Draft Transitional Justice Law in Syria: A Critical Analysis of Structural Gaps and Recommendations for Legislative Reform

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> *SIFR recommends the adoption of an inclusive and impartial transitional justice framework that ensures the recognition of all victims without discrimination, strengthens judicial independence, clearly delineates the powers of the institutions established under the law, guarantees the meaningful participation of victims and civil society, and aligns with international standards in a manner that advances effective accountability, reparations, institutional reform, and guarantees of non-recurrence*

1. Introduction

Draft transitional justice laws are crucial to post-conflict political processes. Beyond addressing past violations and preventing their recurrence, these laws also establish the legal framework governing future state-society relations. Hence, Syria's Draft Transitional Justice Law is expected to provide a comprehensive framework regulating pathways for genuine accountability, reparations, institutional reform, and national reconciliation.

While the Draft Transitional Justice Law includes a number of positive elements—such as combining judicial and non-judicial mechanisms, establishing specialized institutions, and affirming the principles of accountability and reparations—it also raises a series of legal and structural concerns that may affect its coherence, impartiality, and practical implementation.

These concerns acquire particular significance in light of ongoing judicial developments in Syria. The initiation of proceedings concerning grave violations—such as the case of *Atef Najeeb* before the Fourth Criminal Court in Damascus—prior to the adoption of a transitional justice law gives rise to several challenges, particularly regarding the consistency of legal characterization, the uniformity of accountability processes, and the relationship between ongoing prosecutions and the anticipated legislative framework. Although the court relied on the Geneva Conventions, their Additional Protocols, customary international law, and Syrian law in its legal characterization of the alleged crimes, reflecting an effort to incorporate international standards, this approach is unfolding in the absence of a comprehensive domestic legislative framework governing and delimiting the interaction between domestic and international legal sources.

This also brings into focus questions concerning the principle of non-retroactivity in criminal law, particularly if a subsequent law introduces broader definitions or expanded modes of liability. Although exceptions to this principle have been recognized in relation to international crimes—as affirmed in *Kononov v. Latvia* before the European Court of Human Rights, the jurisprudence of the International Criminal Tribunal for the former Yugoslavia in *Prosecutor v. Tadić*, and the Nuremberg Trials—their application remains contingent upon a clear legal basis, the foreseeability of criminal liability, and the protection of fair trial guarantees.

Should the Transitional Justice Law be enacted after judicial proceedings have already commenced, additional challenges may arise concerning the recharacterization of conduct, conflicting judgments, or divergent legal standards. This underscores the need for clear transitional provisions regulating the relationship between ongoing proceedings and the forthcoming legal framework in order to ensure legal consistency and safeguard the principle of legality.

Given the importance of transitional justice legislation at this stage of Syria's history, the Syrian Initiative for Fundamental Rights seeks to provide a critical assessment of the Draft Law. To this end, the following paper examines the Draft Law's legal and institutional architecture, identifies the principal shortcomings that may hinder the achievement of transitional justice objectives, and proposes practical recommendations to enhance its consistency with constitutional and international standards. In doing so, it seeks to support a more inclusive and effective framework for delivering justice and preventing future violations.

2. The Selective Definition of Violations and Victims

The Draft Law addresses violations committed in Syria between 16 November 1970 and 8 December 2024. However, its wording reflects a clear tendency to attribute responsibility primarily to a single actor, through repeated focus on violations committed by the "former regime," while merely referring to "other parties whose emergence in the armed conflict was caused by the regime and which committed similar violations." Although this reference theoretically opens the door to a broader and more inclusive approach, it remains legally insufficient. Transitional justice should be centered on victims and their rights, irrespective of the identity of the perpetrator. Notably, the phrase "other parties" appears only in the preamble and is absent from the operative provisions of the Draft Law, which instead rely exclusively on references to violations "committed by the former regime," without addressing crimes that the regime may have "caused" or facilitated.

This approach reinforces the selective character of the proposed framework, which undermines the principles of impartiality and independence. It also creates the impression that the Draft adopts a political characterization of the conflict, rather than a legal approach centered on the nature of the violations themselves, regardless of who committed them. This concern is further reinforced by the Draft's reference to violations committed against victims belonging to the "revolutionary people," potentially excluding broad categories of victims who suffered serious abuses outside that particular framework.

