

Challenges of Transitional Justice in the Context of the Syrian Conflict An Analytical Study.

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Keywords: Transitional justice, accountability and reparation, Syria, social justice, transitional justice experiences, jurisdiction..

INTRODUCTION

From 1970 to 2024, Syria suffered from injustice, corruption, and social oppression in all its forms, until the Syrian people rose up in 2011 to declare their revolution against the oppressive and tyrannical regime. Their revolution was crowned with success in 2024, and it became necessary to restore Syrian society to its natural state by applying the components of transitional justice. Transitional justice is the gateway to restoring social, cultural, economic, and intellectual balance to Syrian society. Any serious vision for the future of the new Syria is based on the concept of transitional justice as an effective legal and political tool that is indispensable for rebuilding the state, restoring the social fabric, and restoring confidence in state institutions.

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Section I: Components of Transitional Justice.

1-Introductory definition of transitional justice:

The concept of transitional justice is a recent one, coined by American legal scholars. It emerged during the breakup of the Soviet Union in Eastern European countries, when they transitioned from authoritarian to democratic systems. It also emerged and took shape when it was adopted by investigative commissions in Latin America during the political transitions that affected them, particularly the truth commissions in El Salvador and Chile. It is therefore a relatively new concept¹. Transitional justice can be defined as a process of socio-political change in a country that has suffered from a culture of conflict and carries a repugnant intellectual legacy, with the aim of establishing a state governed by the rule of law, starting with criminal justice and extending to social justice, in order to build a new reality—against the backdrop of a bitter political memory—that achieves security, justice, and prosperity for the citizens of that state². The concept of transitional justice refers to a set of processes and mechanisms associated with attempts by a society to deal with a legacy of large-scale past human rights violations, with a view to ensuring accountability, establishing justice, and achieving reconciliation. These mechanisms may include both judicial and non-judicial measures, ranging from the prosecution of individuals, compensation for victims of serious human rights violations, truth-seeking to uncover all abuses, constitutional reform, and vetting of personnel for dismissal or retention in the context of the restructuring of public institutions, with varying levels of international participation or none at all³. The United Nations views transitional justice as a set of judicial and non-judicial procedures, measures, and mechanisms, including truth-seeking, reparations programs, and institutional reform, provided that these mechanisms are consistent with international legal standards and obligations⁴. Transitional justice is described as an integrated set of processes, mechanisms, and measures associated with a society's attempt to achieve peace in the presence of a legacy of serious human rights violations in order to ensure accountability, criminal justice, and national reconciliation in societies exhausted by conflict. These mechanisms include judicial and non-judicial measures with varying levels of involvement or non-involvement of international organizations to achieve criminal justice, victim redress, and institutional reform⁵. Even the description of transitional justice is subject to classification, whether it is a transition from a state of conflict to a state of peace, such as in Sierra Leone, or from a state of authoritarian rule to a state of democratic rule, such as in South Africa. In reality, the description of transitional justice is inadequate because justice in this context encompasses an integrated set of ongoing social processes and interactions⁶. The trends pursued by a society often result in conflicts over the identity of the state through social interactions resulting from the legacy of the past and the pursuit of a future that will play a decisive role in transforming society from a state of conflict to a state of peace⁷. Therefore, it can be said that the term transitional justice emerged with the emergence of conflicts in societies that transitioned from authoritarian to democratic rule when it was linked to issues related to gross human rights violations. It also emerged with another category of non-international armed conflicts when conflicts arose between national parties to monopolize power. However, the idea of linking transitional justice to gross human rights violations in order to combat impunity developed to become one of the most prominent elements of transitional justice. Criminal justice has been considered the fundamental measure of transitional justice, in addition to commissions concerned with redressing harm and compensating victims, uncovering the truth,

¹ Searle, Kerry Anne. *Transitional Justice in South Africa and Sierra Leone: A Case Study Analysis*. Master of Philosophy in International Studies, Monash University, 2018, p. 15.

² *Ibid.*, p. 14.

³ United Nations Security Council. *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of the Secretary-General*. UN Doc. S/2004/616, August 23, 2004, p. 6.

⁴ Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice. March 2010, p. 3. Available at: https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/TJ_Guidance_Note_March_2010FINAL.pdf (accessed 1 October 2025).

⁵ European Union. *The EU's Policy Framework on Support to Transitional Justice*. Implementation of the EU Action Plan on Human Rights and Democracy 2015–2019, p. 2. Available at: https://www.europarl.europa.eu/meetdocs/2014_2019/documents/dand/dv/40_eupolicy_frmwrk_suptrans_justice/40_eupolicy_frmwrk_suptrans_justice_en.pdf (accessed 1 October 2025).

⁶ Dekna, Asma. *Towards a Guide for Designing Innovative Human-Centred Transitional Justice Processes: Lessons from Rwanda, Sierra Leone and South Africa*. Master's Thesis, The Edward de Bono Institute for the Design and Development of Thinking, University of Malta, 2018, p. 8.

⁷ *Ibid.*, p. 9.

and institutional reform, with the aim of rebuilding society on a reconciliatory and sound foundation that respects the rule of law⁸. Transitional justice, according to the United Nations, is a form of justice that accompanies social and political change with the aim of restoring justice and creating balance among the components of national society. Here, a distinction must be made between justice in a period of stability and justice in a period of social transition⁹. Justice itself is a central concept in social life, and this concept is linked to the moral standards of society. It is an innate issue that is compatible with the stability of society. The idea of transitional justice is deeper than the idea of applying laws or considering them a tool for engineering society. It is about bringing about change according to what the people want¹⁰. If we look at justice from a research perspective, we see that it has a fragmented approach, with each country viewing justice from its own perspective. It is a continuous innovation related to improving all sectors of society, from fair justice and healthcare to educational development, energy investment, and service improvement. Some even view justice as the use of available knowledge in all fields¹¹, considering that societies in need of transitional justice are fragile societies trying to transition from a dark past to a bright future using all their energies. Each society has its own specific circumstances that require specific measures appropriate to its nature¹². Transitional justice is a process of combating injustice and restoring balance to society¹³.

