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SYRIA
Options for a Political Transition

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i. Executive Summary

This report outlines constitutional and legislative options for a political transition in Syria. Originally elaborated under the umbrella of the Final Geneva Communiqué, issued by the Action Group on Syria on 30 June 2012, the present revised draft takes into account the paralysis of the Geneva peace process. The Communiqué embodies the greatest degree of consensus that the international community has been able to achieve regarding the Syrian conflict, detailing a path to a negotiated end to the civil war and a political transition. While UN and Arab League Joint Special Envoy Lakhdar Brahimi's efforts at the Syria peace conference in Geneva (dubbed "Geneva II") were sabotaged in Jan-Feb 2014, eventually a political agreement will be needed to end the conflict, incorporating possible constitutional and legislative modalities for a transition. Thus, this report remains relevant. Alternatively, this report also could assist constitutional and legislative reforms initiated in a national dialogue process or unilaterally.

The report draws on a series of consultations with Syrian leaders, activists, lawyers, and academics – pro-government, pro-opposition, and independent, as well as UN, EU and government officials and international experts in political transitions. Additional comments received following the publication of a first draft in September 2013 and a second draft in January 2014 are included in this revised version. The recommendations included in the report have been formulated to expand on the language of the Communiqué (mindful of the subsequent collapse of the Geneva II process), delineating constitutional and legal options for how the transition could be realized. These options are grounded in an analysis of Syrian Constitutions, past and present, and experience in recent, other post-conflict political transitions. They also draw on ideas developed by Syrian experts since the beginning of the uprising.

The suggestions in this report are premised on an understanding that the transitional period in Syria cannot and will not address all of the long term questions regarding the nature of the future Syrian governance and Syrian society. Drafting and ratifying a new permanent Syrian constitution and legislation issued under that new constitutional framework, and long term transitional justice and reconstruction activities will play a role in formulating core questions about Syrian identity. Attempting to address too many of these issues in the early transitional period would overload the process. Instead, this document focuses on providing options for making the *necessary* changes to get through an agreed, time-bound transition, which builds a foundation for future democratic governance, while providing space to address, in a more conducive environment, the big picture questions of Syrian identity in the longer term.

Three options are suggested for the early transition period, allowing either the transition outlined in the Geneva Communiqué to move forward, or power sharing arrangements agreed at an alternative peace negotiation or a national dialogue to be

implemented effectively. Alternatively and at a minimum, some of the suggested reforms could be implemented unilaterally.

Option 1 centers around reforming the 2012 Syrian Constitution, and other relevant laws and decrees. Were this option to be implemented, significant constitutional and legal change would be necessary in four core areas. First, the broad powers currently afforded to the Syrian President would need to be curtailed or balanced by introducing provisions for an effective separation of powers between the various branches of government. Additionally and if the transition outlined in the Geneva Communiqué is maintained, numerous current presidential powers would need to be transferred to the “transitional governing body with full executive powers” referenced in the Communiqué. Second, particular attention would need to be given to judicial reform. Third, a series of laws and decrees, including new legislation passed in 2011, on topics ranging from media freedom, to elections, to the regulation of political parties, would have to be changed. Fourth, a host of decrees that invest substantial authority in various governmental security agencies and special courts would have to be repealed.

Option 2 suggests that the Syrian parties consider a new Interim Governing Constitution for the transition period. This could consist of a set of agreed principles and governance mechanisms, which would supersede the current Syrian Constitution, overriding provisions of the constitution or other laws that contradict the new Interim Governing Constitution. This option includes models for creating new interim governing structures, whose tenure would be limited to the transitional period, and would include checks and balances to prevent abuse of powers. As with option 1, various laws would be repealed explicitly, or become void due the supremacy of the Interim Governing Constitution.

Option 3 considers a proposal circulating among some opposition circles suggesting a return to Syria’s Constitution of 1950. The process for drafting and ratifying this constitution was arguably the most democratic of any such process in Syrian modern history and was therefore imbued with a modicum of democratic legitimacy that is lacking for other Syrian constitutions adopted before or since. This option explores the modalities for, and the pros and cons of, reverting to the 1950 constitution for the transitional period.

This report recognizes that when peace negotiations or a national dialogue commence between the Syrian parties, they are likely to approach transition arrangements from diametrically opposing starting points. The government will insist on the most limited possible changes to the current order, while the opposition will push for a wholesale break with the status quo. In the course of negotiations, ultimately a middle ground will have to be found. Such a compromise could well entail a combination of reforms to the current Syrian constitution and legislation, coupled with the creation of new transitional institutions, and perhaps also new

interim constitutional arrangements. Negotiating such a hybrid of laws and institutions for the transitional period would entail potentially complex tradeoffs, in the effort to ensure that the transition successfully lays a long term foundation for a new Syria, while addressing the legitimate fears and needs of Syria's many communities.

As stated from the outset, this report is limited to constitutional and legislative options for a political transition. The report does not address the causes of the underlying opposition to the government and subsequent civil war, nor does it address the ensuing humanitarian catastrophe, the economic consequences of the war, and the effort as well as economic policies required to rebuild the country.

ii. Acknowledgments

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The genesis of this effort dates back to December 2011 when a Carter Center team met separately with opposition representatives and senior government officials in Damascus to explore possible ways in which credible political reforms could offer a pathway towards a political transition and an end to the conflict. The initiative was the brainchild of late Dr. Robert Pastor of American University (1947-2014). While senior government officials were enthusiastic about the proposal, others rejected the idea of further reforms.

iii. Introduction

The Geneva Communiqué of 30 June 2012 issued by the Action Group on Syria remains the most significant document on the Syrian conflict (see Appendix IV for the full text).¹ The Communiqué suggested possible international consensus supporting a negotiated end to the Syrian civil war and a political transition, although the interpretation of some key clauses remained contentious. The peace conference convened at Montreux and Geneva in January-February 2014 (dubbed "Geneva II") to agree on implementation modalities for the Communiqué failed to

¹ The Action Group for Syria consists of the U.N., League of Arab States, EU, U.S., China, France, Russia, U.K., Turkey, Iraq, Kuwait, and Qatar.

mark any progress. Since then, the Syrian sides and the international community have remained too far apart to renew peace talks. Nevertheless, at some point surely there will have to be a political resolution.

However difficult such a resolution might currently seem, the possibility of an internationally-backed peace agreement on Syria provides the context for The Carter Center's efforts to assist, in particular by supporting the efforts of U.N. Special Envoy Staffan de Mistura, appointed in July to replace U.N. and Arab League Joint Special Envoy Lakhdar Brahimi who resigned in May 2014. This report suggests a set of constitutional and legislative options that could assist the mediator and the Syrian parties at a peace conference or at any other setting willing to consider genuine reforms of the current constitutional governance architecture of the country.

In response to the prospects of Geneva II during the second half of 2013, the Center undertook wide-ranging consultations to frame options on how to assist the process. These took place in the Middle East (including in Istanbul, Gaziantep, Cairo, Beirut and Damascus), in Europe, and in the U.S. While there were inevitably significant limitations regarding who and how many could be involved, the consultations included Syrian political leaders, judges, lawyers, academics and activists (pro-government, opposition and independent), UN, EU and government officials, and international experts on political transitions.

Additionally, the Center received proposals from Syrian opposition members and independent experts, and consulted documents published by international bodies and by various Syrian opposition gatherings, including the *Syria Transition Roadmap* published by the Syrian Expert House (August 2013) and *The Day After Project: Supporting a Democratic Transition in Syria* published by The Day After, an independent Syrian NGO (August 2012). Another document taken into account, *The Joint Political Vision* of the Syrian Opposition Conference held in Cairo (July 2012) under the auspices of then Joint Special Envoy Kofi Annan, stands apart as the only declaration endorsed by all opposition groups and deposited at the League of Arab States as an official document.

These consultations shifted the Center's focus from reforms to a broader and more flexible set of options for transition governance planning. The hope is that the results would be of value to Syrian and other participants in future peace talks, national dialogue and reform efforts.

Comparative experience in recent transitions indicates that there could be two main steps to this process:

- (1) **Establishing interim governing arrangements to address the immediate emergency conditions; create a secure climate and the institutions for elections and a constitution-making process; and end with a constitutional referendum** – The Syrian parties might consider and agree on immediate processes for interim governance. These processes would manage

the ceasefire and military arrangements, respond to emergency conditions and provide transitional governance. The political and constitutional goals would be to re-shape institutions so that they are not dominated by one group, and to provide security for all sides. These arrangements would progressively create sufficient security and stability to allow reasonable citizen participation in the reconstitution of an acceptable government. While military, humanitarian and economic issues would initially dominate, the governance framework would need to ensure personal/community political freedoms, participation in rule-setting and decision-making, laws and management bodies for multi-party elections and referenda, as well as a mechanism to prevent abuse of power. This phase might last 18-24 months and end with a referendum ratifying a new democratic constitution.

- (2) **Election of a parliament and president under a new constitutional arrangement approved by referendum** – This phase would still be part of the transition and would end with the election of key political authorities for their designated electoral term. This would mark the end of the transition and the beginning of a post-conflict Syria. While recovery, institution-building and reform would take place continually, the country’s focus would then shift to implementing the new constitutional arrangements and conducting “ordinary peaceful governance”.

This report focuses on the first phase: providing an immediate governance framework for the initial transition.

Preparing such a framework has required the key assumption that the relevant governance provisions in the June 2012 Geneva Communiqué, or in a similar agreement to be reached in Geneva II or in any other peace conference/national dialogue, would provide the framework for the transition process. A second key and desirable assumption that there would be a cessation of hostilities, accompanied by sufficient governance/stabilization/military arrangements to make peace effective and enduring, seems increasingly impossible as large parts of the country may very well remain outside the reach of any agreement signed in Geneva II or elsewhere.

Finally, the report focuses on transitional governance aspects, not on the implementation of other provisions of the Communiqué.

iv. Foundation for a Political Transition

The June 2012 Geneva Final Communiqué of the Action Group for Syria (“Communiqué”) and the Geneva II negotiations required first that the Syrian sides be represented adequately. The process further required to build sufficient levels of confidence that Syrian communities will not be destroyed. Beyond that, protection of key rights and interests will depend on a newly-negotiated political system. The Communiqué summarizes key steps for converting the civil war into a

political/constitutional process in which such fundamental interests would be protected, while allowing for competitive access to power. The steps in the Communiqué include the cessation of armed violence; the release of detained persons as a result of the conflict; the respect for human rights, fundamental freedoms and international humanitarian law; ensuring humanitarian access; providing for accountability and national reconciliation; and transitional governance and elections. Obviously, the success of any transition in Syria will depend on effectively addressing all these interlinked challenges and especially on providing institutional arrangements for their actual implementation.

