidates from minorities that fail to be elected from single-member districts (by percent of vote).

*Justification:* proportional representation will encourage an emergent party system and strengthen democracy in Syria. It will also facilitate the election of women (especially if gender parity is established for party lists, see below) and of minorities, even if geographically dispersed. The 95 single-member districts will allow popular independents to be represented in their local communities and enhance geographical representation generally. At the same time, the 15 reserved seats for minorities will help to guarantee that ethnic, sectarian, and religious minorities will be represented in the assembly that will draft the new constitution. Filling the reserved seats with the highest-polling defeated minority candidates enhances the legitimacy of these representatives, as they have proven themselves to have a popular following. (Precedence for this last measure can be found in the election system of Mauritius).

**Option 2: A Mixed System of proportional representation and single-member districts (47%:48%:5%)**

- 140 members elected by proportional representation in 14 provinces based on population share with the requirement that all provinces receive a minimum of 2 PR seats.
- 145 members elected from 145 single-member districts. Districts drawn on the basis of population size, geography, and communities of interest with number of registered voters not deviating from the mean more than 20 percent.
- 15 reserved seats awarded to the highest-polling candidates from minorities that fail to be elected from single-member districts (by percent of vote).

*Justification:* Option 2 gives more weight than Option 1 to the single-member districts. It thus increases the likely strength of independents (if they are successful in local races) and of geographically concentrated minorities. It would also marginally increase the accountability of members to their local constituencies, as the size of single-member districts would be reduced. Option 2 does less than Option 1, however, to ensure fair representation of women and dispersed minorities.

**Option 3: A proportional representation system**

- 290 members elected by proportional representation in 14 provinces based on population share with the requirement that all provinces receive a minimum of 2 PR seats.
- 10 reserved seats for minorities drawn from the highest-positioned minority candidates who failed to be elected from the lists (by percent vote).

*Justification:* This system would produce a very close relationship between the votes cast for each party and their share of the Constitutional Assembly (as in Tunisia). Large disparities between votes and seats can be highly problematic where a single party can win a majority (or close to a majority) of the Assembly seats on far less than 50 percent of the popular vote (as in Egypt). The PR elections in the 14 provinces (see **Figure 4-1**) would provide some degree of geographical representation and ensure that cities and towns would be represented by a variety of actors from majority and minority groups (again, as in Tunisia).

**Figure 4-1: Example of Seat Allocations to Provinces (PR Seats)**

Province Name	Pop. (2011)	Percent	Option 1 PR Seats (190)	Option 2 PR Seats (290)
Ḥalab [Aleppo]	4,868,000	22.8	43	66
Rif Dimashq [Damascus Rural]	2,836,000	13.3	25	38
Ḥimṣ [Homs]	1,803,000	8.4	16	24
Dimashq [Damascus]	1,754,000	8.2	16	24
Ḥamāh [Hama]	1,628,000	7.6	14	21
Al-Ḥasakah	1,512,000	7.1	13	20
Idlib	1,501,000	7.0	13	20
Dayr az-Zawr	1,239,000	5.9	11	17
Dar'ā [Daraa]	1,027,000	4.8	9	14
Al-Lādhiqiyyah	1,008,000	4.7	9	14
Ar-Raqqaḥ	944,000	4.4	9	14
Ṭarṭ ūs	797,000	3.7	7	11
As-Suwaydā'	370,000	1.7	3	5
Al-Qunay ṭirah [Quneitra]	90,000	0.04	2	2
Syria	21,377,000		190	290

Source: <http://www.citypopulation.de/Syria.html>

## *2. Voting and Ballot Structure*

In the PR districts, Syrians will vote for a party list and candidates will be elected on the basis of party vote and in accordance with their position on the party's list if a closed list is used (see Closed or Open Party Lists, below). In the single-member districts, voters will choose individual candidates who may be party representatives or independents. To aid voting, the ballot will include the name and the symbol of the party or candidate in color.

## *3. Independent Candidates*

Independent candidates will be able to contest in either the single-member districts or the multi-member PR districts—although an individual may not contest in both. If an independent candidate contests in a PR district election, that individual will be treated as a party for the purposes of seat allocation.

## *4. Threshold for Representation*

The threshold for winning seats—the minimum level of support that a party needs to gain seats—will be the natural threshold. This is a function of the district magnitude, that is, the number of Assembly members to be elected from each province. For example, in the province of Homs, the natural threshold would be approximately 16 percent in Options 1 and 4 percent in Option 3. There will not be a national threshold set to exclude parties that win seats in the provinces. The natural threshold gives the opportunity for a greater diversity of stakeholders to gain seats, which is critical for the Constitutional Assembly. A new electoral law for subsequent legislatures may introduce an imposed threshold.

## *5. Closed or Open Party Lists*

Within any PR system, a choice has to be made between a system which allows the voter to choose a party and accept the ordered list of candidates as presented by the party (known as a closed list), and one in which the voter is free to select particular candidates from among those presented on a party's list (known as open list).

**Option 1: Closed List.** Candidates will be seated in relation to their position on their party's list as published before the election.

*Justification:* Most PR systems around the world (and especially in the Arab world) use closed lists. The advantages are simplicity, a strengthening of the party system, and the comparative ease of achieving a gender balance.

**Option 2: Open List.** Voters will be able to vote for individual candidates on the ballot paper. Seats will be allocated to parties on the basis of party votes and those filling the seats will be the most popular candidates. If adopted, this option should also include a guaranteed minimum number of seats for women, to equal 25 percent (or 75 seats) of the Constitutional Assembly. Seats would be allocated to parties with reference to this guaranteed minimum.

*Justification:* Many established democracies, and increasingly emerging democracies (such as Indonesia), use open lists. This gives the voter greater choice, reduces the power of party bosses, and enhances the accountability of individual legislators to their constituents. To overcome the likelihood that male candidates will receive more votes than female candidates, this option should include a guaranteed minimum number of seats for women.

#### *6. Inclusion of Women*

Almost half of all nation-states have specific electoral mechanisms to promote the presence of women in elected office. These range from subtle and limited rules, to mandatory and far-reaching laws. Gender minimums can be an effective way of ensuring that women have access to leadership positions in public life. Mechanisms should be crafted to suit the context within which they are used and be designed to elect the most dynamic, effective, and popular female candidates—as is the case with male candidates as well. The measures proposed here should be seen as first steps towards reaching parity in gender representation.

**Option 1:** In the PR districts of each option detailed above, every list of candidates can alternate male and female candidates (a practice known as “zipping”).

*Justification:* It is increasingly common (as in Tunisia) to require political parties to balance their lists of candidates between men and women. This avoids the negative reactions to reserving seats for women, which can relegate elected women to being viewed as “second-class” legislators.

**Option 2:** A guaranteed minimum to equal 25 percent (or 75 seats) of the Constitutional Assembly will be filled by elected women. Seats will be allocated to parties with reference to this minimum. That is, each successful party will be required to contribute women candidates to meet the Assembly minimum. For example, if a party wins 10 percent (30 seats) of the Assembly, then it will provide 10 percent (7 seats) of the minimum female members. Candidates should be elected from the provincial PR districts in accordance to their position on the party lists to ensure this level of representation.

*Justification:* Option 2 is a more intrusive gender-balancing mechanism. It avoids the scenario under Option 1 where, if the vote is highly fragmented, most parties win only one, two, or three seats per PR district, and—with zipped lists—far fewer than 50 percent of elected candidates are women. (Tunisia, for example, used Option 1 in 2011 and achieved only 24 percent representation of women in its Constitutional Assembly.) Option 2 also avoids a scenario where enough individual votes are cast for male candidates to push them above female candidates who had been located higher on the party list. This has occurred in Iraq, Serbia, and Indonesia, weakening gender representation.

### *7. Inclusion of Minorities*

In each of the three electoral systems options offered above, a small number of reserved seats (10-15 out of 300) are reserved for minority communities (Option 1 has 15, Option 2 has 15, and Option 3 has 10). The allocation of reserved seats between and among minority communities will be pre-determined on the basis of population. Seats could be distributed to recognized ethnic, religious, and sectarian minorities. These reserved seats will be awarded to the highest-polling candidates (as measured by percentage of vote in a district) who fail to be elected from single-member districts (in Option 1 and 2) or PR lists (in Option 3).

*Justification:* While most minorities will be able to elect candidates of choice under each of the election systems outlined (because of the proportional and single-member district elements) these reserved seats will guarantee that minorities are represented in the Constitutional Assembly. Reserved seats are, in effect, a backup mechanism to ensure that Syria's new constitutional drafters are representative of the entire nation. As noted above, filling the reserved seats with the highest-polling defeated minority candidates enhances the legitimacy of these representatives.

### *8. Education of the Public*

Any of these electoral system options will require education for the public on their many elements. This will include general information about how the electoral system overall will operate, as well as specific guidance on how to participate. It will also include efforts to encourage a new perception of parties as a means to represent collective interests and channel participation. Lastly, it should involve public message campaigns regarding tolerance, diversity, and inclusion (see Chapter 2).

