



Time for Transitional Justice And National Reconciliation in Syria

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Historical Background

When Syria gained its independence from France in April 1947, Syria's founding fathers hoped to establish a state built on the principles of justice and equality. This was reflected in the preamble of the constitution of 1950: "We, representatives of the Arabic Syrian people, members of the Constituent Assembly, by the will of God and the free will of the people, declare that we established this constitution to achieve the following holy goals: the establishment of justice on solid foundations in order to guarantee every person his own right without fear or bias, achieved through supporting the judicial system and consolidating its independence under free democratic and republican rule."

The 1950 constitution was the only constitution in Syrian history to be drafted by an elected constituent assembly. Thus, it reflected the interests of the political forces that had fought for it, but, more importantly, it reflected the popular public interest that had elected the members of the Constituent Assembly. Unfortunately, this constitution did not last very long. Successive military coups brought to power waves of military personnel who rejected the law and the judiciary constitutional limits to their extensive power. The Baath party's seizure of power in 1963 was the ultimate manifestation of the collapse of Syrian institutions and the removal of civilian rule in the face of military power. The Baath party declared a state of emergency that was maintained until 2011 when it was lifted under intense popular pressure from mass peaceful protests at the onset of the Syrian revolution. Thus, Syria had stayed under a state of emergency for more than 48 years, the longest lasting state of emergency in history. Clearly, the Baath party and the Assad family have always mocked the concept of law as a founding principle of the Syrian state. However, as demonstrated in the constitution of 1950, the rule of law is valued by the Syrian people. This

concept goes back to Islamic civilization, which was based on the concept that “Rule is based on justice.” Furthermore, in the *Qu’ran*, Allah says: “And do not let the hatred of a people prevent you from being just.” Justice must be fulfilled, no matter the circumstances or conditions, even during an ongoing conflict.

With the Assad family in power, disregard for the concept of law has been manifested in all political and legal arenas. The state of emergency was maintained without debate and without the need for parliament to renew it. Furthermore, a new special constitution (the constitution of 1973) was drafted by a Baathist committee on behalf of then president Hafez al-Assad to grant him extensive executive and legislative powers, thus declaring himself the absolute ruler. The purpose was also to further undermine the judicial branch to the point that it was subject to the executive branch in all its affairs and apparatuses. The mocking reached its climax when the constitutional court, which is usually the highest judicial authority in any state and a symbol of the judicial supremacy, remained empty for decades, with no appointed judges or appropriate headquarters.

This brief glimpse of the collapse of the concept of law during the Assad family rule has become more prominent in the government’s recent attacks on civilians led by heir president Bashar al-Assad, and the government’s violent responses to the peaceful protests in the early days of the Syrian Revolution in 2011 that demanded the establishment of a lawful state in Syria. The brutal practices that have led to the incomprehensible magnitude of destruction today clearly show that the Assad family only understands power as a tool for control. The killing machine has not stopped even for one day. Moreover, Bashar al-Assad has opened his prisons and security facilities to become torture centers in which hundreds die under torture on a daily basis. One defector, code-named “Caesar” to conceal his identity, who says he was the official forensic photographer employed by the Syrian government, has leaked 55,000 photographs taken between 2011 and his defection and flee from Syria in 2013, showing documentation of 11,000 victims killed under torture inside the prisons of the Syrian regime. This large number of tortured corpses is not only shocking for the Syrian people but also for any person that considers human civilization developed enough to prohibit torture. How much pain did those lives bear before they died? And how much was the pain that the families of these victims held in their hearts as they received the news of their

sons being arrested, knowing the horrifying stories about Assad's prisons, before eventually receiving the news of their sons' death under torture?

Transitional Justice in Syria

The Assad regime today continues to commit war crimes and crimes against humanity against Syrian civilians. The United Nations Human Rights Council and the Independent International Commission of Inquiry on Syria have both published multiple reports documenting these crimes. However, the United Nations Security Council has thus far failed to refer these crimes to the International Criminal Court in order to hold the perpetrators accountable, which is becoming more difficult with time especially after the Russian involvement in Syria since September 2015.

As a result, the responsibility falls on the post-Assad government and Syrian civil society to prosecute those responsible for human rights violations. Whether on the national or international level, justice must be sought on behalf of the victims of violent events surrounding the Syrian revolution. The culture of impunity that has thrived under the Syrian regime for the last forty years must finally be brought to an end. Syria can establish a new culture of legitimacy and overcome the legacy of the past by engaging in national reconciliation efforts carried out through a comprehensive transitional justice process.