While the provisions of the Communiqué remain relevant for ending the civil war and for launching the process of transition in Syria, this report focuses on those institutional arrangements, namely the provisions related to transitional governance architecture and first elections. But even limiting ourselves to these institutional questions, many significant challenges inherent in bringing about these changes were raised in our consultations. They are frankly summarized herein, rather than airbrushed in transition optimism.

In almost all discussions, a commonly-acknowledged starting point was the enormous trust deficit in Syria, including between Syrians and the international community, between the government and the opposition, among opposition groups, among various ethnic and religious communities, and among citizens. Further and critically, the overwhelming current institutional dominance of the Syrian Presidency means that it is hard to argue that it would actually be possible to renegotiate the current political system. Indeed, a new “social contract” is sorely needed, however challenging that may be under current conditions. On the various pro-opposition sides, fears include that any supposed transition will in reality re-consolidate current power, with fatal consequences. On the various pro-government sides, fears include that any real change or concession also will have fatal consequences. On all sides, there are fears that some players have adopted positions that are incompatible with any negotiated and rule-based political system. For these reasons, the war is being prosecuted on all sides and there appears no choice other than violence – every group believes it must win, or be destroyed. Little wonder that it has been difficult to convene Geneva II and it failed when it was convened. But, comparative examples suggest that such concerns are in fact common, and that there may be mechanisms to address them.

However, the effectiveness of such mechanisms depends ultimately on two main factors: first, the degree of *genuine mutual agreement to change* (which would make the mechanisms mostly self-enforcing), and secondly (assuming there will inevitably be some attempts to avoid the agreed arrangements) the *effectiveness of internal and external checks to correct breaches*.

In all governance, but particularly in transitions, the second should be seen as a backstop, rather than a substitute for the first. Effective checks against determined non-compliers require major institutional, resource and personnel commitments,

and/or overwhelming external “checks”, all deployed in a short space of time and all maintained long enough to consolidate new processes and prevent return to war.

Such are the challenges. Building sufficient consent to any arrangements is the task of others. In this report we offer the starting points for some architecture for checks, and recommendations for the removal/curtailment of some formal powers. The focus is on checking the constitutional powers of the Government of Syria, especially the Executive. But it must be accepted that every group will expect checks to prevent abuse of power by others, including military power. Hence this paper should be regarded as illustrative of the issues that will need to be addressed, not as exhaustive.

The sources of current Government power are the institutions, rules and practices of government, including:

- The Executive;
- The Legislature;
- The Judiciary;
- The Security establishment (including military, intelligence, police, prisons and detention points);
- Public service generally (including local government);
- Control of media institutions;
- A wide range of laws;
- Financial control;
- Control over speech, association, movement and other fundamental rights; and
- Formal and informal practices and networks, including the Ba’ath Party, that combine to produce “effective” decision-making.

Put simply, the current Executive dominates all these. Hence (and amongst other issues) it would be necessary to:

- Construct transitional arrangements that balance current Executive powers or reallocate them to new and (possibly) existing institutions;
- Create new interim institutions (including possibly a transitional governing body, legislature, judiciary, and processes for checking security arrangements, as well as others);
- Repeal some laws and prevent some practices;
- Establish new rules and processes for the operation of the media,
- Reform decision-making in existing institutions so that they operate according to revised rules;
- Change some key aspects of decision-making (e.g. regarding funds and other state resources) and ensure transparency and probity; and
- Empower local and possibly external scrutiny and involvement.

To address these complexities, the transition steps in the Geneva Communiqué starkly note three key steps:

1. A transitional governing body with full executive powers, formed on the basis of mutual consent that will establish a neutral environment.
2. A National Dialogue process, and constitutional and legislative review subject to popular approval.
3. Once the new constitutional order is established, free and fair multiparty elections for the new institutions and offices that have been established.

A *neutral political environment* would of course require a great deal of change and time. As noted above, it is useful to see the *constitutional and legislative review* in two stages: first, immediate changes agreed at a peace conference and necessary to enable the formation of a transitional governing body with full executive powers or a national unity/power sharing government, but also with effective checks and balances; and second, longer term changes to be adopted through a *national dialogue process*, including possibly a constituent assembly, and *popular approval*. The second step of this process could thus be accomplished in what should be a much more *neutral political environment*. Once the new constitutional order was established, *multiparty elections* could be organized for the new governing institutions of Syria at all levels, marking the end of the transition process.

Discussions with Syrian interlocutors suggested three main options that might be on the table for Syrian negotiators to consider regarding the first stage constitutional and legislative mechanisms necessary for a transition.

Option 1 – Amend 2012 Constitution: Amend the 2012 Constitution and amend/replace/abrogate existing legislation/decrees.

Option 2 – Agree on an Interim Governing Constitution: The political agreement at a peace conference or a national dialogue could be translated into an Interim Governing Constitution that would provide the framework for the transitional period and override contradictory provisions in the current constitutional and legislative framework. This might include establishing fundamental principles that all future constitutional arrangements must comply with. The current constitution would be amended to include the interim arrangements.

Option 3 – Revert to 1950 Constitution: Replace the 2012 Constitution with a modified version of the 1950 Constitution and amend/replace/repeal existing legislation/decrees contradicting the modified 1950 Constitution.

This report also outlines basic principles that emerged from the discussions, reflecting core concerns likely to be of relevance to all players (Appendix I – Overarching Principles). These Principles might have major implications for how the parties wish to shape their future in Syria, if they do indeed reflect a shared recognition of the suffering and destruction in Syria and the hopes for a peaceful way forward.

v. Options for Constitutional & Legislative Mechanisms

Few lawyers and academics from all sides of the Syrian divide would argue that the 2012 Constitution is without flaws. It seems that the government and its supporters might be willing to entertain further “reforms”, while opposition members are advocating more far reaching “change”. That change could be done by the adoption of an entirely new constitution or by returning to the 1950 Constitution as a starting point. On the opposition side and beyond, not only is there no trust in the government and its support institutions, but the constitutional and legislative reforms that were enacted in 2011 and 2012 are associated with increasing repression and bloodshed. This has made promises of further reforms ring hollow, for all but the government’s most ardent supporters. In Carter Center discussions with some opposition lawyers, even a suggestion that changing the 2012 Constitution could be one of the options to consider elicited a strong reaction.

The significant gap between the government and the opposition on constitutional and legislative amendments makes the development of multiple models of change more useful for potential mediators and Syrian negotiators, should a political process resume. The government side will insist on the most limited possible reforms to the current order, while the opposition will start from a premise of a complete break with the old system and an entirely new order. As such, the three options outlined in this report, flash out how the various processes could work.

i. Option 1: Amend the 2012 Constitution & Existing Laws

The fundamental flaw of the 2012 Constitution of Syria is the effectively unchecked powers granted to the President of the Republic. These powers compromise the principle of separation of powers between the executive, legislative and judiciary. Additionally, some of these powers are vague and broadly formulated, making them difficult to define and control (even if there were institutions that might).

For example, the President has the unchecked power to appoint and dismiss the Prime Minister, ministers and their deputies (Articles 97), to dissolve the People’s Assembly (Article 111), and to assume legislative authority when the People’s Assembly is not in session or when “absolute necessity requires” (Article 113). As commander-in-chief, the President has essentially absolute authority over the armed forces (Article 105). While the President can refer the Prime Minister, ministers and their deputies to court in case of criminal offense, in which case they are suspended immediately (Article 124), the President himself can be called to account only in case of “high treason” and only if two-thirds of parliament vote for impeachment.

President Assad has served two terms in office totaling 14 years. In accordance with a transitional provision in the current Constitution (Article 155), President Assad ran for another seven-year term on June 3, 2014 and was reelected. Syrian interlocutors consulted for this report suggested that Article 155 should not have applied to the

transitional period, but now that the President has been reelected, he should step down in two years when a new constitution is adopted and not stand for reelection so that the country can move on.

The President's powers over the judiciary are most troubling. The President "assures" the independence of the judiciary "assisted by" the Supreme Judicial Council – SJC – (Article 132). Even if the vague meaning of "assures" and "assisted by" are accepted, the SJC is headed by the President and the Constitution does not specify its composition or the manner of its formation; it leaves it to legislation (Article 133). The appointment, disciplining and dismissal of judges are also left to a law rather than the Constitution (Article 136). Given the powers that the President has in legislative matters, these provisions are inadequate to guarantee the independence of the judiciary. In fact, Syrian lawyers across the political divide consulted for this report were highly skeptical of the judiciary.

The constitutional provisions for the Supreme Constitutional Court (SCC) are equally troubling with respect to compromising the independence of the judiciary. While Article 141 specifies that the President of the Republic names the seven members of the SCC, the appointment of the President of the SCC is not clear. Again, the dismissal of the SCC members is left to legislation instead of specifying in the Constitution (Article 144). The powers of the SCC to review the constitutionality of laws and to regulate its internal functioning are also abridged (Articles 146(2), 147(a), 148, and 149).

The 2012 Constitution, in Chapter 2, includes a range of provisions for the protection of universal human rights and fundamental freedoms. The Constitution even refers to the "rule of the people by the people and for the people" (Article 2). However, these provisions upholding universal human rights values are restricted through other constitutional provisions and legislation, *inter alia* controlling political parties, civil society organizations and the media. More significantly, these human rights and fundamental freedoms are annulled or severely compromised through emergency laws and decrees issued since the 1960s and continuing into the current period of civil war. Furthermore, special courts and the security apparatus have completely undermined the individual rights recognized in the Constitution.

If the 2012 Constitution is to guide the transitional period until a new constitution is adopted through a democratic process and popular approval, at minimum, the above detailed flaws must be remedied. The amendments can be done through Article 150 of the current Constitution or through a national pact reached at a peace conference or a national dialogue.