Removing injustice and restoring balance to society requires both punitive and corrective measures. Depriving victims and their families of their right to justice may lead to retaliatory measures that are unnecessary in the context of criminal justice¹⁴. Therefore, transitional justice in Syria, as in other countries, has a special nature that must be adapted to the circumstances of the Syrian revolution. In our opinion, the situation in Syria cannot be resolved without punishing those who killed, oppressed, displaced, raped, destroyed residential neighborhoods, and bombarded civilians with chemical weapons, but within the framework of criminal justice administered by the authority that brought about change for the benefit of the Syrian people.

2 -Components of transitional justice:

The UN Secretary-General's report states that transitional justice measures include four mechanisms or elements that make up the transitional justice process, which serve as a guide for the application of transitional justice, adopted by both the United Nations and the European Union, starting with the pursuit of criminal justice, the search for truth, redress and compensation for victims, and the restructuring of institutions¹⁵. We will begin with criminal justice:

A. Criminal justice as an element of transitional justice:

The United Nations General Assembly emphasized the issue of non-impunity for serious violations of international humanitarian law and human rights law committed during the revolution in the Syrian Arab Republic, which turned to armed struggle after the former regime's practices of killing civilians, which provided fertile ground for further violations and abuses, Referring to statements by the Secretary-General of the United Nations, the United Nations High Commissioner for Human Rights, and human rights procedures, that crimes against humanity are likely to have been committed in the Syrian Arab Republic, Noting that the Secretary-General and the High Commissioner for Human Rights have repeatedly encouraged the Security Council to refer the situation in the Syrian Arab Republic to the International Criminal Court, and stressing the need to ensure accountability for crimes that violate international law, Decides to establish an impartial international mechanism to assist in the investigation and prosecution of those responsible for the most serious crimes under international law committed in the Syrian Arab Republic since March 2011 under the auspices of the United Nations; to cooperate closely with the Independent

⁸ Qassi, Fawzia. "The Complementarity of Transitional Justice Mechanisms and Criminal Justice: The Truth and Reconciliation Commission in Sierra Leone as a Model." *Annals of the Faculty of Law and Political Science, University of Oran 2 Mohamed Ben Ahmed*, vol. 6, no. 1 (Dec. 8, 2014), pp. 204–205. [in Arabic].

⁹ Dekna, Asma, op. cit., p. 10.

¹⁰ Ibid., p. 1.

¹¹ Ibid., p. 6.

¹² Ibid., p. 7.

¹³ Ibid., p. 12.

¹⁴ Ibid., p. 14.

¹⁵ European Union, *The EU's Policy Framework on Support to Transitional Justice*, (This document forms part of the implementation of the EU Action Plan on Human Rights and Democracy –2015 - 2019) op. cit., p. 2.

International Commission of Inquiry on the Syrian Arab Republic¹⁶; to collect, preserve, and analyze evidence of violations of international humanitarian law, and human rights violations and abuses, and prepare files to facilitate and expedite impartial and independent criminal proceedings in accordance with international law standards in national, regional, or international courts with jurisdiction over these crimes under international law¹⁷. A commission of inquiry on Syria was established by the Human Rights Council in 2011 to document human rights violations. Its reports relied on satellite images, photographs, videos, medical records, and witness testimony, which together constitute reliable evidence according to international standards in international criminal law¹⁸. All of this took place before the Syrian revolution succeeded, a government was formed, and a societal dialogue began to establish the stages of transitional justice in Syria. Since most legal experts in countries that have emerged from conflict recognize that the link between the transitional justice process and legal standards is fragile¹⁹, due to the corruption of the old regime and the novelty of the new regime, Therefore, human rights must be viewed as an acknowledgment of the failure to protect victims in the past, rather than working to bring justice to perpetrators by demanding the human rights that people should enjoy, when the causes of the conflict were originally related to the failure to apply human rights to victims, so that the matter does not become questionable²⁰. While the former regime deprived all people of their human rights, now there are those who demand human rights for perpetrators on the pretext of international standards that must prevail in transitional justice, whereas human rights should be synonymous with the concept of criminal justice, as it is an impenetrable fortress against political tolerance²¹. In fact, the essence of criminal justice includes preventing impunity, and it is important to establish coherent and effective strategies for investigation and prosecution at an early stage. Such prosecutions should be national in nature and have clear objectives to prevent impunity for all serious crimes, regardless of the defendants. It is unacceptable to invoke the law to avoid punishment on the grounds that national laws do not provide for such crimes, or that the reality of a country where conflicts have ended or authoritarian rule has ended requires national reconciliation; or to invoke institutional dysfunction or lack of political will, or that national reconciliation requires overlooking certain crimes and suspects, because the number of victims is large, and therefore effective strategies in this context relate to setting priorities in selecting types of crimes and selecting major criminals based on clear criteria, with full commitment to fair trials and due legal procedures that do justice to the victims of those crimes²². In this way, no member of the former regime will be exempt from a fair trial in accordance with equitable legal standards, especially since the UN General Assembly has emphasized that achieving reconciliation and sustainable peace requires any political process aimed at resolving the crisis in the Syrian Arab Republic to ensure credible and comprehensive accountability for violations of international humanitarian law and human rights violations and abuses committed in Syria²³. We therefore propose to begin by drafting laws establishing national courts and defining their substantive, territorial, and temporal jurisdiction in all Syrian governorates in order to begin prosecuting war criminals from among the leaders of the army and allied militias.

