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# **PLANNING FOR SYRIA’S “DAY AFTER” – SECURITY, RULE OF LAW & DEMOCRACY**

## **Policy Planning Paper**

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**Public International Law & Policy Group**

**March 2012**

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SECURITY, RULE OF LAW & DEMOCRACY**

The purpose of this report is to provide recommendations for measures that an interim Syrian government could take in the days immediately following President Bashar al-Assad's departure. This report is meant to generate serious planning for practical responses to a range of transitional challenges and potential solutions that will enable an interim government to effectively lead the nation and provide protection for all Syrians, including minorities, during the transition period.

This report is the result of a four-day workshop held in Copenhagen, Denmark, sponsored by the Foreign Ministry of Denmark and hosted by the University of Copenhagen, the Public International Law & Policy Group, and the Tharwa Foundation. The workshop consisted of roundtable discussions between members of the exiled Syrian opposition, transition planning experts, and individuals integral to the Kosovar and Iraqi transition periods. Syrian participants represented varying religions, ethnicities, and political ideologies, and included members of the Syrian National Council, the Antalya Group, the Syrian Muslim Brotherhood, the Kurdish National Council, as well as independents.

Though uncertainty remains about the date and circumstances in which Assad will leave power, the importance of planning for the transition period is evident. Anticipating challenges likely to arise during the transition period will help to make some of these obstacles easier to overcome. Additionally, a transition plan can show potential stakeholders what Syria could look like without Assad in power. Potential future stakeholders could include members of the international community who have hesitated to become more actively involved in the efforts to remove Assad, as well as Syrians fearful of the destabilizing consequences of Assad's departure.

Transition planning can help identify qualified individuals to groom for leadership roles in a new government. Additionally, training could begin for certain members of the police, military, intelligence, and judicial sectors in order to ensure their preparedness to undertake roles during the transition period. Education initiatives could also begin now to counter the atmosphere of sectarian conflict promoted by the regime and lay the basis for post-conflict understanding and reconciliation among Syria's sects. Funders for various transitional initiatives

could also be identified and approached now to provide financial support for the transition planning process.

Creating a transition plan could also help build cohesion within the Syrian opposition. During our four-day workshop, despite the varying religions, ethnicities, and political ideologies represented, commonalities in each participant's democratic vision for Syria were overwhelmingly more prevalent than the differences. Where there are differences of opinion, the Syrian people should be encouraged to engage in debate over the issues, a cornerstone of democracy.

In order to determine what challenges will arise in the first days following Assad's departure and identify effective measures to counter these challenges, workshop participants discussed the drivers of conflict in Syria. These conflict drivers included corruption, the criminal nature of the political economy, potential fragmentation of the armed and unarmed opposition, smuggling activity and the lack of border security, and the loyalist militias. Policies to address these and other conflict drivers focused on the creation of institutions and provision of incentives and consequences.

The recommendations in this report take into consideration a range of possible transition scenarios, including full regime collapse, partial regime collapse, or a negotiated transfer of power. Each recommendation should be analyzed for each potential scenario to determine its timing and viability. A triggering event should be identified – for instance, as soon as one region is no longer under the regime's control – at which time the transition plan can begin there.

This report is not intended to be a comprehensive list of every issue that will need to be addressed during the transition period. For instance, certain issues, such as transitional justice and the challenges of economic transition, will be discussed at subsequent workshops in The Hague and Warsaw. Participants identified other challenges that deserve further in-depth discussion. For instance, questions about how best to protect minority group interests arose repeatedly during the four-day workshop – including addressing the past abuses and future rights of the Kurdish community, and planning for the interim protection of the Alawite community and prompt steps to begin the process of reconciling them with the broader Syrian community.

This report focuses on three key areas that were discussed throughout the four-day workshop: (1) immediate security measures; (2) immediate steps to

ensure the rule of law; and (3) immediate action to establish a foundation for democratic structures. Though some of the recommendations identified may seem obvious, experience has shown that simple tasks are often neglected during transition periods. The recommendations in this report do not necessarily reflect a consensus of all workshop participants.

### **IMMEDIATE SECURITY MEASURES**

This segment of the workshop addressed some of the immediate security challenges that an interim Syrian government will face after the regime collapses. In addition to identifying some of the most pressing security challenges, workshop participants proposed policies that the interim government could implement to address them. Participants also analyzed the public security and intelligence gaps that will likely exist in Syria in the immediate aftermath of the fall of the regime. Many of the recommendations in this section strive to fill those gaps. Though not the focus of the discussion, participants also discussed security sector reform in order to identify immediate steps that could be taken to begin making progress toward achieving longer term goals.