Additionally if the Geneva Communiqué remains relevant, amendments must give effect to its provision for a *transitional governing body with full executive powers*, which according to some interpretation will require the transfer of executive powers from the President of the Republic to the head of the transitional governing body. Other interlocutors have suggested that the ambiguity in this clause will be the

subject of negotiations at Geneva II, if revived, or at an alternative peace conference, in which case no less than 23 articles of the 2012 Constitution must be amended:

- Article 83 – the President and the Prime Minister share executive powers
- Article 97 – the President names and dismisses the Prime Minister, the Ministers and their deputies
- Article 98 – the President formulates general policies of the state and overseas implementation
- Article 99 – the President may convene Cabinet meetings and ask for reports
- Article 100 – the President signs laws passed by the parliament.
- Article 101 – the President issues decrees, decisions and orders
- Article 103 – the President declares state of emergency
- Article 104 – the President appoints heads of diplomatic missions to foreign countries and international institutions
- Articles 105-106 – as the commander-in-chief, the President has absolute authority over the armed forces
- Article 111 – the President dissolves parliament
- Article 113 – the President assumes legislative authority when parliament is not in session or “if absolute necessity requires”
- Article 114 – the President can take “quick measures” when the country is faced with grave danger
- Article 115 – the President can “set up special bodies, councils and committees”
- Article 116 – the President can call a referendum on important issues
- Article 121 – the Prime Minister, his deputies and ministers are responsible before the President
- Article 124 – the President can refer the Prime Minister, his deputies and ministers to the courts in case they commit criminal offenses, in which case the accused are immediately suspended
- Article 125(a) – the Cabinet is considered resigned when the term of office of the President ends
- Article 132 – the President ensures the independence of the judiciary assisted by the Supreme Judicial Council.
- Article 133 – the President controls the Supreme Judicial Council
- Articles 141, 146 and 147 – the President controls the Supreme Constitutional Court

Moreover, laws controlling the functioning of political parties, civil society organizations, the media and elections, among others, must be changed completely, as early as possible during the transition period, in preparation for the first set of multi-party elections marking the end of the transition period. This report offers in Appendix III a set of general principles or provisions for a truly *multiparty*, *transparent* election managed by an *independent* and *impartial* body, *monitored* by domestic political party proxies and international organizations, with *complaints* and *appeals* addressed fairly and expeditiously. Such an election would be a radical

departure from elections held in Syria to date. This set of general electoral principles could help a transitional legislature or the transitional governing body to draft complete and detailed election law(s).

The Nicaraguan election of February 25, 1990 is an important example of how negotiated reforms to electoral systems, coupled with robust monitoring of an election, can allow elections to cement a democratic transition coming out of an armed conflict.

ii. Option 2: Agree on an Interim Governing Constitution

To address a breakdown of governance along with a problematic existing constitutional order, some countries have adopted interim constitutional arrangements for a defined period until a long-term constitution and other reforms can be organized. The difference between this option and “reform” of the current Constitution (above) is that these interim constitutional arrangements follow comprehensive political agreements, rather than being done essentially unilaterally. The political agreements would be “constitutionalized” by amending the previous constitution and repealing or amending relevant legislation. In some transitions, these arrangements spell out fundamental principles intended to be binding on all future constitutions. For example, in South Africa in 1994, the parties agreed on 32 fundamental principles that would apply across the transition and to the new constitution that would follow free elections. These were brought into force by interim amendments to the existing constitution. The arrangements included the requirement that a new Constitutional Court would examine any reformulated constitution for compliance with these principles. In effect, these basic principles of democratic, non-racial government under the rule of law could not be amended by any constitutional change process.

Somewhat similarly in Kenya, following the post-election violence in early 2008, negotiated peace agreements required the creation of transitional power-sharing arrangements (including the office of Prime Minister, and new processes for cabinet government) that specifically altered the powers of the President. It also required that a future constitution would address the flaws of the past. These agreements were passed unanimously in parliament, amending the previous constitution for the interim period, and requiring independent inquiries into violence and elections, constitution-making, electoral reform, judicial reform, and new mechanisms for controlling the police. All these reforms were eventually adopted in a new constitution and brought into force by referendum. The country then conducted peaceful general elections in March 2013.

The same formula was adopted for the transition in Sudan, with interim constitutional arrangements entrenching a comprehensive peace agreement to govern the transition. It was also used in the late 1990s and early 2000s in the Bougainville

Peace Process, with political agreements being implemented in transitional constitutional arrangements.

In a more recent example, the Yemen constitution was amended in 2012 following a political agreement to put in place interim arrangements. These allowed the serving President to step down (with legal immunities), fresh elections for an agreed candidate for President, continued (shared) executive governance, a substantial period for legal and other reforms, a national dialogue, and fresh constitution-making.

Concerns about current constitutional arrangements in Syria suggest the utility of this sort of interim constitutional arrangement, possibly accompanied by fundamental principles to which all future constitutions must comply (as in South Africa). Government and opposition representatives could negotiate such a document as part of a grand national pact to govern and guide the transition. In effect, such a document would elaborate the transitional arrangements cited very briefly in the Geneva Communiqué.

The founding document for any such arrangement is always the political agreement reached by the parties. Nevertheless, to show how this might work, Appendix II of this report includes some language for this sort of Interim Governing Constitution. As with South Africa, Kenya, Sudan and Yemen, the arrangements would be negotiated in a political context (Geneva II or other process) and then implemented by constitutional amendment. As with all such arrangements, the interim arrangement would not replace the existing Constitution in its entirety. Rather, it would amend key parts of the constitution, repeal a wide range of statutes, and provide that the provisions of the Interim Constitution would override any other provisions or law.

The interim arrangements also would establish oversight mechanisms. Here the examples include a *Transitional National Assembly* and a *Transitional Constitutional Court*, together providing checks and balances over the *Transitional Governing Body*.

Additionally, there would need to be provisions to safeguard universal human rights and fundamental freedoms, the independence of the judiciary, and other general principles. The establishment of a neutral political environment and a national dialogue process would also need to be addressed. Provisions for a democratic electoral process might be part of this stage of the process – key provisions that could support multi-party elections are set out in Appendix III. The arrangements would also include a timeframe for the transitional period with benchmarks.

Mutually reinforcing regional and local support will be needed on these divisive issues, including the nature of decentralization, regionalism and minorities (for which the Syrians appear singularly unprepared) and retaining the compromise in the 1970-2012 Constitution on Islamic jurisprudence being “a major source of

legislation” (Article 3). Each of these fundamental issues requires elaboration. However, interlocutors consulted for this report have suggested that the current compromise formulation in Article 3 should not be altered, otherwise a more controversial formulation might emerge.

Comparative experience suggests that the final, and perhaps most important, point under this heading is that “paper arrangements” are likely to be the easiest part. All recent regional examples carry major lessons about implementation and it may be useful to build relevant lessons into both the political agreement and the Interim Constitutional Arrangements. The Syrian groups consulted in preparing this report appear anxious to avoid the same mistakes. For example, Egypt in March 2011 rushed an opaque Constitutional Declaration with fundamental flaws that represented an elite deal by the transitional Supreme Council of the Armed Forces (SCAF). Following the divorce between the SCAF and the Muslim Brotherhood in July 2013, arguably Egypt is in a worse position today. The question for Syria is whether a hastily cobbled together elite arrangement will provide the most stable outcome.

Tunisia’s transition was initially enabled by the existing Constitution, a military that supported the revolution, and a process guided by an independent Commission for the Preservation of Revolutionary Objectives, Political Reform and Democratic Transition, led by a respected scholar. While eventually successful, for months however, Tunisia’s constitution-making process was at least partly bogged down by a dispute concerning a Presidential or parliamentary system of government. Syrian interlocutors fear a similar debate emerging in a national dialogue process which they cannot control. The question for Syria is how much of the transition should be agreed in advance and with what authority?

Libya’s transition is confounded by a weak interim government, challenges to its legitimacy, out of control militia groups and emerging constitutional debates concerning regionalism, religion and the economy. Any potential transition in Syria will require mutual security arrangements, as well as the mechanisms to implement them.

Differently, Zimbabwe in its 2008 crisis adopted virtually the same formula as Kenya a few months earlier (an agreement, constitutional amendment providing for power sharing, reform, a new constitution and fresh elections), with a reluctant governing party being pressed into compliance by the regional powers. But the implementation of the arrangements proved enormously problematic and regional actors were, in the end, unable to ensure the compliance of the dominant party.

In our consultations, Syrian interlocutors understood the need to imbue trust in any transition and even the potential for third party guarantors in implementation mechanisms. In this context, the example of the 1991 Paris Agreements on a Comprehensive Political Settlement of the Cambodia Conflict was discussed, particularly the instrument of the Supreme National Council (SNC) as the “unique,

legitimate body and source of authority” for the transitional period. The SNC brought together representatives of the four Cambodian factions and Prince Sihanouk and included the participation of the UN Special Representative of the Secretary-General to ensure the compliance of the parties to the agreements. The 1995 Dayton Agreement that put an end to the three-year war in Bosnia and Herzegovina also included provisions for a High Representative of the international community to act as a third-party guarantor for the implementation of the peace agreement.

A final example of the importance of implementation arrangements is the peace process in Nicaragua in the late 1980s leading to the general election in 1990. Negotiated reforms to the electoral system allowed elections to cement a democratic transition coming out of an armed conflict. While the agreements between the parties were very important, it was only the presence of trusted and neutral observers and mediators, President Carter and The Carter Center, which produced an electoral and constitutional process that was accepted by all sides. Only very careful and transparent implementation prevented a return to conflict.²

iii. Option 3: Revert to 1950 Constitution

Some discussants and commentators have suggested that the 2012 Constitution should be regarded as “illegitimate and hence void” and governance should be based on the 1950 Constitution of Syria, reintroduced for the transition period. The line of argument is that the 1950 document was the first genuinely Syrian constitution after independence from France, the only one adopted through an elected National Assembly (thus enjoying “genuine popular legitimacy”), that it comes closer to providing a truly parliamentary system, and that it is more developed than subsequent constitutions regarding rights and liberties.³ The *Day After Project*, gave voice to some of these positive associations:

For some participants the 1950 Constitution evoked memories and feelings of a democratic, consensual, and peaceful period in Syria’s history, before the Ba’ath dictatorship began. These participants also noted with approval that today’s revolutionaries are flying the flag of the 1950 Constitution⁴, indicating that a connection is already being made between that era and the on-going revolution.⁵

² For details on the issues and the way in which they were mediated and resolved, see Robert A. Pastor, *The United States and Nicaragua: Not Condemned to Repetition* (Boulder, Colorado: Westview Press, 2002), chapters 15–16.