*9. Engagement with Non-partisan International Organizations*

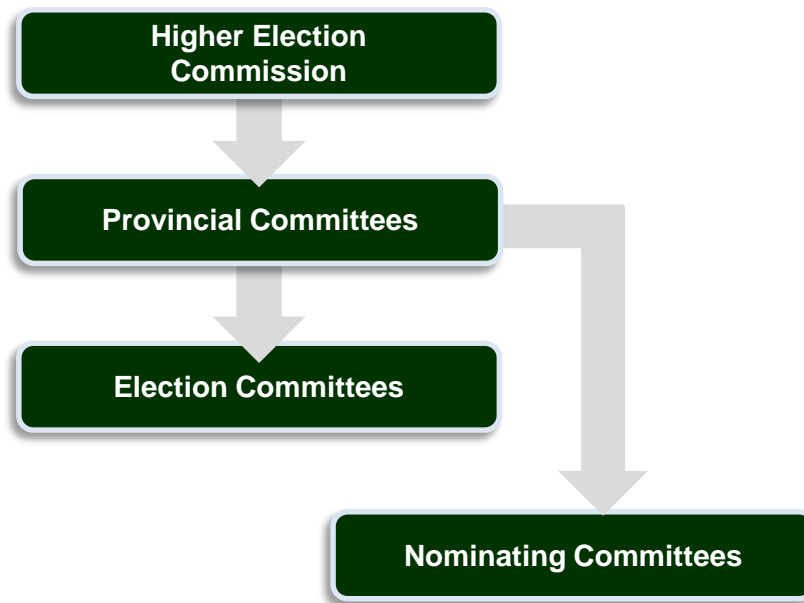
Non-partisan international organizations (such as Democracy Reporting International, International Foundation for Election Systems, International Institute for Democracy and Electoral Assistance, the Netherlands Institute for Multiparty Democracy, and the UN Electoral Assistance Division; see Selected Resources) can provide support for lawmakers and politicians in establishing the electoral system and educating the general public about that system. The transitional government and the Higher Election Commission (see below) should engage with such organizations.

**II. Electoral Laws**

*1. Election Administration*

**Figure 4-2** illustrates a proposed election administration structure:

**Figure 4-2: Notional Election Administration Structure**



**Higher Election Commission**

Syria needs a Higher Election Commission (HEC) that is independent and free from government control. This commission will oversee election preparation, vote, counting, the publication and certification of results, and post-election complaints. The commission will also register domestic and international election observers. It will receive its funding from the government, but be free from government control

and influence. The commission will oversee the work of the electoral bureaucracy. The HEC should consist of respected individuals who have demonstrated competence and integrity in their professional lives.

*Option 1:* Between three and seven commissioners: including but not limited to retired judges, independent current judges, attorneys, professors of constitutional law or political science, and civil society advocates.

*Option 2:* Five judges named by the Higher Council of Judges, with the highest-ranking judge among them to be the president of the HEC.

*Justification:* In current Syrian law, the Higher Election Commission consists of five judges. Option 1 would enable greater diversity of expertise and experience.

**Provincial Committees.** Each province will have a committee consisting of three judges named by the HEC. These committees will conduct the business of the election commission at the local level and work under the auspices of the HEC.

**Review Committees.** Three judges in each locality will be appointed by provincial committees. Their responsibilities will be to adjudicate candidate and voter eligibility and to assist Provincial Committees in investigating post-election complaints and grievances.

**Election Committees:** Three individuals will be named by the Provincial Committees to oversee the election process in each election center.

## *2. Electoral District Boundaries*

The Higher Election Commission will be responsible for drawing electoral boundaries. The HEC will review existing administrative boundaries and take into account issues of population size, geography, communities of interest, contiguity, and equality. Where existing electoral boundaries are already appropriate, they may be retained for use in elections for the Constitutional Assembly.

*Justification:* Fair electoral boundaries are crucial to competitive elections. The drawing of district lines should be done on a regular basis by a body free from partisan considerations or political pressures. The HEC will utilize statistical and demographic evidence applied to the best practices of districting.

### 3. Overseas Voting

All overseas voters who are eligible may vote in the PR elections in their home province.

*Justification:* Syria has a long history of expatriates voting in domestic elections. Voting helps invest the Syrian diaspora in the politics and future of their home country and will also allow for Syrians displaced by conflict to play a part in their country's future. When mixed electoral systems are used, overseas voters are commonly allowed to vote in PR districts, but their participation is more problematic in single-member districts. (In Tunisia, expatriates had their own overseas districts, with France constituting one such district.)

### 4. Eligibility of Candidates and Voters

Candidates should meet the following criteria:

- No criminal convictions (excepting convictions related to political matters);
- Completion of secondary education;
- Syrian citizenship;
- Aged 25 years or older;
- Not on active duty in the armed forces or security services;
- Providing the requisite number of signatures and financial deposit (The Day After project suggests 100 signatures and a financial deposit of 50,000 Syrian pounds).

Voters should meet the following criteria:

- Aged 18 years and above;
- Syrian citizenship;
- No criminal convictions (excepting convictions related to political matters).

*Justification:* Regarding the eligibility of members of the armed forces and security services (including the various intelligence agencies and local police), active duty members may vote but may not run for office. This is to ensure non-interference of the armed forces and security services in elections, while providing for the participation of individuals. It also aims to discourage these entities from continuing to function parallel to and outside of civil society, if completely excluded.

In making this recommendation, The Day After project reviewed election laws in other newly formed or forming Middle Eastern democracies. Libya and Egypt have



both excluded law enforcement personnel from voting, at least for the current election cycle. In Libya, the decision faced substantial criticism. In Egypt, the armed forces and security services comprise some ten million potential voters. With civilian voters numbering 50 million, allowing members of the armed forces and security services to vote would have created the risk of the military dominating the election results. In Syria, better information is needed regarding the number of people on active duty in the armed forces and all security services (see Chapter 3). Once this information is known, the eligibility of these voters may need to be reconsidered if a similar concern arises.

Regarding the eligibility of convicted criminals, the recommended criteria make an explicit exception for “convictions related to political matters.” This is because under the Assad regime, many legitimate political activities have been criminalized. Thus, political dissidents carry criminal convictions based on their political speech, criminalized under such rubrics as “inciting disobedience,” “working with foreign entities against the Syrian people,” or “suspicion of intention to participate in protests.” These political dissidents should both have the right to vote and be eligible to compete for a seat in the Constitutional Assembly or to run for office in a democratic Syria.

The exclusion from voting and candidacy on the basis of standard criminal convictions of course requires an individual be able to challenge the criminal conviction before a quasi-judicial body. The formation of this body may be included under the election commission or established as an independent body.

### *5. Candidate Nominations*

If a candidate is nominated by a party on a party list (for PR elections) or in a single-member district, then the party may apply for all their candidates together or individually.

If the candidate applies as an independent, then she or he will apply individually.

The Review Committees will examine the applications to verify the eligibility of candidates in accordance with the relevant law.

Candidates are not allowed to run in both PR elections and single-member districts simultaneously.

#### *6. Party Registration and Regulation*

A new political party law will regulate the registration of the political parties competing for office.

Review Committees will assess party applications for registration in light of these laws.

#### *7. Election Observers*

Domestic, regional, and international observers should be accredited to monitor the election process from beginning to end.

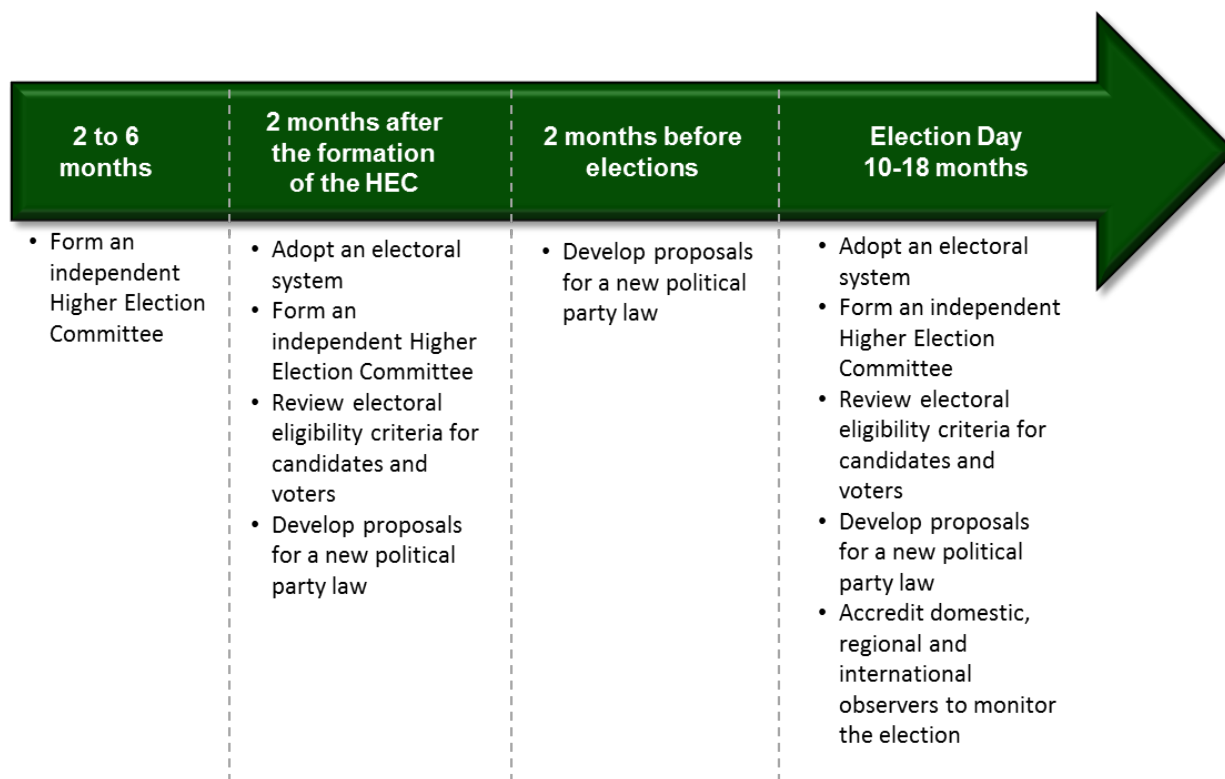
#### *8. Voter Registration Cards*

Voter registration cards should be introduced, designating the specific local voting district for each voter. This will increase logistical efficiency and diminish the possibility of multiple voting.