***Keep personal arms*** – The interim government could announce that every Syrian may keep his or her personal arms in order to provide a greater sense of security. This could help to assure civilians that they will not be deprived of the means to protect themselves, their families, their communities, and their property during a period of post-conflict instability. Every Syrian could be asked to abide by a Code of Honor that establishes guidelines for the use of personal weapons, so as to contribute to the security of civilians, not to undermine it. However, the interim government could also announce that all heavy weapons will be collected from combatants, and establish procedures for doing so.

***Local police to protect*** – The interim government could declare that local police, in coordination with community leaders, will be in charge of maintaining local security during the transition period. This will help to provide some level of immediate security to towns during a period of initial instability. Civilians will likely be more trusting of local police, with whom they are familiar, who have largely been unlinked to the atrocities being committed by the regime thus far, and who in some cases have provided protection to civilians during the uprising. This future role for local police could be announced now so that community leaders can begin to identify police officers in their communities to serve as leaders during the transition, and so that local police structures understand the role that they will be expected to play during the transition.

***Return to barracks*** – The interim government could announce that all government armed forces will be asked to immediately return to their barracks. The interim government should also take steps to assure the armed forces that this is not the prelude to retribution. This will help to constrain some armed forces loyal to Assad from undermining security under a new governing authority. It could also help to prevent retribution against armed forces by members of the local resistance. Once the armed forces return to their barracks, the interim government can identify and deploy certain troops for the protection of borders and state assets.

***Return to your jobs*** – The interim government should announce on day one that every government employee – including everyone in the armed forces and intelligence agencies – should report to work immediately and continue working at their jobs. Additionally, the interim government could assure state employees that they will continue to get paid and will keep their pensions and entitlements, which will assure them that they will continue to be able to provide for their families. It will also prevent government sectors – including the security and intelligence sectors – from being drained of their most experienced and qualified personnel.

***Appoint new leaders*** – The interim government could appoint new leaders to the armed forces, intelligence agencies, and police sector as well as to the civilian ministries that formally oversee these bodies. This would necessarily require the removal from power of those in top decision-making positions. The interim government may consider appointing defectors to these roles. Defectors may be “trained up” now in order to fill such positions. Doing so would help to ensure that those in leadership roles are loyal to the new government, and could encourage current leaders who have not yet defected to do so. Future security sector leaders could be identified now, so that they may be trained for their new roles during a transition period. In particular, it will be important to appoint strong civilian leaders within the Ministry of Defense and the Ministry of the Interior.

***Detain war criminals*** – The interim government should establish procedures for the immediate detention of those accused of committing war crimes and crimes against humanity. This would include detaining certain top officials and loyalist militia members (if they can be apprehended). Steps can be taken now, in coordination with a respected human rights organization, to identify top officials for detention. Doing so would help bring these individuals to justice and prevent them from undermining the security of an interim government. Additionally, detaining persons accused of committing war crimes would protect these persons from the risk of retribution killings. The interim government may consider

allowing local police to manage detention procedures in their own communities. Measures could be taken now to identify proper detention facilities, trusted police officers, and judges that could conduct detention hearings.

***Neutral peacekeeping force*** – The interim government may choose to invite a neutral, armed, international peacekeeping force into Syria to help fill the immediate security gap, particularly in areas where sectarian tension may be especially high during the transition. A neutral force would help ensure Syrians that security will be provided to all citizens, regardless of their real or perceived role during the conflict. Additionally, such a force would provide professionalism and organization during a period in which the interim government is still beginning to reorganize and redeploy Syria's armed forces. One such group that the interim government may consider for providing immediate security is the European Gendarmerie Force. If such a peacekeeping force were invited into Syria, the interim government would need to determine whether it would allow international peacekeepers to use force to maintain security and protect civilians.

***Secure borders*** – The interim government should ensure that the Syrian borders are immediately secured. This will help to prevent the inflow of additional criminal elements determined to destabilize Syria. The interim government may consider asking international peacekeeping forces to temporarily undertake this role or may immediately deploy trusted units of the Syrian armed forces. The interim government may also reach out to Syria's neighboring states to coordinate efforts to secure the borders.