Moreover, the Draft fails to provide a comprehensive and autonomous definition of the violations falling within its scope, instead referring in certain instances to specific legal provisions that do not necessarily encompass all forms of violations experienced in the country. This leaves room for narrow or selective interpretations in practice. Such ambiguity creates significant legal and practical risks, including the exclusion of certain victims from transitional justice mechanisms, the erosion of equality before the law, the weakening of public confidence in the justice process, and the politicization of accountability mechanisms.

In the same vein, the Draft repeatedly invokes the concept of “national sovereignty” without providing a precise definition of its meaning. The term therefore remains open to broad and potentially arbitrary interpretations and should be reformulated in a manner that preserves national ownership of the process while remaining consistent with relevant legal obligations.

3. Jurisdictional Challenges and the Multiplicity of Institutions

The Draft Law establishes a specialized judicial framework comprising Transitional Justice Chambers and a specialized Public Prosecution Office, alongside other bodies tasked with investigations, vetting procedures, and accountability functions. While specialization is an important objective, the Draft does not sufficiently clarify the legal relationship between these institutions and the existing national judiciary.

On the one hand, it creates specialized judicial chambers operating within the judiciary and enjoying institutional independence. On the other hand, it grants the Transitional Justice Public Prosecution Office unusually broad powers, including oversight of investigations, review of vetting files, supervision of settlements, and the authority to challenge decisions issued by certain institutions. The Draft does not clearly delineate the division of jurisdiction between ordinary courts and specialized chambers, the scope of authority of the Transitional Justice Public Prosecution Office vis-à-vis existing prosecutorial bodies, the mechanisms for resolving jurisdictional disputes, or the procedural hierarchy applicable where multiple institutions are competent to address the same matter.

A fundamental legal question therefore arises: if criminal proceedings concerning the same conduct are initiated simultaneously before ordinary courts and specialized transitional justice chambers, which body will have jurisdiction, and how will such conflicts be resolved?

This concern is further compounded by the practical emergence of parallel judicial tracks. Within the framework of the Ministry of Justice, specialized judicial bodies—including investigative judges, referral judges, and criminal courts—have already been established to hear cases involving individuals affiliated with the former regime. The existence of these mechanisms raises additional questions regarding their relationship with the proposed transitional justice framework, particularly given the absence of any provision regulating coordination or delineating their respective competencies.

In such a context, there is a significant risk of overlapping jurisdiction, which may increase the likelihood of procedural conflicts, contradictory decisions or judgments, prolonged litigation, and confusion among victims and litigants regarding the competent authority. In extreme cases, it may even undermine the principle prohibiting double jeopardy.

Furthermore, the broad powers granted to the Transitional Justice Public Prosecution Office extend beyond the traditional prosecutorial function to also include supervisory and evaluative roles. This raises concerns regarding the overlap of functions within the judicial system and potential implications for institutional impartiality.

4. Defining “Serious” and “Non-Serious” Violations: A Problematic Distinction

The Draft Law distinguishes between “serious violations” and other categories of violations and attaches significant legal consequences to this distinction, particularly regarding the availability of reconciliation mechanisms, settlements, or sentence mitigation. However, the distinction remains insufficiently defined within the text.

On the one hand, the Draft defines “serious violations” by reference to provisions criminalizing specific acts, such as genocide, crimes against humanity, and war crimes, without establishing clear and systematic criteria for determining what renders a violation “serious” or how it differs from other violations. On the other hand, the Draft permits the use of non-judicial mechanisms in cases involving “non-serious violations," including settlements and reconciliation processes contingent upon victims' consent, without precisely defining the scope of this category or providing clear safeguards for distinguishing it from serious violations.

This ambiguity may give rise to a range of concerns. Most notably, it creates space for inconsistent or selective interpretations of the nature of violations, raises the possibility that grave conduct could be classified as non-serious, and may generate tension between criminal accountability processes and reconciliation mechanisms. It may also result in unequal treatment of comparable cases, thereby weakening the principle of accountability for serious crimes. Furthermore, the absence of clear criteria may, in practice, lead to the arbitrary application of this classification, allowing political or contextual considerations to influence the determination of the appropriate legal pathway for individual cases.