Transitional justice refers to a group of activities or investigations that focuses on communities with a legacy of human rights violations, genocide, or other forms of violations including crimes against humanity and civil war atrocities, in order to build a more democratic society for a secure future.

The concept of transitional justice can be understood through a number of terms: social reconstruction, national reconciliation, establishment of fact-finding commissions, compensation of victims, and reform of the general institutions of the state often associated with suspicion during civil internal armed conflict like the police, security forces, and the armed forces.¹

¹ Bickford, Louis, *The Encyclopedia of Genocide and Crimes against Humanity* (Macmillan Reference USA, 2004), vol. 3, pp. 1045-1047.

Transitional justice links two main concepts: justice and transition. The accurate semantic meaning of the phrase means achieving justice during the transitional period experienced by a state.² This process occurred in Chile (1990), Guatemala (1994), South Africa (1994), Poland (1997), Sierra Leone (1999), East Timor (2001) and Morocco (2004). During the political transition after a period of violence or oppression in a society, the community often finds itself burdened with the difficult task of addressing human rights violations. To address this task, the state seeks to deal with the crimes of the past in order to promote justice, peace and reconciliation.³ To achieve a sense of justice that is comprehensive and far-reaching, government officials and NGO activists use several approaches to address human rights crimes, including judicial and non-judicial avenues. In the past, transitional justice has been approached in a variety of ways such as lawsuits for violations of individuals, as in Kosovo; establishing fact-finding initiatives to address past abuses,⁴ as in Sierra Leone; providing compensation to victims of human rights violations, as was the case in the United States; or a process of reconciliation in divided societies, as in East Timor.⁵

A History of Violence

As in other states that have considered conducting transitional justice programs, Syria has a long history of regime-sponsored human rights violations. Emergency law remained in effect in Syria from 1963 to 2011. During that time (and to this day), the government strictly limited freedoms of expression, assembly, and association, and harassed and imprisoned human rights

² Kritz, Neil, ed. (1995). *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, Vols. I–III. Washington, D.C.: U.S. Institute of Peace Press.

³ Boraine, Alex, Janet Levy, and Ronel Scheffer, eds. (1997). *Dealing with the Past*. Cape Town, South Africa: Institute for Democracy in South Africa. See also Crocker, D. A. (1999). "Reckoning with Past Wrongs: A Normative Framework." *Ethics & International Affairs* 13:43-61.

⁴ Hayner, Priscilla (2002). *Unspeakable Truths: Facing the Challenge of Truth Commissions*. New York: Routledge. and , Zalaquett, Jose (1993). "Introduction to the English Edition." In *Chilean National Commission on Truth and Reconciliation: Report of the Chilean National Commission on Truth and Reconciliation*, trans. Phillip E. Berryman. South Bend, Ind.: University of Notre Dame Press.

⁵ For more on this please see: Bassiouni, M. Cherif, ed. (2000). *Post-Conflict Justice*. New York: Transnational Publishers.

defenders and non-violent critics of government policies. According to Human Rights Watch, “Syria has a long record of arbitrary arrests, systematic torture, prolonged detention of suspects, and grossly unfair trials.”⁶ Political arrests and forced disappearances became systemic and continuous during the late 1970s and early 1980s, coinciding with the outbreak of violent conflict between the Muslim Brotherhood and the Syrian regime. The regime started using unmitigated violence not only against the armed Islamist organizations but also against the entire spectrum of opposition parties and their supporters in the Syrian society. This culminated in a number of massacres that killed thousands of civilians, most notably the massacre of Hama in February 1982.⁷ The assassination attempt on then President Hafez al-Assad was followed by the massacre of Palmyra on June 27, 1980, in which hundreds of detainees were shot at the notorious military prison. Human rights groups estimate that about 1,000 victims were buried in unknown mass graves.

Since the struggle for freedom and democracy in Syria began in March 2011, the number of arrests and enforced disappearances has increased dramatically. According to the Syrian Network for Human Rights, an estimated 215,000 individuals have been arrested in Syria in the last five years. Of those, the Network estimates that some 60,000 have been enforcedly disappeared. Unfortunately, these numbers are difficult to verify as families of victims often refuse to speak to human rights violation investigators out of fear for their imprisoned relatives' lives.

