

Transitional Justice and National Reconciliation



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 departs from traditional principles regarding the protection of the sovereignty of states, stating that sovereignty is not a right—it is a responsibility. R2P argues that when a regime commits war crimes and crimes against humanity, it loses its sovereignty, and the international community then has the right to take necessary measures to protect civilians and prevent further crimes against them.

The international community has abandoned Syrians to die at the hands of their government. Indiscriminate aerial bombardment has taken the lives of more than 20,000 civilians so far,¹ and Bashar al-Assad’s forces have made extensive use of 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 or for the amount of destruction done to residential areas and infrastructure.

If one compares the conflict in Syria with other conflicts that have occurred throughout the world and have been labeled “civil wars,” it is 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. If we conduct a simple comparison of the number of victims in Syria with the number of victims in countries in which a civil war has actually occurred—in Peru, for example—we can see that the conflict in Peru, which lasted for twenty years, from 1980 to 2000, and had more than 70,000 victims,² is nearly incomparable to the 100,000 victims in Syria during only the past two years. According to the final report of the Truth and Reconciliation Commission, the number of victims has risen from 1,000 per month at the start of the revolution to 5,000 per month today.³ If Assad is allowed to continue his war against the Syrian people, the number of victims can be expected to exceed 250,000.

It will not be 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

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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 and daughters 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 that their representatives will take 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 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 an accountability process. This is because of the position of al-Assad and his militia, and his escalation through intimidation and provoking the Syrians against each other and, most recently, the establishment of the so-called Army of National Defense, which is practically a governmental institutionalization of al-Assad's semiregular militias (al-Shabiha).

There is the option of resorting to international justice, because the crimes of Assad in the war and his crimes against humanity are certainly 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. Any future government formed by the opposition or 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. The path of international justice is certainly not an ideal choice; it is too slow, particularly because the Syrian victims need their rights to be guaranteed, and not be ignored in any political compromises. Therefore, it seems that holding hybrid courts is the best option for Syria and Syrians. The 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. The necessity of international experts participating in hybrid courts 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 a specific religious group and hold them accountable, but to establish the 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. Syrians will need the international community, which failed them before, to rebuild their country and construct their future institutions in all conditions, and confidence building in it, which is a very important issue. But they should also realize that there are limits to the help that can be provided by the international community and that they must ultimately rely on themselves alone to build their democracy.

In order to prepare transitional justice programs in Syria, the Syrian Center for Political and Strategic Studies hosted a conference attended by a large number of representatives of political forces, associations, civil society organizations, human rights activists, judges and lawyers, and family members of the

victims of the conflict. The conference witnessed the birth of two important initiatives: the Association for the Defense of the Victims of the Syrian Revolution—which will serve as the voice of justice for the victims of the conflict—and the National Preparatory Committee for Transitional Justice, which will develop programs, perceptions, and policies necessary for the future transitional justice phase.

Many societies, particularly in Africa and Latin America, have experienced what Syria experienced in the 1980s and what Syria is experiencing today. But these societies were able to transcend the dark periods in their history by opening a new page based on truth, accountability, justice, and then reconciliation—so-called transitional justice. Transitional justice refers to a field of activity or investigation focusing on communities that have a legacy of human rights violations, genocide, or other forms of violations, including crimes against humanity and war crimes or civil war, and 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.⁴

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.⁵ 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 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.⁶ Thus, government officials and nongovernmental organization (NGO) activists 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;⁷ or a process of reconciliation in divided societies, as in East Timor.⁸

The establishment of a culture of accountability, instead of impunity, gives a sense of security to the victims and sends a warning to those who are thinking of committing violations in the future. It also gives a measure of fairness to the suffering of the victims, and helps to curb the tendency to practice vigilante justice or retribution. And it provides an important opportunity to strengthen the credibility of judicial systems suffering from corruption and destruction, or that did not function properly in the past.

The National Preparatory Committee for Transitional Justice, a committee of highly regarded Syrian judges, lawyers, human rights activists, and academics (formed to conduct exhaustive research on transitional justice and present specific recommendations for a future Syrian transitional justice program) is making great efforts to open a dialogue with civil society representatives in order to make transitional justice a priority after the fall of the regime. Therefore, the Syrian Expert House recommends that the interim government support the National Preparatory Committee by legally transforming it into a formal institution under the name of the “National Commission for Transitional Justice and Reconciliation” and then build its capacity and facilitate its efforts in every possible way. The next section describes in detail how this commission will function.