³ Syria Transition Roadmap, Syrian Expert House of the Syrian Center for Political & Strategic Studies, 2013, page 78.

⁴ In fact, the “revolutionary flag” dates back to the 1930 Constitution under the French Mandate. On May 14, 1930, Henri Ponsot, the High Commissioner of the Levant, issued decree No. 3111, approving the drafted Constitution, which Article IV of Chapter I describes the flag.

⁵ The Day After Project, US Institute of Peace, *The Day After*, Aug. 2012, page 101.

Further:

Some participants argued that more than 80 percent of the 1950 Constitution could be used unaltered, decreasing the time during which Syria will operate in a legal vacuum while a transitional legal framework is negotiated and drafted.⁶

If indeed there was agreement between the parties, theoretically it would be possible to start with the 1950 base, update its provisions to create an appropriate document, and bring the whole into force as an interim constitution along the lines of Option 2. Several of our Syrian interlocutors, including lawyers, suggested that this could be done, and they argued that it would be faster than drafting or negotiating something new for the transition period.

However, because there have been also significant criticisms of the 1950 document, this approach has not been pursued further. Those criticisms can be summed up in the following:

The Constitution of 1950 does not contain any formula for a transitional government or transitional executive body, for the scope of the transitional government's executive and legislative powers, or for the event of a constitutional or governmental vacuum, as is anticipated with the fall of the regime. Moreover, reinstating the Constitution of 1950 after suspending the Constitution of 2012 will not have significant value or a positive practical effect upon governance during the transitional period. Instead, it will merely be a cosmetic step that does not address the dilemma of actual constitutional legitimacy.

The Constitution of 1950 was also drafted sixty-three years ago amid a sociopolitical situation that was extremely different from that of today. Today, people demand genuine change that affects their economic, political, and social life and that satisfies their aspirations for more of the rights and liberties that have been guaranteed by the international conventions and treaties signed by Syria since the Constitution of 1950 was issued – especially the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights that Syria ratified in 1968.⁷

In addition, it is worth noting that the broadest gathering of Syrian opposition groups, which produced The Joint Political Vision (referenced in the Introduction of this report above), drafted in Cairo on July 2-3, 2012, ultimately decided that reverting to the 1950 document would be unworkable, a point also asserted by a

⁶ Ibid, page 102.

⁷ Syria Transition Roadmap, Syrian Expert House of the Syrian Center for Political & Strategic Studies, 2013, page 78.

number of the Syrian activists consulted. Finally, ongoing consultations with Syrian interlocutors have raised questions about the advisability of resorting to a fully parliamentary governance system during a transition context that is likely to be unstable. Instead, they have suggested a semi-presidential system with proper checks and balances could be more appropriate.

Rather than updating the 1950 document as noted above, other commentators urge instead “a constitutional declaration of limited power and duration... [clarifying] the government’s powers, tasks, administrative nature, time frame, and mechanisms and method for organizing the election of the constitutional assembly charged with drafting a permanent constitution that will be later put to a referendum.”⁸ In effect, this suggestion is adopted in Option 2 proposed above, though the details are not elaborated as done in this report. For these reasons, this report does not review the 1950 Constitution for possible amendments.

⁸ Ibid, page 79.

Appendix I – Overarching Principles

Consultations and discussions with Syrians suggested that any transition might be done in accordance with fundamental principles that reflected the realities of the conflict and the aspirations of moving forward peacefully, with a place for all. The discussions emphasized the importance of basic concepts: healing, respect, peace, participation, equality, freedom, change, accountability, and effectiveness. How these might be reflected in a peace agreement (and hence, under option 2 above, placed in transitional governance) was, of course, unclear. To assist discussion, these points are elaborated below to indicate what they might mean in terms of mutual obligations, government responsibilities, and implementation in a transition. The following principles represent ideals, which could be viewed as out of touch with the current brutal reality of the Syrian conflict. Including them here is not meant to suggest that they will come into force on the ground in the near future. Nevertheless, eventual agreement on such aspirant principles could provide an important foundation for negotiating the transitional arrangements explored in this report.

1. The Principle of Healing

Applying the principle of healing would require all who exercise public power locally, regionally and countrywide to adhere to the following steps: (a) *acknowledge* the “injury” caused to all aspects of Syrian life; (b) *stop* further injury as quickly as possible; (c) *prevent* the *resumption* or continuation of injury; and (d) *repair* the injury as best and as quickly as possible.

Each of these four steps would have significant implications for governance in the short, medium and long terms. Actions would have to be prioritized as such: (a) *Acknowledgement* would require processes for documentation, assessment and mapping; (b) *Stopping* would require conventional ceasefire processes; (c) *Preventing resumption* would require conventional ceasefire processes; and (d) *Repairing* would require treatment, apology, compensation, commemoration, forgiveness, amnesty, and processes for rebuilding human, social and physical infrastructure.

2. The Principle of Respect

Applying the principle of respect would require all who exercise public power to: (a) *acknowledge the existence and dignity* of all the faiths and communities of Syria; (b) *acknowledge the legitimate fears* (in an increasingly sectarian conflict) that many have for their faith and communities; and (c) *protect* all faiths and communities (in public policies and practices).

For implementation purposes, *respect* would also require all local, regional and central governments to recognize that freedom of worship, non-discrimination and

equality were important pillars of all communities. The principle of *respect* should be reflected in all public statements, and in all television, radio, internet and print media.

3. The Principle of Peace

Applying the principle of peace would require all who exercise public power to: (a) *acknowledge* the violence since March 2011, its causes and consequences; (b) actively *assist* in bringing an end to the violence; (c) *search* for and adopt non-violent mechanisms to protect interests, to conduct competition, and to resolve disputes; (d) *recognize* and take active steps to mitigate the risks of creating sectarian responses to threats, retaliation and violence; (e) *build* progressively a culture of peace in all aspects of Syrian governance and society, with the objective that there would never be a resumption of civil war or significant armed conflict.

This principle evokes peace literature that stresses the insufficiency of “negative peace” (i.e. stopping, or pausing one phase of an immediate conflict, such as a ceasefire). Instead, the requirement is to build “positive peace” by actively creating non-violent mechanisms of addressing social and other issues.

4. The Principle of Participation

Applying the principle of participation would require all who exercise public power to: (a) *acknowledge* that the authority of governance stems from the citizens of Syria; (b) *ensure* that the citizens are reasonably informed about matters that affect their lives, including governance; (c) *establish* practical mechanisms to ensure access to and participation in governance, in discussions and in decisions about governance, especially during the transition processes; (d) *engage* appropriately with relevant groups in Syria, paying particular attention to those affected by relevant issues, including civil society, women, faiths, language and other communities.

Across the sequence of the transition, the nature of *participation* would change from initial negotiations between different Syrian actors, to nominations for interim offices, to eventual free elections.

5. The Principle of Gender Equality

Applying the principle of gender equality and the participation of women in peace-building and post-conflict reconstruction would require all who exercise public power to: (a) adopt a gender perspective that includes the special needs of women and girls during repatriation and resettlement, rehabilitation, reintegration and post-conflict reconstruction; (b) involve women in all the implementation mechanisms of the peace agreements, as well as measures to ensure the human rights of women and girls, particularly as they relate to the constitution, the electoral system, the police and the judiciary; and (c) protect women and girls from gender-based violence.

6. The Principle of Freedom

Applying the principle of freedom would require all who exercise public power to: (a) *acknowledge* that the dignity of every human being in every community requires reasonable security from: the use of unfair force, imprisonment and other forms of coercion by the government or by other members of society, and from unfair physical and economic damage; (b) *acknowledge* that in Syria there have been and still remain gross violations of these different aspects of freedom; (c) *implement* effective mechanisms to ensure reasonable security from violations of freedoms at all levels of society; and (d) *exercise* responsibility in balancing different aspects of freedom and in protecting the freedom and dignity of all peoples and communities.

As with other principles, every aspect of this principle of freedom would have significant public policy implications. Effective implementing mechanisms, for example, would require processes to free political prisoners, and to reveal the whereabouts and fate of disappeared persons, and to prevent further political detention.

7. The Principle of Change

Applying the principle of change would require all who exercise public power to: (a) *acknowledge* that the core purposes of the transition are to establish eventually a new constitutional and governing order in Syria, reflecting these fundamental principles; (b) *develop* a new, open, respectful relationship with and between all the peoples of Syria; (c) progressively *implement* transitional and other arrangements that, where appropriate, either build on or modify relevant aspects of existing structures; and (c) *give effect* to these fundamental principles in all respects of governance including institutions, appointments, operational activities, judicial mechanisms and training.

“Change” (a new order) is different from “reform” (adjustments to the existing order). The principle of “change” encompasses the entire exercise of ending the war and establishing a new constitutional order, with eventual elections for new governance structures.

8. The Principle of Accountability

Applying the principle of accountability would require all who exercise public power to: (a) *accept* that public revenue is raised from and governance conducted on behalf of the people of Syria, and that there would be effective mechanisms, including fair and periodic elections, by which the people could exercise reasonable measures of control over their lives and their governance, including transparent accounting of public expenditures and a right to access information; (b) *carry out* official duties in accordance with publicly-known principles, rules, policies and practices established by proper authorities; (c) *implement* effective, accessible mechanisms so that the people know how government is working and could redress legitimate grievances, free unjustly held prisoners and detainees, correct errors,

question authority, require relevant officials to properly carry out their lawful duties, and to give practical effect to rights and freedoms; (d) *ensure* that no branch of government, especially the executive and the security apparatus, could operate without being subject to checks and balances against the arbitrary exercise of power; and (e) *implement* new laws and systems so that an independent judicial process could operate, and so that the decisions of an independent judiciary would be respected by all.

9. The Principle of Effectiveness

Applying the principle of effectiveness would require all who exercise public power to: (a) *acknowledge* that making fundamental principles work in reality starts with widespread understanding of and agreement with key values, so that they are enforced voluntarily in a spirit of good will and cooperation; (b) *implement* practices and processes to build knowledge and a culture of respect for fundamental principles that govern all levels of society; (c) *recognize* that in addition to voluntary implementation, the words and spirit of agreements, contracts, principles and laws require fair and accepted processes by which they can be checked and implemented; and (d) *establish* appropriate and widespread mechanisms, including for the provision of appropriate information, to enable the proper implementation of lawful arrangements.