Additionally, regime-propagated violence and clashes between the Syrian army and rebel forces have resulted in the death of 250,000 people and laid waste to the country. More than 4.5 million refugees have fled to Turkey, Jordan, Lebanon, Iraq, and Egypt. At least 7.6 million Syrians have been forced to abandon their homes due to the violence and are internally displaced inside Syria. According to the Independent International Commission of Inquiry on Syria, “Government forces and affiliated militia have committed murder, torture, rape, forcible displacement, enforced disappearance and other inhumane acts.”⁸ Gross violations of international

⁶ World Report 2005, Human Rights Watch.

⁷ For more details about the massacre see: Report by the Syrian Committee for Human Rights, The massacre of Hama in February 1982: A genocide and a crime against humanity, February 2, 2006.

⁸ Report of the International Independent Commission of Inquiry on the Syrian Arab Republic, 4 June 2013.

human rights law – including summary execution, arbitrary arrest and detention, unlawful attack, attacking protected objects, and pillaging and destruction of property – have also been committed. According to reports issued by the United Nations and international human rights organizations, Syrian government forces have routinely bombarded densely populated civilian areas with artillery, deployed snipers and helicopters in urban areas, and tortured detained protestors and human rights activists. All of these acts are considered crimes against humanity as defined by the Rome Statute that established the International Criminal Court (ICC) in 2002.

Why Transitional Justice matters?

After war crimes and crimes against humanity were committed in the former Yugoslavia and Rwanda, the General Assembly of the United Nations established an initiative known as the “Responsibility to Protect” (R2P) in 2005. The concept of R2P is a change from traditional principles regarding the protection of the sovereignty of states, recognizing that sovereignty is not a right but a responsibility. According to R2P principles, when a regime commits war crimes and crimes against humanity, it loses its sovereignty thus granting the international community the right to take the necessary measures to protect civilians and prevent further crimes.

The international community has abandoned Syrians and left them to die at the hands of their government. Indiscriminate aerial bombardment has taken the lives of more than 250,000 civilians so far,⁹ and Bashar al-Assad’s forces have made extensive use of short-range Scud ballistic missiles—which are classified as vehicles of weapons of mass destruction—against areas of Syria that are no longer under the regime’s control, with utter disregard for the lives of Syrian civilians and for the amount of destruction inflicted upon residential areas and infrastructures.

If one compares the conflict in Syria with other conflicts throughout the world that have been labeled “civil wars,” it becomes clear that the term “civil war” is far from the reality of the situation in Syria. In fact, Syria is in the midst of a popular revolution against an authoritarian regime. A simple comparison between the number of victims in Syria and the number of victims

⁹ For current numbers of civilian victims of the Syrian revolution, see Megan Price, Jeff Klingner, Anas Qtiesh, and Patrick Ball, “Full Updated Statistical Analysis of Documentation of Killings in the Syrian Arab Republic,” Human Rights Data Analysis Group, commissioned by United Nations Office of the High Commissioner for Human Rights.

in countries in which a civil war has actually occurred—in Peru, for example—shows that the conflict in Peru, which lasted for twenty years from 1980 to 2000 and had more than 70,000 victims,¹⁰ is nearly incomparable to the almost 250,000 victims in Syria only in the past five years. According to the final report of the Truth and Reconciliation Commission, the number of victims in Syria has risen from 1,000 per month at the start of the revolution¹¹ in 2011 to 5,000 per month in 2013 until 2014. If Assad is allowed to continue his war against the Syrian people, the number of victims can be expected to exceed 250,000.

It is therefore not possible to start a genuine process of transitional justice or a process of political transition toward pluralism, democracy, and reconciliation in Syria without a complete cessation of violence. As transitional justice experiences across the world have demonstrated, reconciliation is closely linked to the path of political transition, and depends primarily on the political will and vision of both the actors and the political forces on the ground. The launching of transitional justice processes will signal to the victims that those responsible for committing crimes against their children will be brought to justice and that the time of impunity is over. With the implementation of a transitional justice program that is representative of all, Syrians without exception will see the path towards national reconciliation that ensures adequate pluralism and the necessary credibility.

