

TRANSITIONAL JUSTICE

A Handbook for Journalists, Citizens and Activists

INSTITUTE FOR
WAR & PEACE REPORTING



**INSTITUTE FOR
WAR & PEACE REPORTING**



INSTITUTE FOR WAR & PEACE REPORTING

iwpr.net

IWPR Europe

48 Gray's Inn Road, London WC1X 8LT, United Kingdom
Tel: +44 20 7831 1030

IWPR Netherlands

Zeestraat 100, 2518 AD The Hague, The Netherlands
Tel: +31 70 338 9016

IWPR United States

729 15th Street, NW Suite 500, Washington, DC 20005, United States
Tel: +1 202 393 5641

© Institute for War & Peace Reporting 2013

Design: Srđan Pajić

All photographs: Alessio Romenzi

The Institute for War & Peace Reporting

IWPR.NET

The Institute for War & Peace Reporting gives voice to people at the frontlines of conflict and transition to help them drive change. IWPR empowers citizens and their communities to make a difference – building their skills, networks and institutions, supporting development and accountability, forging peace and justice.

Working in three dozen countries, IWPR's innovative programs are crafted to respond to the needs of the people they serve. Projects prioritise locally informed objectives and lead to sustainable outcomes. Beneficiaries include citizen and professional journalists, human rights and peace activists, policymakers, educators, researchers, businesses, and women's, youth and other civil society organisations and partners.

Headquartered in London with coordinating offices in Washington, DC and The Hague, IWPR is overseen by an international board of trustees made up of internationally recognized journalists and media professionals, business and financial sector executives, philanthropists and civil society leaders. Its 125-person global staff is led by an executive management team of experts in media and governance, program development and management, policy and advocacy, financial development, finance and human resources.

About IWPR's Programmes

The strength of IWPR's programming is rooted in its ability to help individuals and groups develop the knowledge, skills, relationships and platforms they need to communicate clearly, objectively, effectively, persuasively and safely and to use that knowledge and those tools to affect positive change. Projects and initiatives are developed in partnership with local organizations and are designed to meet the unique needs of the individuals and groups they will serve and the communities in which they operate.

IWPR'S GLOBAL PROGRAMMING FOCUSES ON:

- **Promoting Free Expression**

IWPR builds the skills of professional and citizen journalists working in traditional media (newspapers and magazines, radio, TV) and in social and new media (Facebook, Twitter, Internet news magazines and portals, blogs and other online vehicles). Programs train and mentor them to report fairly and objectively with the goal of achieving internationally recognized standards of reporting and analysis. Reporters, editors, producers, bloggers, and managers learn the value of producing substantive content that informs while helping to define the roles of citizens, civil society, government, the media, business and others in building fair, pluralistic, democratic systems that value and respect the opinions of all constituencies. Whether in repressive or closed societies, transitional environments, or democratically developing states, IWPR encourages the development and exercise of freedom of expression, assembly, and belief and uses journalism as a tool to advance peace and social justice.

- **Strengthening Accountability**

Working with international and local partners, IWPR supports the capacity of civil society and human rights groups to more effectively advocate for government and institutional accountability and transparency, with programming designed to reduce corruption, strengthen rule of law, and promote basic rights. It promotes and publicizes the work of international courts and tribunals that support justice and hold individuals and groups responsible for crimes against humanity. IWPR helps communities to more effectively fight against immediate and longer-term threats by building knowledge, empowering, and supporting citizen activism, and helps countries and regions to heal from conflict and war through support for transitional justice.

- **Building inclusive Societies**

IWPR has supported peace and reconciliation in conflict zones around the world for 20 years. These efforts, along with campaigns and activities that encourage free and fair elections, counter extremism, and enhance the ability of civil society organizations to be effective, are all critical to building societies that value and build on the strengths of all of their peoples, including their women, youth, minorities, and traditionally marginalized communities. Societies are most inclusive and cohesive, and strive for the benefit of all citizens, when economies are strong, people are healthy, and the populace is educated; hence, IWPR's focus on these areas of concern.

IWPR employs a skilled staff and expert consultants in a variety of fields to support its capacity-building activities and to assist in providing journalists, civil society and civic activists with the basic and advanced skills and knowledge that support sustainable and positive change. It employs tools and technologies in programming that encourages citizen understanding, participation, and involvement and builds local expertise. All programs and projects are measured and evaluated to ensure that future initiatives and those who participate in them benefit from valuable "lessons learned"

For more information please contact:

Susanne Fischer
Regional Programme Manager,
Middle East
susanne@iwpr.net

Duncan Furey
International Partnerships Director
duncan@iwpr.net

Thomas Baker
Programmes Coordinator
tom@iwpr.net

Transitional Justice

A Handbook for Journalists, Citizens and Activists

Written by

Mustafa Haid, Jeremy Sarkin, Marwan Maalouf, Mariam Abdullah, Youssef Kanaan, Alia Ahmad, Radwan Ziadeh and Wael Sawah.

Editorial support by

Peter Eichstaedt and Ben Gilbert.

June 2013

Table of Contents

About IWPR		03
Introduction	A Quest for Justice By Mustafa Haid	06
Chapter I	Transitional Justice is Key to Long-term Peace and Stability By Jeremy Sarkin	08
Chapter II	Lessons Learned from MENA Transitional Justice By Marwan Maalouf	10
Chapter III	Transitional Justice in Syria: Scenarios of Implementation By Mustafa Haid	13
Chapter IV	Options for Syria: Amnesty, Reparations and Compensation By Jeremy Sarkin	15
Chapter V	Vulnerable Groups: Women at Risk By Mariam Abdullah	17
Chapter VI	Engaging the Public: Civil Society in Transitional Justice By Youssef Kanaan	19
Chapter VII	Transitional Justice - The Role of Social Media By Alia Ahmad	21
Chapter VIII	Addressing Syria's Enforced Disappearances By Radwan Ziadeh	23
Chapter IX	Impartial Justice Requires Documenting and Collecting Evidence By Wael Sawah	25
Chapter X	Reforming the Syrian Justice System By Radwan Ziadeh	27
Chapter XI	Security Sector Reform in Post-Assad Syria By Wael Sawah	29

INTRODUCTION

A Quest for Justice

BY MUSTAFA HAID

On February 18, 2011, more than a hundred Syrians gathered in the Al-Hariqa quarter of downtown Damascus to protest the assault of a young man who had quarrelled with traffic police and had been severely beaten by three policemen.

The hundreds who gathered in Al-Hariqa as the shops were closing chanted, "The Syrian people shall not be humiliated."

Less than a month later, in early March, Syrian authorities arrested more than a dozen teenagers and children in the southern Syrian city of Deraa for spray-painting several city walls with the words, "The people want to topple the regime."

The next day, some 13 human rights activists who had been detained at the Adra prison outside Damascus began a hunger strike. They issued a statement demanding an end to the Syrian government's practice of arresting political opponents and refused to recognize the government-imposed state of emergency that had been in effect in the country for 48 years. The statement also denounced the false accusations and unfair trials the government used to punish political adversaries.

This was the beginning of the Syrian uprising two years ago, and protests only grew larger as more demonstrations were held in Damascus and Deraa in mid-March 2011. Then came death. The first casualty of Syria's uprising was killed in Deraa, on March 18, 2011, when parents demanded the release of their detained children and were confronted by security forces.

Following the killings in Deraa, protesters demanded the end of the state of emergency, the demolition of secret prisons and trials for those responsible for demonstrators' deaths.

Syrian government officials attempted to quiet the public outrage by declaring their intention to release the detained children, but the promises did little to calm the protests.

Despite the continued call for the release of political prisoners and trials for those accused of killing protesters, Syrian authorities did nothing except confront peaceful demonstrators with more violence, arrest and killing.

Consequently, on March 29, 2011, demonstrators in Deraa moved from demanding reforms to calling for the fall of the regime.

On April 2, 2011, six Syrian human rights organizations issued a statement that condemned the government's excessive use of violence as well as the "indiscriminate arrest of dozens of Syrian citizens" by Syrian security forces.

These organizations called on the Syrian government to meet seven demands. Demonstrators around Syria eventually adopted many of these requests:

1. Form a neutral committee to investigate the recent crackdown.
2. Lift the state of emergency.
3. End political arrests and release political prisoners.
4. Close the exceptional emergency courts and annul their rulings.
5. Legalise peaceful protest.
6. Abolish discrimination against Kurdish citizens.
7. Amend the constitution to conform to internationally accepted human rights

standards.

More demonstrations followed in April 2011 when a video appeared showing dozens of civilians in the village square of Baida, a community near the coastal city of Baniyas, on the ground with their hands tied as heavily armed security officers trampled, insulted and beat them while shouting slogans that supported President Bashar al-Assad.

The Syrian army and security forces subsequently attacked the city of Deraa with tanks, leaving hundreds dead or injured.

By the end of May 2011, banners in towns across the country were unfurled that called for President Assad to be put on trial. As more cities began to rebel, the chant could be heard throughout the country, "Good-bye Bashar, see you in The Hague," a reference to the International Criminal Court.

Government security forces then began attacking cities such as Hama and Deir El-Zor with heavy weapons, even as the holy month of Ramadan began in August 2011.