B. The search for truth as an element of transitional justice:

In Syria, we need to develop a legal methodology that is transparent and clear in revealing the truth

¹⁶ United Nations General Assembly. International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011. UN Doc. A/RES/71/248, adopted 21 December 2016, issued 11 January 2017, p. 2.

¹⁷ Ibid., p. 3.

¹⁸ Nassar, Sema, and Iavor Rangelov. Documentation of Human Rights Violations and Transitional Justice in Syria: Gaps and Ways to Address Them. Conflict Research Programme, London School of Economics and Political Science, 2020, p. 6. Available at: http://eprints.lse.ac.uk/106206/2/Documenting_HR_and_TJ_in_Syria_updated_Nov2020.pdf (accessed 5 February 2025).

¹⁹ Mcevoy, Kieran, and Lorna McGregor. Transitional Justice from Below: Grassroots Activism and the Struggle for Change. Human Rights Law in Perspective, vol. 14. Hart Publishing, 2008, p. 18.

²⁰ Ibid., p. 22.

²¹ Ibid., p. 24.

²² European Union, The EU's Policy Framework on Support to Transitional Justice, op. cit., p. 5.

²³ United Nations General Assembly. International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011. UN Doc. A/RES/71/248, adopted 21 December 2016, issued 11 January 2017, p. 2.

in order to understand transitional justice. This requires deep reflection on legal discourse in the context of transitional justice, and we must be creative in overcoming obstacles in order to accommodate victims and local communities at the same time²⁴. Documenting violations for accountability purposes must be a priority for the Syrian government, as well as a priority in national dialogue discussions, where all crimes committed by the forces of the former regime and its militias, which are described as war crimes, must be documented. At that time, the Syrian state collaborated with foreign forces from Iran, Russia, and Iraq²⁵. The European Court of Human Rights, the American Court of Human Rights, and the African Commission on Human and Peoples' Rights have emphasized the establishment of fact-finding commissions as flexible tools that focus on victims. These commissions can be used for several other purposes, including archiving the facts of crimes committed during the Syrian revolution, which helps to provide evidence of the violations that occurred. They can also be used to facilitate national dialogue through conferences and public hearings at which recommendations are made on various reforms to acknowledge the violations that have occurred, as Syrian society is in dire need of knowing the facts and bringing the perpetrators to justice. Fact-finding commissions established by countries that have suffered from conflicts facilitate access to the truth about what happened. On the one hand, they contribute to judicial efforts, and on the other, they have a social dimension that helps build trust among the components of a single people by ensuring that victims obtain their rights and restoring confidence in state institutions by revealing the facts to heal the rift in national society²⁶. Fact-finding committees should give victims and their families a chance to be heard and restore social balance after periods of violent unrest. These committees work to create an official record of what happened in order to overcome past mistakes and commemorate those who sacrificed themselves. to establish a reconciliatory approach within the Syrian nation, taking into account the unique circumstances of Syrian society. Every country has its own specific circumstances that require a specific approach to reform²⁷, especially since the Syrian conflict is one of the most documented conflicts in terms of war crimes committed by the former ruling authorities. Activists, journalists, non-governmental humanitarian organizations, and governmental organizations, including the United Nations and the Human Rights Council, have made efforts to document the atrocities of genocide, crimes against humanity, war crimes, the bombing of hospitals, the displacement and siege of populations, starvation, and the use of chemical weapons²⁸. In this context, building effective national capacities in the judicial and security fields is among the priorities of the current government, as these actors are included in the design and implementation of national prosecution initiatives or are invested in the results of truth-telling efforts. Institutional capacity building can provide a safer environment for authorities to conduct investigations and ensure the protection of witnesses and victims participating in truth-seeking mechanisms²⁹. In our opinion, the facts must be revealed to the Syrian people because during the Syrian revolution, the former regime deliberately falsified the facts and misled justice in order to evade its legal obligations under international humanitarian law and human rights law.

C. Compensation for victims as an element of transitional justice:

Article 75 of the Rome Statute of the International Criminal Court refers to the right of victims of international crimes to receive appropriate compensation. In addition, Article 14 of the Convention against Torture affirms the right of victims of torture to receive compensation. The United Nations has affirmed guidelines on the right to redress and compensation for victims of serious violations of human rights law and international humanitarian law. International conventions explicitly refer to the issue of compensation, but what form does this compensation take? Is it only monetary compensation? Returning to the reports of the United Nations and the European Union, we find that compensation for victims includes, in addition to monetary compensation, medical and psychological services, educational services, social reintegration, restitution of property, apologies, commemoration of victims, and the designation of national days to commemorate victims. Therefore, the idea of compensation is a complex issue that requires a holistic and comprehensive approach³⁰. Compensating victims is one way in which the new state can assert its legitimacy and build trust among victims by restoring their dignity to the extent possible and returning them

²⁴ Mcevoy, Kieran, and Lorna McGregor, *op. cit.*, p. 5.

²⁵ Nassar, Sema, and Iavor Rangelov, *op. cit.*, p. 15.

²⁶ European Union, *The EU's Policy Framework on Support to Transitional Justice*, *op. cit.*, p. 6.

²⁷ Dekna, Asma, *op. cit.*, p. 16.

²⁸ Nassar, Sema, and Iavor Rangelov, *op. cit.*, p. 4.

²⁹ United Nations Security Council. *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of the Secretary-General*. UN Doc. S/2011/634, 12 November 2011, p. 8.

