Failure of International Justice in Syria

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Background

The Assad regime continues committing 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.

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 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 a national reconciliation carried out through a comprehensive transitional justice program. Transitional Justice in Syria will produce the research necessary to implement such a program.

As transitional justice experiences across the world have taught us, reconciliation is closely linked to the path of political transition and depends mainly on the political will and vision of both the actors and the political forces on the ground. Unfortunately, Syria has practically no history of political participation aside from complete domination of the regime-supported Baath party. This leaves Syria with few options when considering to whom to turn in order to design and implement post-conflict reconciliation programs.

The Transitional Justice Process in Syria

It will not be possible to start a genuine process of transitional justice in Syria without a complete cessation of violence. As transitional justice experiences across the
world have taught us, reconciliation is closely linked to the path of political transition, and it depends mainly on the political will and vision of both the actors and the political forces on the ground. The launching of transitional justice processes can let victims feel 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, Syrians without exception will feel that there is a path toward national reconciliation.

Launching the transitional justice process in Syria will be one of the most difficult and complicated processes that the Syrian community will face after the fall of the regime. If we take into account the division of the society that is taking place in Syria today, it will not be possible for the Syrian judicial system to be ready to launch a domestic accountability process. However, there is the option of resorting to international justice. The crimes against humanity that have occurred in Syria since March 2011 certainly fall within the scope of work of the International Criminal Court. However Russia, with its position in the UN Security Council, may prevent the referral of Syrian criminals to the Court. Nevertheless, any future government formed after the fall of the Assad regime should ratify the Rome agreement, which will enable a prosecutor to open an investigation into these crimes.

However, the path of international justice is certainly not an ideal choice. It is too slow, and the process could be undermined through political compromises. Therefore, it seems that holding hybrid courts is the best option for Syria and Syrians. Hybrid tribunals will 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. Hybrid courts are superior to other options, because it grants ownership of the judicial process to Syrian while still ensuring that all international standards are upheld. Revenge will not be the goal of this process; the toughest standards of justice and international transparency will be guaranteed. The goal is not to target a specific religious group and hold them accountable, but to establish a course of justice that can ensure the establishment of the future Syria on valid grounds. And at the same time, it gives more confidence to the international community regarding 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.

Transition and Transitional Justice:

Transitional justice links two concepts: justice and transition. But the semantically accurate meaning of the concept is achieving justice during a transitional period experienced by a state. During the political transition after a period of violence or oppression in society, the community often finds itself burdened with the difficult task of
addressing human rights violations. Therefore, the state seeks to deal with the crimes of the past in order to promote justice, peace, and reconciliation. Government officials and nongovernmental organization activist prefer various judicial and nonjudicial avenues to address human rights crimes, using several approaches to achieve a sense of justice that is more comprehensive and far-reaching. For example, transitional justice has been approached in a variety of ways: lawsuits for violations of individuals, as in Kosovo; or establishing fact-finding initiatives to address past abuses, as in Sierra Leone; or a process of reconciliation in divided societies, as in East Timor.

Any future transitional justice program in Syria should work to establish fact-finding and commissions of inquiry, allow the filing of lawsuits, establish a framework for compensating victims, and invest in institution building for the future.

Commissions of inquiry will conduct investigations regarding extrajudicial killings, torture cases, prisoners of conscience, and enforced disappearances. However, the commissions should not be equated with or considered substitutes for trials. The commissions are nonjudicial organizations; therefore, their terms of reference and powers are less than the powers of the courts. Also, commissions of inquiry have no authority related to prisons, or any capability to enforce or to execute their recommendations, and will likely lack the power to compel any person to be present in front of them.

The establishment of criminal justice is an essential element 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. These must include criminal investigations and legal proceedings taken against the perpetrators of war crimes and crimes against humanity that took place in Syria during the revolution. Suits should specifically seek to target the upper ranks of the Assad regime: those responsible for both giving orders to commit violations, and those who saw the orders carried out. Even members of the armed opposition must be held accountable, and their trials should be conducted according to international standards to avoid any challenges to these trials’ legitimacy. One of the most important challenges, however, is to bring suits against individuals in an unbiased manner, the reason being that the Syrian public must be convinced 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.

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. Governments can create the appropriate conditions to preserve the
dignity of the victims and ensure justice by using methods of compensation for the damage and the suffering that the victims 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 type (physical or moral) and target (individuals or the collective). Physical compensation usually involves the distribution of 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.

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. The general objective of these institutional reforms will be to remove the conditions that gave rise to the conflict or repression. Therefore, the Syrian Expert House recommends:

- 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 be almost certainly incomplete, and thus it will fail to build credibility among the general public. 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. If they are expected to do so, they should be confident that the institutional cultures that allowed or fueled violations of human rights have been evaluated and corrected once and for all.

**Recommendations**

To implement a comprehensive and successful transitional justice and national reconciliation program in post-conflict Syria, any future government have to do the following:
• 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, while promoting the principle of separation of powers and protecting the judicial authority from any interference from the executive authority.

• Prohibiting enforced disappearance, arbitrary detention, genocide, any other crimes against humanity, torture, and any other forms of cruel and unusual punishment, racism, insult, or prohibited discrimination, and any incitement of racism, hatred, and violence.

• Clarifying and disseminating the legal framework and regulatory texts regarding the authority and organization of security forces, limits of 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. Furthermore, families should realize how essential it is to file these cases despite limited resources to close missing persons’ files.
• Filling discrimination lawsuits on behalf 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 of 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 Web site 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 the issuing of an apology by the transitional government, providing victims with compensation, and establishing a national institution specialized in the field of the psychological and social rehabilitation of victims of torture, prisoners of conscience, and the enforcedly disappeared.

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.