The Draft also raises an additional concern regarding violations that may neither fall within the category of serious violations nor be effectively addressed through reconciliation or settlement mechanisms. It fails to clarify the legal avenues available to victims in such circumstances. This creates the risk of a protection gap that could leave certain violations outside the scope of either accountability or redress, undermining victims' ability to access effective remedies.

Beyond the classification issue, the Draft also lacks precise definitions for several crimes, including enforced disappearance and sexual and gender-based crimes such as rape, sexual slavery, and forced sterilization. The failure to adopt clear definitions consistent with international standards may lead to inconsistent interpretation and narrow the scope of legal protection afforded to victims of such violations, particularly given their complexity and sensitivity.

5. Regulating Reconciliation and Civil Peace within the Transitional Justice Framework

The Draft Law introduces a number of mechanisms intended to address the consequences of conflict and promote stability, including national reconciliation, civil peace, societal dialogue, and memory preservation.

While these tools are undoubtedly important, the Draft regulates them only in broad and general terms, without sufficiently defining their scope or operational modalities.

The Draft does not clearly explain the relationship between these mechanisms and judicial processes, nor does it specify how their implementation will remain consistent with the requirements of accountability and the principle of non-impunity. It further fails to identify the national framework within which reconciliation efforts are expected to operate or the mechanisms that would ensure consistent standards and prevent disparities in implementation across different contexts. These shortcomings call into question the capacity of such mechanisms to contribute meaningfully to a coherent transitional justice process, particularly in the absence of a clear institutional vision governing their interaction with other components of that process.

Similarly, the Draft refers only briefly to societal dialogue without establishing a clear methodological or institutional framework to regulate it or ensure its inclusiveness and representation of diverse groups. This weakens its participatory character and limits its potential to address societal divisions in a sustainable manner.

The Draft also refers to concepts associated with a “true narrative” without adequately defining the mechanisms through which such a narrative would be constructed or the safeguards necessary to ensure its plurality. This raises concerns about the production of a singular, official narrative, particularly in the absence of a fully developed judicial framework or broad societal consensus. These concerns are further compounded by the lack of clear standards governing the relationship between the outcomes of such mechanisms and facts that have been judicially established.

6. The Religious Foundations of the Law and Their Implications

In its explanatory memorandum, the Draft Law states that it draws upon a reference framework derived from Islamic Sharia, alongside constitutional and legal foundations. It specifically invokes concepts such as the objectives of Sharia (*Maqasid al-Sharia*), retributive justice (*Qisas*), reconciliation (*Sulh*), and reparations as foundational pillars of justice. While these references are presented as a means of reinforcing the ethical dimensions of justice, they raise a number of legal concerns in the context of legislation expected to be general and universally applicable.

First, incorporating a specific religious reference into legislation governing the transitional justice process raises questions regarding its compatibility with the principle of equality among citizens, particularly in a society characterized by religious and ideological diversity, where legal rules are expected to rest on a common civic foundation. Syrian society encompasses a wide range of religious, sectarian, and ethnic communities, including Muslims of various denominations, Christians of different churches, Druze, Yazidis, Armenians, and others. This diversity necessitates a legal framework that reflects pluralism and guarantees equal treatment for all individuals. Furthermore, the Draft does not explain how this religious reference would be translated into concrete and enforceable legal rules, nor does it clarify its relationship with constitutional principles and other legal standards, leaving room for divergent interpretations in practice.

This concern is also linked to the nature of legal rules themselves, which should be precise and adaptable to evolving social and institutional realities. Broad references to religious principles may not provide a sufficiently clear framework for addressing emerging situations or regulating them through predictable legal standards.

Moreover, the absence of a single, universally accepted religious interpretation may result in divergent understandings of these principles and, consequently, different approaches to addressing violations. Such inconsistency could undermine the uniform application of the law and compromise legal predictability.