³⁰ European Union, *The EU's Policy Framework on Support to Transitional Justice*, *op. cit.*, p. 7.

to their pre-crime status. This may improve their chances of reintegration into society³¹. Addressing the compensation aspects for victims of the Syrian conflict requires diligent work by the new Syrian government, as most victims have lost their homes and all their savings that helped them live in the places where they used to live. They were displaced and their homes were destroyed³². The United Nations believes that successful transitional justice programs must place victims of human rights violations at the center through national consultations between national actors and the national government. They must take into account the privacy, safety, and dignity of victims and the safety and protection of witnesses by adopting a comprehensive approach that supports judicial and non-judicial processes in prosecuting war criminals, paying compensation, and institutional reform³³. Therefore, the new government should take this factor into consideration. Some may wonder where the money to pay compensation will come from, given that the new government does not have the funds. Our answer is that it is not necessary to pay full compensation, but rather to gradually secure a decent standard of living. The creation of an international support fund for this purpose may be worth considering.

D. Institutional reform to ensure non-repetition as an element of transitional justice:

Here, we must distinguish between countries that have suffered from internal power struggles and those that have undergone a revolution against autocratic rule. Syria falls under the latter category, as this distinction has legal implications for institutional reform. In the case of a revolution against autocratic rule, the public institutions of the former regime are tools of oppression and injustice. Therefore, reforming these institutions is imperative to strengthen the rule of law and ensure accountability for human rights violations on the one hand, and on the other hand to build trust between citizens and state institutions to prevent future violations. In general, institutional reform includes oversight of public institutions, and dissolving some of them, most importantly the security agencies that played a major role in committing massacres, dismissing corrupt employees, and reforming constitutional and legislative institutions to achieve the best results from transitional justice programs. Perhaps one of the most important priorities is reforming the security and justice sector to ensure the accountability of the security forces by strengthening the authority, independence, and integrity of the judiciary and repealing national legislation that conflicts with international standards to prevent human rights violators from holding public office again³⁴.

Restructuring state institutions from repressive institutions to institutions that serve the people, and from tools in the hands of the former authoritarian regime to tools for fair and just governance based on the equitable participation of the people, will enable these institutions to gain the trust of the masses who previously suffered at their hands³⁵. This requires the new Syrian government to exercise caution in proceeding with restructuring in terms of punishing the innocent and rewarding the oppressors. No one denies that transitional justice has been a highly politicized process in some countries. Although the transitional justice process poses a challenge to society in its transition from autocracy to democracy, excessive talk of human rights and the application of liberal principles may undermine the rule of law and lead to ambiguity in the application of the restructuring law³⁶. It should be noted that vetting procedures for employees and national trials can help dismantle abusive state structures and criminal networks that hinder efforts to strengthen judicial and security institutions³⁷. Peace cannot prevail without fighting corruption, distributing wealth equitably, striving to secure social services, and working to restructure institutions so that they become reliable in addressing transitional justice issues³⁸. We therefore believe that the formation of specialized committees in each institution is imperative in order to restore institutions to their original purpose, rather than using them against vulnerable population groups. Social integration into state

³¹ Dekna, Asma, *op. cit.*, p. 17.

³² Nassar, Sema, and Iavor Rangelov, *op. cit.*, p. 14.

³³ United Nations. Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice. March 2010, *op. cit.*, p. 6.

³⁴ European Union, The EU's Policy Framework on Support to Transitional Justice, *op. cit.*, p. 7.

³⁵ Dekna, Asma, *op. cit.*, p. 17.

³⁶ Mcevoy, Kieran, and Lorna McGregor, *op. cit.*, pp. 6–7.

³⁷ United Nations Security Council. The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of the Secretary-General. UN Doc. S/2011/634, 12 November 2011, p. 8.

³⁸ United Nations. Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice. March 2010, *op. cit.*, p. 7.

institutions must primarily target vulnerable population groups in times of conflict³⁹. In this way, institutions will be able to advance Syrian society away from corrupt officials who contributed to supporting the former regime by harnessing state institutions to serve the violations that occurred during the Syrian revolution.

Section II: Examples of transitional justice in some countries.

1- The South African experience:

The roots of the political crisis in South Africa go back to colonial causes, namely the control of the state by a white minority of European origin. Since 1948, the South African government has officially applied a policy of racial discrimination known as apartheid, dividing society into four population groups: whites, coloreds, Indians, and blacks. Racial discrimination against blacks, who represented the overwhelming majority, was enforced through racist legislation. In 1961, South Africa gained independence from the British Crown, but the system of racial discrimination remained in place, causing bloody events. The international community ignored some of these events for reasons known to all⁴⁰. South Africa suffered from racial discrimination for decades, with the majority of the population marginalized politically and socially, as was the case in Syria. Social, political, and economic injustice was inflicted on the majority of the people. In 1994, South Africa began to recover from oppression and injustice, transforming from an authoritarian state to a democratic one. A truth and reconciliation commission was formed, consisting of three committees: a human rights violations committee, a victims' compensation committee, and an amnesty committee⁴¹. In 1990, the democratic transition process began when the South African president lifted the ban on the African National Congress and released its leader, Nelson Mandela. The then-president, F. W. de Klerk, and Mandela worked to develop a transition plan to bring the country out of chaos and into stability. and from a state of tyranny and corruption to a state of democracy and the rule of law. A transitional constitution was drafted in 1993, followed by free presidential elections in which all ethnic groups were allowed to vote. Parliament then passed the National Unity and Reconciliation Act, which established the Truth and Reconciliation Commission. Nelson Mandela took power in 1995. The commission was composed of 17 people who enjoyed popular approval. It worked to uncover the truth and established mechanisms for reconciliation and amnesty to prevent the tragedies from recurring. Three committees emerged from the commission: The Human Rights Violations Committee, which investigated violations that occurred between 1960 and 1994 and identified victims and perpetrators; the Reparations and Rehabilitation Committee, which issued recommendations for compensating victims; and the Amnesty Committee, which heard witnesses and victims and examined more than 7,000 requests for amnesty. It continued its work until 2000⁴², and a special court was established to prosecute human rights violators⁴³.