***Protect state assets*** – The interim government may decide to immediately deploy military units to protect important state assets to ensure that they are not destroyed or looted during the initial post-conflict period. This would help to assure the Syrian people that certain buildings and institutions important to Syrian culture, history, and daily life are not destroyed by criminal elements seeking to exploit instability. Special effort should be made to protect buildings and institutions important to Syria's religious and ethnic minority groups.

***Request assistance now*** – The opposition should request now that the international community begins to train and professionalize some core members of the leadership cadre of the armed forces, intelligence agencies, and police sector so that they are ready to maintain security in Syria as soon as the regime falls. Training may be conducted in neighboring countries or elsewhere.

***Military, intelligence, and police reform*** – Once the interim government has identified and eliminated top officials from positions of power, and once the interim government has ensured that the armed forces, intelligence agencies, and police apparatuses remain largely in place, the interim government may take further steps to reform these apparatuses. This could include dissolving the Republican Guard and the 4<sup>th</sup> Armored Division and redistributing personnel who have not committed war crimes within the security apparatus. The interim government may also decide to reduce the inflated military sector by decreasing the term of duty for conscripts or by redistributing members of the armed forces to police agencies to fill the local security gap. The goal of reforming the military and intelligence apparatuses would be to maintain security expertise, redistribute trusted security personnel to sectors where they are most needed (for instance, as local police), and separate members of groups loyal to Assad in order to prevent sabotage, while ensuring that those who have not committed war crimes or crimes against humanity are able to keep their jobs and provide for their families.

#### **IMMEDIATE STEPS TO ENSURE THE RULE OF LAW**

One of the most important requirements for upholding the rule of law during a transition period has already been addressed – ensuring that security measures and personnel are in place to prevent lawlessness. This segment of the workshop addressed some of the immediate legal and policy challenges that an interim government will face in striving to maintain the rule of law during a transition period. Workshop participants identified and proposed solutions to some of the most pressing legal challenges facing the Syrian interim government. Participants also discussed future legal guarantees and judicial sector reform in order to identify immediate steps that could be taken to achieve progress in reaching longer-term goals.

***Keep legal framework*** – The interim government may decide to keep the existing legal framework in place during the transition period in order to avoid a legal vacuum. This would include temporarily keeping and abiding by the Syrian Constitution and all state and local laws, but only to the extent that they do not violate international legal standards. The interim government may decide whether it is preferable to temporarily instate the 1950 Constitution or adhere to the 1973 or 2012 Constitution. The interim government should refuse to enforce any law that violates international legal standards for human rights or freedoms. The Constitution would only remain in place until such time as a new one is drafted and promulgated in accordance with democratic procedures. The interim government

could create a Legal Commission whose task it is to review existing legislation to determine what should be kept, discarded, or amended.

***Ensure equal rights*** – The interim government may announce and encourage the creation of legal guarantees that provide all Syrians with equal rights, regardless of race, ethnicity, religion, or gender. Interim authorities could announce that Syria is not an Arab, Islamic state, but rather a multi-ethnic, multi-linguistic state. In creating legal guarantees of equality, a new constitution may specifically identify the religious and ethnic communities comprising Syria's population, or may simply guarantee that all Syrians have equal rights without singling out any group or groups. Vital interest laws for the recognition of languages, cultural heritage, and national symbols could be created to protect the interests of minority communities, as they require a higher percentage of votes from Parliament to amend. The interim government may also consider creating affirmative action laws and plans to create opportunities for historically oppressed and minority communities in Syria.

***Accept international treaties and conventions*** – The interim government should announce on its first day in office that Syria will respect all existing international treaties, conventions, and obligations. Doing so will alleviate concerns within the international community that certain obligations may not be kept by a new government. The interim government may also wish to consider whether there are any additional international conventions that Syria should sign onto, such as the Rome Statute of the International Criminal Court.

***Decide emergency law*** – The interim government may decide to repeal Decree 54, which requires strict approval for civilian demonstrations, and Decree 55, which authorizes extended detention of individuals. Interim authorities should determine whether to establish a temporary state of emergency in order to facilitate security during the transition period. A state of emergency must abide by the international legal requirements of necessity, proportionality, and temporality. Following these requirements, interim authorities may decide to issue a transitional security law in order to facilitate security during the transition period. If the interim authorities do decide to institute a transitional security law, it should be very limited in scope and timeframe, and authorities should ensure that it is not abused to create a prolonged state of oppression as it was under Assad.