Launching the transitional justice process in Syria is one of the most difficult and complicated processes that the Syrian community will face after the Assad regime. Given the vast divisions in the Syrian society today, the current Syrian judicial system is not ready to launch an accountability process. The escalation by al-Assad and his militias through intimidation and provocations of Syrians against each other have intensified the divisions within the Syrian society. In addition, the most recently established so-called Army of National Defense is practically a governmental institutionalization of al-Assad's semiregular militias (*al-Shabiha*).

One possible pathway to overcome these obstacles in launching a transitional justice system is resorting to international justice, because the war crimes and crimes against humanity

¹⁰ See Hatun Willakuy, *Abbreviated Version of the Final Report of the Truth and Reconciliation Commission in Peru* (Lima, 2004).

¹¹ See Human Rights Watch, *Death from the Skies; Deliberate and Indiscriminate Airstrikes on Civilians* (New York: Human Rights Watch, 2012), <http://www.hrw.org/reports/2013/04/10/death-skies>.

committed by Assad are certainly within the scope of work of the International Criminal Court. However, given Russia's position in the UN Security Council, Moscow may prevent the referral of Syrian criminals to the Court. Any future government formed by the opposition or formed post Assad regime should ratify the Rome agreement in order to enable a prosecutor to open an investigation into these crimes. The path of international justice is certainly not an ideal choice; it is too slow, particularly because Syrian victims need their rights guaranteed and not ignored by political compromises. Therefore, it seems that holding hybrid courts is the best option for Syria and Syrians. The tribunals should be held on Syrian territory and will involve the direct participation of Syrian judges, supported by international expertise perhaps under the supervision of the United Nations. The necessity of international experts participating in hybrid courts, especially when held in divided societies, remains the best option, because it will send the message to all Syrians that revenge is not the goal, as well as reassure them that the toughest standards of justice and international transparency will be guaranteed. The goal is not to target specific religious groups and hold them accountable, but to establish the course of justice that can ensure the establishment of the future Syria on valid grounds. At the same time, such international involvement gives more confidence to the international community regarding the credibility and inclusiveness of the new system and its commitment to justice and reconciliation, and that there is no place for the policies of revenge or retaliation within its program. Syrians will need the international community, which has failed them so far, to rebuild their country and construct their future institutions. However, Syrians should also recognize the limits of the help that can be provided by the international community and realize that they must ultimately rely on themselves alone to build their democracy.

The National Commission for Transitional Justice and Reconciliation

The proposed National Commission for Transitional Justice and Reconciliation in Syria will focus on achieving seven key objectives: fact-finding and commissions of inquiry, filing lawsuits, compensation, institution building, reforming the security forces and intelligence agencies, restructuring institutional reforms, and memorialization. It is useful to briefly examine each objective.

Fact-Finding and Commissions of Inquiry

The National Commission for Transitional Justice and Reconciliation will set up databases to contain evidence of all human rights violations currently maintained by Syrian human rights groups, and form commissions of inquiry to conduct investigations of extrajudicial killings, torture cases, prisoners of conscience, and enforced disappearances.

The creation of these various commissions of inquiry would serve to establish capable investigative bodies in order to uncover the facts surrounding conflict-related violence, whether perpetrated by the state or non-state actors. The establishment of such committees must be based on an expanded process of national consultation, appropriate terms of reference for each commission of inquiry, and the presence of a clear political commitment to an independent, effective investigation. In addition, when filing lawsuits against perpetrators of human rights violations that occurred in the past, strong and serious efforts must be made to institute adequate and fair legal proceedings, including the strengthening of the judiciary and the local court system, giving these efforts the same attention and priority that are given to measures for preventing future violations.

Filing Lawsuits

The establishment of criminal justice system is an essential part of addressing the massive violations of human rights in Syria. Lawsuits must be brought against individual perpetrators, and prosecutions should seek to restore the dignity of the victims and restore Syrian citizens' confidence in the rule of law.

The lawsuits will include criminal investigations and legal proceedings against the perpetrators of war crimes and crimes against humanity that took place in Syria during the revolution. These trials should specifically seek to target the upper ranks of the Assad regime, both those responsible for giving orders to commit violations and those who oversaw the execution of such orders. Even members of the armed opposition must be held accountable, and their trials should be conducted in accordance with international standards in order to avoid any challenges to these trials' legitimacy.