THE NATIONAL COMMISSION FOR TRANSITIONAL JUSTICE AND RECONCILIATION

The National Commission for Transitional Justice and Reconciliation will focus on achieving four key objectives: fact-finding and commissions of inquiry, filing lawsuits, compensation, and institution building for the future. It is useful to briefly examine each objective.

1. Fact-Finding and Commissions of Inquiry

The National Commission for Transitional Justice and Reconciliation will gather all the databases containing evidence of human rights violations currently maintained by Syrian human rights groups and will form commissions of inquiry for conducting investigations regarding 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 to reveal all the facts regarding conflict-related violence, whether perpetrated by the state or nonstate actors. But the establishment of such committees must be done after efforts have been made to ensure that there are an expanded national consultation process, appropriate terms of reference for each commission of inquiry, and the presence of a clear political commitment that will allow an independent, effective investigation. In addition, when seeking a lawsuit against the perpetrators of the human rights violations that occurred in the past, strong and serious efforts must be made to institute adequate, fair legal proceedings, including the strengthening of the judiciary and the local court system, and these efforts must be given the same attention and priority as the necessary measures to prevent future violations.

The commissions of inquiry that will be created by the National Commission for Transitional Justice and Reconciliation 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, they have no authority related to prisons, or any capability to enforce or to execute their recommendations, and most of them lack the power to compel any person to be present in front of the commissions.⁹

At the same time, the National Commission should encourage civil society to carry out transitional justice initiatives and indirectly support its work. Indeed, many NGOs—such as the Syrian Network for Human Rights, the Local Coordinating Committees, the Damascus Center for Human Rights Studies,

and the Syrian Observatory for Human Rights—have documented the violations and abuses perpetrated by the Assad regime, often at great personal risk for the activists.¹⁰ An impressive cross-authentication system has emerged from the work of these groups, resulting in a large number of well-documented violations that have already been used by the United Nations Human Rights Council and can be used by the National Commission in the future.

The powers of the commissions of inquiry established by the National Commission should be as follows:

- ▶ The commissions are temporary; their work will last from one to two years.
- ▶ The commissions are officially defined as mandated by the Transitional Government, and derive their powers directly from it.
- ▶ These commissions are nonjudicial and are legally independent.
- ▶ Each commission will conclude its work by publishing a final report containing conclusions and recommendations.
- ▶ The commissions will focus on human rights violations and sometimes humanitarian standards.¹¹

The National Commission for Transitional Justice and Reconciliation should benefit from the experiences of other countries that have convened transitional justice and truth commissions. Since 1974, more than twenty-six truth committees have been established, under various different names. Argentina, Uganda, and Sri Lanka established “Special Disappearances Committees”; Haiti and Ecuador established “Truth and Justice Committees”; Chile, South Africa, Sierra Leone, and the former Republic of Yugoslavia established “Truth and Reconciliation Committees”; East Timor established a “Commission for Reception, Truth, and Reconciliation”; and, most recently, Morocco established the “Equity and Reconciliation Committee.”

The National Commission for Transitional Justice and Reconciliation should work to achieve the following:

- ▶ Seek and establish the truth regarding the grave human rights violations perpetrated by the Assad regime against the Syrian people.
- ▶ Hold accountable the perpetrators of human rights violations by providing evidence to courts and tribunals.
- ▶ Hold general forums for the victims to encourage a public debate on issues of transitional justice and reconciliation.
- ▶ Give recommendations regarding compensation for the victims via direct dialogue.
- ▶ Give recommendations for necessary legal and institutional reforms.
- ▶ Promote social reconciliation at multiple levels of society, the most important being the grassroots level.
- ▶ Help strengthen the democratic transition.¹²

Therefore, the Syrian Expert House recommends that the National Commission for Transitional Justice and Reconciliation organize a number of public hearings, to give the victims a forum to talk about their suffering. These hearings will break the sectarian barrier when they show that the victims belong to various sects. And they will play an important role in social healing, after the intense violence that Syrian society has experienced in the last two years.

2. Filing Lawsuits

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.

Trials 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. These trials 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.