Syrians became frustrated as the killing and destruction escalated in Homs, Deraa and Baniyas; the United Nations Security Council remained deadlocked, with China and Russia vetoing efforts to condemn the Syrian government's crackdown.

When the late Libyan dictator Moammar Gadhafi was killed in Libya following months of revolution there, Syrians fighting against the government began to shout, "We're coming to get you," indicating their desire to see Assad meet a similar fate.

As the Syrian uprising gained momentum, the opposition became increasingly visible in the new media. Youtube videos, Twitter

and Facebook updates transitioned from featuring peaceful protests early in the uprisings to capturing a new phase of armed struggle against the Assad regime by mid-2012.

A number of factors pushed the Syrian opposition to take up arms against their government and to seek revenge instead of accountability and justice. They include:

- Ever-escalating levels of violence against the opposition by the Assad regime, including the use of heavy weapons such as tanks, artillery, helicopters, fighter jets and ballistic missiles.
- Massacres against civilians, especially women and children, which have been confirmed by the United Nations' Human Rights Council, and the increasing number of deaths due to torture and field executions.
- Failure of the Arab League of Nations and the United Nations observers to address the demands for accountability and justice, despite the extraordinary effort made by demonstrators and opposition fighters to document violations and arrange for field visits for the observers to enable them to witness the crimes of the Assad regime.
- Failure of the United Nations' Security Council to refer the Syrian case to the International Criminal Court, and the absence of any regional or international initiative to hold members of the regime accountable.
- Absence of state institutions and the rule of law, or any substitute for them, in the areas controlled by the opposition.

While many Syrians have grievances against their government, it seems that the civil war in Syria is likely to continue for the near-term.

Today in Syria, the opposition has no clear organizational structure. In addition, the conflict has seen the emergence of Salafist and jihadist militias, who also battle

the Assad regime, but under their own leadership.

Meanwhile, a number of pro-regime militias have joined the fight against the Syrian opposition alongside the Syrian military. Of late, sectarian discourse and practises have emerged. In most areas, the only form of justice found is that which the victor imposes.

As of this writing, the Syrian rebellion against the government led by President Bashar al-Assad continues in its struggle to find victory, peace, and most importantly, justice.

Mustafa Haid is a Syrian activist and director of Dawlaty, a non-profit foundation focused on documenting human rights issues in Syria and proposing constructive, peaceful solutions for a post-conflict transition in Syria. The foundation's website can be found at www.dawlaty.org.



Transitional Justice is Key to Long-term Peace and Stability

BY JEREMY SARKIN

Transitional justice is a process used by societies in transition to deal with past human rights and humanitarian law violations. These actions may be judicial or non-judicial.

While transitional justice is usually a domestic process, the internationalising of accountability for violations has added another layer to the dispensing of justice with the creation of international criminal tribunals, hybrid courts (mixed international and domestic), and the International Criminal Court (ICC). Regional and sub-regional systems also have a role to play, especially with truth commissions and courts.

Transitional justice mechanisms examine events in the past to determine what occurred, to learn how to prevent their reoccurrence, and to move society forward.

No two transitions are the same and no two transitional justice processes are the same. Countries do, however, look to the experience of others to learn lessons and see the positives and negatives of what processes were used elsewhere.

Transitional justice mechanisms usually focus on five areas: truth, justice, reparations, reconciliation and guarantees of non-repetition. These processes may include criminal prosecutions, truth and reconciliation commissions, reparations programs, and ways to guarantee that such violations do not reoccur. This can mean the drafting of a new constitution or reforming an old one, as well as adopting new laws and creating new institutions.

Requiring those responsible for committing crimes to face justice is critical to ensuring respect for human rights and the rule of law in transitioning societies, and is necessary

to prevent future violations. Reconciliation can be undermined, however, if it is believed that only one side has been prosecuted when all sides committed violations.

Justice can occur in the ordinary courts of a country, but only if the courts can be trusted, if prosecutors are sufficiently skilled, if requisite laws exist, and if sufficient evidence to prosecute and convict is available. Because of these conditions, new courts may need to be established or the old ones transformed.

Internationalised courts may need to be developed, and if crimes against humanity, genocide, or war crimes have occurred, such cases can be referred to the International Criminal Court in The Hague, Netherlands.

States regularly use amnesties as conditions of transition and often are part of negotiations leading to the transition.

International law does not permit amnesty for certain international crimes, however, such as genocide, crimes against humanity, and war crimes.

Amnesties have been used when there are many perpetrators, all of whom cannot be prosecuted. Amnesties have been used for certain types of crimes or for certain perpetrators, although where such blanket amnesties have been used, they have generated criticism.

Lustration or vetting laws, sometimes called political isolation laws, have been used in conjunction with other processes to ensure that perpetrators who are not prosecuted do not continue to hold public office.

Ensuring that state institutions are effective, credible, open and transparent is necessary so that citizens trust them. Untransformed institutions can undermine democratisation of societies and be a barrier to reform.

Wholesale removal of all public officials belonging to one political party or one political group can alienate people and can hurt institutions because people with the skills needed to conduct business are gone. Such wholesale removals can cause a great deal of resentment and can result in leading those excluded to resort to criminality and opposition to the new state. Due process and carefully planned and executed vetting of institutions is important to successful transitions.

Learning the truth about the past is essential so that the public can know who did what, to whom, and the reasons that the violations were committed. Truth also is essential for victims. They want to know what happened. This is why judicial processes, including truth commissions, are established.

Approximately 40 official truth commissions have occurred around the world, as well as many unofficial ones. Places that have had such commissions include Argentina, Guatemala, Morocco, Peru, South Africa, Sierra Leone, Timor-Leste, Nigeria and South Korea, among others.

Truth commissions are intended to expose and acknowledge past human rights abuses. Official recognition can open a dialogue between individuals and the various groups in the society.

Facilitating open and honest dialogue can create a catharsis and prevents, as I wrote previously in the South African Journal on Human Rights, a "collective amnesia, which is not only unhealthy for the body politic, but also, essentially an illusion – an unresolved past...[which will] inevitably return to haunt [a society in transition]."

In the Middle East and North Africa region, there has been a focus in the last few years on regime change and a strong call to deal with the past through transitional justice. Countries in the region have debated it and some aspects have been implemented. Morocco had a comprehensive process including a truth commission. In Libya and Tunisia similar processes are being planned. In Egypt there have been trials, and in Syria transitional justice processes are being contemplated and discussed.

Dealing with the past in Syria will be necessary after the conflict ends. Many key questions must be answered. Which period ought to be dealt with? Should it be for the period from 2011 or from 2000 when Bashar Al-Assad became president? Or should it be from 1971 when his father, Hafez Al-Assad, assumed the presidency?

Other questions need to be answered as well. Should Syria prosecute low and mid-level officials, or should only senior officials be put on trial? Should a special tribunal be created or should ordinary courts be used? Should the ICC be called on? Should a truth commission be established? What issues should it focus on? How far back should it look? Who should be on a commission and how should its members be appointed? What reparations should be paid and are there resources to pay individuals? Should reparations be given in symbolic ways – for example by changing names of streets and building monuments and memorials?

Syria will need a comprehensive transitional justice program to address past wrongs

and it will need components that ensure truth, justice, reparations, reconciliation and processes to prevent human rights violations from resuming.

There will need to be prosecutions, certainly, and a truth commission will be helpful. Reparations that affect as many people as possible ought to be considered. Reconciliation strategies are essential, including those that deal with issues of citizenship for those excluded in the past and others that focus on the rebuilding of society. The process needs to be inclusive and include broad public discussion. It needs to contribute to the rebuilding of Syrian society as a whole. A revision of the constitution is probably necessary, as are new laws and new or reformed public institutions.

Achieving long term peace and stability in Syria is dependent on getting a complete and widely accepted transitional justice process.

Jeremy Sarkin is Extraordinary Professor of Law at the University of South Africa and a member and former Chairperson-Rapporteur (2009-2012) of the United Nations Working Group on Enforced or Involuntary Disappearances. He was an acting judge in 2002 and 2003 and National Chairperson of the Human Rights Committee of South Africa from 1994-1998. His most recent book is *Germany's Genocide of the Herero* (2011).



Lessons Learned from MENA Transitional Justice

BY MARWAN MAALOUF

The Arab world has captured global attention since 2010 as popular revolutions have ousted decades of authoritarian regimes throughout the Middle East and northern Africa.

The consequence of each political uprising has varied from country to country since the conflicts differed in how they were conducted, how long they continued, and how difficult each was.

The Tunisian revolution, for instance, was swift and relatively nonviolent. Just 27 days after protestor Mohamed Bouazizi set himself on fire, dictator Zine El Abidine Ben Ali fled the country, ending more than two decades of control. About 330 people lost their lives in the Tunisian revolution and slightly more than 2000 were injured, far less than the human toll of the Syrian revolution.

The Egyptian revolution was similar. Former President Hosni Mubarak stepped down from the presidency after 17 days of protests, but the death toll in Egypt exceeded that of Tunisia, with 850 deaths among protesters and security forces. Mubarak, unlike Ben Ali, did not flee the country and remains in custody.