### **4.5. Timeline to Implement**

**Figure 4-3** depicts a notional timeline to implement Electoral Reform recommendations.

**Figure 4-3: Timeline for Electoral Reform**



**4.6. Selected Resources**

Democracy Reporting International. <http://www.democracy-reporting.org/> [July 2012].

EuropeAid .[http://ec.europa.eu/europeaid/where/worldwide/electoral-support/index\\_en.htm](http://ec.europa.eu/europeaid/where/worldwide/electoral-support/index_en.htm) [July 2012].

International Foundation for Electoral Systems. <http://www.ifes.org/> [July 2012].

International Institute for Democracy and Electoral Support. <http://www.idea.int/> [July 2012].

Netherlands Institute for Multiparty Democracy. <http://www.nimd.org/> [July 2012].

United Nations Electoral Assistance Division. <http://www.un.org/wcm/content/site/undpa/main/issues/elections> [July 2012].

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## Chapter 5. Constitutional Design

*Syria's constitutional moment offers a unique opportunity for the Syrian people to break with a dark past and usher in a new era of peace, democracy, and freedom. The legitimacy of the revolution, the transition, and the new constitution depend on the constitution-making process being inclusive, transparent, participatory, and deliberative.*

### 5.1. Summary of Recommendations

- Syria's constitution-making process should seek to achieve more than just a new constitution. It should help the Syrian people develop, strengthen and promote a national identity and foster unity; build trust between different components of Syrian society; contribute to national reconciliation; and create a new culture of democracy in Syria over time.
- To achieve these and other goals, the Syrian constitution-making process should incorporate the core principles of inclusiveness, transparency, participation, consensus, deliberation, and national ownership.
- The 2012 Constitution should be abolished and replaced with either an amended version of the 1950 Constitution or a new legal instrument to provide a legal framework during the transitional period.
- The transitional legal framework should include fundamental rights and freedoms, transitional governance provisions, a roadmap for the negotiation and drafting of the permanent constitution, and agreed-upon constitutional guarantees that must be incorporated into the permanent constitution.
- The constitution should be negotiated, drafted, and approved by a Constitutional Assembly, with additional consideration to utilizing a national referendum for final ratification.
- The Constitutional Assembly should be as inclusive and representative as possible, reflecting the diversity of Syria. (Chapter 4 elaborates options for achieving these goals.)
- A public outreach and communication strategy will be needed at all stages of the constitution-making process in order to keep the public informed, maintain trust, and manage expectations.
- The process for making the permanent constitution should include robust civic education and consultation with the people so that the document accurately reflects their needs and aspirations.
- Constitution-making officials and Syrian civil society should cooperate to ensure the process is sufficiently transparent.

- Decisions by constitution-making officials should be transparent and achieved, as much as possible, by consensus.
- Sufficient time should be allocated to the constitution-making process to allow for civic education, public consultation, and the necessary debate, deliberation, research, and drafting. A time frame of eighteen months to two years is likely necessary.
- To help ensure the implementation of and respect for Syria's new constitution, civic education should continue well after the constitution is formally adopted.

### **Goals and Principles**

The process of making a new constitution can achieve much more than just the drafting of the constitution itself. By transforming the negotiation and drafting of the constitution from a legal exercise conducted by lawyers and political elites into a national dialogue, the process of making a new constitution can help Syria achieve many goals:

- Develop, strengthen and promote a new national identity
- Foster unity;
- Build consensus on the core values and fundamental principles of the nation as well as the new framework for governance;
- Broaden the reform agenda by including the wider aspirations of the people beyond just a few key elites or groups;
- Build trust between all social communities and groups;
- Contribute to national reconciliation;
- Open political space and revive previous social structures;
- Make a definitive break with the past by demonstrating the commitment of political leadership and government to democratic principles and processes;
- Educate and empower citizens on the principles and practice of democracy; and
- Increase the potential for a legitimate and effective governance and legal framework.

These goals, which are at the heart of Syria's revolution, cannot be achieved by Syrian leaders on behalf of the people. They must be realized by the Syrian people themselves. Reaching them will involve a process of civic education, national dialogue and public consultation that allows the people to express their fears, needs, and aspirations directly to their leaders and each other. Such a process should be grounded in the following core principles of constitution-making:

*Principle 1. Inclusiveness.* An inclusive constitution-making process is one that includes all components of Syrian society so that their representatives can equitably participate in the process. Those components reflect the full diversity of Syrian society, including its many different ethnic, religious, and sectarian groups; its men and women; its varieties of political thinking; and its geographic dispersion.

*Principle 2. Transparency and Accountability.* A transparent constitution-making process is one that is conducted in an open manner using a wide variety of means to keep the public informed. Transparency must be ensured throughout the constitution-drafting process so that each member of society can be easily aware of the constitution-making activities and can share suggestions through appropriate and accessible mechanisms, so that such opinions can be taken into consideration by the relevant committees. At the same time, a national body must monitor and call the committee to account to ensure its adherence to the principles governing this process.

*Principle 3. Public Participation.* Public participation in the constitution-drafting process should be encouraged as widely as possible. People should consider it a natural and legitimate right to be educated and informed about the process and the main constitutional questions. They should be given real, free, and impartial opportunities to express their opinions, interests, and preferences. They may do so via the infrastructure of civil society organizations, educational institutions, unions, syndicates, places of worship, or new groups developed for this purpose. Information systems and communication technology should be used to collect suggestions, recommendations, and other input so these may be analyzed and studied during the drafting of the constitution.

*Principle 4. Consensus.* A constitution-making process based on consensus is one where decisions are reached by drafting and ratifying bodies based on discussion, negotiation, and persuasion, and only as a last resort by majority rules. Along with inclusion and participation, this guarantees that the final document reflects the interests and the aspirations of the nation, and not just one societal interest.

*Principle 5. National Ownership.* Participation in the constitution-making process is a national duty and a right for all Syrians. Participation ensures that the constitution-making process and its outcome will be fully Syrian, while benefiting from the lessons of constitution-making in other states.

*Principle 6. Deliberation.* The national interest will be best served by comprehensive dialogue and quiet discussion within a realistic, comfortable timeline. This includes reflecting on historical resources and contemporary comparative experiences. It will

also be aided by transparent mechanisms to prevent the conflict of sectarian, partisan, or personal interests.

Importantly, these core constitution-making principles are not rigid rules to be mechanically applied at each stage of the constitution-making process. At all times, however, they must guide procedural design choices to strengthen and promote the legitimacy of Syria's transitional leaders, the constitution-making process, and the constitution itself, enabling Syria to reach its goals.

## 5.2. Context

With the Ba'th Party's seizure of power in March 1963, Syria's constitution became an instrument for the consolidation of single party rule and the centralization of power in the hands of the executive. Viewed as the framework for Syria's social and economic transformation, and for empowering social classes that had been marginalized by the country's landed and business elite, the constitution of 1964 and those that followed enshrined the dominant role of the Ba'th Party in Syria's state and society, denied citizens basic freedoms, restricted political competition, and provided a thin veneer of legalism for an authoritarian system of governance.

No less important, however, is the growing divergence under Ba'thist rule between the content of Syria's constitution and the practices of its leaders. In the constitution promulgated in 1973 under Hafiz al-Assad, a document which remained in effect with only modest revisions until February 2012, Section Four includes numerous articles affirming the supremacy of the law, the rights of citizens, and the equality of citizens. Article 28 of Section Four states that "no one may be kept under surveillance or detained except in accordance with the law," and that "no one may be tortured physically or mentally or be treated in a humiliating manner." Yet by that time, Syria's prisons contained thousands of political prisoners, surveillance and torture had already become routine, and the rule of law had been thoroughly corrupted by the lawlessness and criminality of the ruling elites.

*Bashar's promises of political reform were never kept. It was only in late 2011, as a belated and grudging response to the Syrian revolution, that the Assad regime undertook limited constitutional reforms in an effort to dampen the spread of mass protests and popular demands for the fall of the regime.*

Little changed with the succession of Bashar al-Assad in July 2000, despite the short-lived "Damascus Spring" that followed his rise to power. Bashar's promises of political



reform were never kept. It was only in late 2011, as a belated and grudging response to the Syrian revolution, that the Assad regime undertook limited constitutional reforms in an effort to dampen the spread of mass protests and popular demands for the fall of the regime. However, the constitution of 2012 was no more democratic than the one it replaced, and served merely to affirm the determination of the Assad regime to cling to power. The Day After project has this history in mind as we propose guidance for the next effort.

The Day After project has also reviewed cases of contemporary constitution-making in other post-conflict states, including processes occurring in Afghanistan, Benin, Columbia, East Timor, Egypt, Kenya, Uganda, Bolivia, Tunisia, and the process proposed in Yemen. In particular, we examined the divergent experiences of Iraq and South Africa, as well as the on-going processes of constitution-making in Egypt and Libya. A few lessons can be highlighted here; others will be referred to below.