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 in the places in which the Syrian law code has gaps. 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 important challenges 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.

3. 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. Governments can create the appropriate conditions to preserve the dignity of the victims and to ensure justice using methods of compensation for the damage and the suffering that 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 types (physical and moral) and the targeted groups (individual and 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 National Commission for Transitional Justice and Reconciliation 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.

There is also a need for a Committee for Compensation and Reparation because the compensation of Syria's victims perhaps presents the greatest moral, legal, and political challenges, particularly for massive government-run programs. A range of considerations and challenges must be considered during the design of material reparation programs. It is necessary to first clearly define the "victims," or categories of beneficiaries, in order to be able to decide who deserves access to such compensation. Unfortunately, due to the limited nature of any state's resources, the wider the category, the lower the amount of compensation for each victim. Conversely, if "beneficiary" is narrowly defined, the government could be inadvertently excluding a large number of legitimate victims.

The second consideration for the commission is to decide whether compensation will be distributed directly to individuals or to groups that have been wronged en masse. It is no surprise that structuring

compensation in the form of collective grants often involves political gains that could include a larger number of beneficiaries, but the value of restitution is minimal in most cases. Usually, these types of programs are viewed as normal social development efforts, and not necessarily as compensation for damage done to victims. These considerations make this kind of program subject to political and financial excesses. Conversely, this kind of compensation's advantage is that it provides redress to individuals, although it is less influential and extensive.

The third challenge is to organize compensation in the form of an integrated set of services (e.g., medical aid, education, and housing), or an exchange of payments, or a combination of the two. Conducting compensation via the provision of integrated services may be more expensive and limits the autonomy of individuals to clearly receive a personal form of compensation. Additionally, the quality of provided services depends directly on the ability of the state to invest in public infrastructure and to conduct the programs in an effective manner.

The disbursement of financial compensation would certainly fill the real needs of the beneficiaries, provided that a minimum level of compensation that would have an impact was maintained. Moreover, if the amount of compensation is determined by only the amount of financial damage done to the victim, it will be neither adequate nor appropriate. Convincing the poor of Syria that financial reparations take precedent over social welfare programs will be difficult, but doing so will be vital for showing the government's commitment to compensating victims. Accordingly, it might be best—as a general rule—to structure compensation programs so they include both the provision of services and financial disbursements.

There are other significant challenges that a reparation program might face, including the need to determine the types of damages for which victims can be compensated. The Committee for Compensation and Reparation will need to decide if compensation will be administered for economic, physical, or psychological damage, and whether compensation levels will be based on the amount of damage, or of need, or both. Another challenge will be how to quantify the

extent of the damage (e.g., determining the amount of appropriate compensation to those who have lost their sight, been raped, or psychologically tortured) and then find the resources to fund compensation programs, particularly in light of the inevitable competition for limited funding for other social programs, not to mention the fact that international grants are not often given in the absence of significant domestic financial contributions.

It also needs to be decided if individuals or groups will receive the same amount of compensation no matter how different their cases, as well as how to distribute compensation (will money be disbursed via single payments, or in the form of regular payments, and what is the entity that carry out either option?). The committee will also need to determine the timetable of the compensation program; the impact of civil rulings, insurance payments, and other independent sources of compensation; and whether or not the receiver of that aid truly benefited from the compensation program or the amount of money given. The possibility of including former human rights violators in compensation programs should also be considered.¹³

It will also be important for the transitional government to seek to restore victims' legal ownership of property. Examples include performing procedures to assist residents who were forcibly displaced from towns and villages affected by indiscriminate shelling conducted by the Assad regime's forces. Other examples could include restoring ownership of stolen land or reintegrating victims into previously held jobs within the Syrian government. Second, it may be important in some contexts to develop special programs for the rehabilitation of victims, including psychological support and physical therapy or medical assistance for the many victims of physical and sexual violence. Third, a wide range of actions could be taken to provide redress for other damages, both for individual victims (e.g., finding final resting places for the dead) and victims in general (e.g., the formal recognition by the transitional government of regime-perpetrated crimes to open a new page, or customize public places and street names or care for special exhibitions, works of art, or building memorials and public monuments

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and museums—all of which are recommended by the Syrian Expert House).

