

# Syria Justice and Accountability Centre



## **Syria: Data, Documentation and Evidence to Support Institutional Reform**

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# Syria: Data, Documentation and Evidence to Support Institutional Reform

## Introduction

*...[D]ocuments accumulated by the organs of repression are important for the memory of the people, and serve as an irreplaceable testimony. But the most important argument in favour of the preservation of the archives of repression by new democratic states lies in the importance which such documentary sources have for people affected by the former regime, whether as direct or indirect victims. Documents of the repressive period are essential to the exercise of individual rights: amnesty, indemnity, pensions, and general civil rights (inheritance, property...) in the new political situation.<sup>1</sup>*

- A report prepared on behalf of the International Council of Archives for UNESCO in 1997

The above-mentioned bureaucratic documents are particularly important for institutional reform after autocracy, which aims to convert the state from a repressive organization focused on protecting those in power (regardless of the law) into a democratic one that protects the rights and property of all citizens—including those who hold power—equally under the law. For this to be achieved in Syria, individuals who work in these institutions will need to be vetted individually or in groups, a practice generally known as lustration. They may or may not also be held accountable for past actions, in accordance with standards established by Syrian society. Few will be criminally prosecuted, but many may be granted amnesty, retired, fired, moved, or retrained for more suitable occupations. All these decisions depend upon documentation.

Vetting and lustration may also be applied to members of rebel groups. While documentation is likely to be far less complete for armed groups, administrative councils and revolutionary courts in liberated areas will keep at least rudimentary records. It is important that post-autocratic institutions be seen as treating rebel forces equally so as to avoid impunity for their misdeeds, prevent compromised individuals from taking on important responsibilities after Assad, and reduce incentives for revenge killings. The experience of Libya demonstrates the problems that can arise from failure to hold militias accountable. Such problems could include barriers to demobilization, demilitarization and reintegration and to the establishment of a state monopoly on the legitimate means of violence—an essential first step in security sector reform.

## Data, documentation and evidence from the Assad regime are vital to transitional justice

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<sup>1</sup> Antonio Gonzalez Quintana, "Archives of the Security Services of Former Repressive Regimes," Report Prepared for UNESCO on behalf of the International Council of Archives, Paris: UNESCO, 1997, accessed August 13, 2013, [http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=9&ved=0CG0QFjAl&url=http%3A%2F%2Fportal.unesco.org%2Fci%2Fen%2Ffile\\_download.php%2F9d60f7a50593532c613c169f6ef62c85Archives%252Bof%252](http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=9&ved=0CG0QFjAl&url=http%3A%2F%2Fportal.unesco.org%2Fci%2Fen%2Ffile_download.php%2F9d60f7a50593532c613c169f6ef62c85Archives%252Bof%252)

While the Syrian conflict still seems far from resolution, it is not too early for those concerned with transitional justice and accountability to be thinking about the data, documentation and evidence required to support institutional reform as well as other transitional justice processes like reparations, prosecutions and Truth and Reconciliation Commissions. If this conflict ends with an opposition victory or a negotiated settlement, there will be both the opportunity and need to document abuses and hold perpetrators accountable. The regime's public administration records, and whatever records are available from the opposition inside and outside Syria on its own activities or the regime's, will be important and must be preserved.

It is unlikely that documents will be preserved the normal course of events. The regime may try to destroy relevant records in its final days and weeks, as happened in East Germany during the fall of Communism. Only citizen protest prevented Communist officials in 1989 and 1990 from obliterating records that in the subsequent 25 years have proven invaluable for giving individuals a full picture of what the regime was doing and for holding the officials responsible for its actions accountable—today more than a thousand people still work for the Federal Commissioner for the Stasi Archive.

It is also possible that in the chaos of a collapsing regime citizens will ransack and destroy records that otherwise might be vital to justice and accountability. This happened in Iraq, where many security service records were left unguarded and strewn in the streets or were burned or otherwise destroyed, making accountability difficult if not impossible.