The Libyan revolution was different in that it quickly developed into a violent conflict after the initial spasm of protests and uprisings in February 2011. Lasting for more than eight months, the Libyan uprising came at a much higher cost, and the protracted conflict between rebels and the forces of Moammar Gadhafi ultimately drew foreign intervention and killed an estimated 30,000 Libyans and injured more than 50,000. The conflict ended with the extra judicial execution of Gadhafi by the rebels shortly after his capture.

The Yemeni revolution, meanwhile, spanned 13 months. About 2,000 Yemenis died and more than 22,000 were injured. The crisis ended with an agreement between the opposition and President Ali Abdullah Saleh, which was backed by the Gulf Cooperation Council and ended Saleh's 30 years in power.

The revolutions in all four countries took divergent courses, consequently leading to different tracks for transitional justice.

The Yemeni experience is significant because the agreement that ended the crisis granted amnesty for Saleh while officials in his government gained immunity from prosecution. This agreement defined transitional justice in Yemen.

Yemen is an example of what Syria could face as the crisis continues and as stakeholders consider negotiations with the Syrian President Bashar al-Assad's regime.

Libya also is comparable to Syria since its armed rebellion was waged against an autocratic government notorious for using violence to silence political opponents, including the employment of killing and disappearing people as tools of oppression.

The Tunisian experience with transitional justice is also valuable. At first it seemed to evolve smoothly, but it has encountered stumbling blocks and critics have accused some people of using the process as a political tool.

While Yemen is unique in the Middle East, since amnesty allowed for a peaceful resolution to the conflict, it has faced criticism because amnesty precluded the prosecution of violations of international human rights laws, undermined the rule of law, and did not offer accountability. Human rights activists contend that Yemen's amnesty was unfair and helped create a general sense of impunity for government officials. Activists also say the amnesty was useful only because it allowed the opposition to gain control.

Syrians may also consider negotiations as an option to end the war. However, the Syrian opposition and civil society groups should cautiously discuss amnesty because it could preclude the prosecution of human rights crimes and therefore hurt the fair dispensation of justice.

If granting amnesty is the only way to end the bloodshed, however, it should be considered since amnesty does not prevent society from taking alternative courses of action in the future. For example, Argentina's supreme court overturned amnesty for the former Junta's top officers 20 years after the amnesty laws were adopted.

A strong desire to deal with issues of the past is the cornerstone of comprehensive transitional justice. In Tunisia and Libya, an active civil society and a population with a strong political will launched early efforts at transitional justice.

In Tunisia, a ministry of human rights and transitional justice was created. In Libya, a more specialized ministry was established,

focusing on the martyrs and missing victims of the political uprising.

While these steps were welcomed, they also have suffered from politicization and a lack of resources, two factors that have delayed results and compromised the process.

In Tunisia, various transitional justice laws have been proposed, one by the Ministry of Human Rights and Transitional Justice, another by the National Constituent Assembly, and yet another proposed by the Ministry of Justice, that would exclude allegedly corrupt judges from the process. Debate over these proposals slowed the progress of transitional justice.

Egypt, Libya and Yemen also have drafted laws that define transitional justice in the post-revolutionary period as civil society and governments agree that a framework must exist for the justice mechanisms to address past abuses.

Transitional justice laws have given human rights activists and civil society groups an opportunity to discuss opportunities for the families of the victims and the general public to identify priorities. In Tunisia, this dialogue raised awareness about the importance of participating in the transitional justice courts.

The process of drafting new transitional justice laws in all three countries has taken a lot of time and has created frustration due to the public's demands for swift action in the post-conflict era.

The proposed laws also appear compromised. Two years into the transition, the Libyan and Yemeni transitional justice laws had to be redrafted after civil society and legal professionals criticized them because they introduced mechanisms that lacked national consensus.

For example, Tunisia's law proposed arbitrations to deal with financial abuses and punishment under the penal code for human rights abuses. Though this might seem a logical approach to financial crimes, it took place without national consensus or dialogue.

Some draft laws included a host of well-known justice mechanisms, but were unrealistic given the various countries' capacities, resources and political contexts. Some of the proposals required additional laws to be adopted and this slowed the process.

In Libya, the transitional justice laws contain biases. Islamist parliamentarians have proposed "political isolation laws" that would exclude Gadhafi-era officials from holding public office, even though such laws ignore the reality that many Islamists were allies of the Gadhafi regime.

The Tunisian and Libyan experiences show that laws that marginalize the former regime have not been introduced to strengthen the administration or establish a transparent democracy, but were political tools designed to hurt opposition figures in the name of accomplishing the goals of the revolution.

A recent report by the International Center for Transitional Justice noted that Iraq's political isolation laws, which purged the country's post-2003 governments of Saddam Hussein-era officials, also created problems.

Post-revolution lawmakers have been encouraged to establish laws that investigate the political backgrounds of those in question, while setting clear criteria for those individuals who would be excluded from the political scene, for what reasons and for how long.

A common factor across all the Arab world's experiences in dealing with past political figures is that transitional leaders have responded to the popular demands of the revolution. Some of those demands have called for complete disconnection from all forms of pre-revolutionary politics.

This has led to the introduction of some extreme measures such as political isolation and exclusion, rather than less vindictive and more constructive concepts of vetting.

Just as Yemen, Libya, Egypt and Tunisia have followed their own paths to transitional

justice, Syria must as well. As Syria moves into the future, it would be wise to learn from what has happened to other countries in the region that have experienced similar conflicts, and not repeat the mistakes of the past.

Marwan Maalouf is a Lebanese human rights lawyer focusing on the rule of law and political reforms in the Middle East and North Africa. He is co-founder of Menapolis, a consulting company specialized in the production, dissemination and implementation of development and democratic ideas in the MENA region.



Transitional Justice in Syria: Scenarios of Implementation

BY MUSTAFA HAID

Syria has endured a repressive regime with a long record of human rights violations since the Baath party assumed power in March 1963.

Syrians suffered from widespread, systematic violations of their basic human rights under the late President Hafez al-Assad and his son and current president, Bashar al-Assad. Murder and forced disappearances have compounded the violations of Syria's basic civil, political, social and economic rights.

Some of these violations have taken an official status since they were enacted according to governmental and presidential decrees, and legislation.

Informal, loosely organized paramilitary groups known as shabiha have also committed violations. These militias were active before the March 2011 uprising

and have played a prominent role in the crackdown on demonstrations and extrajudicial killings in the on-going conflict.

Within months of the March 2011 uprising, the Syrian conflict became violent due to the disproportionate use of force by the government and its affiliated militias.

Not only did this cause the collapse of the Syrian state and diminish the legitimacy of its institutions; it also produced serious social, geographical, sectarian and ethnic divisions that are becoming more deeply rooted as the conflict continues.

There are signs that the state has disintegrated, as evidenced by the absence of the rule of law and discontinued services such as education. This poses a real challenge to any future government in Syria.

Because the administration of justice is the job of the state, the nature of transitional

justice in Syria will depend on the situation in Syria once the conflict ends. Justice may ultimately come from a political agreement between the warring factions, or it could be the result of a military victory by one of the warring parties. It could also grow out of an intervention by a foreign force to end the war.

Transitional justice will also depend on the political transition in Syria. The quality of the process will be affected by the justifications for the chosen process, and the demands of the Syrian people.

Transitional justice could be imposed by international players and conditioned by financial aid for reconstruction. It could also be the result of a combination of both national and international demands and include national, international or joint tribunals.

Regardless of the time or form of the political transition in Syria, the country will face many critical challenges. The most important will be how a young and fragile government can control strong oppositional militias that have various allegiances and agendas.

A new government must deal with deep social, geographical and sectarian divisions, the size and effects of which are unpredictable. It must rebuild a devastated infrastructure and cope with a high number of internally displaced people and refugees. It must face a scarcity of financial resources and a deteriorating economy. It must work with a multitude of local, regional and international actors, individuals, groups and governments.

All of these issues will impact the ability of Syria to implement transitional justice and will determine whether transitional justice will be imposed by the victor or will be reached by general and international consensus.

A political transition brought about by either international intervention or negotiations will have a positive effect on transitional justice, rather than a transition accomplished by armed conflict.

However, a transition based on negotiation that might include amnesty for President Assad and key figures in his regime – all officials who have been implicated in war crimes and crimes against humanity – will undoubtedly diminish the chances of achieving accountability and justice. This could pave the way for personal vendettas and the loss of public faith in law and the concepts of justice and accountability.

While a new government might establish a special criminal court as an independent interim judicial body that functions within the Syrian legal system, one must ask whether it will be established according to internationally or nationally agreed-upon standards, or other standards that are determined by the triumphant party.

Should such a tribunal function under the authority of the Syrian state and put high-ranking government officials and members

of the ruling family on trial? Or, should a new government refer key members of the Assad regime to the International Criminal Court in order to avoid unwanted clashes between Assad's supporters and opponents?

A referral to the ICC could help to prevent what happened to former Libyan dictator Moammar Gadhafi from also happening to Assad or members of his regime. Trials of low-ranking officials, meanwhile, could be held using customary legal procedures well known in Syria.

One of the most important characteristics of justice is timeliness. There must be a guarantee that transitional justice will respond to demands of accountability and help restore the rule of law.

Any judicial procedure should also recognize that transitional justice is a long term process. Victim recovery, the restoration of citizen faith in the state, and the reform of society require time. Transitional justice should include clearly defined tasks to be quickly completed as well as long-term goals.