Although effectiveness is interwoven with all the principles, it warrants explicit treatment. Every single aspect of a transitional arrangement would have to be scrutinized to ensure compliance with this principle.

Because of the trust deficit between various parts of Syrian society and concerns about how power actually operates in both state structures as well as various opposition structures, there is concern about whether any transitional process could actually work. Hence, mechanisms to ensure effectiveness would be central to all stages of the transition (and, no doubt, into the new constitutional order).

Appendix II – Aspects of the Interim Governing Constitution

The following is illustrative of a possible framework for and contents of an Interim Governing Constitution (IGC). Under current conditions, something like these basic arrangements is likely to be discussed at a revived Geneva II or an alternative peace conference. The resulting agreement in the form of the IGC would be endorsed by a U.N. Security Council resolution or a genuine national dialogue. Once the Interim Governing Constitution is in force, some authorities would relinquish power to relevant transitional institutions and some would continue in office.

Preamble

Recognize the deep pain and suffering of the Syrian people and the material damage wrought by the conflict and understand this will require *special national and regional measures* to restore and reconstruct the Syrian community.

Acknowledge that the 2012 *Constitution and existing laws require amendment* to support a genuine political transition and hasten an end to conflict in Syria.

Recognize the importance of *oversight mechanisms* to instill trust in the transition period including a role for civil society and possibly a neutral third party.

The restoration of constitutional government (Step 5 in Section X below) constitutes the formal “end of transition”.

Understand there are long term reform and reconstruction issues for various sectors, including the return of refugees and internally displaced persons (IDPs) to their homes and the just payment of compensation where it is not possible for the refugees and IDPs to return, that might not be completed during the formal transition period.

Acknowledge the importance of regional and international support to any transition in Syria, meaning an unambiguous commitment to:

1. Syria's territorial integrity and inviolability;
2. The withdrawal of all foreign forces;
3. The cessation of military support;
4. Assistance to refugees/IDPs and their return/compensation; and
5. Reconstruction and restoration.

Establish that the transitional arrangements would reflect overarching principles based on healing, respect, peace, participation, gender equality, freedom, change, accountability, and effectiveness [further developed in Appendix I above].

I. The Nature and Aims of the Transitional Phase

Agree on the following aims of the *Transition Phase*:

1. End the conflict within Syria.
2. End foreign interference in Syria. [*territorial integrity and inviolability*]
3. Establish a Transitional Governing Body [with Full Executive Powers].
4. Establish checks and balances and oversight mechanisms, including
 - i. The Transitional National Assembly.
 - ii. The Supreme Transitional Constitutional Court/Council.
 - iii. An independent Judiciary.
5. Establish a neutral political environment.
6. A national dialogue process and constitutional and legislative review subject to popular approval.
 - i. Recognition of the trust deficit and the importance of oversight mechanisms for the transition, including a role for civil society and possibly a third party will be critical.
 - ii. Recognition of the need for broad participation of women in peace-building and post-conflict reconstruction.
7. Commence restoration and reconstruction of the Syrian community including the return of all refugees and IDPs to their place of residence or just compensation if this is not possible.
8. Multiparty Elections.

The arrangements herein will guide the transition. The transition will commence upon the establishment of a Transitional Governing Body (TGB) and will be complete after the election of a permanent constitutional authority and supporting political institutions.

These arrangements will bind all organs of state at all levels of government, and supersede any incompatible provisions in the Constitution and legislation of the Syrian Arab Republic currently in force.

II. General Principles

The Syrian Arab Republic is a sovereign state with a democratic system of government committed to achieving full equality of citizenship, regardless of gender, origin, language, ethnicity, political opinion, religion, or sect.

1. Syrians who have become political refugees or have lost their citizenship as a result of opposition political activities must have their citizenship restored. Syrians who have fled the country because of fear that their political activities may have jeopardized their life and liberty must be able to return. Syrians who have been denied citizenship on account of their national origin or linguistic characteristic must be granted Syrian citizenship.

2. Members of the armed forces or other security apparatus who have abandoned their posts since 1 March 2011 must be able to return to their previous posts without prejudice to their benefits.
3. The diversity of religions, language and culture must be acknowledged and protected, and conditions for their promotion must be encouraged. [Note: Discussions with Syrian interlocutors across the political divide revealed a total rejection of any Lebanese-style protection with quota systems for the various communities and religious groups.]
4. Everyone must enjoy all universally accepted fundamental rights, freedoms and civil liberties.
5. Legislation providing for State Security Courts with exceptional jurisdictions and special counter-terrorism laws listed in Appendix II, Annex 1, is repealed and all such courts are abolished.
6. All persons detained because of their activities in defense of human rights and opposition to the government since 1 March 2011 must be released immediately. Due consideration must be given to ensure that persons imprisoned for ordinary crime are not released along with those included in the provision of the preceding clause. [Note: mechanisms to enforce this provision could include national and provincial level committees composed of civil society lawyers/activists.]
7. The rights of forming, joining and maintaining organs of civil society, including associations, non-governmental organizations and political parties must, on the basis of non-discrimination and free association, be recognized and protected.
8. The practice of *incommunicado* detention, and any form of torture and cruel, inhuman and degrading treatment or punishment by security apparatus or law enforcement officials, including gender-based violence against women and girls, must be prohibited effectively. Relatives of detainees must be informed promptly about their whereabouts.
9. All citizens have the right to a fair and just trial within an acceptable timeframe. The right to a lawyer must not be violated. All citizens equally enjoy the right to legal protection and all accused are innocent until proven guilty.
10. The right to life is inviolable and all citizens have the right to personal safety and freedom. Citizens must not be arrested or their residence searched without a judicial warrant.
11. The legal system must ensure the equality of all before the law and an equitable legal process. No individual or state institution, including the security apparatus, is above the law.
12. There must be a separation of powers between the legislature, executive and judiciary, with appropriate checks and balances to ensure accountability.
13. The legislature must pass laws providing for freedom of and access to information so that there can be open and accountable administration at all levels of government.

14. The current members of the judiciary must be vetted by a special committee of peers appointed by the Transition Governing Body and approved by the Transition National Assembly.

Government will be structured at national, provincial and local levels.

1. At each level of government there must be democratic representation – national, provincial and local executive officeholders and members of the legislature must be subject to periodic elections.
2. The powers, boundaries and functions of the national and provincial governments must be defined in legislation. Provision must be made for obtaining the views of a provincial legislature, concerning all legislative amendments regarding its powers, boundaries and functions.
3. Each level of government must have legislative and executive powers and functions that will enable them to function effectively. The allocation of powers between different levels of government must be made on a basis that is conducive to financial viability and effective public administration, and which recognizes the need for, and promotes, national unity and legitimate provincial autonomy and acknowledges cultural diversity.
4. In the event of a dispute concerning the legislative powers allocated concurrently to the national government and provincial governments that cannot be resolved by a court on a construction of the Constitution, precedence must be given to the legislative powers of the national government.

In addition to local resources, each level of government has the right to an equitable share of revenue collected nationally so as to ensure that provinces and local governments are able to provide basic services and execute the functions allocated to them.

There must be an efficient, non-partisan, career-orientated public service broadly representative of the Syrian Arab Republic's citizenship, functioning on a basis of fairness and which must serve all members of the public in an unbiased and impartial manner, and must, in the exercise of its powers and in compliance with its duties, loyally execute the lawful policies of the government of the day in the performance of its functions. The structures and functioning of the public service, as well as the terms and conditions of service of its members, must be regulated by law.

III. Transitional Governing Body

1. Composition

A Transitional Governing Body (TGB) [possibly the Council of Ministers in the current Constitution,] [must assume full executive powers and] must include [XX] members taking into account the political, regional, gender, religious, national and linguistic diversity of the Syrian people, [option 1 – and a Chairperson or the Prime

Minister who must be elected by 2/3 majority of its members within XX days of its formation] [or option 2 – and the President of the Republic]. [Note: if the notion of “full executive powers” is retained, it must be further defined – see Section V, Option 1 above for discussion on this subject.]

The TGB is the executive authority for the transitional phase until the election/formation of a government based on the new constitution.

Members of the Transitional Governing Body must not be candidates in the first elections to be held after the referendum approving a new Constitution. [Note: this suggestion stems from concerns that, if the members of the TGB were to present themselves as candidates in the first election, then their decisions and actions might be motivated, or at least perceived to be motivated, by their wish to promote their candidacy. During a sensitive transition context, this may cause loss of confidence in the integrity of the process.]

2. General Tasks

- i.** The TGB must make decisions with a simple majority.
- ii.** The [President, Chairperson or the Prime Minister of the TGB] must represent the state in international forums.
- iii.** The TGB will formulate the general government agenda to be approved by the Transitional National Assembly [and the Supreme Transitional Constitutional Court/Council.
- iv.** The TGB will establish a neutral political environment.
- v.** The TGB will establish a Constitutional Commission within XX [possibly 6-12] months of coming into being, to be approved by the Transitional National Assembly.
- vi.** The TGB will establish an Independent Elections Commission within [X] months of coming into being, to be approved by the Transitional National Assembly.
- vii.** The TGB will establish an Independent Commission of Human Rights within [X] months of coming into being, to be approved by the Transitional National Assembly
- viii.** The TGB will establish a Special Commission for the Restoration and the Reconstruction of the Syrian Community within [X] months of coming into being to be approved by the Transitional National Assembly.

IV. Oversight Mechanism - Transitional National Assembly

1. Composition

For the interim period of the transition, all legislative authority for the state must be assumed by a Transitional National Assembly composed of either

Option 1 – XX/3 members to be nominated and elected by the current People’s Assembly, and an equal number to be nominated by the opposition representatives participating in Geneva II [or an alternative peace conference], and XX/3 to be nominated by [the UN Special Envoy] [or another neutral third party];

[Note: the formula suggested above in option 1 respects the current National Assembly representing mostly Baath party or pro-government members, but acknowledging at the same time that the opposition needs to be represented in the transitional Assembly. The XX above (maybe 60) tries to limit the number of Transitional Assembly members from each side to a size that is not unwieldy. The Special Envoy or another third party could attempt to supplement the Transitional Assembly with categories of members otherwise not proposed by the two sides (minorities, women, certain strata of society, etc) – such supplementary appointments could be limited to 1/3 of whatever number the XX represents.]