South Africa's process was exemplary in allowing groups enough time to build trust and largely adhering to the principles outlined above. Its permanent constitution was written over a period of two years by an inclusive constitution-making body. During the process, officials educated and consulted with millions of citizens, operated with transparency, and made decisions based on consensus rather than strict majority voting. South Africans attribute the relative peace of their democratic transition, reconciliation between white and black South Africans, and political stability today in no small part to the principles applied during the constitution-making process. The Day After project also took note of a distinctive aspect of the process in South Africa whereby the interim constitution included verifiable principles that had to be present in the permanent constitution. This gave the minority party that had previously ruled the country confidence to engage in the process, assured that their primary interests and concerns would be addressed. (This is discussed further in Box 1, below.)

The experience of South Africa stands in stark contrast to that of Iraq, whose 2005 constitution was written in approximately three months with almost no transparency or public participation, and to the exclusion of a significant component of Iraqi society, Sunni Arabs. As a result, critical constitutional issues could not be sufficiently examined, negotiated, and resolved, leading to serious governance challenges in Iraq today. More importantly, the marginalization of Sunni Arabs led directly to Iraq's most serious sectarian violence in 2006 and 2007.

While it is too soon to fully evaluate the constitution-making processes in Egypt, Libya, and Tunisia, we have observed that at least Egypt and Libya have already suffered from a failure to apply the core constitutional principles set forth above. In Egypt, decisions about the transitional legal framework and roadmap for the design of

the permanent constitution have been made largely in secret by an exclusive group of leaders, and the formation of the constitutional commission has been attacked for being insufficiently inclusive. In Libya, the National Transitional Council has also been accused of operating without transparency, being insufficiently inclusive, and failing to consult adequately with important components of Libyan society. In both Egypt and Libya, the manner in which the transitional legal frameworks and constitution-making processes have been designed has already led to tensions and mistrust, and has undermined the legitimacy of the transitional authorities and the transitions themselves.

Reviewing the recent history of constitution-making in Syria and comparing contemporary processes of constitution-making in other states has given The Day After project the opportunity to consider a variety of lessons, broaden its perspective, and deepen its reflection. This effort confirmed the profound importance of adhering to core principles, while also providing useful insights for developing the recommendations offered below.

### **5.3. Challenges and Risks**

#### *Challenge 1. The need for a transitional legal framework*

Negotiating and drafting a permanent constitution requires time and focus. These are unlikely to be available immediately after the fall of Assad. Whatever the nature of the transition, the initial aftermath of the end of the Ba’thist regime is likely to include some measure of crisis, chaos, and flux. A transitional legal framework may therefore be needed until the necessary circumstances and environment for a permanent constitution-making process are achieved. The transitional legal framework, however, will have to balance competing tensions: (1) the need for legal continuity as quickly as possible in the aftermath of the fall of the regime and the dissolution of the 2012 constitution; and (2) the difficulty in negotiating a transitional legal instrument amidst political and social crisis, chaos, and flux. The need to craft an interim legal framework to govern the transition itself and to guide the drafting of a permanent constitution is a challenge that other transitional states have faced, and met (see **Figure 5-1**).

**Figure 5-1: Facing Challenges: Creating Time and Trust in South Africa*****Facing Challenges: Creating Time and Trust in South Africa***

*A number of countries have faced the challenges of needing to conduct a principled constitution-making process in a context of initial post-conflict disorder and widespread social mistrust. South Africa's experience may be instructive, suggesting possible routes for Syria to consider.*

*A first step is creating a provisional constitution to both govern the transition and guide the process of creating the permanent constitution. This allows the possibility of generating the conditions necessary—and particularly sufficient time—for a proper constitution-making process. Following the fall of South Africa's apartheid regime in 1991, the two dominant parties entered into talks on how to transition to democracy. These talks took approximately two years and resulted in an Interim Constitution. South Africa governed itself by this provisional document until a permanent constitution was adopted more than two years later.*

*Another important step is finding the means to address profound social mistrust. Again, South Africa provides a useful illustration. South Africa's permanent constitution was to be written by a constitutional assembly elected by all the South African people. The white minority knew that the elected body would be overwhelmingly dominated by the African National Congress Party, which could then design any constitutional framework it desired. In order to protect the interests of white South Africans, the African National Congress and the National Party included in the Interim Constitution an annex of 34 principles that were of greatest concern to the two parties and which could not be violated by the permanent constitution. The principles did not prescribe the exact articulation of each issue; they did provide broad contours and redlines that could not be violated. The presence of these principles allayed the fears of the parties and assured them that the eventual constitution would respect their most coveted rights and interests.*

*Part of the strength of these guarantees was that they were accompanied by an implementing mechanism. South Africa created a Constitutional Court to review the permanent constitution and ensure it did not violate any of the agreed-upon 34 principles. The Court, in fact, found that two provisions of the constitution indeed did violate principles and returned the draft to the constitutional assembly for revision.*

*Challenge 2. The loss of civic trust*

Syria has become an increasingly fragmented society, grappling with many competing identities and considerable civic mistrust. Some of the fractures and mistrust were fostered and manipulated by the Assad regime. The more time before the current regime falls, the more exacerbated the fragmentation and mistrust between societal groups and interests could become. As the transition begins, Syrians may be reluctant to enter into a constitution-making process without certain agreements or understandings in place about especially difficult and divisive issues. This may be particularly true if Syria, like the other countries of the Arab Spring, opts to hold elections to constitute a body that will draft the permanent constitution (or select a commission to do the drafting). This too is a challenge that others have encountered, and overcome (see case Box 1).

*Challenge 3. The inherent risks and opportunities of transitional moments*

The negotiation and adoption of a transitional legal framework and permanent constitution offers a unique and extraordinary moment in Syria's transition from tyranny to democracy. It is unique in that post-conflict states often have only one chance to "get it right" and create a legal framework that establishes rights, institutions, and practices that will support lasting peace, prosperity, democracy, and freedom. It is extraordinary because, after almost a half-century of dictatorship, the constitutional moment will offer Syrians a chance to make a clean break from the past and set the nation on a course where all Syria's components and peoples can create not just a functional system of democratic governance, but begin to establish a culture of democracy and a state based on respect for the rights and freedoms of all people.

Such moments are inherently risky. If conducted unwisely—that is, not in keeping with the principles set forth above—constitution-making in Syria could exacerbate existing fault lines, undermine the legitimacy of the transitional authorities and any government that follows, and contribute to greater long term violence and instability. Such moments are also immense opportunities. The Day After project believes that if the constitution-making process is not merely a legal drafting exercise conducted by political elites, but rather a national dialogue that accommodates the needs and interests of Syria's diverse society, then the transition will earn its legitimacy and Syrians will realize the goals and aspirations of the revolution.

## 5.4. Detailed Recommendations

### 1. A Roadmap of the Constitution-Making Process

Having considered these goals and principles, identified these challenges and opportunities, and reviewed lessons and examples from other countries’ experiences, The Day After project recommends the following roadmap of sequenced tasks to negotiate, draft, and adopt Syria’s permanent constitution (**Figures 5-2, 5-3, and 5-4**). The roadmap begins immediately after the fall of the Assad regime with civic education so that by the time the Constitutional Assembly is in place, the public will understand and be able to fulfill its role. The roadmap concludes three years later with the adoption (possibly through referendum) of a legitimate permanent constitution for a new Syria.

**Figure 5-2: Tasks of the Roadmap for Constitution-making**

Task/Phase
Negotiate and adopt transitional legal framework
Establish commission to begin civic education
Conduct civic education
Elections for Constitutional Assembly (CA)
CA establishes secretariat to help develop budget, procure resources, develop strategic plan, document and facilitate drafting process
CA establishes regional/district offices for CA to assist in civic education and consultations
CA establishes sub-committees to assist in researching and drafting
Conduct more civic education
Conduct public consultations
Analyze public inputs/views
Research, negotiate and agree on first draft of constitution
Allow public to comment on first draft
More negotiation and drafting, as needed
CA adopts constitution
Referendum, if appropriate
Implementation, including additional civic education on the final constitution

**Figure 5-3: Time Proposed for Constitution-Making Tasks**

<b>Task/Phase</b>	<b>Time</b>
Negotiate and draft transitional legal framework	2-3 months (perhaps longer if necessary to agree on guaranteed principles)
Prepare for CA elections	(See Chapter 4)
CA preparation (formation of secretariat, outreach unit, regional offices, development of by-laws, budget and strategic plan, etc.)	3 months
Civic education	3 months
Public consultation	3-6 months
Research, negotiation, drafting, adoption by CA	3-6 months
Preparation for referendum	3 months

**Figure 5-4: Timeline for the Constitution-Making Process**

<b>Day 1</b>	<b>6 Mos</b>	<b>1 Yr</b>	<b>1.5 Yrs</b>	<b>2 Yrs</b>	<b>2.5 Yrs</b>	<b>3 yrs</b>
Negotiate and adopt TLF						
Public outreach and communication strategy						
Civic education/preparation						
CA Elections						
CA begins work						
Civic education						
Public consultations						
Analyze public inputs						
First draft						
Civic education						
Public consultations						
More negotiation and drafting						
CA adopts constitution						
Civic education for referendum						
Referendum						

*2. Options for the Transitional Legal Framework*

As noted above, Syria will need a transitional legal framework both to govern the interim period and to guide the constitution-making process. The Day After project believes that the existing constitution of 2012 is wholly inadequate and inappropriate

to serve as the legal framework during the transitional period. First, the 2012 constitution is completely undemocratic and would have to be comprehensively amended. Second, by suspending the existing constitution, Syria will demonstrate both a real and symbolic break with its dictatorial past. Such an act has legal grounding in the internationally recognized principle of “revolutionary necessity.”