Rebel records are likely to be far less complete and orderly than regime records, but equal treatment under the law will require that whatever can be preserved should be preserved. Experience from Kosovo, Serbia and Iraq suggests human rights and criminal violations committed during wartime can be an issue for even a victorious rebel movement for up to two decades after the end of war.

Whatever decisions are ultimately made regarding their purpose, the usefulness of documentation can be maximized by ensuring that regime and rebel records are kept intact and confidential in the immediate aftermath of the fall of the regime until the successor government can make decisions on how to use them for purposes of accountability and whether to make them public and how. If such records become public at random, they may trigger revenge killings of the sort currently witnessed in Libya.

### **Types of documents important to informing institutional reform and promoting accountability**

The main security entities in Syria include:

- the State Security Intelligence within the General Intelligence Directorate, which has regional branches within Syria
- the Political Security Directorate, within the Ministry of the Interior, which actively engages against the opposition
- the Military Intelligence Directorate within the Defense Ministry, which is also actively engaged against the opposition and also supports radical groups outside Syria (Iraq)

- the Air Force Intelligence Directorate, which is generally regarded as first among equals in the regime’s efforts against the opposition and also has agents outside Syria<sup>2</sup>

Some of these institutions may be abolished in the aftermath of the revolution. Others may be reformed or reconstituted. In either case, their records need to be preserved to the maximum extent possible.

The types of documentation ultimately required for institutional reform and transitional justice will depend on the answers to the following questions, usefully posed by Roger Duthie:<sup>3</sup>

- Targets:* What are the institutions and positions to be vetted?
- Criteria:* What misconduct is being screened for?
- Sanctions:* What happens to positively vetted individuals?
- Design:* What are the type, structure, and procedures of the vetting process?
- Scope:* How many people are screened? How many people are sanctioned?
- Timing and Duration:* When does vetting occur and how long does it last?
- Rationale:* How is vetting justified? What are the reasons for vetting?
- Coherence:* How does the vetting relate to other measures of institutional reform? How does it relate to other transitional justice measures?

Syrians will have to decide these issues before it will be clear precisely what documentation is needed and for how long.

Documentation requirements will also depend on the political context of the transition. A negotiated end to the war and an agreed political outcome will likely preserve the state institutions and allow a slower, more deliberate and possibly less complete process of institutional reform. An opposition military victory will likely lead to a quicker and more draconian reform process. Whether the post-Assad period is supervised internationally will be an additional factor, as Syria would then be under greater pressure to conform to international norms (and likely have greater access to resources needed).

Possible categories Syrians might consider for archiving in the initial stages include:

1. **Employment and financial records for all the security services**, including not only the police and army but also internal security officials and paramilitaries like the *shabiha*.

This should include personnel records (including evaluations), payment documentation, and organizational structures. Without this documentation, it will be difficult to prove who was part of

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<sup>2</sup> See also “Syria, Intelligence and Security,” Encyclopedia of Espionage, Intelligence and Security, accessed August 15, 2013, <http://www.faqs.org/espionage/Sp-Te/Syria-Intelligence-and-Security.html>

<sup>3</sup> “Introduction” to Alexander Mayer-Rieckh and Pablo de Greiff, *Justice as Prevention: Vetting Public Employees in Transitional Societies* (New York: Social Science Research Council, 2007), p. 20. This more than 500-page compendium of case studies views vetting broadly as the screening of individuals required for institutional reform and includes a thematic chapter by Serge Rumin on “Gathering and Managing Information in Vetting Processes,” pp. 404-34.

the regime security apparatus, making vetting on an individual basis difficult. These records should include payments to people who acted as agents or informants for the security services.

2. **Operational records of the security services**, both official and unofficial.

Many autocratic regimes keep records of even their worst behavior, as they do not anticipate being held accountable. This may include records of interrogations, torture and “disappearances” as well as military and paramilitary operations against the opposition, including names of perpetrators and commanders. As an example, the Khmer Rouge documented the Cambodian genocide of 1975-79.<sup>4</sup> Regime records of this sort are vital if compensation is to be offered to victims.