It is also worth noting that the inclusion in the explanatory memorandum of religiously framed statements—such as the assertion that *Qisas* is “a manifestation of justice and a means of preserving life, as affirmed by all divine religions”—does not resolve the underlying concern. Rather, it may be perceived as an attempt to confer religious legitimacy upon concepts that should primarily derive their legitimacy from the principles of equal citizenship and universally applicable legal and human rights standards, particularly in a context where equality among all citizens, regardless of religion or belief, is a central demand.

These concerns are compounded by references to concepts rooted in Islamic jurisprudence, such as "purification of liability" (*Tatthir al-thimma*) and "redressing grievances" (*Radd al-Mazalim*), without providing precise legal definitions. This may introduce indeterminate normative considerations into a process that should be governed by clear and predictable legal rules, especially in matters relating to reparations and reconciliation. Likewise, the Draft's reference to rebuilding the social fabric on "ethical and legal foundations" incorporates ethical standards into a legal text, which may introduce interpretive ambiguities that affect the clarity and enforceability of legal norms.

Furthermore, the simultaneous reliance on multiple sources of authority—constitutional, international, and religious—without clearly defining their hierarchy or rules for resolving conflicts between them, may generate legal uncertainty and weaken the consistent interpretation and application of the law.

This concern becomes even more pronounced in light of the apparent tension between this approach and certain constitutional provisions, particularly Article 10 of the Constitutional Declaration, which guarantees equality before the law without discrimination on the basis of religion or ethnicity, as well as Article 12, which provides that international treaties ratified by Syria form part of the governing legal framework. The incorporation of an undefined religious reference into a general legal text risks undermining these principles, both in terms of equality and consistency with Syria's international obligations.

7. Legal Characterization of Crimes and the Temporal Scope of Transitional Justice

Ordinary Syrian criminal law relies on individual criminal offenses—such as murder, theft, unlawful deprivation of liberty, torture, and rape—without systematically addressing international crimes as defined under international law, particularly war crimes and crimes against humanity. This constitutes a structural deficiency in addressing large-scale and organized patterns of violations, which by their nature transcend the traditional individual-crime framework and require a legal approach that reflects their collective and systematic character.

In this regard, the Draft Law deserves recognition for adopting legal characterizations grounded in international law, particularly those derived from the Rome Statute of the International Criminal Court. However, despite drawing inspiration from these provisions, the Draft does not fully incorporate them, omitting certain constitutive elements of these crimes. This may affect both the accuracy of legal characterization and the ability to establish criminal responsibility and prosecute perpetrators in accordance with internationally recognized standards.

This shortcoming assumes even greater significance in light of Syria's non-accession to the Rome Statute, which limits available international accountability pathways, particularly in relation to perpetrators located outside Syrian territory or otherwise beyond the reach of national courts. This raises broader questions concerning the effectiveness and limitations of the domestic legal system in delivering comprehensive accountability, especially in relation to international crimes with transnational dimensions.

The Draft also raises concerns regarding the temporal scope of transitional justice. In practice, it confines the transitional justice process to the period of rule by the Assad family, which may undermine the inclusiveness of the process and suggest that it is directed only toward a particular political context. However, it would be more fitting to adopt a broader temporal framework, starting from September 1961—the date of the dissolution of the union between Syria and Egypt—and extending until the enactment of the Transitional Justice Law itself to also encompass violations committed after 8 December 2024. Such an approach would better reflect the various historical periods marked by structural deficiencies within the state and its institutions and would ensure that violations are addressed within a comprehensive and non-selective framework.

This ambiguity is also evident in practice. Some ongoing proceedings, including trials in Aleppo involving individuals accused of committing violations during the coastal events, have been described as part of the transitional justice process, despite the Draft Law establishing a temporal scope that would appear to exclude these specific proceedings from its application. This reflects a degree of inconsistency in the understanding and implementation of transitional justice and underscores the need for clearer temporal boundaries and governing criteria.

8. Powers of the Institutions and Overlapping Institutional Roles

Under the Draft Law, responsibility for implementing its provisions is entrusted to the "National Transitional Justice Commission." The Commission consists of nine institutions, including the Truth-Seeking Directorate, the Vetting Committee, the Directorate for National Reconciliation and Civil Peace, and other bodies. While this institutional diversity reflects an effort to address the various dimensions of transitional justice, the Draft does not clearly define the powers of these entities or regulate the relationship between them. Nor does it establish a clear temporal limitation on their mandates, creating the risk that transitional justice may evolve from a temporary and exceptional mechanism into a permanent institutional structure, contrary to its intended nature.