There will undoubtedly be some controversy regarding the ability of the domestic Syrian courts to hold perpetrators accountable. If the domestic courts prove incapable of conducting these trials, Syria may have no choice but to conduct judicial proceedings at the international level or via hybrid tribunals.

The post-Assad transitional government can invite the international community to assist in the establishment of hybrid courts presided over by Syrian judges and advised by international judges, all operating under the supervision of the United Nations. This hybrid court system will simultaneously uphold both Syrian and international law, resorting to international law only when the Syrian law code falls short. The courts can also rely on the provisions of various international treaties that Syria has signed in order to develop their procedures. Mixed courts ensure that the Syrian population feels a sense of ownership regarding judicial proceedings while at the same time bringing international legitimacy to the court's rulings.

One of the most significant challenges will be to file lawsuits against individuals in an unbiased manner. While challenging, this is an important central objective in order to ensure for the Syrian public that the court is not acting in a selective or vengeful way. Syrians must feel that the age of impunity is over and that a new era of transitional justice and accountability will be capable of building a new, just Syria.

Compensation

In light of widespread violations of human rights, it has become incumbent upon governments to not only address the perpetrators of these abuses but also to guarantee the rights of victims. In this regard, governments can create the appropriate conditions to preserve the dignity of the victims and to ensure justice through methods of compensation for the damages and suffering they experienced. The concept of compensation has several meanings, including direct compensation (for damage or loss of opportunity), restitution (moral and mental support for victims in their daily lives), and recovery (restoring what has been lost as much as possible). Compensations can be distinguished by their type (physical or moral) and their target groups (individual or collective). Physical compensation can be made by giving money or material goods. It can also include the provision of free or preferential services, such as health, education, and

housing. Moral compensation can be made by issuing a formal apology, by dedicating a public place (e.g., a museum, park, or monument), or by declaring a national day of remembrance.

Compensation (whether material or moral) has numerous and various objectives, including admitting the grace of victims (groups and individuals), implanting the remembrance of the violations in the collective memory, promoting social solidarity with the victims, giving a concrete response to demands for remedies, and creating the appropriate environment for reconciliation through the restoring of the victims' confidence in the state. Above all, the principle of compensation has become mandatory under international law. The proposed National Commission for Transitional Justice and Reconciliation in Syria will play a key role in identifying the kinds of compensation that are appropriate for all of Syria's victims through a number of committees that will consider every possible means of reparation.

Institution Building for the Future

Syria will need to make comprehensive reforms—including of its institutions, laws, and policies—in order to achieve its long-term social, economic, and political objectives, and to avoid any civil or democratic collapse in the future.¹² The general objective of these institutional reforms will be to remove the conditions that gave rise to the conflict or repression. Therefore, the National Commission for Transitional Justice and Reconciliation in Syria will ensure institutional reform by:

- Restructuring state institutions that were complicit in acts of violence or abuse.
- Removing any long-standing racial, ethnic, or sectarian discrimination, which some feel was perpetrated by the Ba'ath Party in state institutions, especially within the armed forces and security institutions.
- Prevent the former perpetrators of human rights violations from continuing to benefit from holding positions in public institutions.

It must be stressed that without reforms in certain areas such as the judicial system, Parliament, and the state security services, any accountability process will almost certainly be

¹² See International Center for Transitional Justice, *Annual Report of the International Center for Transitional Justice, 2003/2004* (New York: International Center for Transitional Justice, 2004).

incomplete, and thus will fail to build credibility among the general public. Without such reforms, it will be difficult for citizens who have learned to look at the police, army, and government with suspicion to believe in the usefulness of any proceedings, including the accountability of those institutions. In order to ensure the credibility of government institutions, Syrians should be confident that the institutional cultures that allowed or fueled violations of human rights have been evaluated and corrected once and for all.

Reform of the Security Forces and Intelligence Agencies

During the Syrian revolution, the mission of the police to enforce order has often been understood as a green light to commit political crimes. National police officers have often colluded with the intelligence services in the commission of gross violations of human rights, including ignoring rights in relation to inspection, orders of arrest, and detention procedures, leading to beatings, torture, and murder.