The Day After project carefully considered two other options for a transitional legal framework: (1) amending the 1950 constitution to meet Syria’s transitional needs (for example, by including greater minority rights and recognition); or (2) creating a new transitional document. Participants in the Day After project engaged in significant debate over which was the better choice; each has benefits and risks. All of the participants, however, agreed that the decision of whether to use the 1950 Constitution (amended) or to start over with a new document would have to be guided by facts and variables that cannot be known at this time. How the transition transpires, the manner in which the current regime falls, and the nature of the transitional authorities that replace it will have a significant impact on the appropriateness of each option.

### **Option 1. Amended 1950 Constitution**

Debate over the appropriateness of using the 1950 Constitution as the starting point for the transitional legal framework revolved largely around contrary perspectives on two main points.

1. For some participants the 1950 Constitution evoked memories and feelings of a democratic, consensual, and peaceful period in Syria’s history, before the Ba’th dictatorship began. These participants also noted with approval that today’s revolutionaries are flying the flag of the 1950 Constitution, indicating that a connection is already being made between that era and the on-going revolution. Other participants, however, had a more negative view. For them, the 1950 Constitution represented an era of pan-Arabism in Syria, which was later distorted and polluted by the Ba’th Party and therefore can no longer be a positive and unifying symbol for Syria’s future. This group also argued that because it excluded reference to Kurds and other minorities, the 1950 Constitution would not reassure these groups; using it as the basis for the transitional legal framework would risk losing their support. Some participants argued that the manner in which the 1950 Constitution was adopted—not inclusive, non-transparent, and non-participatory—would send the wrong message about the principles of democracy that Syrians wish to highlight during the transition. And finally, some participants argued that an association between the present revolution and the 1950 Constitution is

actually harmful to building a unified and inclusive state after the Assad regime falls, because not all Syrians are part of the revolution. These participants argued that the “new” Syria needs a fresh start with a transitional constitution that is not associated with an exclusionary past.

2. Some participants argued that more than 80 percent of the 1950 Constitution could be used unaltered, decreasing the time during which Syria will operate in a legal vacuum while a transitional legal framework is negotiated and drafted. Others disagreed, stating that the 1950 Constitution would have to be substantially amended to make it a truly modern constitution and effective during the transitional period, and would therefore require about the same time to revise as would be needed to draft an entirely new constitution.

### **Option 2. New Transitional Legal Framework**

To many participants, the main advantage of creating a new transitional legal framework is the fresh start for Syria that could incorporate the benefits and insights of the past 60 years of legal and political thinking and practice. A new document could be tailored to this new chapter in Syria’s history, and reflect the needs and aspirations of all Syrians. Participants also noted that the negotiation and drafting process could be a source of positive dialogue, and practice for the process of drafting the permanent constitution. The main disadvantage was the additional time it would take to start over, extending the period during which Syria would operate in a legal vacuum or under a transitional legal framework. This might cause drafters to rush—leading to less effective institutions, mechanisms, or processes. Participants also expressed concern that writing a new transitional framework would require negotiating many potentially contentious issues immediately after the fall of the regime, which could spark division, instability, or even mass unrest.

### *3. Process for Establishing a Transitional Legal Framework*

Whichever option is chosen, the six core constitutional principles discussed above should be applied during the process. All components of Syrian society—the full range of ethnic, religious and sectarian identities, all political persuasions, men and women as well as youth—should be included in the design of the transitional legal framework. Excluding any component—even segments of society that supported the current regime—will undermine the legitimacy and stability of the transition. Transitional leaders should operate with the utmost transparency, communicating directly to the people not just the choices that are being considered, but the reasons why certain choices are made.



In this respect, one of the key elements in the roadmap provided above is public outreach, which begins immediately and continues throughout the entire process. It is imperative that the transitional authorities keep the public informed about developments in the negotiation and drafting of the transitional legal framework and subsequent constitution-making process, and indeed all other aspects of Syria's democratic transition. Outreach will not only increase the transparency of the process, but will also help transitional leaders manage the expectations of the public, thereby increasing the likelihood of having their decisions accepted as fair and legitimate.

And while a comprehensive public participation process, such as the one proposed for the permanent constitution-making process described below, may not be feasible under the tight time frame of the transition, The Day After project also recommends that transitional leaders consult key sectors of society so as to build and retain legitimacy and trust, for themselves and for the transitional legal framework.

#### *4. Content of the Transitional Legal Framework*

While it would be inappropriate for The Day After project to dictate the language and provisions of the transitional legal framework (indeed, doing so would violate The Day After project's core constitutional principles), it is appropriate to consider the general nature of what should be included. The Day After project believes that, broadly speaking, the following components should be in the transitional legal framework: (1) guarantees of basic human rights; (2) the rules, institutions, and procedures for transitional governance; (3) the roadmap for the negotiation, drafting, and adoption of the permanent constitution; and (4) consideration of procedural and substantive guarantees that will guide the drafting of the permanent constitution (see below).

Transitional leaders should also consider not just what goes into the transitional legal framework, but what issues are best reserved for the permanent constitution. Because the transitional legal framework will necessarily be negotiated and drafted in less time and with less participation than the permanent constitution, it should be as skeletal as possible and include only those issues that are essential for stability and governance during the transitional period. This may minimize the perception that a new constitutional order has been predetermined by political elites and imposed on the people.

#### **5. Procedural and Substantive Guarantees for the Transitional Legal Framework and Permanent Constitution**

As discussed above, to allay profound civic mistrust and to guide the constitution-making process, Syria may find it extremely useful to adopt a set of guarantees, as did South Africa (see Box 1). These guarantees would apply to both the transitional legal framework and the permanent constitution. They would assure Syria's many social components of the fundamental safety of engaging in the constitution-making process, knowing their core interests and concerns would not be violated. Negotiating constitutional guarantees could be difficult and require considerably more time than promulgating a transitional legal framework without them. Transitional leaders will need to assess the social and political climate in post-revolution Syrian and determine whether such guarantees are necessary and appropriate, with an eye towards maximizing the legitimacy and stability of the transitional period. If Syrian leaders do decide to incorporate constitutional guarantees into the transitional legal framework, they must also create a mechanism to ensure they are not violated by the permanent constitution (such as the Constitutional Court established by South Africa, see Box 1).

The Day After project identified many constitutional issues that might be appropriate to include as constitutional guarantees, as described below. To be clear, these are only recommendations; more consultation between the different parties (and the people) would be critical to identifying the core principles that need to be protected and the assurances that need to be made.

**Supra-Constitutional Principles:** The principles below are binding guidelines that represent the spirit of the constitution from which it cannot deviate.

- The transitional and permanent constitutions will begin with “We, the Syrian people,” to underscore that the people, and not any party or government, are the sovereigns in Syria.
- Syria is a civil, democratic, and free state.
- Syria is a territorially unified state.
- Syria is a multi-ethnic, multi-religious, multi-lingual, multi-sectarian society that respects its diversity.
- As a multi-ethnic society, Syria recognizes ethnic diversity as a valued part of its social fabric.
- Syria is a part of the Arab world.
- The state is neutral toward religion, respects its values, and neither compels nor impedes religion among the people.
- Islamic *sharia*, Christianity, and other religious and humanist traditions are sources to inspire legislation.
- Syria's system of government will be based on the principle of administrative decentralization.

- Fundamental human rights are to be included among the constitutional principles: in particular, anti-discrimination, equality, and due process, as well as freedom of thought, mobility, consciousness, belief, opinion, expression, assembly, and association.
- The rights and freedoms are to be guaranteed equally to male and female persons.
- Every individual is equal before and under the law and has the right to equal protection of and benefit to the law without discrimination.
- Every individual has the right to life, liberty, and security of the person.
- The constitution should guarantee the independence of the judiciary.
- The military and security forces are completely subject to civilian authorities.
- Private property is protected.
- The economy should incorporate principles of social and economic justice.

#### *6. Application of the Core Principles to the Roadmap*

##### **Inclusiveness**

The election of the Constitutional Assembly is addressed elsewhere (see Chapter 4), but merits discussion here because it is absolutely critical that the Constitutional Assembly be sufficiently inclusive and representative of Syrian society. As affirmed in Chapter 4, all interests and components must be represented, and in some cases perhaps even disproportionately to their numbers. Constitutional assemblies are not like ordinary legislatures, where the regularity of elections means that if a group loses this time, it can do better next time. In contrast, the constitutional moment is unique, with much higher stakes. Groups that feel marginalized are less likely to feel part of the “new Syria,” or worse, may attempt to undermine or obstruct the democratic transition.

Therefore, Syrian leaders must take care to ensure that elections produce not merely democratic (in the sense of majoritarian) results, but rather legitimate results. The Day After project, therefore, recommends that in addition to the normal electoral process, Syria reserve an adequate number of seats in the Constitutional Assembly for groups that might lose through elections but nevertheless ought to be represented. The principles of inclusiveness and deliberation must be balanced to create a body that can effectively represent the nation and also design a coherent and competent constitutional draft. (Mechanisms for achieving such a constitutional assembly, in line with internationally established electoral procedures, are detailed in Chapter 4.)