2- The Sierra Leone experience:

Civil war broke out in Sierra Leone in 1991 between the Revolutionary United Front (RUF) and the government of Joseph Saido Momoh. The RUF received widespread support from Sierra Leoneans who were disillusioned by years of authoritarian rule. In 1999, the parties reached a peace agreement known as the Lomé Peace Agreement, which provided for a controversial general amnesty⁴⁴. Sierra Leone experienced a bloody conflict that lasted ten years, from 1991 to 2002, characterized by violence, killings, and the recruitment of children. The war left thousands of civilian and military casualties. In addition to cases of rape, basic infrastructure was severely damaged. After the Lomé Peace Agreement, a settlement commission was established and began work in 2002. One of its mistakes was that it granted a blanket amnesty to all parties without conditions, which drew severe international criticism⁴⁵. The United Nations expressed reservations about this amnesty, insisting that crimes against humanity, war crimes, and genocide could not be covered by the amnesty. The Lomé Agreement established a Truth and Reconciliation Commission with the aim of creating a historical record documenting human rights violations to prevent impunity and

³⁹ Ibid., p. 11.

⁴⁰ Raash, Serhan, and Nour-Eddine Hachoud. "Truth and Reconciliation Commissions as a Mechanism for Promoting National Reconciliation: A Comparative Study of Sierra Leone and South Africa." *Journal of Humanities and Social Sciences Researcher*, vol. 13, no. 1 (March 31, 2021), p. 164. [in Arabic].

⁴¹ Searle, Kerry Anne, op. cit., p. 12.

⁴² Raash, Serhan, and Nour-Eddine Hachoud, op. cit., p. 165.

⁴³ Searle, Kerry Anne, op. cit., p. 13.

⁴⁴ Qassi, Fawzia, op. cit., p. 209.

⁴⁵ Searle, Kerry Anne, op. cit., pp. 12–13.

respond to the needs of victims in order to promote national reconciliation and prevent the recurrence of violence and violations⁴⁶. The commission was funded by international donors, and parliament enacted a special law defining its spatial and temporal mandate. Representatives of the United Nations participated in the process of establishing the commission⁴⁷, whose work was divided into two main phases. The first phase was called the statement-gathering phase, during which 70 members from various sectors of society were recruited to collect information from across the country. The second phase was known as the hearing phase, during which perpetrators and victims were heard. However, the hearings did not achieve the desired result because the president at the time, Tijan Kibeh, refused to acknowledge responsibility and apologize to the people⁴⁸. As a result, the commission drafted its report in several volumes. Although the report was extensive, it did not serve the interests of the people in overcoming their ordeal⁴⁹. According to the internal regulations of the Truth and Reconciliation Commission—whose mission was to make recommendations to the government for implementation—it was necessary to return to the causes of the conflict. The committee's report, despite its size, was unclear and unlike the South African commission's report, which condemned the apartheid regime and worked to prepare for political transition. In contrast, the Lomé Agreement, which put an end to the civil war that led to the establishment of the commission, was not a decisive victory for one warring party over another, nor was it a victory for one ideology over another. Therefore, the commission's report was unclear, as it blamed many external factors, accusing Muammar Gaddafi and Charles Taylor, the president of Liberia, in addition to internal factors such as corruption, theft of funds, and mismanagement⁵⁰.

The committee's position on the amnesty stipulated in the Lomé Peace Agreement was controversial. The International Court of Justice for Sierra Leone confirmed that the amnesty violated international law, knowing that the amnesty was one of the most important reasons for stopping the fighting between the parties to the conflict⁵¹. On the other hand, the government was aware that the Revolutionary Front would not accept the peace agreement without this amnesty. The question was: what would be the alternative if the war were not stopped? If the amnesty had not been approved in the agreement, the fighting would have continued. Although the amnesty was undesirable and the most serious criminals should have been tried, the political reality imposed itself on the agreement. Although the committee did not support the amnesty, it was one of the reasons for establishing peace and providing a framework for the agreement to begin the return to normal life, which took more than five years⁵². Nevertheless, the committee is criticized for not attempting to separate the amnesty from criminal justice and reconciliation, and for not clarifying the extent to which the amnesty contributed to national reconciliation. Was the insistence on criminal trials an obstacle to peace to the extent that it prevented its achievement⁵³.

3- The Rwanda experience:

In April 1994, civil war broke out in Rwanda between the Hutu and Tutsi ethnic groups, claiming nearly one million victims in 100 days⁵⁴. After the conflict ended, under the law of prosecution, criminals were classified into four categories⁵⁵:

- Perpetrators of genocide, its organizers and instigators, and perpetrators of torture.
- Perpetrators of murder and their accomplices.
- Perpetrators of serious assaults on victims that did not result in death.
- Perpetrators of crimes against property, such as looting and theft.

In response to the inability of the national judiciary and the International Criminal Tribunal for Rwanda to act, the Rwandan government began to seek alternative forms of justice and adopted the principles and values prevailing in Rwanda by promoting tolerance instead of revenge in order to speed up the process of justice and investigation. Prisons were overcrowded with defendants, which led to the

⁴⁶ Qassi, Fawzia, op. cit., p. 210.

⁴⁷ Ibid., p. 211.

⁴⁸ Ibid., pp. 215–216.