Transitional justice can only be legitimate when it has the support of a broad spectrum of stakeholders, and must include various members of government institutions and non-governmental organizations and civil society. Achieving this may be difficult due to the absence of a strong civil society in Syria and the lack of political and institutional life in past decades.

Finally, the complex situation in Syria, with many actors involved and the scale of crimes committed, as well as the absence of a realistic and acceptable vision domestically and internationally, make it difficult to predict when and how a political transition and transitional justice will take place.

What is obvious, however, is that time is not on the side of victims or justice. The longer the conflict in Syria continues, the smaller the chances of achieving democratic change, transitional justice, or any other acceptable form of accountability.

Mustafa Haid is a Syrian activist and director of Dawlaty, a non-profit foundation focused on raising awareness of human rights issues in Syria and proposing constructive, peaceful solutions for a transition to democracy in Syria. The foundation's website can be found at dawlaty.org.



Options for Syria: Amnesty, Reparations and Compensation

BY JEREMY SARKIN

A comprehensive accounting of the past is considered a vital element for a successful transition to democracy. Yet achieving national reconciliation, building unity and reconstructing the institutions necessary for a stable political and economic system often seem to conflict with efforts to deal effectively with the past.

Facing the possible tensions between justice and peace, the transitional process entails tremendous challenges. The needs of victims and society as a whole must be balanced against the political reality of a new government, which may have inherited a fragile state and may have limited political power.

Some of the major questions faced by new governments are whom to prosecute and how many to prosecute. States have duties to prosecute certain offenders and this duty derives from international humanitarian

law, international human rights law and international criminal law.

This means that the state has a duty to punish offenses against peace, war crimes, crimes against humanity and genocide. In the Syrian context, the crimes that have to be prosecuted include crimes against humanity and war crimes.

Those who committed offences need to be prosecuted regardless of which side of the conflict they were on when they committed the offences. This does not mean that everyone who committed crimes ought to be prosecuted, however.

At least some senior political and security force officials ought to be held to account. Senior rebel commanders also ought to be prosecuted, if they committed serious offences, particularly if they were widespread or systematic.

Even-handedness is critical. Prosecutions cannot be aimed or perceived to be directed solely at one community, such as the Alawites.

States can and have been held accountable for not exercising their responsibilities to prosecute or extradite in various courts at the international and regional level. Thus, the possibilities for amnesties have been narrowed in recent years.

Amnesties can have a reconciliatory effect if done in a careful, comprehensive, inclusive and transparent way. If it is affected for all, and not one sided, then it may promote understanding and tolerance. If there is an amnesty, it should apply in narrow circumstances, be given on application and in exchange for information on what was done, to whom, and the circumstances in which the violations were committed.

A Syria in transition ought to contemplate a truth and reconciliation commission to create a comprehensive record of human rights abuses. Such a process ought to record the nature and extent of the crimes, and archive a full record of the names and fates of the victims.

Only by publicly and collectively acknowledging the horror of past human rights violations will it be possible for Syria to establish the rule of law and a culture of, and respect for, human rights.

The truth commission must have a wide mandate, sufficient resources and staff, full access to the information it needs, and sufficient time to carry out its work. It also needs political support, sufficient and wide investigation powers, and the ability to make recommendations. It must compile a report of detailed findings. It must make comprehensive recommendations on a whole range of issues.

Regarding reparations, the transitional Syrian state will also have responsibilities. The United Nations established the nature of state responsibility for providing reparation to victims in the "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law."

"Principles and Guidelines" provides that the state is responsible for violations even when the violations were perpetrated by non-state actors. A variety of human rights institutions have held that states can be held responsible for the actions of non-state actors in specific cases. This means that all violations committed in Syria will be the responsibility, from a reparations point of view, of the transitional state.

Reparations will be important as they fulfil a variety of functions. Firstly, victims are able to cope with the financial deprivation that they have suffered; and secondly, they allow official recognition of the past; and thirdly, reparations deter future perpetrators from committing similar violations.

Reparations, symbolic or otherwise, serve

as focal points in the grieving process, and can aid recovery by allowing individuals to deal with their grief. There is also a dimension of dignity in the sense that those abused in the past believe that some degree of assistance to reclaim their dignity ought to occur.

Reparations should be given in stages, with interim or emergency relief being given quickly to those in dire need. A phased approach is important as reparation programs can take time to establish and securing adequate funding is often challenging.

A reparations process requires care and planning. It is very common to have a truth commission, or other mechanism, responsible for mapping the issues and documenting the number of victims and violations; the commission then recommends reparations that the government can implement. This process should be followed in Syria as well.

A Syrian reparations process should be designed to maximize the resources available. Reparation can encompass a variety of concepts including damages, redress, restitution, compensation, rehabilitation and satisfaction.

Each of these concepts has a unique meaning although they are often used as general terms to encompass all the different types of remedies available to a victim.

Reparations can be individual or collective, symbolic or material or a combination thereof. It may be useful for the process to focus on collective and symbolic forms of reparations.

Reparations should have a component that returns what has been lost, for example, documents and land. Rehabilitation also ought to be provided and this may include medical and psychological care, legal and social, and other types of care and services. It should also include measures to restore the dignity and reputation of victims.

A reparations process must have rehabilitation processes for any physical

or mental damage, guarantees of non-repetition, restoration of personal liberty, family life, citizenship, employment or property, or a return to one's place of residence.

Symbolic reparations should also be provided. These can include measures that facilitate communal remembering and commemoration of the pain and victories of the past. National holidays ought to be established in memory of events and victims.

Schools, buildings, streets and airports can be renamed after events or victims. Monuments and plaques should be erected. Prisons and military bases closely associated with the conflict should also be either renamed or closed. It is also important to issue death certificates, expunge criminal records and expedite any outstanding legal matters.

Reparations should also contain processes that entrench democracy and good governance. The new Syrian state should adopt legislative and other measures to guarantee non-repetition. The government should expend resources on demilitarization and reintegration programs.

The process should also ensure that there is effective control of military and security forces, restrict the jurisdiction of military tribunals, strengthen the independence of the judiciary, protect the legal profession and human rights workers; and provide human rights training to all sectors of society, in particular, to military and security forces and to law enforcement officials.

Jeremy Sarkin is Extraordinary Professor of Law at the University of South Africa and a member and former Chairperson-Rapporteur (2009-2012) of the United Nations Working Group on Enforced or Involuntary Disappearances. He was an acting judge in 2002 and 2003 and National Chairperson of the Human Rights Committee of South Africa from 1994-1998. His most recent book is *Germany's Genocide of the Herero* (2011).



Vulnerable Groups: Women at Risk

BY MARIAM ABDULLAH

Um Hassan stops talking, then extends her trembling hand to wipe the portrait of her son, the third to be killed in the Syrian conflict. She murmurs, “May God forgive whoever has done it.”

Um Hassan – a pseudonym – was among the first women in the town of Douma, outside Damascus, to take to the streets following Syria’s March 2011 uprising. She is typical of the Syrian women who see the revolution as a path to change and who want to influence the uprising as much as men.

Explaining that she wanted to fight against the injustice she had suffered in a male-dominated society, Um Hassan started writing, drawing, singing and chanting in demonstrations.

When she took to the streets, she exposed herself to the same dangers as men. “After

we were banned from even passing in front of the funeral tent, we had our own seats in the men’s tent,” Um Hassan said.

When weapons appeared and the Free Syrian Army (FSA) was formed, women were forced from the front lines under the pretense that they, as representative of their families’ honor, were in danger.

The Assad regime used the presence of women in the uprising to arrest and reportedly torture women. As rumors spread that women were raped in prison, and as some cases were documented, it led to honor killings.

Um Hassan eventually fled to a refugee center in the Bab Mousalla quarter in Damascus. Despite her pleadings, her sons joined the FSA. Yet, she continues working for the revolution, and holds dear her remaining son and three daughters.

“My sons’ blood should not be spilled in vain,” she says. “After the fighting stops, everybody should admit that my sons were killed for the sake of the homeland. Their murderers should be fairly punished by courts and not at the hands of ordinary people,” Um Hassan says.

“Also, my husband should not be my boss anymore. I, too, have suffered and there is a lot that I can do. I will no longer accept injustice after I have known what it is like to resist and say ‘no’. I, too, have changed.”

Syrian women pushing for social change include writers, artists, lawyers and doctors who have participated in the revolution and who have also suffered repression. Some have been arrested and tortured.

A journalist in her twenties, who goes by the pseudonym of Rand for fear of being

targeted by the government or an armed group, lost the man she loved when he was killed while filming fighting in Syria. Rand has participated in demonstrations, has been persecuted, and was forced to leave Syria. Today, she remains bitter and cannot forgive the crimes and killing that have occurred.

Rand rejects financial compensation for the past wrongs, considering it an insult to the dead. Nonetheless, she hopes the blood that has been shed will contribute to building a new Syria.

Women have been excluded from the political arena, Rand says, due to the spread of militarism and Islamic extremism. Syrian women will not have a fresh start unless they assume an active role in a new government.

"We have to turn a new page in Syria," says Rand, who started her own cultural project to support Syrian children.

A new Syrian government must adopt laws that respect human rights, she says, and existing laws need to be changed, especially ones that govern inheritance and personal status.