***Invite human rights observers*** – The interim government may invite international human rights observers into Syria to monitor compliance with international human rights standards and international humanitarian law. In



particular, the interim government may wish to invite the International Committee of the Red Cross into prisons to document the treatment of prisoners under the Assad regime and to observe the treatment of prisoners during the transition period. This will help to assure members of the international community that the interim authorities do not intend to take retributive measures against imprisoned members of the Assad regime, and that there is a true commitment by the interim government to upholding human rights.

***Proper treatment of detainees*** – The interim government should guarantee the proper treatment of detainees by ensuring that human rights standards are upheld in prisons. The interim government could do so by investigating allegations of torture and abuse, creating procedures for processing detainees and prisoners, educating detainees about their rights, maintaining safe prisons, and protecting vulnerable groups within the prisons. The interim government may establish training programs for prison workers, create effective oversight mechanisms, and ensure that proper disciplinary procedures are in place for prison workers that do not abide by human rights standards.

***Punish retribution killing*** – The interim government could announce that all retribution killing and torture is illegal and will be punished in accordance with the law. The interim government might assure the Syrian people that legal channels will be available to bring to justice those who have committed crimes during the uprising. Legal mechanisms should then be put in place to do so. A National Reconciliation Commission could be established now to begin the process of reconciling before the transition period begins and to decrease the tendency toward retribution killing during this period.

***Establish vetting procedures*** – Once the interim government assures the Syrian people that government institutions will remain intact, it may decide at a later date to create an objective vetting process using transparent criteria whereby individuals are evaluated on the basis of integrity, capacity, and commitment to the rule of law and the democratic transition. The interim government may assure government employees that the vetting process will focus on each individual's ability to serve the new government, not on past performance. Additionally, the interim government should assure employees that they will not be discriminated against on the basis of race, ethnicity, religion, or gender during the vetting process. Such a targeted vetting process will eliminate from leadership roles some of those individuals who may try to undermine the new government.

***Create a national human rights institution*** – The new government may consider creating an independent Human Rights Commission or Ombudsperson Institution, in order to help uphold new human rights standards in Syria and/or to hear complaints about government agencies. The interim government may consider what type of mandate such an institution would have, and what its role could be in the immediate transition period. The interim government may also consider how such an institution would fit into Syria's future governance structure.

***Vet financial contracts*** – The interim government may decide to immediately vet the old regime's financial contracts in order to remove illicit sources of funding. In order to do so, the interim government may decide to create a special auditing body to identify the government's revenue streams. Doing so would send the message that eliminating corruption is a priority. Additionally, the interim government could ensure that the financial gains from future government contracts benefit the Syrian people.

***Independent property tribunal*** – The interim government may decide to establish an independent property tribunal to determine what happens to property that has been abandoned by individuals who flee Syria after the conflict ends, to address property issues that arise as a result of the creation of refugees and internally displaced persons (IDPs) during the conflict, and to hear property disputes that originated before the uprising, for instance in Syria's northeast region. To address the property issues of returning refugees and IDPs, the interim government may wish to consider adopting the Pinheiro Principles, which provide legal and technical guidance on managing housing, land, and property restitution. A process for property restitution will help to ensure that refugees and IDPs will have a place to return to, and will prevent people from taking property disputes into their own hands.

***Reform of judicial sector*** – The interim government may take immediate steps to ensure the future independence, qualification, and integrity of the judiciary. A training program in international standards and best practices could be established now for Syrian judges who have been forced to resign and are in exile. Qualified and trusted judges will be needed during the transition period in order to preside over whatever transitional justice mechanisms are agreed upon. The interim government may also decide to create a vetting program and disciplinary procedures for judges and lawyers to ensure that corruption within the judicial sector is properly addressed and eradicated. Additionally, when the new constitution is drafted, particular attention should be given to ensuring that the judicial sector remains independent from the other branches of government.

## **IMMEDIATE ACTION TO ESTABLISH A FOUNDATION FOR DEMOCRACY**

This segment of the workshop addressed some of the immediate steps that an interim government could take to establish democracy in Syria. Workshop participants identified challenges that interim authorities will face in building democracy, and discussed some solutions to these challenges. Conversations focused on the establishment and responsibilities of a transitional governing body, the drafting of a new Syrian constitution, planning for timely, free, and fair elections, drafting political party laws, and considerations regarding the establishment of a strong, decentralized government.