Within this framework, the National Transitional Justice Commission is granted extensive powers, including unrestricted access to records, the authority to summon individuals, compel the disclosure of information, establish subsidiary institutions, issue recommendations, and monitor their implementation. In principle, these powers represent a positive and necessary step.

However, the effectiveness of these powers ultimately depends on the cooperation of executive authorities, particularly security institutions, in the absence of clear enforcement mechanisms to guarantee compliance in cases of refusal or obstruction. Similarly, provisions criminalizing the destruction or concealment of evidence, obstruction of justice, or failure to cooperate with the Commission can only be effective if supported by genuine enforcement mechanisms and a willingness on the part of relevant institutions to comply—issues that the Draft does not adequately address.

These concerns extend to practical challenges associated with accessing places of detention and other sensitive locations. The Draft does not establish sufficient guarantees to ensure that such powers can be exercised effectively in practice. Consequently, clear implementation mechanisms are needed to secure actual access to relevant information and locations while maintaining an appropriate balance between investigative needs and privacy protections, particularly with respect to non-state actors.

Furthermore, the provisions governing the Truth-Seeking Directorate and the Transitional Justice Public Prosecution Office, alongside certain other bodies, reveal overlapping responsibilities in relation to information gathering, fact-finding, and case management, without clearly delineating their respective roles.

This overlap also extends to institutions exercising quasi-judicial functions, such as the Directorate of Accountability and Oversight and the Directorate for National Reconciliation and Civil Peace, which is tasked with resolving community disputes and strengthening social cohesion. These bodies may issue decisions with direct legal consequences for individuals, yet the Draft does not sufficiently clarify the legal framework governing such decisions nor the mechanisms through which they may be reviewed or challenged. As a result, several concerns arise, including uncertainty regarding the allocation of responsibilities, the possibility of conflicting decisions or procedures, difficulties in identifying institutional accountability, and the weakening of oversight and accountability mechanisms within the system itself.

Moreover, the concentration of multiple functions within certain institutions—particularly the National Transitional Justice Commission—may result in a significant accumulation of powers, raising concerns regarding institutional balance and safeguards for independence. These concerns are compounded by the judicial immunity granted to Commission members without a clear definition of its scope or limitations. Such immunity prompts questions regarding accountability and oversight, particularly given the absence of transparent criteria governing the appointment of members or procedures for their replacement.

This uncertainty also extends to which body would be competent to hold Commission members accountable in cases of misconduct, negligence, or complaints brought against them. The Draft does not clarify whether such accountability would fall under the jurisdiction of the Supreme Judicial Council, the Commission itself, or another independent mechanism.

9. Fair Trial Guarantees

Concerns remain regarding judicial independence and impartiality, particularly in light of indications that the executive branch continues to exert influence over certain aspects of judicial functioning, including judicial appointments, administrative oversight, and the organization of judicial work. These concerns are reinforced by the fact that the Constitutional Declaration, the Judicial Authority Law, and other legislation currently in force in Syria do not fully adhere to the principle of separation of powers. Moreover, they confer extensive powers upon the President of the Republic—who heads the executive branch—including, for example, serving as President of the Supreme Judicial Council.

There is also a notable absence of clear and binding criteria to ensure that judicial positions are filled on the basis of legal competence and specialized expertise. This creates the possibility of appointing individuals who do not meet the necessary professional qualifications, thereby undermining the foundations of an independent and professional judiciary. Such shortcomings directly affect the environment in which fair trial guarantees are implemented. Judicial independence cannot be secured through legal provisions alone; it also requires an institutional framework that ensures impartial appointment processes, security of tenure, and protection from external influence. In the absence of such safeguards, concerns arise regarding the judiciary's ability to perform its functions independently and effectively, as well as whether the conditions necessary to ensure procedural integrity and public confidence in judicial proceedings are met.