Once the Syrian conflict ends, the focus should shift to mental reforms, realizing that the duty of the police officer is to act professionally, to maintain the rule of law, and to respect the human rights of all citizens. However, the recovery of such a mentality is not easy. Even if the complex relations between the systems of the state police and other security agencies were to be disconnected, it is very likely that the reforms would face resistance from within the system itself from officers and officials who fear losing power and facing the consequences of their actions, and reject the notion of external intervention.

Therefore, a reconstructed police force is characterized by professional conduct, nondiscrimination, and integrity, all of which require a comprehensive approach to institutional reform including reforms in the areas of employment, and the retraining, restructuring, and reform of management and of reporting and control measures. The *Syrian Expert House* recommends the following three goals for police reform (which were successfully met by the international peacekeeping forces in Bosnia):

- Restructuring of the police forces;
- Reform through the application of new procedures for training, selection, and certification;
- and

- A democratic method for establishing a police force that is not subject to political matters; is fair, accountable, and multiethnic; and believes in the principles of a community police force.

Furthermore, this reform can contain a comprehensive strategic set of elements, including the adoption of an ethical institutional charter; working on public education and retraining of the police based on new political procedures; the application of administrative, communications, and management procedures to promote transparency and control; the application of corrective measures to ensure discipline; providing a means for complaint and evaluation; and reviewing recruitment procedures to encourage participation in the police force so that all communities are represented on the force without discrimination.

The culture of impunity that was institutionalized in Syria during Assad's rule, and encouraged the perversion of the intelligence agencies, must be resisted by encouraging a nondiscriminatory employment policy for all Syrians. In Northern Ireland, for example, 88 percent of the police officers in the Northern Ireland Royal Police in 2000 were Protestants, and only about 8 percent were Catholics. Needless to say, the Catholic population felt that the police in Northern Ireland were not defending their interests. The same applies to the Syrian security services, in that more than 80 percent of its staff belongs to the Alawite sect (it is almost the same percentage in the military), although the proportion of Alawites in Syrian society does not exceed 10 or 12 percent.¹³ Therefore, the vast majority of Syrians feel that these forces do not represent them nor seek to ensure their safety. Therefore, an adjustment of the representation within the police forces could have a double benefit: first, to preempt further police abuse perpetrated against citizens; and second, to restore public confidence in the integrity of the police force.

Effective and objective control is a prerequisite for ensuring respect for the new procedures. Therefore, the *Syrian Expert House* recommends the creation of new institutions to achieve this end, including bodies of civilian control, a national committee for human rights, a Supreme Audit, an office of grievances (to receive complaints against officials of the state and to investigate them), and an office for fighting corruption, which also must develop programs and policies for fighting corruption.

¹³ For more on this, see Radwan Ziadeh, *Power and Intelligence in Syria* (Beirut: Dar Riad Al Rayes, 2013).

Restructuring Institutional Reforms

In the context of reforming abusive institutions, as in all other areas of transitional justice, numerous challenges are presented by the existing political climate, the available resources, and the need to draft a project with realistic targets. Among the lessons learned from past attempts to reform abusive institutions is that the efforts made to achieve reform in quantity and quality should not exceed the local capacity in terms of institutional structure as well as human and financial resources. Making such a mistake could take the reform process backward instead of forward. Another related lesson is to pay attention to the risks that could be involved in isolating people from public office (especially former officials of the police force, the army, and the intelligence services, who often become criminals after they are terminated from state institutions). Therefore, this challenge should be anticipated by allowing review and inspection bodies to devise ways to prepare those officials for a new life. In the transitional periods in particular, where levels of unemployment and crime are high, civil programs in retraining and teaching should be considered, in addition to other methods of permanent economic reintegration.

However, such formulated actions should be taken with great caution to ensure that they do not resemble rewards for past abuses and perpetrated violations. Institutional reforms must also be carried out in a fair and transparent manner, while ensuring broad popular participation (including NGOs and civilian populations) in both the consultation processes and the formulation of institutional reforms. Moreover, such reforms should be designed with attached mechanisms that are aimed at reducing the likelihood of recidivism and relapse. Examples of these mechanisms include the application of systematic observations and keeping accurate records and analyses of the model. Monitoring and evaluation are necessary to ensure compliance and may necessitate the establishment of new institutions that are independent of surveillance institutions.

Finally, and perhaps most importantly, the reform of arbitrary or abusive institutions should be considered a long-term process. It takes many years before the success or failure of new laws and institutions can be discerned; thus it is necessary to work in this area with will power but without haste.