***Formation of transitional government*** – An interim government may be composed of a political body and a security body. The leadership structure of the political body may include representatives from local communities as well as Syrian technocrats. The leadership structure of the military body may include leaders of the Free Syrian Army and representatives from local armed opposition groups. The interim government may wish to announce, and could work with military leaders to ensure, that the political body has control over the military body in order to set a strong precedent for civilian oversight. The interim government may also wish to create a temporary symbolic group, like a Presidential Council, in order to give recognition to the interests of ethnic and religious minority groups.

***Draft new constitution*** – In considering procedures for drafting a new Syrian constitution, the interim government may either appoint a constituent assembly through political negotiation to draft a new constitution or may hold elections to select members of a constituent assembly. Regardless of how the constituent assembly is formed, the interim government should create mechanisms for the Syrian people to participate throughout the constitution-drafting process in order to ensure the legitimacy of the new constitution. Additionally, after the constitution is drafted, the interim government may decide to hold a referendum that requires a certain percentage of approval by the Syrian people in order for the constitution to be promulgated. The constituent assembly may also be tasked with drafting new election laws and political party laws for Syria, or such responsibilities may go to other specially-created bodies. Timelines should be set for the completion of these tasks.

***Municipal elections first*** – The interim government may choose to hold municipal elections first (on a rolling basis), followed by provincial and then national elections. Immediate, local elections project the sense that the new authorities are not trying to stifle change, and can channel energy on the street into productive activities. Mistakes made on the local level are easier to correct than when made on a national scale. This process would enable elections to begin quickly while allowing new political parties time to organize for national elections. It would also help to keep the immediate focus during the transition period on local security and governance. Interim authorities will need to decide which electoral system will govern Syria's first elections: plurality (first-past-the-post), majority, proportional representation, or mixed.

***Invite election observers*** – The interim government can allay international concerns raised by recent actions of the Egyptian government by announcing that it will invite international election observers and democracy facilitators into Syria to ensure that elections are free and fair. This could be announced now in order to assure the Syrian people and the international community that elections under a new Syrian government will abide by international standards, and will not be a carry-over from the old regime.

***Bill of Rights*** – The interim government may encourage the constituent assembly to draft a bill of rights in the new constitution, which will include certain inalienable rights of the Syrian people. By placing special emphasis on certain rights as inalienable, the Syrian people will gain confidence that the new government will not repeat the mistakes of the old regime. Guiding principles could be adopted now to be considered for inclusion in a future bill of rights, including principles of strong individual rights and protections for minority groups.

***Political party formation*** – The interim government should focus early on drafting political party laws so as to allow parties to be created by any group of individuals, but also so as to disallow parties from excluding members on the basis of race, ethnicity, religion, or gender. The interim government may also wish to promulgate campaign financing laws to promote clean sources of funding and to consider whether there should be a limit on campaign funding. The interim government may decide to immediately dissolve the current Ba'ath party, and to seize the party's assets to be redistributed to the Syrian people. However, members of the Ba'ath party will retain their jobs like every other state employee, and will not be subject to discrimination during the vetting process.

***Strong, decentralized government*** – Interim authorities should consider creating a strong, decentralized government in Syria based on regional proportional representation. A decentralized government structure would allow some degree of political power, administrative control, and financial responsibility to be devolved to the local or provincial authorities. This may help to assure minority communities that their interests will be fairly represented at the national level and that they will have more control over their own affairs at the local and provincial levels. This may be a better solution than ethnic or religious quotas, which might entrench ethnic divides and could lead to a dysfunctional government trapped in identity politics.

***Role of women*** – The interim government could announce that women will play an important role in the new Syria. Immediate steps may be taken to ensure female participation in the transition government, as well as in permanent government structures. The interim government may encourage the establishment of a quota system to ensure that women obtain a certain percentage of seats in the new Parliament, for instance 33 percent. Women will also have an important role to play in national reconciliation and transitional justice initiatives.

This report is intended to provide a starting point from which a larger international debate on transitional challenges will grow. It is meant to help guide transition planning by the Syrian diaspora and the international community; but most importantly, this report is intended to help identify issues for the Syrian people and resistance leaders within Syria to begin considering in planning for their country's future.

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PILPG was founded in London in 1995 and moved to Washington, D.C. in 1996, where it operated under the auspices of the Carnegie Endowment for International Peace for two years. In July 1999, the United Nations granted official Non-Governmental Organization status to PILPG.

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