⁴⁹ Ibid., p. 216.

⁵⁰ Ibid., p. 217.

⁵¹ Ibid., p. 219.

⁵² Ibid., p. 220.

⁵³ Ibid., p. 221.

⁵⁴ Mibenge, Chiseche. "Enforcing International Humanitarian Law at the National Level: The Gacaca Jurisdictions of Rwanda." *Yearbook of International Humanitarian Law*, vol. 7 (December 2004), p. 410.

⁵⁵ Ibid., p. 411.

emergence of the gacaca court system as a traditional mechanism that uses local customs as a means of resolving disputes, which was followed by the local population⁵⁶.

The amended Jakaka Courts Act was passed in 2004 and 11,000 courts were established. The courts were formed through elections by the local community and comprised nine judges and five deputies, headed by a judge for each court⁵⁷. The Gacaca court system launched by the Rwandan government is one of the largest transitional justice projects in the world, which has tried large numbers of human rights violators, similar to the International Criminal Tribunal for Rwanda. The Gacaca system relied on local customs for resolving disputes as a general method of conducting trials. It is a participatory system that seeks to combine punitive and restorative justice. These courts were presided over by individuals known for their integrity within local communities. The courts were held in public squares and schoolyards⁵⁸, and the Gacaca courts did not follow legal procedures in their trials. This system was heavily criticized by international organizations because the presiding judges did not have sufficient legal experience, the defense of the accused was virtually non-existent, and there was fear of reprisals against witnesses. The composition of the court was fundamentally flawed, as the majority of its members were from the Tutsi ethnic group, which had been subjected to ethnic cleansing by the Hutu majority. The Hutu viewed these courts as a tool of justice in the hands of the victors. These courts subsequently gained international support because they combined criminal and reformatory justice. They heard thousands of cases, and although the Rwandan people did not consider the Gacaca courts to be fair, they accepted them⁵⁹.

4- The Tunisian experience:

After the success of the Tunisian revolution in January 2011 and the flight of the former Tunisian president from Tunisia, Tunisia began a recovery phase in an attempt to build a state that respects the rule of law, human rights, and freedoms. Of course, there was a need for national reconciliation and transitional justice to establish justice and stability in society. Civil society groups, civic organizations, and human rights organizations began working on this through workshops, lectures, and seminars, which played a major role in establishing the principles of transitional justice.

After the elections for the National Constituent Assembly and the formation of the Troika government⁶⁰ in 2011, Tunisia entered a new phase in the transitional justice process, marked by the establishment of a legal framework, the creation of parliamentary committees to follow up on corruption cases and compensate victims, and the establishment of a Ministry of Human Rights and Transitional Justice. An extensive national dialogue involving various political and social actors culminated in the adoption of the Transitional Justice Law in December 2013, in a consensual context aimed at revealing the truth, redressing harm, and ensuring an inclusive national process⁶¹.

This law addresses the definition of transitional justice and considers in Chapter II that revealing the truth about violations is a right guaranteed by law to every citizen, taking into account the interests of victims, clarifying the concept of violation and revealing the truth in Chapters III and IV. The law also included in the third section the issue of accountability, noting the jurisdiction of certain legal circles and specifying certain types of violations in the eighth chapter, including but not limited to murder, extrajudicial executions, rape, enforced disappearances, election fraud, and financial corruption. It also notes that cases arising from the violations mentioned in Chapter 8 are not subject to a statute of limitations. Transitional justice has also been included as a fundamental principle in Tunisia's new constitution 2014⁶².

In the context of transitional justice, it is necessary to exclude amnesty and apply the principle of no

⁵⁶ Ibid., p. 412.

⁵⁷ Ibid., p. 413.

⁵⁸ Rettig, Max. "Gacaca: Truth, Justice, and Reconciliation in Post-Conflict Rwanda?" *African Studies Review*, vol. 51, no. 3 (Dec. 2008), p. 25.

⁵⁹ Ibid., p. 26.

⁶⁰ Troïka (French: Troïka), "A Presidential, Governmental, and Parliamentary Coalition Consisting of Three Majority Parties Represented in the Tunisian Constituent Assembly to Form a Stable Government in Tunisia." Established 22 November 2011, dissolved 20 November 2014.

⁶¹ Tunisia. Organic Law No. 53 of 2013 Establishing Transitional Justice and Its Organization. Tunis: Legislation Portal. Available at: [<https://legislation-securite.tn/ar/latest-laws>] [in Arabic].

⁶² Tunisia. The 2014 Constitution of the Tunisian Republic. Adopted by the National Assembly on January 27, 2014, following the 2011 revolution, establishing a semi-presidential system and replacing the 1956 constitution. [in Arabic]

statute of limitations to war crimes, genocide, crimes against humanity, and torture in order to prevent impunity and ensure accountability for serious crimes, which is in line with the 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity. This has been successfully enshrined by the Tunisian legislature in the Basic Law on Transitional Justice No. 53 of 2013, in Chapters VIII and IX.

Also, under the aforementioned law, an independent body was established—the Truth and Dignity Commission (2014–2019)—to investigate human rights violations from 1955 to 2013. Its powers included uncovering the truth, documenting violations, investigating corruption and political tyranny, providing redress to victims, and referring certain cases to the competent courts. Its term of office was set at four years, renewable once for a period of one year.

The Truth and Dignity Commission issued its final report in 2019. It contained important recommendations, but their implementation remained partial and politically non-binding.

Opinions were divided between supporters and opponents of the commission's recommendations. The commission formulated several recommendations aimed at reforming the judiciary and strengthening its independence. The commission's recommendations addressed issues that have a significant impact on the independence of the judiciary, including the role of the Supreme Judicial Council in the appointment of judges, the disciplinary system, accountability, and means to reform the judiciary and ensure its independence, as well as reforming the military justice system⁶³.