Option 2 – XX members to be nominated by the Syrian participants in Geneva II [or alternative peace conference].

All members of the Transitional National Assembly must have Syrian nationality. Measures must be enacted to ensure that XX percent of the members of the Transitional National Assembly elected are women.

2. General Tasks

- i. The Transitional National Assembly must make all decisions by a [simple] [two-thirds] majority of members present and voting.
- ii. The Transitional National Assembly must exercise its functions in full transparency.

V. Oversight Mechanism – Supreme Transitional Constitutional Court/Council

1. Composition

The current Supreme Constitutional Court is renamed the Supreme Transitional Constitutional Court/Council and is reconstituted for the transitional phase. Its membership is increased to nine, composed in either of the following manners:

Option 1 -- with three members nominated by the current National Assembly, three nominated by the opposition participants in Geneva II [or alternative peace conference], and the remaining three members nominated by [the UN special Envoy] [or another neutral third party]; or

Option 2 – with all its members to be nominated by the Syrian participants at the Geneva II meeting [or alternative peace conference].

All members must have Syrian nationality.

2. General Tasks

- i. The Supreme Transitional Constitutional Court/Council is the final arbiter to determine if decisions of the Transitional Governing Body, legislation adopted by the Transitional National Assembly, and a draft Constitution proposed for popular approval by the Constituent Assembly are in compliance with the present Interim Governing Constitution [and the Final Communiqué of the Action Group for Syria or other peace agreement].
- ii. In cases when the Transitional Governing Body or the Transitional National Assembly is incapable of fulfilling their functions mandated by the present Interim Governing Constitution, the Supreme Transitional Constitutional Court/Council must promulgate an appropriate remedy.
- iii. Decisions of the Supreme Transitional Constitutional Court/Council must be adopted by a majority of six. If a majority of six votes cannot be reached after two votes on a given matter then a simple majority vote will suffice for a decision.

VI. Oversight Mechanism – Independent Judiciary

The judiciary at all levels must be appropriately qualified, independent and impartial and must have the power and jurisdiction to safeguard and enforce these arrangements, all laws and all rights.

1. Basic Principles on the Independence of the Judiciary ... [Note: provisions can be incorporated here from a number of existing sources. Opposition sources have cited the Basic Principles on the Independence of the Judiciary, Montreal in 1983, and endorsed by the UN General Assembly in 1985.] These Basic Principles supersede any provision of existing Syrian laws otherwise affecting the judiciary's independence and impartiality.
2. The current Constitutional institution of the Supreme Judicial Council is hereby abolished and its functions are assumed by the Supreme Transitional Constitutional Court/Council.

[Note: while this document tries to minimize the changes necessary for the first stage of the transition, the independence of the judiciary in Syria is so compromised by executive power and security apparatus meddling that a radical departure from current practices necessitates fundamental changes. Other oversight mechanisms could also be established.]

VII. Establish a Neutral Political Environment

Every member of the security forces (police, military and intelligence), and the security forces as a whole, is required to perform their functions and exercise their powers in the national interest and is prohibited from furthering or prejudicing political interests.

The establishment of effective administration, civilian oversight, and accountability systems for the security forces must be a high priority for the Transitional Governing Body.

[Provisions must be included here for disarmament, demobilization and reintegration (DDR) of paramilitary forces, giving due consideration to confidence building measures during the early stages of the transition before attempting to disarm those forces.]

VIII. National Dialogue Process, Constitutional and Legislative Review

Within XX months after assuming office, the Transitional Governing Body would nominate a Constituent Assembly consisting of XX members to be approved by the Transitional National Assembly and the Supreme Transitional Constitutional Court/Council.

Members of the Constituent Assembly must reflect the diversity of Syrian society and have the competencies necessary to draft a new Constitution.

The Constituent Assembly is to elect its own President and present its budget and work plan to the Transitional National Assembly within 30 days.

The Constituent Assembly will undertake broad national consultations and submit recommendations for constitutional review to the Transitional National Assembly and the Supreme Constitutional Council/Court within 12 months of commencing its work. Based on the approval of a two thirds majority in both, the recommendations will be subject to an act of “popular approval” within 3 months.

The new draft Constitution must comply with these arrangements.

[Note: The election of a Constituent Assembly was also considered. However prevailing conditions in the country would necessitate delaying the election for perhaps 24 months, thus delaying the drafting of the constitution and the transitional process. As such, this option is not included in this report]

IX. Restoration and Reconstruction of the Syrian Community – Special Commissions and Transitional Justice

1. An independent National Commission for Accountability and Reconciliation (NCAR) must be established by the Transitional Governing Body and endorsed by the Transitional National Assembly. The NCAR must focus on four objectives: fact-finding, national reconciliation and forgiveness, compensation, and commissions of inquiry on acts committed during the period 1 March 2011 through the formation of the Transitional Governing Body.
2. A National Commission for Reconstruction and Return (of refugees/IDPs) must be established by the Transitional Governing Body and endorsed by the Transitional National Assembly must endeavor to bring about the return of refugees and IDPs to their homes and where not possible to compensate them. The Commission must give special attention to a decentralized approach through local councils, to achieve rapid, efficient and transparent results. Particular attention must be given also to the special needs of women and girls during repatriation and resettlement.

X. Elections/Referenda

There must be representative government embracing multi-party, regular, fair, free and transparent elections based on secret ballot, universal adult suffrage, a common voters' roll, and, in general, proportional representation.

Within six months after its formation, the Transitional National Assembly must enact a new Election Law setting forth general laws under which elections are to be conducted henceforth in compliance with international election standards [an example of such standards is detailed in Appendix III], and specific election laws for the conduct of referenda and the election of the President, National Assembly and local governance institutions.

Timetable of electoral events [suggestions are for illustration purposes]:

1. Local government elections, 12-24 months from the date the Transitional Governing Body assumes its responsibilities; [*note*: depending on developments in the provinces, local elections may be premature in 12 months and may have to be postponed to a later date.]
2. Appointment of a Constituent Assembly, 6-12 months after the Transitional Governing Body assumes its functions;
3. Publication of a new Constitution for popular consultation, 12 months after Constituent Assembly appointed or elected;
4. Referendum on new Constitution, within 3 months after Constitution published;
5. Election[s] of National Assembly [and President], 3 months after Constitution approved in a referendum.

Appendix II – Annex 1 – Decrees and Laws Relating to Emergency, Counterterrorism, and Special Tribunals to be Addressed

Background note: Some of these decrees and laws are cited inconsistently in various sources. On April 21, 2011, the State of Emergency Law (Military Act No 2/1963) was repealed and the Supreme State Security Court abolished. At the same time, Legislative Decree No 161 abolished the Supreme State Security Court (SSSC), an exceptional court with almost no procedural guarantees. However, the security apparatuses have continued to detain individuals without arrest warrants even before the enactment of Legislative Decree No 19 (July 2, 2012), dubbed the Counterterrorism Law. Also, Law No. 20 (July 2, 2012) was enacted, targeting state employees “convicted” of any act of terrorism. Finally, Law No. 22 (July 26, 2012) was enacted, establishing the Counterterrorism Court to apply the Counterterrorism Law.

The list of laws that might be repealed, or subject to appropriate prompt amendment, would include (but not be limited to) the following:

- Legislative Act No 51 (Law of Emergency) of 22 December 1962
- Military Act No 2 (Law of Emergency) of 8 March 1963
- Legislative Decree No 6 (The establishment of military tribunals in Damascus and in other cities when needed) of 7 January. 1965.
- Legislative Decree No 40 (no immunity for judges) of 21 May 1966
- Legislative Decree No 109 (establishing the Military Field Tribunal) of 17 August 1967
- Legislative Decree No 47 (Supreme State Security Court) of 28 March 1968
- Legislative Decree No 14 (establishing the General Intelligence Administration, and guaranteeing immunity to intelligence personnel for crimes committed in the course of duty) of 15 January 1969
- Legislative Decree No 549 (regarding the regulations of the Internal Structure of the General Intelligence Administration (Article 74 guarantees immunity to intelligence personnel for crimes committed in the course of duty) of 25 May 1969
- Law No 53 (on the Security of Arab Socialist Baath Party) of 8 April, 1979
- Law No 49 (on the Muslim Brotherhood) of 7 July 1980
- Legislative Decree No 64 (immunities of police, customs police and political security by requiring a decree from the General Command of the Army and

Armed Forces to prosecute any member of the internal security forces, Political Security (one of Syria's security services), and customs police) of 30 September 2008

- Legislative Decree No 55 (allowing the detention of suspects for up to 60 days) of 21 April 2011
- Law No 19 (on counterterrorism) of 2 July 2012
- Law No 20 (targeting state employees “convicted” of any act of terrorism) of 2 July 2012
- Law No 22 (on counterterrorism courts) of 26 July 2012

Appendix III – Electoral Principles

Because there will always be limits to how long an interim government should stay in office without a democratic mandate, it might be necessary to establish as early as possible, agreement on basic principles (and perhaps even on details) that should apply to the institutional and legal arrangements to conduct elections. Based on the comment, this report noted two possible stages in the transition, with the first ending with elections. In the second stage, an elected parliament and government would govern while continuing the national dialogue and implementing the new constitutional framework. Discussants also suggested that early elections at local government might be a key part of building legitimacy in the transition.

With this in mind, it may be useful to the parties to consider key areas that would be critical components for the rebuilding of electoral machinery. The three areas noted below are only meant to be illustrative. Highlighting them does not suggest that other provisions of election laws do not impact the democratic character of an election. Rather, these three would be amongst some of the critical determinants of whether genuine, transparent multi-party elections could be possible.