Khawla Dunia, an activist who was arrested and tortured along with her husband, and who is currently being sought by Syrian security, agrees.

"Women pay the highest price in all situations," says Dunia. Transitional justice, already a concern of those affected by the conflict, is even more important because the Syrian state of repression continues.

Women pay a double price, Dunia says, to their families and to society, which is why it will take longer for women to become fully active members of the society. Women are victims in men's wars, Dunia says, and urges the adoption of laws that address the condition of women.

Dunia rejects indiscriminate revenge, and supports fair trials, believing that there is no alternative for judicial institutions, which can rehabilitate society.

Sanaa al-Sabe, a displaced person and former member of The Observatory of

Syria's Women, believes that women will suffer if the Syrian public does not accept transitional justice.

Women have suffered, al-Sabe says. They have been victims of rumors, threatened with kidnapping and rape, told to wear conservative clothing or face sexual assault, and have been ordered to restrict their movement outside the home.

Women need transitional justice based on the rights of citizenship, activist Khawla Dunia says.

Women have suffered from poverty, a lack of education, physiological illnesses, and the loss of loved ones. These issues must be addressed with new health, legal and political activism, Dunia says.

Dunia notes that financial compensation must be given to the whole family, not just men, otherwise women will be left in poverty if they are divorced.

Lawyer Wissam Jalahej, member of a group called "A Project of Citizenship," or Mashru' Muwatana in Arabic, believes that women suffer the most in armed conflict because they are subject to violence and sexual assaults.

Yet, women's needs are rarely taken into account during the conflict or post-conflict period. Transitional justice, says Jalahej, must consider gender in all post-conflict phases, such as trials for war crimes; national dialogue; compensation for injury, damage, imprisonment or torture; and activities to memorialize victims.

Gender analysis must be performed during the reform and rebuilding of institutions, he says. Women must be fairly represented and should be given equal right to access courts and legal committees. The implementation of these of processes should be without discrimination, he says.

Women's organizations in Syria are wary of the Syrian National Council and the National Coalition because they are male-dominated, as is the regime's Ministry of National Reconciliation, says Sabah Hallaq, a member of the League of Syrian Women.

The organizations advocating for women's

rights include the Women's Initiative, the Center for Equality, the Committee to Advance Women's Causes, and the League of Syrian Women. The proposed quota for women's participation in future reform committees is set at only 20 percent.

Two of these committees, the military and clergy committees, do not include any females, even though the National Preparatory Committee for Transitional Justice, which was formed in Istanbul on January 1, 2013, asked that 40 percent of its members be women.

Hallaq says the trend continued with the lack of women's representation on local councils in opposition-controlled Syria.

"During the elections of the Aleppo's local council, there were women candidates, but they were not capable of defending their presence or enforcing a quota for women's representation," Hallaq says. "Women's organizations must prove their presence, now and during the upcoming phases."

Women in transitional countries have been subjected to abuses by the regime and their male-dominated societies. The authorities must prevent these abuses during the implementation of transitional justice in Syria.

Mariam Abdullah is a Syrian journalist trained by IWPR who writes under an assumed name.



Engaging the Public: Civil Society in Transitional Justice

BY YOUSSEF KANAAN

The two-year conflict in Syria has left tens of thousands killed, wounded or displaced. Both sides have committed severe human rights violations. Syria must prepare for a transitional justice process, just as other countries in the region that have undergone violent regime change.

"In Syria there was a popular revolution that started out peacefully, demanding freedom, dignity and social justice," said Ihsan Taleb, a member of the Workshop to Protect National Unity and Criminalize Sectarianism.

"[The revolution] was met with violent security solutions, and the confrontation then turned into a purely military one," Taleb said. "The authorities went too far in committing mass liquidation. They have carried out very harsh reprisals by resorting to concentrated shelling, targeting populated areas that offer refuge to the

rebels."

Taleb thinks that the Syrian situation "has evolved into a dirty war that crossed the red line and violated the rules of war as well as international and local laws."

Salma Huneidi, an activist from the Relief Committee of Jaramana, a neighborhood in Damascus, said that chaos began to spread as opposition fighters gained control on the ground and the regime lost military positions.

"Chaos has been spreading in the ranks of the armed opposition," she said. "It has affected the structure, loyalties and goals of the battalions."

Huneidi said she fears for the revolution and its goals as violence and counter-violence continues, especially with the emergence of Salafist and extremist movements that are far from the nature of the Syrian people.

Since different parties share the responsibility for the violence, a new government dominated by any one group will lack credibility in the post-conflict period, some suggest. As a result, civil society organizations must play a crucial role in pushing forward the process of transitional justice.

Unlike Taleb, who thinks that civil society members and organizations should have a central role in achieving transitional justice, Huneidi does not see a role for civil society in ending the violence. This is a political issue that is related to the negotiations between the regime and the opposition.

"I don't believe there is a big role for civic and community organizations that were born during the revolution in ending violence during this phase," she said. "This is a political process related to negotiations between the regime and the opposition."

The role of civic organizations is to support peace after the end of violence, Huneidi said. "We have no doubt that, in the future, we have the ability to influence the process of civil peace and national reconciliation," she added.

Huneidi points to civil society's role in relief work.

"Civic organizations have gained legitimacy on the street through all sorts of relief activities – providing food aid, medical aid, accommodation and clothing – and have gained people's trust," Huneidi said.

"This is what we do in Jaramana through the Jaramana Relief Committee. It offers services on the basis of humanitarian criteria, away from politics, which means that the beneficiaries are displaced people from different backgrounds – both supporters and opponents of the regime."

An activist who works in refugee camps and who spoke on condition of anonymity said that negotiations around transitional justice should include internally displaced Syrians as well as refugees abroad.

"In addition to returning these people to their homes and the areas they had to leave during the conflict, refugees need to be reached where they are and actively included in the talks related to the transitional process, considering the multifold suffering they have been through," the activist said.

Including displaced Syrians in and out of the country in a transitional justice discussion could be difficult, however. The United Nations High Commission for Refugees said in early March 2013 that the number of Syrians considered as refugees had reached the one million mark.

"With a million people in flight, millions more displaced internally, and thousands of people continuing to cross the border every day, Syria is spiraling towards full-scale disaster," said António Guterres, the UN High Commissioner for Refugees.

Under such circumstances, talks on a national level should lead to a new constitution that paves the way for a

democratic state based on the rule of law and respect for human rights. This new pact could help heal the effects of the painful past.

In order to reach a national consensus on such difficult issues, Taleb believes all Syrians must be involved in the discussions, even extremist parties.

"At our organization, we see that realizing this goal includes documenting crimes and violations, irrespective of the party that has committed them," he says. "It also includes dialogue with extremist groups and seeks to reach a national accord with them. They should not be looked at condescendingly, nor should the problem be ended with dogmatic, totalitarian rulings. Transitional justice is a real, social, legal and intellectual issue."

Noureddine Nasser, a member of Together for a Free Democratic Syria and the head of the group's office in the coastal city of Tartus, supports the idea of including all opposition groups in talks regarding Syria's future.

"There should be representatives of all Syrian groups in the constituent assembly, including representatives of the full spectrum of the opposition," Nasser said. "At the forefront of these, there should be people involved in the popular protests in Syrian towns and cities. There should also be members of the regime whose hands have not been tainted with the blood of the people or the [looted] riches of the homeland."

According to Jad al-Karim al-Jibaei, a Syrian intellectual who helped found the Movement of Secular Democrats, reaching agreement on a democratic constitution requires that all ethnic and sectarian groups are treated equally, regardless of size.

"It has little bearing on the value of these groups if their members are numerous or not," he says.

People from different political and ethnic groups in Syria should not be hypocritical, al-Jibaei said, and must be honest with each other in the process of drafting a new constitution.

As the conflict continues in Syria, fighters on both sides may resort to violence to evade punishment, said Mohammad Dibo, an independent Syrian writer. In such situations, offering concessions to stop the war and the bloodletting is necessary.

A distinction must be made between former fighters and their leaders. This would provide trials for the worst offenders, such as officials and warlords, and reduced sentences for regular fighters. This would encourage an end to the fighting.

However, such a policy would be prohibited for those found to have committed serious crimes, such as genocide, crimes against humanity or torture—crimes for which international law prohibits granting amnesty.

Youssef Kanaan is an IWPR-trained Syrian journalist.



Transitional Justice - The Role of Social Media

BY ALIA AHMAD

Human rights' violations in Syria have increased and continue to be committed by various parties after peaceful protests receded in the face of militarism by the al-Assad regime.

The need for and information about transitional justice must be spread as widely as possible since it allows for those responsible for criminal violations to be held accountable; encourages the repairing of social and political damage; spurs national reconciliation; and attempts to insure that mistakes of the past are not repeated.

The participation of all parties, not only civil society and community organizations, but also news and social media, are needed to promote transitional justice and the mechanisms to achieve it.

Given the role they have played in the

Arab Spring, blogs and social media such as Facebook, Twitter, and YouTube are no longer limited to recreation and entertainment.

Social media have become important sources of news and information, and as the phenomenon of social media activism has spread, average citizens have become independent journalists.

The Tunisian revolution, the first in the Arab world, was called the "Facebook Revolution" as Tunisian youth used it to mobilize action on the street.