Memorialization

Memorialization can be accomplished by way of an event, occurrence, or building being used as a tool of remembrance. Moreover, remembrance can entail formal commemoration (e.g., the establishment of a monument) or informal commemoration (building a wall in a community.) In other words, remembrance can be done in an official way by the state or voluntarily by citizens. People seek to commemorate the events of the past for many reasons, including the desire to evoke the memory of the victims and/or to identify them, to educate people about their past, to increase community awareness, to support or amend a historical narrative, or to encourage the adoption of the commemoration and the transitional justice process at the local level.

Understanding the needs of victims and their families, along with the needs of survivors of mass atrocities and brutal violations of human rights, represents one of the key elements of transitional justice. Despite the lack of a single procedure for dealing with the past, the victims and their organized associations often seek a number of objectives as part of transitional justice, including the achievement of justice and prosecution, truth-telling, reparations, ensuring that past atrocities are not repeated, and simply remembering. Remembering the past symbolically honors those who died or were sacrificed. However, remembrance can also contribute to the achievement of other objectives of transitional justice, including searching for the truth, guaranteeing non-repetition in the future, stimulating a dialogue and discussion about the past, establishing an accurate historical record, listening to the voices of victims, and pursuing the objectives associated with reparations for victims.

The struggle over the control of the national memory, or “collective memory,” is at the heart of the accountability process following the end of the conflict or the fall of the regime. Two different narratives for the Syrian conflict will exist in Syrian society. Human rights activists and victims may feel deeply aggrieved by efforts of the new government (or the old) to create an official final narrative of the past. Certain transitional justice strategies—such as the creation of a truth commission—are seen as necessary steps in the direction of remembrance; however truth commissions alone are insufficient. The official truth commissions become a rigid part of the new official narrative of the past, but the actual memory and keeping it alive is extremely difficult. From this perspective, the challenge is for the narratives not to be forgotten.

The requirement to never forget what happened to victims of human rights violations in the past necessitates a discussion about what to teach in schools, how the victims should be remembered, and whether people will continue to listen to the voices of the victims, even after the publication of the report of the truth commission or the successful completion of trials of human rights violators. Even if history books ensure the telling of the stories of victims, remembrance must still make people engage in a dynamic, long-lasting dialogue, not only about the past—and events and their implications—but also about how the present can benefit from the past and how the suffering communities can better prepare for the future.¹⁴

Transitional Justice and National Reconciliation

Transitional justice alone establishes national reconciliation, and the legacy of reconciliation has roots far back in Arab-Islamic history.¹⁵ The term “national reconciliation” dates back to the historic French leader Charles de Gaulle, and was later used by French politicians Georges Pompidou and François Mitterrand, when addressing the responsibilities and erasing debts for past crimes that occurred under French occupation during the Algerian war.¹⁶

When de Gaulle returned for the first time to Vichy France and gave his famous speech about the unity and uniqueness of France, he formed the concept of national reconciliation to support his campaign to liberate France. Pompidou did the same when he spoke at a famous seminar about national reconciliation, overcoming divisions, and forgiving Touvier, the Nazi collaborator who betrayed France to the Germans during World War II. The same concept was the subject of Mitterrand’s speech when he declared that reconciliation was the guarantor of national unity and refused to accept that France would be responsible for the crimes perpetrated under

¹⁴ Volkan, Vamik D., *What Some Monuments Tell Us about Mourning and Forgiveness, Taking Wrongs Seriously: Apologies and Reconciliation*, Edited by Elazar Barkan and Alexander Karn, Stanford University Press, 2006, P.115-130.

¹⁵ Irani, George Emile, “Apologies and Reconciliation: Middle East Rituals,” in *Taking Wrongs Seriously*, ed. Barkan and Karn; Abdel Hussein Shaaban, *The Jurisprudence of Tolerance in Arab Islamic Thought: Culture and the State* (Beirut: Dar al-Nahar, 2005).

¹⁶ See Jacques Derrida et al., *Tolerance and Reconciliation Policies Memory*, translated by Urban Hassan (Casablanca: Toubkal, 2005), 7.37.

Vichy rule, which he described as an illegitimate authority and representative only of an extremist minority.