The three areas are outlined briefly here:

1. Establishing an independent election management authority
2. Ensuring transparency
3. Providing for proxies/agents, observers, and representatives of media

Election Management Bodies

1. Electoral commissions must be **independent** from state and local government bodies in exercising their mandates. Electoral commission members at all levels must exercise their mandate with independence, impartiality, integrity, transparency, efficiency, collegiality and professionalism.
2. There will be a **Central** Election Commission responsible for all types of election and referenda for the Syrian Arab Republic, subsidiary **Provincial** Election Commissions for each Province of the Syrian Arab Republic, and **Precinct** Election Commissions for each precinct.
3. The **funding** of expenditures for organizing and holding elections as well as expenditures necessary for the activities of electoral commissions must be made at the expense of the state budget. Such expenditures must be envisaged by a separate budget line in the state budget. Subsidiary electoral commissions must be funded and their members remunerated from the state budget. The Central Electoral Commission may have an off-budgetary

- account for implementing programs aimed at improving the quality of the electoral administration and technical refurbishment of the electoral commissions.
4. The Central Electoral Commission must be composed of seven members. The Provincial Election Commissions must be composed of seven to eleven members each. The Precinct Election Commissions must be composed of seven members each.
 5. The election commissions' activities must be directed by the commission Chairman or, as assigned by him/her, the Deputy Chairman. The commissions' Chairman, Deputy Chairman and the Secretary must be elected by the respective commissions during the first session.
 - a. The Chairman, Deputy Chairman and Secretary of commissions may be dismissed by a decision of the respective commission, if two thirds of that commission members vote for that decision.
 6. A citizen of the Syrian Arab Republic who has the right of suffrage may be a **member** of the election commissions. Members of the Central Election Commission and the Provincial Election Commissions must have: (1) Higher legal education and at least XX years of professional experience in the last XX years; or (2) Higher education and at least XX years of public service experience in state bodies in the last XX years. Citizens who, by the procedure prescribed by the Central Electoral Commission, completed professional courses on holding elections and have been awarded qualification certificates, may be members of Precinct Electoral Commissions.
 7. Members of the **Central Electoral Commission** must be **appointed** by the Transitional National Assembly of the Syrian Arab Republic upon the proposal of the Transitional Governing Body and the Supreme Constitutional Court. Three members of the Central Electoral Commission must be appointed upon the proposal of the Transitional Governing Body, three members upon the proposal of the Supreme Constitutional Court, and one member upon the proposal of the UN Special Envoy. Two members appointed upon the proposal of the Transitional Governing Body and two members appointed upon the proposal of the Supreme Constitutional Court must be representatives of different genders and at least one candidate in each group must have legal education. [An alternate method for appointment of the Central Election Commission could be by decision of the Syrian participants in Geneva II or an alternative peace conference in consultation with the UN Special Envoy.]
 - a. Members of electoral commissions must be terminated in the following cases:

- i. If they lose their electoral rights;
 - ii. In the event of their death; and
 - iii. In the event a commission member is absent from commission sessions three times without a compelling reason and a majority of commission members have voted to terminate his/her membership; and
 - iv. On the basis of their letter of resignation.
 - b. In the case of early termination of an election commission member, vacancies must be filled upon the nomination of the person or entity that nominated the vacating member.
8. Members of the **Central Electoral Commission** must be appointed for an initial transition period of two years, and thereafter for four years.
 9. Members of the **Provincial Election Commissions** must be appointed by the Central Election Commission for a period to be determined by the Central Election Commission.
 10. Members of the **Precinct Election Commissions** must be appointed by the Provincial Election Commissions in their respective Provinces for a period starting one month prior to the election or referendum and expiring when final electoral or referendum results are certified by the Central Election Commission.

Transparency of Elections

1. Elections and referenda must be prepared and conducted in a transparent manner.
2. Decisions of electoral commissions, national government and provincial as well as local self-government bodies, related to the preparation and conduct of elections, must be published in the official Gazette within three days of taking these decisions.
3. In the course of sessions of electoral commissions and during the voting process, chairpersons of electoral commissions must ensure that proxies, observers and representatives of the mass media participate in the activities of electoral commissions and that necessary and equal working conditions have been provided to them.
4. The authorized agency compiling the national Voter Registry must publish the total number of voters included in the Voter Register on the day preceding the voting in presidential or National Assembly elections and referenda.

5. Citizens must be informed about the composition, location and working hours of electoral commissions, the formation of electoral precincts and precinct centers, the deadlines for submitting appeals about inaccuracies in voter lists, the nomination and registration of candidates, and the voting day and the election results.
6. On voting day, Precinct Electoral Commissions must report to Provincial Electoral Commissions the voter turnout and electoral results every three hours. Provincial Electoral Commissions must sum up these reports, make them public and forward them to the Central Electoral Commission every three hours, by electoral districts. In national elections or referenda, the Central Electoral Commission must publish information on voting progress, including voter turnout and voting results at 9:00 on voting day, and then, from 12:00 until 21:00, every three hours, it must publish information on voter turnout and electoral results as of the preceding hour, and about applications and complaints received. The Central Electoral Commission must, by 10:00 of the day following the voting day, officially publicize electronic spreadsheets of Precinct, Provincial and countrywide data on the voter turnout and electoral results in nationwide elections on the basis of data received by telecommunication means from Provincial Electoral Commissions.
7. Proxies, accredited observers and representatives of the mass media must have the right to be present at precinct centers during electoral commission sessions and throughout the voting process.
8. In the cases stipulated by Part 6 of this Article, the Central Electoral Commission must publicize the data by means of live radio and television broadcast from the administrative building of the Central Electoral Commission.

Proxies, Observers & Representatives of Mass Media

Proxy Status

1. Political parties, after registering their election lists and candidates, and after registering themselves, may have proxies for protecting their interests in electoral commissions and in their relations with state and local self-government bodies, organizations, and the mass media. Only citizens of the Syrian Arab Republic with the right to vote may serve as proxies.
2. Once party lists and candidates are registered, proxies must be issued stamped ID cards, based on the submitted lists, The ID cards must be issued within five days of submitting the request. The appropriate commission must include the candidate's first name, last name and the name of the party on the cards. The cards must be filled out and given to proxies by the candidate or

- his/her authorized representatives or an authorized representative of the party.
3. The procedures for registration of proxies must be established by the Central Electoral Commission. Candidates or their authorized representatives, and authorized representatives of parties may recall their proxies and appoint new ones at any time upon providing written notification to the appropriate electoral commission.
 4. Members of the Supreme Constitutional Court, judges, employees of the Syrian Arab Republic police, and security service, Ministry of Defense, Prosecutor's Office, tax and customs agencies, social security agencies (services), military servicemen, clergymen, members of electoral commissions, leaders of state-owned mass media and foreign citizens may not serve as proxies.

Rights and Responsibilities of Proxies, and Safeguards for their Activities

1. Proxies have the right:
 - a. to participate in commission sessions without the right to vote, and be present in the voting room during the voting;
 - b. to examine electoral documents, including the relevant court verdicts and the respective statement issued by the authorized body;
 - c. to examine freely all documents under the authority of the relevant commission, the electoral commission's decisions and protocols in the presence of the electoral commission's chairman, deputy chairman, secretary or any other commission member designated by the commission chairman, to receive copies of the aforementioned documents, take excerpts from them, as well as to examine voted ballots in accordance with the same procedures. Copies of or excerpts from decisions, protocols and other records must be stamped and signed by the chairman and the secretary of the commission. Documents received from Precinct Electoral Commissions must be stamped on voting day only;
 - d. to appeal commissions' decisions, actions or inaction;
 - e. to observe the process of printing, transporting, storing and counting the ballots in accordance with procedures defined by the Central Electoral Commission;
 - f. without interfering with the work of a commission member, be physically present next to the commission members performing the

voter registration, allocation of ballots and voting envelopes, the stamping of voting envelopes, and the supervision of the ballot box, and to observe their work;

- g. on the voting day, observe the commission work and make comments and suggestions to the commission chairman regarding such work, in respect of which the commission chairman must undertake necessary measures;
 - h. to examine freely the voted ballots and marks made on them in the presence of the electoral commission's chairman, deputy chairman, secretary or any other commission member designated by the commission chairman, and to be present during the counting of ballots and summarization of voting results.
2. Proxies must exercise their rights in accordance with procedures defined in this Code.
3. One proxy for each candidate and each party running in the National Assembly elections may be present during an electoral commission's session and during the voting.
5. No limitation of the rights of the proxies is allowed. No one, including electoral commissions, has the right to ask the proxies to leave the voting room or to isolate them in any other way from being present at the commission's activities, except in the case of their arrest or detention.
6. Proxies must not be prosecuted for their opinions about the course of the elections or the summarization of their results.

Right to Carry Out Observation Missions

1. The following have the right to carry out electoral observation missions:
 - a. international organizations;
 - b. representatives of foreign states;
 - c. Syrian Arab Republic and international non-governmental organizations, whose objectives, according to their bylaws, include democracy and protection of human rights, and who do not support any of the candidates or parties.
2. International organizations, representatives of foreign states, and foreign non-governmental organizations may carry out observation missions with an appropriate invitation.

3. The following have the right to send to the aforementioned organizations and individuals an invitation to carry out observation missions:
 - a. The President of the Syrian Arab Republic;
 - b. The Transitional National Assembly of the Syrian Arab Republic;
 - c. The Transitional Governing Body of the Syrian Arab Republic; and
 - d. The Central Electoral Commission.
4. The procedures for carrying out observation missions must be established by the Central Electoral Commission.

Accreditation of Observers

1. Organizations and persons specified in the **Right to Carry Out Observation Missions** of this Code may carry out observation missions after being accredited by the Central Electoral Commission.
2. Applications for accreditation must be submitted to the Central Electoral Commission after the day when the election date is announced, but no later than XX days before the voting day.
3. The Central Electoral Commission must issue the credentials for the observation mission, as well as stamped ID cards for observers on the basis of submitted lists, to the appropriate organization within no more than XX days after receiving the application. In the case of non-governmental organizations registered in the Syrian Arab Republic, the ID cards of observers also must be stamped by the appropriate organizations that have received accreditation to carry out an observation mission.
4. If observers support any candidate or party after having received their accreditation, the Central Electoral Commission must have the right to deprive the appropriate organization of its right to carry out an observation mission.
5. The authority of persons carrying out observation missions must be terminated on the 7th day following the official announcement of the election results, unless such results are being contested in court. In case the election results are being contested in court, the authority must terminate on the day following the day on which the final judicial act is published, unless repeated voting or a new election is ordered by court. In case of repeated voting or a new election, the observer organizations must not be required to re-register.