10. The Situation of Detainees and Released Persons

The Draft Law does not clearly address the situation of individuals who were subjected to detention during previous periods, nor does it establish mechanisms for determining their fate or resolving their legal status, including those who have been released or granted some form of "amnesty" or security guarantee. This omission constitutes a significant gap, given that clarifying the fate of detainees and safeguarding their rights are fundamental components of any transitional justice process.

11. Appeals and the Lack of Clear Standards

The Draft Law grants the Public Prosecution Office for Transitional Justice the authority to challenge decisions issued by Local Reconciliation Committees before the General Assembly of the Court of Cassation where such decisions "violate legal standards or victims' rights." However, the Draft fails to define these legal standards and does not clarify the legal consequences of an appeal, particularly whether filing an appeal suspends the implementation of the challenged decision.

Furthermore, the Draft does not clearly regulate the relationship between appeals within judicial proceedings and appeals against decisions issued by bodies exercising administrative or quasi-judicial functions. Nor does it specify whether decisions rendered by the appellate body are final and binding.

The absence of a comprehensive framework governing the right to appeal gives rise to several concerns, including inconsistencies in the protection of rights across different cases and the weakening of procedural safeguards essential to a fair trial.

12. Freedom of Expression and the Criminalization of Denying the Crimes of the "Former Regime"

The Draft Law criminalizes what it describes as the "glorification, denial, or justification of the crimes of the former regime or its symbols" and imposes criminal penalties for such conduct. While the criminalization of denial may be justified in certain contexts, particularly where it concerns crimes that have been judicially established, the formulation adopted in the Draft raises important legal concerns regarding its compatibility with freedom of expression guarantees.

The Draft defines denial as "the rejection of crimes committed by the former regime or its symbols, the deliberate questioning of their occurrence, or attributing them to another party." It defines glorification as "praising the crimes of the former regime or its symbols, portraying them in a positive light, or promoting them." Justification is defined as "providing grounds for the crimes of the former regime or its symbols or offering explanations that confer legitimacy upon them."

Given the breadth of these definitions, the Draft does not clarify the requisite mental element (*mens rea*) of the offense. In particular, it remains unclear whether criminal liability requires a specific intent to deny established facts for the purpose of deception or incitement, or whether the mere expression of an opinion, interpretation, or analytical assessment could fall within the scope of criminalization. Moreover, the

Draft does not link this offense to the existence of a legally established narrative grounded in final judicial rulings that determine the facts that may not be denied.

This omission raises a fundamental concern, as the criminalization of denial presupposes the existence of an established legal truth rather than a general or political characterization of past violations.

Such ambiguity creates several risks, including disproportionate restrictions on freedom of expression, the possibility of selective or politically motivated enforcement, and the weakening of intellectual pluralism and public debate concerning the past and the violations committed. Furthermore, by linking criminalization to a specific perpetrating party, as the Draft does, the provision acquires a distinctly political character and increases the likelihood that it may be applied beyond the confines of narrowly tailored legal regulation.

13. The Death Penalty and Its Impact on Justice and International Cooperation

The Draft Law includes the death penalty among the sanctions prescribed for certain crimes. While the inclusion of capital punishment may be understood as reflecting a stringent response to serious violations, it raises a number of legal and practical concerns regarding its compatibility with the objectives of transitional justice and the requirements of international cooperation.

On the one hand, there is a growing trend within legal systems and international mechanisms toward restricting or abolishing the death penalty, particularly in transitional justice contexts, which are increasingly viewed as processes aimed at rebuilding trust and strengthening the rule of law rather than serving solely as instruments of punishment. On the other hand, retaining capital punishment may limit opportunities for cooperation with international bodies, especially those whose policies prohibit the sharing of information or the provision of assistance in cases that could result in a death sentence.

The application of such a penalty within a judicial system facing structural challenges—as is often the case during transitional periods—raises additional concerns regarding fair trial guarantees and the risk of irreversible judicial errors. These concerns are heightened by the irreversible nature of the death penalty itself and its profound implications for the right to life.