## **Participation**

Educating and preparing the public to participate in the permanent constitution-making process should begin even before the Constitutional Assembly elections. The Day After project recommends the transitional authorities create an official body (perhaps an independent commission or an office within the transitional government) to begin civic education and outreach almost immediately—and well before elections—in order to prepare citizens to meaningfully participate in the constitution-making process and reduce the time of the process itself. In addition, civil society should be encouraged to help in the civic education effort. These bodies can not only educate the public, but gather critical input to inform the drafting process. For example, people can be asked about the challenges they face, what they want the government to do (or not do), their priorities and needs, and their views on important or divisive constitutional matters.

Later in the process, the public should be given an opportunity to provide further input and comments as constitutional drafts are produced. A procedure should be established to analyze, collate, and present public input to constitution-making officials. And at each stage drafters should provide reasons for the choices that were made and indicate how they took the public's input into account—so that the public can see that it was listened to.

## **Transparency and Accountability**

As mentioned earlier, transitional authorities should construct a communication and outreach unit and strategy immediately after the revolution to inform citizens about what is happening, how decisions are being made, and how they can get involved. Constitution-making officials should conduct regular briefings to the media and public to update on developments, official documents should be available for inspection, and proceedings should, as much as possible, be broadcast on radio and/or television. Finally, civil society and the media should be encouraged to monitor and report on the process. Such transparency is needed to increase public trust in and the legitimacy of the process. Through the media and other mechanisms, constitution-makers will be held accountable to the people. Specifically, a code of conduct should be developed to clarify their responsibilities and duties, including how to avoid conflicts of interest that could damage the credibility of the Constitutional Assembly.

## **Consensus**

Balancing the desire to reach decisions by consensus whenever possible with the reality that sometimes deadlock-breaking mechanisms will be necessary, The Day

After project recommends that the drafters try to reach decisions on constitutional issues and provisions by 100 percent agreement as much as possible. In cases where consensus cannot be reached after three rounds of discussions, negotiations, and persuasion, decisions should then be adopted by two-thirds (67 percent) majority. Such a high voting threshold increases the likelihood of the final document reflecting the interests and aspirations of the nation rather than a certain sectarian interest. In the event no side achieves two-thirds majority support, other deadlock-breaking measures should be employed, including: (1) referral of the issue to a technical committee that can propose alternative approaches to the problem; (2) referral of the issue to a leadership council that can negotiate a compromise; (3) referral of the issue to a non-binding national referendum, which will allow the negotiators to see the public preference; and (4) referral of the issue to a binding national referendum, which would also require a two-thirds majority vote and in the event the measure does not pass the two-thirds threshold, the Constitutional Assembly is itself dissolved and new elections are held. The drastic effects of such an outcome would likely ensure that the Constitutional Assembly will find compromise solutions and avoid such a referendum.

### **Deliberation**

The Day After project notes the short timeframes in which Egypt and Libya are conducting their constitution-making processes. In each case, the envisioned time frame can be measured in a few months. Tunisia is only slightly longer (about one year). It is understandable that any country would want to shorten its transition and achieve democratic governance as soon as possible. However, shorter constitution-making timelines come at a cost. The constitutional roadmaps for Egypt, Tunisia, and Libya do not allow time for meaningful public participation. The Day After project believes that in light of Syria's social and political environment, public participation will be critical to creating a legitimate constitution-making process and realizing the goals of the revolution. In addition, The Day After project suggests that a longer process will allow more time to research, negotiate, and resolve critical contentions and divisive issues, as well as consult with relevant experts and the public. Therefore, The Day After project recommends that transitional leaders carefully consider a longer timeframe for Syria's constitutional drafting.

### *7. Referendum*

The roadmap concludes with the *possibility* of a referendum. The question of whether to hold such a referendum merits further discussion. Referendums carry potential benefits and risks. On the one hand, they can be definitive and popular demonstrations of ratification and support for the final constitution—increasing the

legitimacy and national ownership of the constitution. On the other hand, they are expensive, time-consuming, and can be divisive and polarizing. The Day After project observed that in other countries referendums have been fought on one or two issues, undermining national support for the document as a whole. Ultimately, The Day After project believes whether Syria should have a referendum to ratify the permanent constitution should come down to the question of legitimacy. If transitional leaders conduct free and fair elections for the Constituent Assembly that result in a body that sufficiently reflects the diversity of Syria, and if the constitution-makers educate and fully consult with the people, then a referendum may not be needed for the people to feel they own the constitution. However, if there is otherwise insufficient public participation, or if political and social realities demand it, then a referendum may be necessary and appropriate.

#### *8. Alternative Roadmap*

The Day After project discussed the possibility that constitution-making in post-Assad Syria may require greater time and negotiation than set forth in this chapter. In a scenario where violence persists and sectarianism and mistrust dominate politics, the different political and social interests may require more substantial trust-building measures and assurances in order to allow for a peaceful and stable transition to democracy. Under such circumstances, a longer constitutional roadmap that provides greater guarantees for inclusiveness may be necessary. Such a roadmap might look like the following:

1. The existing constitution is abolished.
2. A Constitutional Commission is formed—its size and makeup to be agreed upon by the major political and social parties—to draft an interim constitution.
3. The commission prepares a draft transitional constitution.
4. The draft transitional constitution is adopted by a national conference. The size and make-up of the national conference is agreed to by the major political and social parties. Each political and/or social component selects its own representatives. The national conference must approve the transitional constitution by a two-thirds majority for it to be deemed adopted.
5. The transitional constitution, which would be more comprehensive than the transitional legal framework proposed in this chapter, would remain operative for a longer period of time—perhaps two years.

6. During the period governed by the transitional constitution, steps would be taken to elect a Constituent Assembly, which would negotiate and draft the permanent constitution in a fashion similar to procedures described above (see Chapter 4).
7. The Constituent Assembly would adopt the permanent constitution, with an additional option for a national referendum if deemed appropriate.

## 5.5. Selected Resources

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## Chapter 6. Economic Restructuring and Social Policy

*Syria faces urgent humanitarian needs for emergency relief, the challenge of post-conflict reconstruction, and the imperative of restructuring a weakened economy that has been characterized by bad policy, mismanagement of resources, corruption, and nepotism. To meet these challenges, Syria will need to draw upon a full range of financial and human capital, including both domestic and foreign resources. Throughout the process, empowering local communities to make their own decisions will be paramount. This will help prevent aid dependence or distortions, facilitate both national reconstruction and reconciliation, and set Syria on a path of equitable and sustainable economic and social progress over the long term.*

### 6.1. Summary of Key Recommendations

- Immediately undertake a comprehensive study to identify and determine the social and economic challenges, including the need for relief assistance, with precision and specificity.
- Convene a donors' meeting (perhaps anchored in the Friends of Syria group), or some other mechanism to elicit and coordinate donor funds, establishing from the start the imperative of local involvement and decision-making so as to avoid the risks of dependency or distortion.
- Meet urgent humanitarian needs through immediate emergency relief (medical care, food, shelter); restore basic services (sanitation, electricity, education), and begin to resettle refugees and internally displaced persons.
- Rehabilitate physical infrastructure. Establish a bureau of reconstruction to coordinate the many agencies that will be involved in the reconstruction effort.
- Empower local communities to make economic decisions so as to stimulate the economy and ensure sustainability.
- Take measures to facilitate macroeconomic stability, jump-start the economy, and attract capital back to Syria.
- Establish a National Economic and Emergency Relief Council to review economic policies and relief efforts, so as to ensure the appropriate balance between initiatives to jump-start the economy and programs for emergency relief and reconstruction.
- Dismantle the legacies of corruption, nepotism, and discrimination left by the Ba'athist regime. Initiate new patterns of transparency, accountability, participation, and inclusion of all Syrians.

## 6.2. Goals, Objectives, and Resources

The economic and social well-being of Syrians entails three interrelated goals: consolidated peace, national reconciliation, and economic recovery. No one of these can be established and sustained without the other two. In moving toward these three goals, Syria has the chance to establish a framework for equitable and sustainable social and economic progress.

In developing objectives and recommendations in this area, The Day After project adhered to the same principles that have guided the entire endeavor, searching for approaches that embody inclusiveness, participation, accountability, and transparency. In the economic and social realm, this means that, from immediate emergency relief to medium-term reconstruction to long-term economic restructuring, the underlying concerns include providing broad-based opportunities, ending corruption, and fostering capacity and empowerment among all Syria's diverse social components—its ethnic, sectarian, and religious groups; men, women, and youth; and all regions. A further abiding concern is the imperative of maintaining local ownership while working in conjunction with foreign donors and actors, so as to avoid the risks of dependence or economic distortion. Toward these goals, and with these underlying principles, The Day After project has identified six objectives:

### *Objective 1. Consolidate peace.*

Peace is elemental. Syria requires security and stability for all. While the obvious initial focus is ending violence between the regime and all opposition forces, consolidating peace also involves ending any sectarian violence that may have been triggered during the revolution, as well as the protection of those made particularly vulnerable by the conflict (refugees, displaced persons, injured, and dispossessed), and those who may become victims of violence—either of revenge attacks or of the domestic violence that too often characterizes post-conflict societies as traumatized individuals are more apt to engage in acts of violence. Consolidating peace will mean peace and security for all Syrians, without exception. The basic steps toward this objective are covered in Chapters 1, 2, and 3 and will not be further elaborated here. It bears emphasizing, however, that consolidating peace is thoroughly entwined with meeting any other social, political, or economic goals.