At the same time, there were some issues raised by the Commission's recommendations, including recommendations to develop social welfare for victims that are unrelated to violations, which could be considered an expansion in the interpretation and application of the law and powers. In addition, some recommendations were repeated in more than one place, such as the recommendation to adopt postage stamps to commemorate the victims and preserve the national memory. It should also be noted that the report recommended the establishment of institutions to continue the pursuit of justice after the commission's term ends. Human Rights Watch has emphasized the need to renew the mandate of the Truth and Dignity Commission to continue the transitional justice process, given its role in referring serious human rights violations to specialized courts, considering that the refusal to extend the mandate effectively perpetuates impunity⁶⁴.

The Tunisian model of transitional justice has faltered due to the slow pace of proceedings, which in turn has led to delays in the implementation of decisions on reparations, judicial reform, and accountability, thereby delaying the achievement of justice. The role of political fluctuations and pressures, which revealed a lack of political will and the return of figures from the old regime⁶⁵, cannot be denied. All of this has hindered the implementation of some of the commission's recommendations. Economic and security challenges also imposed priorities on the government after the 2014 elections.

It can be seen from these examples that the reasons for pursuing transitional justice were different. The conflict in South Africa was due to racial discrimination against the black majority, the conflict in Sierra Leone was between the Revolutionary United Front and the oppressive and authoritarian government of Sierra Leone at the time, while the conflict in Rwanda was due to ethnic cleansing, and in Tunisia it was to fight corruption and various violations. Perhaps the reason we chose these examples is because they represent everything that happened in Syria. The Syrian revolution was based on all the reasons that occurred in South Africa, Sierra Leone, and Rwanda, in addition to reasons related to the marginalization of the Syrian people, the theft of their money, administrative corruption, the impoverishment of the people, the plundering of national wealth, and the silencing of voices. There was sectarian discrimination against the majority of the Syrian people, and there was ethnic (sectarian) cleansing in some areas that affected a

⁶³ ICJ. Tunisia: Supporting the Recommendations of the Truth and Dignity Commission Related to Judicial Reform. Briefing Paper, 2021. Available at: [<https://www.icj.org/wp-content/uploads/2021/12/Tunisia-IVD-recommendations-publications-briefing-paper-2021-ARA.pdf>] [in Arabic].

⁶⁴ Human Rights Watch. "Tunisia: Parliament Must Not Undermine Transitional Justice," 23 March 2018. Available at: <https://www.hrw.org/ar/news/2018/03/23/316154> [in Arabic].

⁶⁵ Al-Houki, Shaker. "The Dilemma of Transitional Justice in Tunisia: Between Confused Paths and Future Challenges." Arab Policies Journal, no. 47 (November 2020), p. 46. [in Arabic].

particular sect. The Syrian revolution was peaceful at the beginning, then moved to a military stage, and the conflict became between the revolutionary opposition and the former government. Therefore, it can be said that transitional justice and its implications in Syria differ radically from other countries where conflicts have led to the implementation of transitional justice, depending on the cause of the revolution and its results. Since the Syrian people's revolution was motivated by the desire to change an unjust system of government, Transitional justice in Syria requires political will to develop programs that are compatible with the nature of Syrian society in order to address the root causes of the Syrian revolution, including criminal justice, compensation for victims, the search for truth, and structural reform of institutions in line with the root causes of the Syrian revolution and the nature of Syrian society. There are thousands of missing persons whose fate remains unknown. It must be stated that the transitional Syrian government has a responsibility to begin implementing transitional justice mechanisms, starting with the prosecution of war criminals and ending with national reconciliation, given that transitional justice in Syria requires an approach that compensates victims and restore state institutions to their basic functions of serving citizens after restructuring them, as they were working to serve the machinery of oppression and tyranny of the former government. Any approach to transitional justice in Syria must take into account the societal problems resulting from the former government's rule at all levels. It is fine to learn from the experiences of other nations, but without replicating them. The Syrian transitional justice model must be born from the womb of Syrian society and express its needs for criminal justice, victim compensation, and political, social, intellectual, economic, and administrative change.

Section III: The Foundations of Transitional Justice in Syria:

Transitional justice in Syria is based on the fundamental principle of promoting the rule of law and addressing the root causes of the conflict between the revolutionary factions and the authoritarian regime. It should not be based on a pre-determined model of transitional justice imported from abroad. We will therefore examine the following principles:

1- Rule of law: The concept of the rule of law refers to the principle of governance in which all persons, institutions, and public and private entities, including the state itself, are accountable to publicly enacted laws that apply equally to all. and are adjudicated by an independent judiciary in accordance with international human rights standards and norms. This principle also requires measures to ensure compliance with the principles of equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness, procedural transparency, and the principle of the rule of law⁶⁶. Here, the rule of law means that all natural and legal persons, including the state, are subject to laws that are enacted and applied to all persons, and the effectiveness of the rule of law is judged independently⁶⁷. There is growing recognition that strengthening the rule of law requires more than just technical expertise and procedural support. It is necessary to express political will and harness it to serve the collective interest through coherent and coordinated action by a wide range of actors at various levels with the aim of applying the law to all⁶⁸. Since consolidating peace in the immediate post-conflict period — as well as maintaining peace in the long term in countries ravaged by internal wars — can only be achieved if the population is confident that grievances can be addressed through legitimate structures for the peaceful settlement of disputes and that justice will be done fairly. At the same time, the extreme vulnerability of women, children, prisoners, detainees, displaced persons, refugees, and others who were marginalized by the former regime, which is evident in all situations of conflict and post-conflict, adds urgency to the imperative of restoring the rule of law⁶⁹. Therefore, the legal and judicial vacuum in Syria must be filled as quickly as possible in order to uphold the rule of law. National actors should play a greater role in promoting, designing, and implementing rule of law programs, thereby increasing the likelihood of their sustainable impact⁷⁰.