Yet, social media are lagging when it comes to transitional justice, said Tunisian activist Maha Jouini. "Legal organizations... worked on the issue of transitional justice," she said. "But the issue was not actually addressed in social media."

Libyan activist Leila Rjeibi, of Birds of Peace

for Human Rights, believes that social media can help broaden and clarify the concept of transitional justice.

"The concept has been restricted to those interested in human rights," Rjeibi said. "In social media networks, however – for example Facebook – [transitional justice] has received wide criticism from the public because people have not adequately understood the meaning of [it]."

Rjeibi points to a Facebook campaign that promoted transitional justice in Libya but found very few followers. "Transitional justice will not materialize unless the government follows a policy of dialogue among Libyans," Rjeibi said.

In Syria the role of social media in promoting transitional justice has been weak, said activist Muhammad al-Abdullah, who goes by a pseudonym.

"People involved in social media need to be more...rational," Abdullah said. "Their effort should be concentrated on shaping public opinion in a way that serves the country and its people, because the current phase [of the war] is one in which the fate [of Syria] is being decided. They should make sure not to alienate those who are hesitant [to stand against the regime]. They should also stay away from sectarianism."

Relief activist Milia Amdouni thinks social media can help spread the concept of transitional justice to many sectors of society.

"Our generation has been sheltered from these concepts for a long time, and now we're experiencing their meaning anew," Amdouni said. "The way these concepts are discussed in social media is extremely important. This is one step in the thousand-mile journey of establishing respect for different opinions."

Eyyas Qa'douni, head of the Saraqeb office of the Civil Society and Democracy Center, believes that "social media are a successful means, not to spread certain beliefs, but to prepare people for accepting them."

According to Qa'douni, transitional justice needs to be put in practice, but in Syria, "there is a shortcoming on the part of social media outlets in promoting transitional justice; there's no activity that clearly supports it."

Social media is among the "most important tools" to engage youth and activists in awareness campaigns that "make them an essential part of [a certain] project," said media activist Wassim Hassan.

Social media training also teaches people how to document human rights abuses and exert pressure on officials. It provides a link between people and trusted parties that monitor human rights abuses.

Interviewing victims and publishing their stories through social media is important to achieving transitional justice, said media activist Youssef Kanaan, who goes by a pseudonym.

"Making silent victims feel that there are

people who have suffered like them will encourage them to speak out about what happened to them and will contribute to revealing the truth and holding the perpetrators accountable," he said.

But those collecting stories must be careful, Kanaan said, because interviewing victims of human rights abuse is different from conducting other types of interviews.

"The victim should be told that the interview will be published and will serve to document the case for the use of legal bodies," Kanaan said, adding that the journalist should also "make sure the victim feels safe from any harm by not revealing his or her name without prior consent."

Ola, who also asked that her real name not be published, is a relief activist who was arrested by security forces four months ago.

"They came to [our] house around midnight and took me with my brother without telling us what our charges are," Ola said. "What I clearly remember is their ability to stall and give me false promises in order to make me [give information]. Once they couldn't, they worked on destroying me psychologically."

"I [was released] a month later because there was no evidence against me," Ola said. "I experienced as much cruelty during this month as I did in my entire life. I don't think I can easily forget...it."

Ola said she does not like journalists and activists who ask "close-ended questions that could only be answered with a 'yes' or a 'no.'" I prefer questions to be open-ended so that I could freely express what is on my mind and what I think is important and affects me personally, without any interference from the interviewer."

Iman is a Syrian woman who was arrested three months without being clearly accused of anything. She asked her last name not be published. When she was released, activists wanted to use her story [for political ends] and asked her to claim that she was raped in order to criminalize the regime. She refused.

"Does a woman have to be sexually assaulted so that we acknowledge that she

has been abused?" Iman asked. "Is it not enough that I was deprived of my freedom and arbitrarily arrested and subjected to psychological torture?"

Iman said that she wanted to "say what happened to me in order to serve the truth and prove that I'm not wrong when I defend my free thoughts."

Several media activists and administrators of pro-revolution Facebook pages have been arrested and persecuted for documenting violations. Some were arrested by the rebel security services when they exposed wrongdoings of the opposition fighters.

Such is the case of Muss'ab Hammadi, who was arrested by rebels for reporting on acts of theft and forcing people to pay protection money. Hammadi later escaped.

Exposing rights violations committed by only one party or another does not serve the truth. Finding the truth and reporting it requires taking risks. This presents dangers to the journalist and/or media activist, so rules of safety must be observed.

A journalist/media activist should not be on the frontlines without protection. He or she should not work in areas where they do not know anyone, since this can lead to accusations of spying. They must also not break the law by carrying weapons or illegal items.

News and social media play critical roles in spreading information throughout Syrian society. Social media also faces the challenge of filling the void of credible news content since mainstream news media has become highly politicized. While the conflict continues, it is important that social media promote the concepts of transitional justice, enabling Syria to find a future of peace and reconciliation.

Alia Ahmad is an IWPR-trained journalist who writes under a pseudonym.



Addressing Syria's Enforced Disappearances

BY RADWAN ZIADEH

Enforced disappearances have been a pillar of Syrian authoritarianism since the early 1980s, when armed confrontations between the Muslim Brotherhood and Hafez al-Assad's government led to the disappearance of many citizens.

The fate of many missing persons remains unknown. The term "missing" usually refers to a person who has disappeared and whose disappearance cannot be linked to official authorities, but the term is synonymous with enforced disappearances and is used in Syrian legal documents.

Between 1979 and 1990, an estimated 17,000 people went missing in Syrian prisons and interrogation centers. Some sources claim the number is as high as 25,000.

Since the Syrian Revolution began in March of 2011, enforced disappearances

have increased exponentially, but reliable numbers are difficult to verify.

According to the Syrian Network for Human Rights, 194,000 individuals have been arrested in Syria since March 2011. Of those, the Network estimates that some 60,000 have been forcefully disappeared. Again, these numbers are difficult to verify, in part because families of victims often refuse to speak to human rights violation investigators out of fear for the lives of their imprisoned relatives.

Both political arrests and forced disappearances are at the forefront of the Syrian regime's violations of human rights. Indeed, political arrests by the security branches were, in most cases, a prelude to the forced disappearances that many Syrians suffered.

Syrian citizens are usually arrested at their

homes, workplaces, or upon arrival at the airport after returning from abroad. They are not given the opportunity to object, to seek legal counsel, or to contact their families.

The security agencies conducting the arrests often do not identify themselves and do not give the reason for the arrest either to the arrested person or his/her family. Sometimes a wanted person is summoned to a security branch office and never returns.

When a family inquires at the security agency that took their relative, they receive either inconclusive answers as to the whereabouts of their loved one or denial of his detention.

Such arrests constitute inhuman treatment that lead to significant deleterious effects on the detainee and his family. The effects

of what happens after the initial detention are more severe.

Lack of control over the security agencies' activities, the absence of the rule of law and an independent, transparent judiciary process in such cases allows the agencies to practice brutality. Torture is a common tool to extract confessions, as explained by Abd al-Hay al-Sayyid, in his 2005 article titled, "Accountability of Security Services in Syria within Syrian Law."

The situation has only gotten worse since the beginning of the uprising in Syria. Amnesty International pointed out in its report about enforced disappearances in Syria after the uprising that:

"Since the beginning of the uprising in Syria, we've seen a dramatic rise in the authorities' use of enforced disappearances to silence opposition and sow fear among the friends and relatives of the disappeared"

The goal is to "terrorize the society and dry up the revolution," said Anwar al-Bounni, a veteran defense lawyer and human rights campaigner in Damascus.

Two international groups, Amnesty International and Human Rights Watch, said they believe a majority of detainees in Syria are held under conditions amounting to enforced disappearance. Amnesty said it estimates that tens of thousands of Syrians are in detention but does not have exact figures.

Reports say that detainees are often held in one of the security service branches throughout an initial investigation before being transferred to one of the prisons assigned for political prisoners, like Palmyra, Adra, or Sydnaia and al-Mezza Military Prisons.

However, the testimonies of scores, if not hundreds of former detainees prove that thousands of lives were taken without legal documentation, leaving their fate unknown to their families and communities.

Detainees have been subjected to enforced disappearance for months or even years. They have been transferred to more than one security branch, which all denied the

prisoner's presence, making his location and fate completely unknown to his family.

Addressing and resolving the vast number of missing and enforced disappearances by both Bashar al-Assad and Hafez al-Assad's regimes will be an important and major task during the coming period of transitional justice for Syria's eventual new government and leaders.

The issue of the missing persons should be a top priority for any future government after the fall of the Assad regime. This is important for two reasons: First, because of the high number of people who are missing, and second, because the families of the missing have the right to know the fates of their loved ones. This issue will be a source of instability if there is no strategy to deal with it from the early days of any interim government.

To avoid such a crisis in the future, the interim government must deal with the issue of the missing comprehensively, including opening up all government files and agencies for investigation. Civil society should play a significant role by collecting all the information from the families.

Concurrently, an overall transitional justice law should be passed which includes the issue of enforced disappearances and which seeks to hold the previous government responsible. This law should also insure the right of the families to reparation.