### *Objective 2. Meet urgent humanitarian needs.*

Urgent humanitarian needs must be met with immediate emergency relief in the form of medical care, food, and shelter in devastated areas; resettlement of refugees and internally displaced persons; and the restoration of basic services such as sanitation,

electricity, and education as soon as possible. Due attention should be given not only to the physical needs of the Syrian people, but to their psychological needs as well. Because of the potential effects of post-traumatic stress disorder from prolonged conflict, addressing psychological and emotional needs will be critical to fostering healing in the transition period (see Chapter 2).

Providing for basic needs will require careful coordination and management. At first, the transitional government will be leveraging aid to meet these needs rapidly and effectively, and partnering with relief organizations to bolster distributive capacity in the short term. Right from the start, it will also be important to map and collaborate with local civic and religious groups. Involving and relying on local groups will encourage a sense of community and build local capacity, strengthen the legitimacy of and trust in the transitional government, and help to prevent the dependence and distortions of a heavily aid-based or donor-directed recovery effort.

*Objective 3. Rehabilitate physical infrastructure.*

The conflict, and especially the regime's use of heavy weapons, is resulting in the damage, destruction, and devastation of physical infrastructure in Syria's cities and villages. Rebuilding, reconstructing, and restoring residential and commercial buildings, transportation infrastructure, and communications infrastructure is therefore a core objective. If undertaken properly, the process of reconstruction can itself create jobs and facilitate economic activity, becoming a critical step toward economic self-sufficiency and sustainability. The process of reconstruction can also be part of addressing the fundamental psychological and social needs of the Syrian people, as reconstruction projects provide a concrete and purposeful locus around which communities can interact, building mutual trust as well as optimism in Syria. If progress on infrastructure rehabilitation is promptly audited and effectively communicated, this will also help the transitional government attain legitimacy, both domestically and internationally.

*Objective 4. Empower local communities.*

Empowering local communities to make economic decisions while bolstering the economy overall will have myriad positive effects. A key to rebuilding the economy is job creation, to ensure the direct participation of Syrian citizens. Proven methods of local job creation include providing food for work, hiring local labor in reconstruction, elevating the technical skills and literacy of the workforce, and working with capable agencies to provide both inputs and credit to local businesses (with a particular focus on small- and medium-sized businesses). Local economic development will also entail community-based skills and training, the fostering of local competition, and the

improvement of market access. Through locally controlled economic reconstruction efforts, Syria can create a variety of opportunities, especially for the reintegration of marginalized groups, and encourage community-building and a sense of unity. Giving greater weight to local decisions will also help shift the Syrian economy away from its past emphasis on the public sector, although a place will remain for the preservation of public institutions and public sector salaries. Further, an economy with more local control also has a greater potential of being sustainable and avoiding dependence on or distortions created by foreign aid. Across the economy, decentralization will prevent undue control of the development process by national officials or elites.

*Objective 5. Ensure macroeconomic stability.*

Stimulating the economy will involve fostering economic activity at the local level, reestablishing economic infrastructure (e.g., the banking and regulatory system), seeking an end to all sanctions, improving Syrian access to regional and international markets, and providing macroeconomic stability.

Macroeconomic stability is critical to economic reconstruction and requires careful attention to some systemic aspects of the Syrian economy. Macroeconomic stability provides predictability, allowing both investors and savers to make long-term decisions without fear of economic disruption and instilling confidence among domestic economic actors. Macroeconomic stability will assist Syria in becoming viable financially. It will also be crucial to generating fiscal responsibility, so the transitional government can enforce fiscal obligations that will make the government more sustainable. Macroeconomic stability will also help create an enabling environment for local economic activities. Other factors conducive to an enabling economic environment are the lifting of sanctions, improved access to international markets, low inflation, and the elimination of bottlenecks (such as the lack of foreign exchange). Finally, macroeconomic stability will be essential to manage inflows, as Syria receives external assistance.

Accomplishing macroeconomic stability in Syria is a complex task that will require both coordination and expertise. Among institutional reforms, macroeconomic stability will require a strong treasury and central bank capable of making effective policy. To use these institutions properly, Syria will need to augment its technical capacity for economic policy-making. This can be accomplished through training programs, as well as through a limited advisory role for international agencies and partners. The transitional government will need to balance the imperative of efficiency with a conflict-sensitive approach to economic reconstruction and economic programming more broadly. This will entail giving the transitional government leeway to spend what is required for success, as immediate post-conflict

engagement is a high-expenditure process. The transitional government will also need flexibility in spending to ensure that other objectives listed above, as well as priorities identified in other chapters, have a realistic and supportive economic background.

*Objective 6. Begin to dismantle legacies of the Ba’thist regime and establish new patterns.*

The final objective is to begin to dismantle the economic and social legacies of the Ba’thist regime. These include decades of misguided and incoherent economic policies, widespread corruption, prevalent nepotism, and the utter lack of transparency and accountability which have characterized both business and government dealings in Syria. Overcoming these patterns will be a critical factor in rehabilitating the economic and social environment of Syria. By establishing new patterns of transparency and accountability, the transitional government will increase the impact of economic and social reforms, and ensure that gains are durable and sustainable.

Dismantling remnants of the old regime in the economic sector will parallel similar efforts in the rule of law, security, and political sectors (see Chapters 1, 3, and 4). As in these sectors, there is a great need for mechanisms of monitoring and oversight, from local networks to international monitors. In the economic realm, oversight of the transition process will require a twofold effort. The first step will involve an audit to establish the resources at the disposal of the government, including funds and basic budget availability. The second step will be to practice transparency, evaluating reconstruction efforts, and updating the public on the progress of the transition. This will enhance the legitimacy of support for the transition. A further useful tool in combating corruption and establishing transparency will be to encourage the independent media to alert the public of any wrongdoing while also sharing news of accomplishments when reporting on transition activities.

Other initiatives will be required to overcome the negative legacies of the Ba’thist regime. These include revision of school curriculum, a health policy that is both accessible and affordable, and equitable division of economic gains to all Syrians. Empowering women in all sectors (including business and politics; see Chapter 4), abolishing discriminatory practices, and ensuring freedom of association to stimulate the formation of civil society organizations are other core elements that will allow Syria to make a distinctive break with its repressive past and avail itself of the unique opportunity provided by the transition. Each of these steps forms part of an overarching approach to address the challenges facing the country in a way that establishes equality and social justice for all Syrians.

## **Resources and means**

To meet these objectives and achieve these goals, Syria will need great resources and diverse means. Some of these are already at hand; others will need to be acquired.

A first obvious resource is funds. Sources of funds for the transition include income from the resumption of exports, the collection of taxes, and donor funds from the international community. A further source may be the repatriation of the upwards of \$50 billion in funds stolen from the Syrian people by figures in the Assad regime. Funds alone will not accomplish objectives without the capacities and skills to use them well. Syria already has some of this essential second resource, but will need further training and skill-transfer programs. A third essential means for achieving these entails a mechanism of monitoring and communication, to facilitate transparency, accountability, and participation. These elements have been underdeveloped in Syria, but plans to initiate them can be found throughout this document (see especially Chapters 1, 2 and 4). A fourth critical resource is the interoperability of all transition programs, which will enhance local engagement and the long-term success of the transition. A fifth core resource is the collaboration and coordination of many actors, from local civil society groups to the Syrian community abroad and donor organizations, working together to meet the needs of the Syrian population both rapidly and effectively.

### **6.3. Context**

Over many years of Ba’thist rule, the regime institutionalized corruption, nepotism, and greed. It entrenched socioeconomic inequality and exacerbated the neglect of marginalized groups. Over the course of the revolution, economic activity has been reduced to a minimum. The business community has been driven to near bankruptcy, both by the constraints of doing business while under international sanctions and by being forced to bankroll the ongoing repression of the Syrian opposition. Average citizens, formerly of the middle or working class, have been reduced to a state of destitution. The regime’s violent response to the uprising, including the use of heavy weapons, has resulted in the devastation of villages and cities, the destruction of infrastructure, and the disruption of basic services. More than 1.5 million Syrians have been displaced or have fled to neighboring countries. Syria’s current economic distress is summarized in **Figure 6-1**.