Rights and Responsibilities of Syrian and International Observers, Representatives of Mass Media, and Safeguards for their Activities

1. Observers and representatives of mass media must have the right:
 - a. to be present at electoral commission sessions, as well as in precinct centers during the voting;
 - b. to observe the process of printing, transporting, storing and counting the ballots in accordance with procedures defined by the Central Electoral Commission;
 - c. to freely examine electoral documents, sample ballots, electoral commission decisions and protocols of meetings under the authority of the relevant commission, and to receive their copies and make excerpts from them;
 - d. to move freely in precinct centers for observation of ballots and ballot boxes, in accordance with procedures defined by the Central Electoral Commission.
2. Observers and representatives of mass media must have no right to interfere with the work of electoral commissions.
3. On the voting day, observers must observe the work of electoral commissions. They may make comments and suggestions about the work to the commission chairpersons, and the latter must take appropriate measures.
4. No limitation of the rights of observers and representatives of mass media must be allowed in all electoral processes.
5. Observers and representatives of mass media must not be prosecuted for their opinions about the course of the elections or the summarization of their results.

Appendix IV – The Geneva Communiqué

Action Group for Syria Final Communiqué 30.06.2012

1. On 30 June 2012, the Secretaries-General of the United Nations and the League of Arab States, the Ministers for Foreign Affairs of China, France, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland, the United States of America, Turkey, Iraq (Chair of the Summit of the League of Arab States), Kuwait (Chair of the Council of Foreign Ministers of the League of Arab States) and Qatar (Chair of the Arab Follow-up Committee on Syria of the League of Arab States) and the High Representative of the European Union for Foreign Affairs and Security Policy met at the United Nations Office at Geneva as the Action Group for Syria, chaired by the Joint Special Envoy of the United Nations and the League of Arab States to Syria.
2. The members of the Action Group came together out of grave alarm at the situation in the Syrian Arab Republic. They strongly condemn the continued and escalating killing, destruction and human rights abuses. They are deeply concerned at the failure to protect civilians, the intensification of the violence, the potential for even deeper conflict in the country and the regional dimensions of the problem. The unacceptable nature and magnitude of the crisis demands a common position and joint international action.
3. The members of the Action Group are committed to the sovereignty, independence, national unity and territorial integrity of the Syrian Arab Republic. They are determined to work urgently and intensively to bring about an end to the violence and human rights abuses, and to facilitate the launch of a Syrian-led political process leading to a transition that meets the legitimate aspirations of the Syrian people and enables them independently and democratically to determine their own future.
4. In order to secure these common objectives, the members of the Action Group (a) identified steps and measures by the parties to secure the full implementation of the six-point plan and Security Council resolutions 2042 (2012) and 2043 (2012), including an immediate cessation of violence in all its forms; (b) agreed on principles and guidelines for a political transition that meets the legitimate aspirations of the Syrian people; and (c) agreed on actions that they would take to implement the objectives in support of the Joint Special Envoy's efforts to facilitate a Syrian-led political process. They are convinced that this can encourage and support progress on the ground and will help to facilitate and support a Syrian-led transition.

Identified steps and measures by the parties to secure the full implementation of the six-point plan and Security Council resolutions 2042 (2012) and 2043 (2012), including an immediate cessation of violence in all its forms

5. The parties must fully implement the six-point plan and Security Council resolutions 2042 (2012) and 2043 (2012). To that end:
 - a. All parties must recommit to a sustained cessation of armed violence in all its forms and to the implementation of the six-point plan immediately and without waiting for the actions of others. The Government and armed opposition groups must cooperate with the United Nations Supervision Mission in the Syrian Arab Republic (UNSMIS), with a view to furthering the implementation of the plan in accordance with the Mission's mandate;
 - b. A cessation of armed violence must be sustained, with immediate, credible and visible actions by the Government of the Syrian Arab Republic to implement the other items of the six-point plan, including:
 - Intensification of the pace and scale of release of arbitrarily detained persons, including especially vulnerable categories of persons, and persons involved in peaceful political activities; the provision, without delay and through appropriate channels, of a list of all places in which such persons are being detained; the immediate organization of access to such locations; and the provision, through appropriate channels, of prompt responses to all written requests for information, access or release regarding such persons;
 - Ensuring freedom of movement throughout the country for journalists and a non-discriminatory visa policy for them;
 - Respecting freedom of association and the right to demonstrate peacefully, as legally guaranteed;
 - c. In all circumstances, all parties must show full respect for the safety and security of UNSMIS and fully cooperate with and facilitate the Mission in all respects;
 - d. In all circumstances, the Government must allow immediate and full humanitarian access by humanitarian organizations to all areas affected by the fighting. The Government and all parties must enable the evacuation of the wounded, and all civilians who wish to leave must be enabled to do so. All parties must fully adhere to their obligations under international law, including in relation to the protection of civilians.

Agreed principles and guidelines for a Syrian-led transition

6. The members of the Action Group agreed on the principles and guidelines for a Syrian-led transition set out below.

Any political settlement must deliver to the people of the Syrian Arab Republic a transition that:

- Offers a perspective for the future that can be shared by all in the Syrian Arab Republic;
- Establishes clear steps according to a firm timetable towards the realization of that perspective;
- Can be implemented in a climate of safety for all and of stability and calm;
- Is reached rapidly without further bloodshed and violence and is credible.

I. Perspective for the future

The aspirations of the people of the Syrian Arab Republic have been clearly expressed by the wide range of Syrians consulted. There is an overwhelming wish for a State that:

- Is genuinely democratic and pluralistic, giving space to established and newly emerging political actors to compete fairly and equally in elections. This also means that the commitment to multiparty democracy must be a lasting one, going beyond an initial round of elections;
- Complies with international standards on human rights, the independence of the judiciary, accountability of those in Government and the rule of law. It is not enough just to enunciate such a commitment. There must be mechanisms available to the people to ensure that these commitments are kept by those in authority;
- Offers equal opportunities and chances for all. There is no room for sectarianism or discrimination on ethnic, religious, linguistic or any other grounds. Numerically smaller communities must be assured that their rights will be respected.

II. Clear steps in the transition

The conflict in the Syrian Arab Republic will end only when all sides are assured that there is a peaceful way towards a common future for all in the country. It is therefore essential that any settlement provide for clear and

irreversible steps in the transition according to a fixed time frame. The key steps in any transition include:

- The establishment of a transitional governing body that can establish a neutral environment in which the transition can take place, with the transitional governing body exercising full executive powers. It could include members of the present Government and the opposition and other groups and shall be formed on the basis of mutual consent;
- It is for the Syrian people to determine the future of the country. All groups and segments of society in the Syrian Arab Republic must be enabled to participate in a national dialogue process. That process must be not only inclusive but also meaningful. In other words, its key outcomes must be implemented;
- On that basis, there can be a review of the constitutional order and the legal system. The result of constitutional drafting would be subject to popular approval;
- Upon establishment of the new constitutional order, it will be necessary to prepare for and conduct free and fair multiparty elections for the new institutions and offices that have been established.
- Women must be fully represented in all aspects of the transition.

III. Safety, stability and calm

Any transition involves change. However, it is essential to ensure that the transition can be implemented in a way that ensures the safety of all in an atmosphere of stability and calm. This requires:

- Consolidation of full calm and stability. All parties must cooperate with the transitional governing body to ensure the permanent cessation of violence. This includes completion of withdrawals and addressing the issue of the disarmament, demobilization and reintegration of armed groups;
- Effective steps to ensure that vulnerable groups are protected and that immediate action is taken to address humanitarian issues in areas of need. It is also necessary to ensure that the release of the detained is completed rapidly;
- Continuity of governmental institutions and qualified staff. Public services must be preserved or restored. This includes the military forces and security services. However, all governmental institutions, including the intelligence services, have to perform according to human rights and

professional standards and operate under a leadership that inspires public confidence, under the control of the transitional governing body;

- Commitment to accountability and national reconciliation. Accountability for acts committed during the present conflict must be addressed. There also needs to be a comprehensive package for transitional justice, including compensation or rehabilitation for victims of the present conflict, steps towards national reconciliation and forgiveness.

IV. Rapid steps to come to a credible political agreement

It is for the people of the Syrian Arab Republic to come to a political agreement, but time is running out. It is clear that:

- The sovereignty, independence, unity and territorial integrity of the Syrian Arab Republic must be respected;
- The conflict must be resolved through peaceful dialogue and negotiation alone. Conditions conducive to a political settlement must now be put in place;
- There must be an end to the bloodshed. All parties must recommit themselves credibly to the six-point plan. This must include a cessation of armed violence in all its forms and immediate, credible and visible actions to implement points 2 to 6 of the six-point plan;
- All parties must now engage genuinely with the Joint Special Envoy. The parties must be prepared to put forward effective interlocutors to work expeditiously towards a Syrian-led settlement that meets the legitimate aspirations of the people. The process must be fully inclusive in order to ensure that the views of all segments of Syrian society are heard in shaping the political settlement for the transition;
- The organized international community, including the members of the Action Group, stands ready to offer significant support for the implementation of an agreement reached by the parties. This may include an international assistance presence under a United Nations mandate if requested. Significant funds will be available to support reconstruction and rehabilitation.

Agreed actions that the members of the Group will take to implement the above in support of the Joint Special Envoy's efforts to facilitate a Syrian-led political process

7. Action Group members will engage as appropriate, and apply joint and sustained pressure on, the parties in the Syrian Arab Republic to take the steps and measures outlined in paragraph 5 above;
8. Action Group members are opposed to any further militarization of the conflict;
9. Action Group members emphasize to the Government of the Syrian Arab Republic the importance of the appointment of an effective empowered interlocutor, when requested by the Joint Special Envoy to do so, to work on the basis of the six-point plan and the present communiqué;
10. Action Group members urge the opposition to increase cohesion and to be in a position to ensure effective representative interlocutors to work on the basis of the six-point plan and the present communiqué;
11. Action Group members will give full support to the Joint Special Envoy and his team as they immediately engage the Government and the opposition, and will consult widely with Syrian society, as well as other international actors, to further develop the way forward;
12. Action Group members would welcome the further convening by the Joint Special Envoy of a meeting of the Action Group, should he deem it necessary to review the concrete progress taken on all points agreed in the present communiqué and to determine what further and additional steps and actions are needed from the Action Group to address the crisis. The Joint Special Envoy will also keep the United Nations and the League of Arab States informed.