3. **Records and proceedings of the security courts**, including secret decisions or judgments.

Unlike Iraq, where most regime atrocities were extra-judicial, Syria operated until 2011 under a dual system, with “national security” cases handled in Supreme State Security Court separately from the regular judicial process. While this has been abolished, a “Counterterrorism” court now handles cases against human rights defenders and other activists.<sup>5</sup> Some of the worst regime behavior may be documented in the records of the security and counterterrorism courts.

4. **Membership and other records of the Ba’ath Party**, which has held power in Syria for 50 years.

Many ordinary Syrians became members of the Ba’ath as a condition of employment, but its records should show different levels of membership as well as participation and commitment. Abuse of these records to tar people as collaborators with the regime should be anticipated. Deciding the issue of “political isolation” of former regime and Ba’ath officials will depend in part on accurate records. Where the line is drawn prohibiting people from holding public office has real implications for who can hold political power, as Libyan and Iraqi experience suggests.

5. **Telecommunications intercepts**, as well as records of cyber warfare.

The Assad regime has significant intercept and cyber warfare capabilities that have been actively employed in efforts to repress the opposition. These will be needed to document abuses, but they will also contain material that many people would prefer be kept private.

6. **Reports of the security services** on individuals and organizations.

Such reports constitute a routine part of any law enforcement activity, and they are likely to be voluminous in Syria.

7. **Documents related to regime decisions**, in particular at the highest levels, including audio recordings and records of the president’s office.

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<sup>4</sup> Yale University Cambodian Genocide Program, accessed August 16, 2013 <http://www.yale.edu/cgp/>

<sup>5</sup> Human Rights Watch, “Syria: Counterterrorism Court Used to Stifle Dissent,” accessed August 29, 2013, <http://www.hrw.org/news/2013/06/25/syria-counterterrorism-court-used-stifle-dissent>

Command responsibility will need to be proven, not just assumed. Most high-level officials ensure decisions are well-documented, including through audio recordings and email messages.

8. **Property and financial records of the regime and its principals**, including foreign bank accounts.

Such records are required for the recovery of state assets, which are frequently “privatized” either during a regime’s rule or in anticipation of its fall.

9. **Prisoner files.**

Without the relevant records, a transitional administration has no way of distinguishing between political prisoners, political extremists and ordinary criminals. Release of political prisoners will be a high priority in the immediate post-Assad period.

The prisoner question creates a difficult challenge early on. If prison doors are simply swung open, as many in the population may wish and as happened in Libya, a substantial number of criminals and political extremists will go free. They are likely to plague the transition, causing significant international concern about instability and possibly terrorism both within Syria and beyond, until the authorities identify them, regain control and incarcerate a significant number once again. This can take years. It would be far better to maintain the records required to distinguish among prisoners and make reasonable judgments, with due process, about who should remain incarcerated and who should be released.

The Syrian war is one of the first in which social media are playing a role, including Youtube video clips. This material may prove useful in identifying perpetrators and human rights violations, but it is not likely to play a strong direct role in institutional reform, as few officials have been caught on video committing human rights violations. It may prove more useful in identifying abusive rebels, some of whom have posted their abuses to the Internet and in documenting defections and their timing.

Some idea of the types of leadership documentation likely to exist can be garnered from National Defense University’s Saddam Hussein Collection, which includes “audio recordings of high-level meetings, speeches by Saddam and senior officials, correspondence between ministries, records of the Presidential Diwan, and others—that bear mainly on issues related to national security, defense policy, and diplomacy.”<sup>6</sup> Even these incomplete records have proven invaluable, but apart from the few trials of high-level officials (including the President himself) there has been little individual accountability for the abuses of the Hussein regime, in part due to the inadequacy of the documentation now available.