Moreover, the death penalty increasingly raises concerns under international human rights standards, where it is often regarded as a cruel and inhuman punishment, particularly in light of the physical and psychological suffering it entails and the irreversible deprivation of the right to life that it imposes. The gravity of the crimes committed does not, in itself, necessitate the adoption of the harshest available punishments; rather, it calls for an effective accountability framework capable of delivering justice while safeguarding fundamental rights and guarantees. Retaining the death penalty also creates additional risks in institutionally fragile environments, where it may be susceptible to political manipulation or abuse by authorities, thereby undermining the objectives of transitional justice and eroding public confidence in the integrity of the process.

14. Institutional Reform and Reconstruction

The Draft Law recognizes institutional reform as one of the fundamental pillars of transitional justice and refers to the restructuring of state institutions as a means of guaranteeing non-recurrence. However, this approach remains general in nature and does not provide a clear or direct framework for reforming the military establishment and security agencies, despite the central role these institutions have played in the commission of violations.

The Draft neither establishes professional and legal criteria for institutional restructuring nor provides safeguards against the reproduction of patterns of domination or politicization. It also fails to clarify accountability mechanisms within these institutions or the means through which they would be subjected to civilian oversight.

This omission is particularly significant given that many of the most serious violations were committed within organized military, security, and judicial structures. As a result, any reform process that does not explicitly and comprehensively address these institutions risks falling short of its objectives.

In addition, the Draft does not clearly address the violations and institutional transformations that have occurred following the fall of the former regime, despite the profound changes that have taken place during the subsequent period, including the restructuring of certain institutional bodies and the creation of new positions and functions, particularly within the judicial sector. This calls into question the extent to which the proposed framework is capable of responding to current institutional realities and addressing ongoing or emerging violations within the broader transitional justice process.

Furthermore, the Draft fails to clearly regulate the relationship between transitional justice and reconstruction efforts, despite the close connection between the two, particularly in contexts marked by widespread destruction and forced displacement. Reconstruction should be part of a broader reparative approach that takes into account the spatial dimensions of violations and recognizes the relationship between individuals, communities, and their places of origin, including the identities and memories associated with them. This requires the adoption of a framework for memory-sensitive reconstruction that contributes to restoring social and cultural ties while preventing the entrenchment of the consequences of past violations.

15. Limited Public Participation in Drafting the Law

The participation of civil society organizations and victims in the drafting process remains unclear. Neither the text of the Draft Law nor the drafting process itself demonstrate the existence of systematic participatory mechanisms capable of ensuring the meaningful involvement of these stakeholders.

This lack of clarity becomes particularly significant given that the drafting process has moved into a governmental framework led by the Ministry of Justice, without any clear explanation of how contributions from civil society organizations have been incorporated or how meaningful public participation will be ensured during subsequent stages.

This situation limits how the Draft reflects victims’ experiences and needs and undermines its participatory character, which constitutes one of the core principles of transitional justice processes. It also raises questions concerning the transparency of the drafting process and the mechanisms through which comments and recommendations are considered.

16. Recommendations

In light of the above, the Syrian Initiative for Fundamental Rights recommends introducing the following amendments to the Draft Transitional Justice Law to strengthen its legal coherence and practical effectiveness:

Ensuring Inclusiveness, Independence, and Legal Neutrality

- Adopt neutral language in defining the scope of violations, based on their nature and gravity rather than the identity of perpetrators or political characterizations.

Regulating the Temporal Scope and Retroactive Application

- Expand the scope of the Law to encompass all victims and relevant violations from the date of the dissolution of the union between Syria and Egypt in 1961 until the date of enactment of the Transitional Justice Law.

- Clarify the relationship between the principle of non-applicability of statutory limitations and general principles of criminal law to ensure legal consistency and practical applicability.

Regulating Judicial Jurisdiction and Preventing Overlap

- Clearly define the relationship between ordinary courts and specialized chambers, including rules governing jurisdictional priority in cases of conflict.

- Establish a clear mechanism for resolving jurisdictional disputes between judicial bodies and parallel accountability processes.

- Limit the powers of the Transitional Justice Public Prosecution Office to its prosecutorial functions and prevent overlap with supervisory or evaluative roles.

Precise Definition of Crimes and Classifications

- Adopt clear and comprehensive definitions of serious and non-serious violations based on objective criteria.