**Figure 6-1: Current State of the Syrian Economy**

Current State	Description
<b>Economic Characteristics</b>	
A legacy of state predation	Weak social contract, fragile institutions, resource capture and exclusionary economy
Protracted violence	Reversed development, destroyed infrastructure, undermined real economy, enhanced aid dependency, and perverse war economy
Macroeconomic instability	Dwindling international reserves (roughly \$5-7B; equivalent to less than 3 months of imports) Multiple exchange rates ( <i>de jure</i> pegged to basket, but growing divergence with parallel market) Increasing inflation (due to shortages, monetized financing of fiscal deficit, depreciating currency, and imported inflation) Mounting debt (domestic debt, cross-debts, and unquantifiable growth in external debt)
Employment	Growing unemployment (roughly estimated at 40 to 50%; more pronounced among youth) Endemic underemployment (across the labor market)
Output	Oil sector (declining output, exacerbated by outdated technology and techniques) Non-oil sector (agriculture weakened; tourism decimated; manufacturing weakened)
Economic/Financial Institutions	“Policy” banking (e.g., directed credit—less than 5% to agriculture and construction; differentiated reserve requirements) Interventions (e.g., complex array of subsidies and ‘incentives’)
<b>Social Characteristics</b>	
Social Infrastructure	Displacement and food insecurity Household dynamics (impacts of income loss and asset depletion) Household size (growth and increased dependency ratio) Vulnerable segments of the population (especially by gender) Sectarian strife
Essential Services	Essential services destroyed/disrupted Water; Electricity; Transportation/fuel; Medical; Telecommunications
Infrastructure destroyed/damaged	Government and commercial buildings; private residences Hospitals/clinics; cultural/community centers Roads and bridges Communications infrastructure

## **6.4. Challenges and Risks**

Syria faces many challenges and risks as it seeks to reconstruct its economy and rebuild society. Many of the general challenges—and the means to mitigate them—have already been discussed in previous chapters, such as rampant crime and looting driven by desperation (see Chapters 1 and 3), or grave social mistrust (see Chapters 2 and 5). Some challenges are more specific to the economic sector, though they will affect all other initiatives during the transition. These include the lack of qualified personnel to head the economy or lead social change, the great cost of reconstruction and redevelopment, the need to jump-start a weakened and bankrupt economy, and the imperative of restoring jobs and providing skills-development programs.

Two other challenges merit further discussion. One is the risk of dependence on or distortion caused by foreign assistance. In some instances, relief aid can debilitate a local economy, as exemplified in Haiti or in the Congo, where some areas have remained on relief aid for over fifteen years. In other instances, donors with ideological, political, or religious agendas have imposed them on countries in need. Very often, procurement rules for donor assistance may require the purchase of foreign goods or services in ways that do not permit local decisions or enable local economic sustainability. International funds will clearly be needed for Syria's reconstruction effort; international funds also come with risks.

A final challenge is posed by Syrians themselves. After years of repression, corruption, and government impunity, the expectations of Syrians during the transition will run very high. As Syria moves toward an open, democratic state, citizens will expect any new leadership to restructure the economy, institute social policy reforms, and establish a framework that is inclusive of all members of Syrian society. Moreover, the people of Syria will expect the transitional government to replace the repressive Assad regime with a system that embraces transparency and accountability. Managing these expectations while also earning the people's trust and support will be a further challenge for the transitional government.

## **6.5. Detailed Strategies and Recommendations**

The Day After project has developed a series of recommendations to address the immediate needs of the Syrian people (including food, shelter, and jobs) while establishing a framework to accelerate economic activities to position Syria for equitable, sustainable economic progress over the long term. The recommendations below include some suggestions for institutions or initiatives to guide the transition process at each phase, as well as specific recommendations of tasks.



**Prior to Transition**

- Undertake a comprehensive study immediately to identify and determine the social and economic challenges, including the need for relief assistance, with precision and specificity. This will enable greater efficiency, equity, and fairness in designing economic assistance and recovery programs throughout Syria. The baseline needs assessment should be conducted both at the national level and at the level of local towns and councils. Various internal and local opposition groups (Local Coordinating Committees, Syrian Revolution General Commission, and others) should assist in this effort, identifying the principal networks and actors who will collaborate during the transition to begin implementing the national agenda.

**Immediate Priorities**

- Conduct an audit to establish the financial resources of the transitional government, including funds and basic budget availability. Communicate the results of the audit so as to demonstrate transparency, facilitate accountability, and manage public expectations.
- Establish a Bureau of Reconstruction to coordinate the many agencies that will be involved in the reconstruction effort. Its mandate will be to strengthen accountability and transparency, breaking the legacy of corruption and thwarting new incentives for corruption during reconstruction. The functions of the bureau should include setting clear priorities, revising procurement laws, monitoring building standards so that reconstruction is sustainable and efficient, and ensuring that contracts are assigned through a process of market-based competition.
- Convene a donors' meeting (perhaps anchored in the Friends of Syria group), or some other mechanism to elicit and coordinate donor funds, establishing from the start the imperative of local involvement and decision-making.
- Establish a National Economic and Emergency Relief Council to review economic policies and relief efforts, so as to ensure the appropriate balance between initiatives to jump-start the economy and programs for emergency relief and reconstruction.

Specific priorities for the transitional government immediately after the collapse of the Assad regime should include:

- Address refugee and internally displaced persons (IDP) resettlement.

- Provide immediate emergency relief (e.g., medical, food, shelter) for the devastated areas.
- Restore basic services throughout the country as soon as possible (e.g., education, sanitation).
- Assess physical infrastructure throughout the country, and quickly undertake reconstruction activities in the hardest-hit areas.

**First few months**

- Foster macroeconomic stability by strengthening institutions, such as the treasury and Central Bank, so they can make effective policy.
- Take steps to establish transparency and accountability in the economy and fight corruption and nepotism. Revise and enforce relevant legislation against corruption. Adopt international standards such as the Extractive Industries Transparency Initiative (EITI) and Publish What You Pay; these international standards can be especially useful in establishing oversight for the oil industry. Improve access to the judicial system, ensuring that court rulings are enforced in a transparent fashion.

Specific tasks for the first few months of the transition should include:

- Assess any additional refugee and IDP requirements.
- Provide additional relief for devastated areas not fully recovered.
- Assess the state of basic services throughout the country and determine how to upgrade them.
- Establish needed economic institutions (e.g. banking and regulatory systems) to foster economic activity.
- Assess key physical infrastructure (e.g., roads, hospitals) throughout the country, and quickly undertake reconstruction activities in the hardest-hit areas.

**Figure 9** provides a more detailed list of recommendations, justifications, and a timeline for implementation. The Day After project proposes a “cluster approach” that would create collectively reinforcing growth in priority areas across the economy. Each region will build on its competitive advantages.

**Figure 6-2: Summary and Timeline for Economic Recommendations**

Recommendation	Justification	Timeline to Implement
Drive macroeconomic stability	<ul style="list-style-type: none"> <li>● Address drivers of inflation</li> <li>● Review currency arrangements</li> <li>● Quantify debt (domestic / external)</li> <li>● Augment technical/management competencies</li> </ul>	First 6 months
	<ul style="list-style-type: none"> <li>● Introduce indirect fiscal deficit financing mechanisms</li> <li>● Rebuild reserves gradually</li> <li>● Initiate customized debt restructuring</li> <li>● Evaluate new currency options</li> </ul>	6 months to 2 years
Stimulate Employment	<ul style="list-style-type: none"> <li>● Focus on reducing unemployment (introduce quick wins)</li> <li>● Quantify and map underemployment</li> <li>● Retain public sector employees and preserve current institutions</li> </ul>	First 6 months
	<ul style="list-style-type: none"> <li>● Transition focus to sustained employment opportunities</li> <li>● Develop strategy to address underemployment (training + placements)</li> <li>● Develop strategy for SMEs and microenterprises</li> <li>● Assess requirements to revive non-oil employment</li> <li>● Introduce reconstruction zones</li> </ul>	6 months to 2 years
Real Sector Output	<ul style="list-style-type: none"> <li>● Improve opportunity and access for all Syrians</li> <li>● Integrate local economy in reconstruction efforts and service provision</li> <li>● Identify barriers to private sector development</li> <li>● Map non-formal sector</li> </ul>	First 6 months
	<ul style="list-style-type: none"> <li>● Provide incentives to SMEs and microenterprises</li> <li>● Restructure public enterprises</li> <li>● Initiate steps to improve competitiveness</li> </ul>	6 months to 2 years

Recommendation	Justification	Timeline to Implement
	<ul style="list-style-type: none"> <li>• Develop strategy to improve market access for producers (domestic, regional and global)</li> </ul>	
Restructure Economic and Financial Institutions	<ul style="list-style-type: none"> <li>• Ensure functioning payment system in major towns</li> <li>• Strengthen management of public-sector institutions</li> <li>• Enforce accountability</li> <li>• Improve domestic coordination (ministries, banks, treasury)</li> <li>• Establish rules for coordination with external institutions</li> <li>• Improve central bank monitoring and supervision of private institutions</li> </ul>	First 6 months
	<ul style="list-style-type: none"> <li>• Appoint independent oversight and regulatory institutions</li> <li>• Expand functioning payments system</li> <li>• Rationalize financial regulations (e.g., tiered reserve requirements)</li> <li>• Create a regulatory and institutional support framework for non-formal sector</li> </ul>	6 months to 2 years
Address immediate social needs and challenges	<ul style="list-style-type: none"> <li>• Develop community-based and generated approaches to social development</li> <li>• Provide basic human needs: food, medicine, water, shelter</li> <li>• Restore basic services and infrastructure: electricity, schools, hospitals/clinics, transportation, fuel, and social services.</li> </ul>	First 6 months
Address societal issues	<ul style="list-style-type: none"> <li>• Assess sectarian and ethnic divides and develop the framework for national dialogue and healing</li> <li>• Develop a comprehensive reintegration plan (e.g., political detainees, members of the security forces, displaced populations, returning refugees)</li> <li>• Account for the forcibly disappeared</li> </ul>	First 6 months

Recommendation	Justification	Timeline to Implement
Create sustainable programs	<ul style="list-style-type: none"> <li>• Deepen and broaden scope of social and economic dialogue</li> <li>• Gradually reduce dependency on humanitarian aid</li> <li>• Develop long-term educational programs</li> </ul>	6 months to 2 years

## 6.6. Selected Resources

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