The advantage of symbolic measures is that they are relatively achievable, can reach all parts of Syrian society, adopt a broad definition of victims, encourage the creation of a collective memory, and promote social solidarity. The inherent drawbacks of these measures are that they do not provide any financial compensation for the victims. Likewise, in the absence of other concrete compensatory measures, they may leave the victims inadequately compensated for the pains they have suffered.

4. 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.¹⁴ 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 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 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.

Moreover, the constitutional and legal reforms should accompany police reform. These constitutional and legal reforms aim to promote democracy, human rights, and the rule of law, and they could be relevant and visible in many areas, such as equity in wages; nomination of judges; fair assigning of positions, promotions, and disciplinary actions; election procedures; the independence of the media; freedom of access to information and the media; affirmative action; disarmament; the funding of political parties; and criminal law and penal procedures. Furthermore, the dynamics within the state apparatus do not allow for a diagnosis of simple reforms, because the reform of the state “security services” requires the reform of the army, police, judiciary, customs, immigration control, intelligence services, and many other related sectors. Thus, an attempt to change institutional structures and sensitivities within one institution would affect many others, and all the linkages between these different institutions are not always clear.

There could also be a need for a gradual insertion of a certain type of integrity and professionalism into

the institutions of the state—especially in three areas: the reform of the police, institutional reform (comprehensive reform of discrimination and/or the old era’s practices), and clearance policy (the prevention of the former perpetrators of human rights violations from continuing to benefit from holding positions in public institutions).

It is important to note that the institutions of the state do not exist in a vacuum, and the implementation of reforms in a field or an institution will always reflect and affect other areas and institutions. For instance, the reform of the police and the review of their recruitment procedures are both incomplete solutions, whether the goal is to punish violations of human rights or to prevent corruption. Therefore, they can and must necessarily be accompanied by full, comprehensive reforms and other measures capable of achieving prevention, accountability, and reparations.

Reform of the Security Forces and Intelligence Agencies

During the Syrian revolution, the mission of the police to impose order has often been understood as a green light to commit political crimes. The 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 among the systems of the state police and the other security agencies were to be disconnected, it is very likely that the reforms would collide with resistance from within the system itself from officers and officials who fear losing power, resent the consequences of their actions, and reject the need for any control or external intervention.

Therefore, a reconstructed police force is characterized by professional conduct, nondiscrimination, and integrity, which all require following a comprehensive approach to institutional reform (e.g., reform

in the areas of employment, retraining, restructuring, and reform of management/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 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 of 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 encouraged the perversion of the intelligence agencies, which must be resisted by encouraging a nondiscriminatory employment policy for all Syrians. In 2000, for example, 88 percent of the police officers in the Northern Ireland Royal Police were Protestants, and only about 8 percent were Catholics. There is no need to even mention that 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.¹⁵ Therefore, the vast majority of Syrians feel that these forces do not represent them nor seek to ensure their safety. So an adjustment of the proportions of

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.

Restructuring Institutional Reforms

In the context of reforming abusive institutions, as in all other areas of transitional justice, restrictions are posed 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 lesson linked to the first, especially in the field of testing, 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 the state institutions.) Therefore, this challenge should be anticipated by allowing the review and inspection body to think of ways to prepare those officials for a new life. In the transitional periods in particular, where levels of unemployment and crime are high, retraining and teaching civil programs can be considered, as well as other methods for more 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 that of NGOs and the civilian population in the consultation processes as well as the formulation of institutional reforms. Moreover, institutional reforms should come with attached mechanisms that are aimed at reducing the likelihood of recidivism and relapse (e.g., the application of systematic observation and keeping accurate records and analysis of the orientation/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 important, 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.

Cleansing Institutions of Corrupt Officials

The National Commission for Transitional Justice and Reconciliation should develop the necessary mechanisms to remove corrupt and incompetent staff members, along with those who have violated the law, from among government officials in order to build more effective, trustworthy institutions. It has become widely acknowledged that the investigation of persons to verify their eligibility to work, especially in the sectors of security and justice, is one of the basic measures needed to reform the government. Staff examination or screening means, in general, reviewing the private employment records of individuals in order to determine whether to employ or dismiss him or her from the workplace. The examination is often a central element in the reform of abusive institutions, and it is adopted by new governments as a way to isolate the individuals responsible for serious abuses of their positions in the public sector. The screening process involves an accurate review of the candidate's or employee's background, depending on many sources to determine whether a particular official was involved in previous abuses. In addition to that, the examination tends to develop procedures that ensure that the party subject

to the investigations understands the allegations and is given an opportunity to respond.