- Ensure that serious crimes are not subject to alternative mechanisms that may undermine accountability.

- Adopt precise definitions of crimes, particularly sexual and gender-based crimes, in accordance with international standards.

Regulating National Reconciliation

- Establish a clear legal and institutional framework governing national reconciliation and defining its relationship with judicial processes, ensuring that reconciliation is not used as a substitute for accountability in cases involving serious crimes.

- Develop clear mechanisms for societal dialogue that guarantee inclusiveness and representation of diverse groups and integrate such dialogue into a structured national process.

- Regulate mechanisms for constructing “truth” or “narratives” within a framework that guarantees plurality of perspectives, prevents the imposition of a single narrative, and links such processes to facts established according to clear legal standards.

Clarifying Legal References and Strengthening the Civil Character of the Law

- Draft the Law in clear legal language and confine its normative foundations to the constitutional framework and international standards, avoiding broad religious references that may undermine legal clarity or the principle of equality.

- Avoid reliance on moral standards or indeterminate concepts that could affect the predictability and clarity of legal rules.

Strengthening Institutional Effectiveness and Preventing Overlapping Mandates

- Clearly define the mandate of each institution within the transitional justice framework and establish effective coordination mechanisms.

- Subject decisions issued by administrative or quasi-judicial bodies to meaningful judicial review.

- Clearly regulate the scope of immunity granted to members of transitional justice institutions and establish transparent criteria for their appointment and replacement.

Ensuring Effective Access to Evidence and Information

- Establish clear implementation mechanisms guaranteeing access to records, places of detention, and mass graves.
- Strengthen provisions criminalizing the destruction of evidence and obstruction of justice through effective enforcement measures.
- Ensure an appropriate balance between access to information and the protection of privacy, particularly with respect to non-state actors.

Strengthening Fair Trial Guarantees

- Reinforce the principle of separation of powers and limit executive interference in judicial affairs.
- Establish clear and transparent legal criteria for the appointment of judges and members of judicial bodies based on competence, expertise, and independence, while ensuring the existence of independent accountability mechanisms that preserve judicial integrity and strengthen confidence in justice and fair trial processes.

Addressing the Situation of Detainees and Missing Persons

- Incorporate clear provisions governing the determination of the fate of detainees and missing persons.
- Clarify the legal status of released detainees and ensure that their cases are reviewed through transparent and well-defined procedures.

Regulating Appeals and Judicial Oversight

- Clearly define which decisions are subject to appeal, the procedures governing appeals, and the applicable standards.
- Ensure that all decisions affecting rights and interests are subject to effective judicial review.

Protecting Freedom of Expression

- Limit the criminalization of denial to circumstances involving facts established by final judicial decisions and clearly define the mental element required for the offense.

- Ensure that criminal provisions are not used to restrict legitimate expression or public debate.

Reviewing Penalties and Ensuring Consistency with Transitional Justice Objectives

- Reconsider the inclusion of the death penalty in a manner consistent with the objectives of transitional justice and the requirements of international cooperation.

Strengthening Institutional Reform and Reconstruction

- Adopt a clear framework for institutional reform that guarantees civilian oversight and prevents the recurrence of violations.
- Integrate reconstruction efforts into the transitional justice framework as a component of reparations, while adopting an approach that takes into account the spatial dimensions of violations.
- Adopt the concept of spatial justice to ensure memory-sensitive reconstruction that preserves the relationship between place, identity, and culture.

Strengthening Consistency with International Criminal Justice

- Accede to the Rome Statute of the International Criminal Court to facilitate the prosecution of perpetrators of international crimes, particularly where national mechanisms are unable to reach them.
- Accede to the International Convention for the Protection of All Persons from Enforced Disappearance and the Optional Protocol to the Convention against Torture, and withdraw reservations to the Convention against Torture, thereby strengthening Syria's international obligations regarding the prevention of torture and enforced disappearance and enhancing accountability for, and oversight of, places of detention.
- Adopt Article 28 of the Rome Statute as the basis for defining the doctrine of "Responsibility of Commanders and Other Superiors."
- Strengthen cooperation with relevant international mechanisms, including through information-sharing and facilitating access to evidence in support of accountability efforts.