For decades, the subject of enforced disappearances has been met with official indifference and silence. Speaking in public about the details of this tragedy is not permitted. Syrian authorities have adopted a policy of hiding the truth instead of offering reparations and justice to the victims. Now is the time to beginning planning to address these wrongs done to the Syrian people, the disappeared, and their families.

Radwan Ziadeh is Executive director of the Syrian Center for Political and Strategic Studies in Washington, D.C.; Director of Damascus Center for Human Rights Studies in Syria; a Visiting Scholar at Lehigh University; a Fellow

at the Institute for Social Policy and Understanding (ISPU) in Washington D.C.; and managing editor of the Transitional Justice in the Arab World Project.



Impartial Justice Requires Documenting and Collecting Evidence

BY WAEL SAWAH

With the first bullet that was shot at Syria's peaceful demonstrators, the Syrian government lost its legitimacy and became a burden on the country, the people, the region and the world.

Now, with more than 70,000 Syrian dead, three million people displaced inside and outside the country, and thousands more arrested, tortured, and raped, there is no doubt that President Bashar al-Assad's government has no legitimate claim to power, and there is no longer any question of "if" Assad and his regime will collapse, but "when" and "how."

In the meantime, many armed opposition groups are responding to the government's violence with similar violence. Some radical groups now control certain regions in the country where governmental authority

has been forced out. Inspired by radical Islamists, these groups use methods similar to the government's. Evidence exists that pro-government loyalists, including civilians, have been cruelly killed or tortured.

When regime change comes to Syria, the process of justice and accountability must begin. A transitional justice process is the safest way for the new Syria to move toward democracy with the least possible social loss. It will ensure justice for the people and the country, and not mire the country in revenge and settling of scores.

The first step in transitional justice is to document violations of international humanitarian law and international human rights law. This step needs to be accomplished independently and

professionally.

Transitional justice experts have established standards and procedures to document violations during conflicts. The documentation process in Syria must abide by these standards if it is to be effective and respected by international and local actors.

Impartiality and objectivity are also essential for proper transitional justice in Syria. Although the Syrian government might be responsible for the vast majority of the violations that have occurred in Syria, armed groups that violate international human rights law must also be held accountable, regardless of how unpopular this topic might be.

Information must be collected from various sources and be compiled, verified, analyzed, and stored securely until such time as it can be used.

In the Syrian conflict, thousands of persons are collecting and compiling transitional justice evidence. Unfortunately, these individuals and groups had not been properly trained and equipped when the uprising broke out.

Providing the proper training for these actors is vital if Syrians want to have a evidence that is admissible in international or local courts. Training needs to cover legal standards applicable to potential crimes and trainees must learn how to record, measure and preserve evidence in compliance with international standards. Such training can increase the sources, amount and geographical scope of evidence collected.

Hopefully transitional justice in Syria will not simply be victor's justice. History has shown, however, that post-war tribunals are often a charade in which winners punish losers for the damage and suffering of the war.

Justice must include not only civilians who were killed, arrested and wounded in the revolution, but also soldiers and security officers who were forced to oppress people. They must be treated fairly.

Even if they must pay some price, such as admitting what they have been ordered to do and apologizing to their victims in public, those who helped to perpetrate the violence will be among the winners, as they will not only relieve their own consciences, but will also participate in the rebuilding of the new Syria.

Numerous groups in Syria are dedicating their time and energy to documenting violations and collecting transitional justice evidence. We can divide these groups into several categories:

1. Syrian organizations working on a national level such as the Violation Documenting Center, Shuhada (Martyrs), the Syrian Network for Human Rights, the Syrian

Observatory for Human Rights, and the Syrian Commission for Justice and Accountability.

2. Syrian organizations working on a regional level, such as Aleppo's Ahfad al Kawakibi (meaning the "the Grandchildren of Kawakibi," a reference to a famous 19th century intellectual and religious scholar from Aleppo).
3. Syrian organizations that focus on a certain type of violations, such as Rasd, which documents violations to property, and Domino, which focuses on wounded people who are permanently disabled.
4. Independent and opposition affiliated Syrian news agencies reporting on events in Syria, often with access to firsthand documentation, such as Orient News, Sham News and Ugarit News, which rely on citizen and activist journalists, videographers and photographers on the ground in Syria, and thus have a unique ability to collect firsthand documentation, especially videos, photographs and firsthand accounts.
5. Intergovernmental organizations and bodies, governmental and non-governmental organizations are also gathering evidence.

The challenges to documentation include the deteriorating security situation in Syria; the lack of coordinating efforts; the lack of a professional, international legal approach; the absence of proper verification standards; and incomplete coverage of affected areas and populations.

In order to have an appropriate documentation effort, these challenges must be addressed. A new entity, with which I am involved, is trying to fill the gap. The Syrian Center for Justice and Accountability is a non-profit organization that works to collate, vet, and analyze human rights violations data using a comprehensive data repository. The Center also provides training, resources and support for local groups in Syria and conducts research and analysis to create a narrative about human

rights violations related to the conflict in Syria.

Finally, what is to be done with the volume of data collected on the violations committed in Syria? If efforts succeed to centralize the data collected in one safe repository, the next duty will be to safeguard the data and ensure that it is provided to the proper judicial commission tasked with administering the Syria file.

There are two future scenarios for Syria. The first is the fall of the current government and its replacement by a democracy. The second is much less clear and could involve the regime's regaining full control of the country, a protracted stalemate that results in chaos and an extended civil war, or the rise of another authoritarian state established by, for example, the military or a conservative religious group.

In the first scenario, the transitional justice evidence should be handed to the local judicial system, which must be supported by international legal expertise. In the second, data collection needs to continue and efforts made to convince the international community to help end the bloodshed and to impose a transitional justice procedure for the benefit of all Syrians.

Transitional justice is not just a process for punishment. It is a process for reconciliation and forgiveness.

Wael Sawah is a Syrian researcher on issues of civil society in Syria. Sawah is a member of the Annual Middle East Legal Studies Seminar (MELSS, Yale University); Board member of the Syrian Center for Media and Freedom of Expression, Damascus; founding member of the Syrian League for Citizenship; a founding member of the Arab Rationalists League, Paris; and Editor of Al Awan Website for Laic Studies.



Reforming the Syrian Justice System

BY RADWAN ZIADEH

For the more than 40 years the ruling al-Assad family has built a vast and impregnable structure of control over the Syrian people. This is seen in the government's four intelligence directorates, the monopoly of the Baath patronage system, and most notably, the Syrian law code and the structure of the Syrian judiciary.

For decades, Syrian courts have been used as a tool of the al-Assad family to suppress dissent and punish those who question the system. As a result, the Syrian justice system has lost all credibility in the eyes of the Syrian people.

In order to begin a new era of accountability and create a judicial system that has the trust of the people, a number of Syrian laws must be repealed and much of the justice system dismantled or restructured.

The State of Emergency

On March 8, 1963, the Baath Party's National Council of Revolutionary Command declared that a state of emergency existed "in all parts of the Syrian Arab Republic... until further notice."

The declaration paved the way for laws that allow widespread human rights violations in Syria. These laws were intended to prevent opponents of Baathist officers from launching a coup and permitted the Baathists to crackdown on adversaries, real or potential.

The emergency law erased Syrians' guarantees of freedom from torture, inhuman treatment, and isolation from the outside world that were enshrined in the constitution.

Enacting the state of emergency put all internal and external security forces at

the disposal of a "Military Governor," to be appointed by the Prime Minister. This opened the door to chaos and arbitrary acts based on personal whims of those in power. These powers were used to prosecute, detain, torture and disappear citizens.

No other authority was able to check or object to what they were doing. Crimes were committed due to extremist sectarian, partisan and ideological attitudes, without regard to legal or constitutional controls, or human rights and personal privacy.

The emergency law permitted the Military Governor to send suspected violators to military courts; to restrict people's ability to assemble, live and move where they chose; to arrest those suspected of threatening security and public order; and to order investigations of anyone at any time.

The state of emergency remained in effect

until 2011, when it was nominally ended as a means of assuaging the masses of protesters, inspired by the Arab Spring, who gathered across the country to peacefully demand governmental reform. Unfortunately, the lifting of the state of emergency did little to change the reality on the ground. Those viewed as a threat to the regime continued to have their rights violated by security officials with impunity.

Syrians rights continue to be violated as in the past. Members of the intelligence branches detain, arrest, torture and imprison Syrian civilians daily. The Syrians themselves have no legal recourse to defend their rights. In fact, Syrian law makes it nearly impossible to prosecute government employees who commit and have committed human rights violations.

The Revolution Protection Law and Systemic Immunity

A law that undermined Syrian freedoms is the Revolution Protection Law, adopted on Jan. 7, 1965. It states that anyone who is critical of the state “by actions, verbally, or through writing, or by any means of expression or publishing” would be punished.

The law also allowed the punishment of “demonstrations, rallies, riots, or instigating riots as well as spreading chaos and undermining public confidence in the goals of the revolution.” The punishment was “hard labor or life in prison, and may include a more stringent sentence.”

The provisions of this law consist of vague phrases that made possible broad interpretations of any form of expression contrary to the whims of the ruling Baath Party. It allowed the repression of political dissidents at every level without mercy, and protected the Baath party from any criticism.