Conversely, there is a difference between screening and “cleansing,” a term that was used extensively in Central and Eastern Europe and used later in Iraq to refer to laws and policies that include the processes of isolation and dismissal, not according to the records of individuals but to their party affiliation, political positions, or continued involvement with a repressive intelligence system. Many of the cleansing laws were subject to criticism for violating essential standards of integrity during certain procedures, such as the imposition of punishment on the basis of collective guilt rather than individual guilt. Moreover, the principle of the presumption of innocence until proven guilty was violated. Also, restrictions were imposed on the positions that were held by election or appointment (in clear violation of the principle of nondiscrimination on the basis of the political attitude or position), and restrictions were placed on the rights to appeal in front of tribunals.

There are many pros to the screening process as one of the mechanisms for achieving transitional justice. Screening, for example, helps reduce the risk of new or continued violations, enhances public confidence in state institutions, contributes to removing barriers among prosecutions, and assists in the rehabilitation of officials who have had their reputations damaged unfairly as a result of their names being listed among those of corrupt officials within their organizations. Therefore, the screening and the cleansing processes can be seen as “bridges” between the old and new institutions, which are characterized by their transparency and accountability.

Screening procedures must be applied to officials in any institution, regardless of the person's reputation, years of service, or position. It may be prudent to invest resources and energy in the examination of small numbers of individuals holding the highest rank in the organization, and who have been involved in past abuses. In general, it is advised to rely as much as possible on all available legitimate sources of information to examine the person, including confidential government documents, court records / trial documents, internal complaints registered with the organization,

police investigation files, and reports from local and international NGOs that are involved in combating corruption and promoting human rights.

Examination mechanisms must conform to the basic principles of procedural fairness or legal practice. Efforts to prevent corruption or reform institutions must not resort to wrong practices. Therefore, those whom are to be dismissed from office should have the right to be informed of the accusations against them, to protest against these accusations before a screening committee, to appeal the decision before an unbiased body, and to be informed of these rights in a timely manner.

The screening committee should have the authority impose a range of sanctions. Naturally, it should also have the power to order the dismissal of officials and the authority to impose other penalties, such as a temporary ban from the civil service, prohibition from owning and using weapons, a reduction of pensions or limiting of other functional privileges, ordering the confiscation of property, or the payment of a fine to the state. For particularly serious violations, cases can be presented to law enforcement authorities for the taking of further action. The screening committee should also have the power to impose less severe penalties on those who have committed less serious abuses, or to persons who give evidence to alleviate their sentences. These lesser penalties could include mandatory leaves of absence, demotion, relocation, or lower wages. However, the examination committee may want to make the mitigation of sanctions conditional on the achievement of some other demands, such as participating in training programs, returning the property, providing services to the community, or cooperating with law enforcement authorities.

5. 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 / 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 the objectives 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 nonrepetition 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 located in the heart of the accountability process that will ensue 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 the new government or the old (should it survive) if either seeks to create an official final narrative of the past. Sometimes, certain transitional justice strategies—such as the creation of a truth commission—are seen as a necessary step in the direction of remembrance; but at the same time, this step alone is insufficient. The reason for this is that keeping the memory alive is extremely difficult, but the official truth commissions become a rigid part of the new official narrative of the past, and then the challenge that imposes itself from this perspective is that it not 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.¹⁶

Memorials embody the persons, events, or activities that were part of a particular historical moment. This category is quite broad and includes many artistic forms, including sculptures, memorial gardens, and museums of conscience. Therefore, the Syrian Expert House recommends transforming centers of torture and abuse (e.g., Tadmour and Sednaya) into memorial squares and building memorial walls in public places, such as Umayyad Square in Damascus, Assi Square in Hama, and Jabri Square in Aleppo. All these efforts will commemorate the victims and inspire a lively discussion of the past.

The building of a monument is a process that involves elements of politics, history, and aesthetics. The memorial, in terms of being an element of the process of nation building, is considered a part of a physical and social environment that can help identify and build a common understanding of a nation's collective experience, imagination, and self-perception. In addition, the memorials interact with all the people who shared in their establishment, the people who do not have any self-authority, and these memorials are thus activated by the people. Above all, the ultimate influential role of memorials and monuments is to commemorate the people who come to visit them.