Nelson Mandela also used this concept in South Africa when he was still imprisoned. He saw it as his duty to negotiate under the principle of general amnesty, which would grant the return of exiled members of the African National Congress and achieve national reconciliation, without which the country would be vulnerable to further conflagration, bloodshed, and revenge killings. Reconciliation is a form of transitional justice necessary to simultaneously reestablish the nation on the basis of legal, pluralistic, and democratic legitimacy.

There is no way that Syria will be able to escape from its deep social rifts following the end of the conflict unless a historic decision is made to institute a comprehensive national reconciliation program. Reconciliation represents a culmination of all the phases of transitional justice referred to above, and thus it can enable the Syrian society to overcome its deep social and sectarian divisions by creating a national partnership for building a new future.

Recommendations

In order to implement the proposals presented in this paper, Syria will work to achieve the following goals:

- The establishment of a documentation and auditing committee whose main purpose will be collecting and verifying the names of the victims and their families.
- Training documentation staff to gain knowledge about similar experiences from other countries, such as the Truth and Reconciliation Committee in South Africa, the Equity and Reconciliation Committee in Morocco, and similar entities in Chile and Peru.
- Achieving community dialogue in Syria regarding general human rights issues by focusing on areas such as accountability, justice, enforced disappearances, and prisoners of conscience.
- Revealing the truth about human rights violations committed in the past, seeking to expose the truth to public opinion, and compensating the victims of enforced disappearances and their families both morally and financially.

- Adopting and supporting political, social, and cultural development programs based on need.
- Seeking to adopt constitutional and legislative reforms in human rights, security, and justice and endorsing a national strategy against impunity to hold those who committed human rights violation accountable via active participation from the community, while promoting the principle of separation of powers, and protecting the judicial authority from any interference from the executive authority.
- Prohibiting the enforced disappearance, arbitrary detention, genocide, torture and any other forms of cruel and unusual punishment, racism, insult, or prohibited discrimination, and any incitement of racism, hatred, and violence, and any other crimes against humanity.
- Clarifying and disseminating the legal framework and regulatory texts regarding the authority and organization of security forces, limiting intrusion during operations, surveillance systems, and evaluating the performance of security forces, as well as the administrative authorities assigned to maintain order and those who have the authority to use force.
- Urging civil society, civil organizations, and NGOs to file lawsuits against the perpetrators who committed extrajudicial killings, torture, or enforced disappearances against civilians, while maintaining the privacy of the victims. Such a process should occur according to the active penal law code. In addition, encouraging civil society organizations and NGOs to report the cases of missing individuals to human rights committees and the Committee on Enforced Disappearances of the United Nations, assisting the families of the victims on how to report their cases while fully explaining to them that such procedures will lead to revealing the fate of the missing person. Furthermore, families should realize how essential it is to file these cases despite limited resources to close missing persons' files.
- Filing discrimination lawsuits on behalf of victims of torture, prisoners of conscience, and those who were subject to enforced disappearance—especially those who have suffered in the past thirty years and during the Syrian uprising. Such lawsuits must be based on Syrian law and the international human rights standards that the Syrian government has ratified.

- Working on acquiring the necessary experience to qualify certain individuals and organizations to assist victims of torture, prisoners of conscience, and the family of the enforcedly disappeared. This process should be based on similar experiences in other countries along with the assistance of the expertise of international organizations.
- Emphasizing the humanitarian side and the suffering endured by the families of the missing individuals during the process. For example, instead of completely focusing on the documentation process and legal procedures, a website can be developed to honor Syria's victims. Moreover, the families of the victims can connect with other individuals who have had the same experience, whether in Syria or in other post-conflict countries.
- The suffering endured by the families of the victims must be addressed. This includes issuing an apology by the transitional government, providing them with compensation, and establishing a national institution specialized in psychological and social rehabilitation of victims of torture, prisoners of conscience, those subject to enforced disappearance, and victims of enforced disappearance who were released. Moreover, offering the families of enforced disappearance victims guidance and advice on how to follow the progress of their case at various levels, and printing and disseminating publications specifically for that purpose. In fact, there has not been any guide for dealing with this issue for the families of missing individuals on which they can rely.
- Determining the locations of detention facilities and secret prisons so they can be subject to legal observation and control. Also, prohibiting detentions from being conducted by the security intelligence agencies, which are countless and difficult to subject to any form of control. In addition, holding the security agencies accountable if they are proven to have been involved in enforced disappearances.

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