Syrian authorities used the law to close all the doors to the opposition and intimidate anyone who might disagree with the regime. Every statement, act, brochure or statement that was contrary to the regime was considered a crime.

Another law that undermined Syrian

freedom is Decree No. 14, issued on January 15, 1969, which granted members of Syria's General Intelligence Directorate protection from prosecution “for crimes that were committed during the execution of the tasks entrusted to them.” Officials could only be prosecuted by an order of the head of the Directorate.

This decree allowed security services to intervene in people's private affairs without being held accountable for the crimes they committed in the course of their duties. The decree led to the domination and interference of the security services in the daily lives of the Syrian people.

Additional laws, such as Article 74 of the internal rules and regulations of the State Security Department, issued on May 25, 1969, prevented Syrians from pursuing legal action against any State Security Department employees for crimes committed while conducting their duties.

That immunity was reaffirmed in more recent decrees that prevent the prosecution of the police, the Political Security Agency, and Syrian customs, without approval from the commander of the Syrian armed forces. The decree extended this immunity to anyone who was temporarily assigned to, on loan to, or was working on a contract basis at any of these departments.

Exceptional Courts

To this day the Syrian government uses a variety of special, field and military courts to prosecute and jail Syrian civilians engaging in activities considered a threat to the state. This enables the Syrian justice system to send thousands of peaceful protesters to distant, secret prisons.

Legislative Decree No. 47, which established the State Security Supreme Court, was issued on March 28, 1968. The court was composed of a president and two judges, one civilian and one military, nominated by the Military Governor.

The special court replaced a military court and expanded the scope of the special military field trials to include civilians. The decree stated that the court could

hear cases about “all persons, civilians and military, whatever their capacity or immunity.”

Most importantly, the article permitted the State Security Supreme Court to try all those who opposed the regime in any form, even if only verbal. The Revolution Protection Law and subsequent degrees and articles made “regime security” equivalent to “state security.” Crimes punishable by the Security Supreme Court were applied to anyone who the authorities saw as politically active, notably Islamists and other dissidents.

Ultimately, the court, along with a variety of other field and military courts, sentenced hundreds of leftist dissidents and human rights activists to long terms in prisons. Some of them have not been heard from since; traces of other prisoners were discovered only 30 years later.

Reforming the System

To create a system in which the Syrian people have faith and trust will take an enormous effort and commitment. All of the laws devoted to inhibiting freedom of expression and granting immunity to individuals in the Syrian government's employ must be repealed. All special, field and military courts must be re-organized and the vast majority of cases transferred to civilian courts that are transparent, independent and accountable to the Syrian people.

Clearly, a military justice system must remain, but military courts should have the right to try military personnel only, and parallel structures should be established to guarantee oversight and accountability.

Radwan Ziadeh is Executive director of the Syrian Center for Political and Strategic Studies in Washington, D.C.; Director of Damascus Center for Human Rights Studies in Syria; a Visiting Scholar at Lehigh University; a Fellow at the Institute for Social Policy and Understanding (ISPU) in Washington D.C.; and managing editor of the Transitional Justice in the Arab World Project.



Security Sector Reform in Post-Assad Syria

BY WAEL SAWAH

Syria is a police state. This was the case under the late President Hafez al-Assad and it continues under his son and successor, Bashar al-Assad. The police, and particularly the domestic intelligence and security services (mukhabarat in Arabic), have always been involved in upper-level politics as well as the everyday lives of citizens.

In 1984 Hafez al-Assad sidelined the military and strengthened the intelligence services when he came under direct threat from certain divisions in the military led by his own brother, Rifaat. Ever since, the mukhabarat has had a say in all government nominations, from ministers to the lowest civil servant.

In 2005, Bashar al-Assad issued a decree stipulating that the mukhabarat's permission would no longer be needed to start 73 kinds of businesses. Syrians

were shocked to learn, for example, that permission from the mukhabarat had formerly been needed to open even a small bakery.

Unlike many other police states, such as Tunisia under ousted President Zine al-Abidine Ben Ali, Syria under Hafez al-Assad assigned national security and intelligence duties to different competing security agencies, each of which had its own agents, information gathering services and prisons. Each agency operated independently, working with no clear jurisdictional limits and a deliberate policy of non-coordination with the other agencies.

There is little public knowledge about the size or importance of the various security and intelligence agencies in Syria. However, there is general agreement among Syrians that the biggest mukhabarat apparatus is the General Directorate for Intelligence

(GDI), known also as Amn al-Dawla (State Security). This agency answers directly to the president.

Since July 2012 the GDI has been headed by General Mohamad Deeb Zaitoun, who succeeded the Directorate's long-time strong man Ali Mamlouk when he was promoted by Assad to head the National Security Bureau. The former National Security Director, Hisham Ikhtiyar, was killed in a bomb explosion that also killed Defense Minister Daoud Rajha; the Deputy Chief-of-Staff, Assef Shawkat, who was also Assad's brother-in-law, and Hassan Turkmani, the head of a crisis cell set up to tackle the uprising against the regime.

The second largest mukhabarat agency is Military Intelligence (MI), headed now by General Rafik Shehadeh. Contrary to what its name might suggest, the responsibilities of the Military Intelligence are not limited to

matters affecting the armed forces, but also include internal security.

The third agency is the Political Security Agency, headed by General Ali Younes. Officially, this agency should be responsible for internal security; however, other agencies compete with it and often override its mandate.

The fourth agency, Air Force Security (AFS), is the most feared. Since the 1980s, AFS has been known to torture and mistreat prisoners and detainees. To be arrested by AFS is the worst case for a dissident. Its director, Jamil Hasan, is the only security chief who retained his position in Assad's senior leadership reshuffle in July 2012.

It is difficult to describe the various security agencies in Syria due to their opacity. Many of the laws and decrees regulating the organization and activities of the security services are secret, if they ever existed. There is no information available regarding the size of these agencies, so any detailed accounts are mere estimates.

The late President Hafez al-Assad shifted responsibilities among these agencies. In the 1970s, for example, Military Intelligence did not play a significant role in citizens' lives. At that time GDI was the agency most feared by political dissidents. However, Military Intelligence became the most important apparatus after the deadly conflict in the early 1980s between Assad and the Muslim Brotherhood. Air Force Intelligence also took on an essential role at that time.

When Bashar al-Assad ascended to power in 2000 and wanted to be seen as modernizing the country, he reduced the authority of the GDI, Military Intelligence and Air Force Intelligence, and gave a greater mandate to Political Security Agency, which is considered by many Syrians to be less brutal.

During the past four decades, the Syrian civil police force's mandate has been limited to non-political crimes, like robbery and murder. While the mere mention of one of the four clandestine intelligence services created horror in the hearts of Syrians, the civil police were considered easy to deal

with due to their high level of corruption, which enabled citizens to influence them with bribes.

Security sector reform is and will be a major challenge if and when Assad's government collapses. There is serious danger, however, that if Assad does depart, Syria will witness widespread revenge-inspired violence and sectarian strife.

In order to avoid this scenario, an interim government must adopt a transitional justice process that will undoubtedly be needed to lead the nation and control the chaos. To assist such a government, reform in the security sector is imperative. Reform should be a multi-layered process.

First, the Syrian military should be the major security force for Syria and should be preserved as an institution. High-ranking officers who participated in the fighting against the Syrian people and who ordered killings must be removed and held responsible for their actions. A transitional justice process must be implemented and impartial, fair and reputable individuals should be chosen to run the process.

Second, the four major intelligence and security agencies must be disbanded. These agencies' senior officers and officials must be held responsible for their roles during the past four decades in maintaining a brutal police state, and particularly for their actions during the Syrian uprising. However, low-ranking officers and ordinary members can be rehabilitated and absorbed in the military or other government agencies.

A new united and transparent security agency should be established under the authority of a new national "Police Commander." The Police commander would head a national police force that is very limited compared to the current security agencies. The mission of the police force will be to maintain security and order within society and to protect the security and the safety of citizens. At the same time, as in all other countries, an intelligence agency needs to be established with the mandate to work solely outside Syria.

Both the new internal police force and the external intelligence agency should have

clear, legislatively established regulations for information gathering and organization. Greater transparency and accountability

should be at the core of both the police force and the intelligence agency. A new culture must be created to prevent repression, abuse and impunity regarding the rule of law and citizens' rights. Both organizations must be completely apolitical, professional, neutral and impartial, and should be provided with proper training.

Finally, in order to create a proper national police force that serves people and does not master them, the term of the police commander has to be limited. The police budget must be approved by the Syrian Parliament and the Minister of Interior should be in charge of the police bureaucracy. The size of the police force should be strictly controlled to prevent unnecessary growth.

If a new Syrian government can adopt and follow these recommendations, it will be more likely to have a successful transition. If a new government simply replaces the security agencies with others having the same values and culture of the past, it may very well lead to a catastrophe.

Wael Sawah is a Syrian researcher on issues of civil society in Syria, author of a number of research papers, and coauthor of a number of books in Arabic and English. Sawah is a member of the Annual Middle East Legal Studies Seminar (MELSS, Yale University); Board member of the Syrian Center for Media and Freedom of Expression, Damascus; founding member of the Syrian League for Citizenship; a founding member of the Arab Rationalists League, Paris; and Editor of Al Awan Website for Laic Studies.