TRANSITIONAL JUSTICE AND NATIONAL RECONCILIATION

Transitional justice alone establishes national reconciliation, and the legacy of reconciliation has

roots far back in Arab-Islamic history.¹⁷ The term “national reconciliation” goes back to the historic French leader Charles de Gaulle, and it was later used by Georges Pompidou and François Mitterrand, when the need to take responsibility for erasing debts and past crimes that occurred under occupation during the Algerian war was cemented in their beliefs.¹⁸

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

Nelson Mandela 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 and bloodshed, which would undoubtedly result in 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 Syrian society to overcome its deep social and sectarian divisions by creating a national partnership for building a new future.

ENDNOTES

- 1 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, June 13, 2013.
- 2 See Hatun Willakuy, *Abbreviated Version of the Final Report of the Truth and Reconciliation Commission in Peru* (Lima, 2004).
- 3 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>.
- 4 Louis Bickford, ed., *The Encyclopedia of Genocide and Crimes against Humanity* (New York: Macmillan Reference USA, 2004), 3:1045–47.
- 5 Neil Kritz, ed., *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, 3 vols. (Washington: U.S. Institute of Peace Press, 1995).
- 6 Alex Boraine, Janet Levy, and Ronel Scheffer, eds., *Dealing with the Past* (Cape Town: Institute for Democracy in South Africa, 1997); D. A. Crocker, “Reckoning with Past Wrongs: A Normative Framework,” *Ethics & International Affairs* 13 (1999): 43–61.
- 7 Priscilla Hayner, *Unspeakable Truths: Facing the Challenge of Truth Commissions* (New York: Routledge, 2002); Jose Zalaquett, “Introduction to the English Edition,” in *Report of the Chilean National Commission on Truth and Reconciliation*, edited by Chilean National Commission on Truth and Reconciliation and translated by Phillip E. Berryman (South Bend, Ind.: University of Notre Dame Press, 1993).
- 8 For more on this, see M. Cherif Bassiouni, ed., *Post-Conflict Justice* (Ardley, N.Y.: Transnational Publishers, 2000).
- 9 Mark Freeman and Priscilla Hayner, *Openness* (New York: International Center for Transitional Justice, 2004), 2.
- 10 *Mapping Accountability Efforts in Syria*, Public International Law & Policy Group, February 2013, <http://www.dchrs.org/english/File/Reports/mapping-accountability-efforts-in-syria.pdf>.
- 11 Hayner, *Unspeakable Truths: Facing the Challenge of Truth Commissions*.
- 12 Robert I. Rotberg, “Apology, Truth Commissions, and Intrastate Conflict,” in *Taking Wrongs Seriously: Apologies and Reconciliation*, edited by Elazar Barkan and Alexander Karn (Stanford, Calif.: Stanford University Press, 2006), 33–48.
- 13 Pablo de Greiff, *Reparation Efforts in International Perspective: What Compensation Contributes to the Achievement of Imperfect Justice* (New York: International Center for Transitional Justice, 2004).
- 14 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).
- 15 For more on this, see Radwan Ziadeh, *Power and Policy in Syria* (I.B. Tauris, 2011).
- 16 Vamik D. Volkan, “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.
- 17 George Emile Irani, “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).
- 18 See Jacques Derrida et al., *Tolerance and Reconciliation Policies Memory*, translated by Urban Hassan (Casablanca: Toubkal, 2005), 7.37. To implement the proposals presented in this chapter, Syria will work to achieve the following goals:

Recommendations

- 1 The establishment of a documentation and auditing committee whose main purpose will be collecting and verifying the names of the victims and their families.
- 2 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.
- 3 Achieving community dialogue in Syria regarding general human rights issues by focusing on areas such as accountability, justice, enforced disappearances, and prisoners of conscience.
- 4 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.
- 5 Adopting and supporting political, social, and cultural development programs based on need.
- 6 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.
- 7 Prohibiting the 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.
- 8 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.
- 9 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.
- 10 Filing 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.

11 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.

12 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 postconflict countries.

13 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 the field of the 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 to.

14 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.