### **Operational requirements for preserving data, documentation and evidence for transitional justice**

The documentation relevant to the nine categories listed above is likely to be massive, partly digitally encoded, and housed in facilities that will be under attack in the final days of the regime. The physical files are likely to be measured in kilometers of shelf space and it is important that they not be destroyed or jumbled, either intentionally or unintentionally. The Assad regime may well have already instructed

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<sup>6</sup> Institute for National Strategic Studies, “Saddam Hussein Collection,” accessed August 15, 2013, <http://www.ndu.edu/inss/index.cfm?secID=138&pageID=4&type=section>

paramilitary forces like the *shabiha* (comparable to the Saddam *Fedayeen* in Iraq) to destroy records as part of a broader “stay behind” operation. Looters will attempt to steal computers housing valuable archives. Police or other armed forces will need to be assigned to protect the documentation and people will need to be authorized to access to it in order to catalogue it and ensure its continued integrity.

Thus preservation of regime records will require a specialized bureaucracy charged with preserving documents, along with whatever personnel and property are associated with them. The places where documents are held will need to be guarded and protected. Perhaps the best way of achieving this would be to create a “Regime Documentation” unit, staffed in part with officials from the institutions whose records need to be preserved. Their personal familiarity with the documents would make them best able to prioritize their preservation. They will need however to make clear to others in the opposition why this is necessary and how they intend to go about it. They may otherwise be seen as undertaking this effort for their own protection or other nefarious purposes.

There may be a large number of people, including many now in the opposition, who collaborated at some point with the Assad regime, as happened during the Communist period throughout Eastern Europe. There is a need to balance concerns about personal privacy with the society’s need for clarity and accountability. Policies on eventual access to regime documentation have varied widely, from the German model of virtually universal open access to much more restricted access in Hungary and Poland, to the decisions to destroy archives in Chile and Greece.<sup>7</sup>

## Conclusions

A great deal will depend on whether the regime collapses in chaos or an orderly negotiated transition proves possible. Even after the regime is gone, developing policies appropriate to the Syrian circumstances will take time. Institutional reform is never accomplished in a single sweep soon after the fall of a regime. It is far more likely to take a decade or more before the issues are resolved, as has been the case in Iraq. In the meantime, use of these materials for personal or political purposes would discredit the revolution and make the transition far more difficult than it might otherwise be.

An important early step towards preserving documentation necessary to support transitional justice would be to survey what is already happening in liberated areas and to collect whatever is available. One provincial capital, Raqqa, has fallen to opposition control. What has happened to regime security and judicial records there and in Aleppo, Homs and other cities where the opposition has gained ground? Have they been destroyed or removed? Have any records been captured? What about the military bases that have been overrun? What is happening to their records? Gathering as much of the available material as possible—some is reportedly being held by the lawyers’ association in Raqqa—as a kind of pilot project would be a sensible way of beginning a process that will require many more years of effort.

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<sup>7</sup> For the experiences in Eastern Europe, including the Balkans, see Vladimira Dvořáková and Anđelko Milardović, eds., *Lustration and Consolidation of Democracy and the Rule of Law in Central and Eastern Europe* (Zagreb: Political Science Research Centre, 2007, accessed August 20, 2013, [http://www.kas.de/db\\_files/dokumente/7\\_dokument\\_dok\\_pdf\\_12839\\_2.pdf](http://www.kas.de/db_files/dokumente/7_dokument_dok_pdf_12839_2.pdf))

### **About The Syria Justice and Accountability Centre**

The Syria Justice and Accountability Centre (SJAC) is a non-profit, multilaterally-supported organization that envisions a Syria where people live in a state defined by justice, respect for human rights and rule of law.

The SJAC is collecting, preserving and analysing information on human rights violations and other relevant data to contribute to and inform a transitional justice process for Syria. Employing an unbiased and non-partisan approach, the SJAC also builds and maintains close relationships and partnerships with Syrian individuals, organizations, communities and international actors working towards justice and accountability for all Syrians.