2 - Addressing the root causes of conflict: Transitional justice starts by addressing the root causes of

⁶⁶ United Nations Security Council, The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies, Report of the Secretary-General, UN Doc. S/2004/616 (23 August 2004), p. 5–6.

⁶⁷ Kerry Anne Searle, op.cit, p.14.

⁶⁸ United Nations Security Council, The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies, Report of the Secretary-General, UN Doc. S/2011/634 (12 November 2011), p. 5.

⁶⁹ United Nations Security Council, The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies, Report of the Secretary-General, UN Doc. S/2004/616 (23 August 2004), p. 4.

⁷⁰ United Nations Security Council, The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies, Report of the Secretary-General, UN Doc. S/2011/634 (12 November 2011), p. 13.

authoritarian rule or ending conflict between two parties, and tackles the fundamental societal problems that have resulted from the nature of violations within the social structure among all actors in society. Here, legal and political institutions, as well as civil movements, must have a say in the form and mechanism of transitional justice, as there are psychological and social problems and behavioral problems resulting from a deviant culture that prevailed during the years of the former regime. Transitional justice must be designed in a way that is compatible with solutions to these problems. This is an innovation for each society according to its nature and specificity⁷¹. Transitional justice should focus on addressing the root causes of conflicts and violations that have resulted in human rights violations, including civil, political, economic, social, and cultural rights, in an integrated and interconnected manner. In order to contribute to the achievement of peace and reconciliation and the prevention of further conflicts⁷². From the United Nations' point of view, the transitional justice process should seek to investigate serious human rights violations, prosecute the perpetrators, and ensure that victims receive compensation as a contribution to the root causes of the conflict⁷³. It should be noted that the United Nations states that transitional justice mechanisms cannot function in the absence of a political vacuum in countries ravaged by conflict, as these countries are often characterized by a fragile environment⁷⁴. However, this does not apply to Syria, as there is no political vacuum. There is a transitional governing authority, and institutions, including the courts, operate in accordance with internationally recognized legal mechanisms. Furthermore, the United Nations supports accountability and justice within the framework of the national legal system. The United Nations cannot support any national reconciliation that prevents the prosecution of perpetrators of gross human rights violations, in order to ensure a conflict-free transition period. These mechanisms must be consistent with human rights instrument⁷⁵s. Therefore, even if some problems arise, the state's authority to hold perpetrators accountable remains intact. and it must not be suspended on the pretext of resolving internal crises to address the root causes of the conflict, or in order for the new authority to meet their security needs, or in order to address the evils of war, the state leaves the root causes of the conflict unaddressed. However, society will only be able to prevent a return to conflict in the future by addressing the causes of the conflict through legitimate and just means. Peace and stability can only prevail if the Syrian people realize that politically charged issues such as ethnic and sectarian discrimination, inequality in the distribution of wealth and social services, abuse of power, and denial of property rights or citizenship, can be addressed in a legitimate and fair manner. Prevention from this perspective is the first requirement of transitional justice⁷⁶. Transitional justice is an ongoing effort to build civil peace and restore balance in society by restoring its moral values. Therefore, understanding and analyzing society and addressing social issues are among the most important starting points for transitional justice⁷⁷.

3 - Avoid importing ready-made models for implementing transitional justice: We must learn how to avoid ready-made solutions for all cases of power transition, and refrain from importing foreign models⁷⁸, as no success or sustainability can be expected from any initiative imposed from outside to reform the rule of law or rebuild transitional justice. The international community should play a supportive role, not a replacement role, and these efforts must be based on meaningful public participation that includes national legal professionals, the government, women, minorities, affected groups, and civil society. Countless pre-designed or imported projects have failed the test of justice sector reform, no matter how well-crafted and elegantly packaged they may be. Without public awareness and education campaigns and public consultation initiatives, public understanding of national reform efforts will not be achieved⁷⁹. Syria is different from Rwanda, Sierra Leone, South Africa, and Tunisia. Each country has its own demographics, culture, and nature of conflict.

⁷¹ Dekna, Asma, op. cit., p. 18.

⁷² United Nations, Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice (March 2010), p. 3.

⁷³ Ibid., p. 4.

⁷⁴ Ibid., p. 4.

⁷⁵ Ibid., p. 4.

⁷⁶ United Nations Security Council, The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies, Report of the Secretary-General, UN Doc. S/2004/616 (23 August 2004), p. 5.

⁷⁷ Dekna, Asma, op. cit., p. 18.

⁷⁸ United Nations Security Council, The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies, Report of the Secretary-General, UN Doc. S/2004/616 (23 August 2004), p. 1.

⁷⁹ Ibid., p. 9.

Even when the United Nations provides assistance in the field of transitional justice, this assistance must be tailored to each individual country, as each country needs a unique framework for implementing transitional justice. The United Nations avoids imposing ready-made models for transitional justice procedures in countries ravaged by conflict. It is a matter of the country's needs and national capacities related to the causes of the conflict and the emergence of the dispute. Transitional justice is primarily a national task in which all state institutions participate to preserve rights and work to provide security and sustainable development⁸⁰. International organizations may or may not participate in this.

Section IV: Objectives of Transitional Justice in Syria:

Transitional justice in Syria should aim to establish national reconciliation and deal with political, legal, social, and economic challenges in a positive manner that reflects peace, prosperity, and development in Syrian society. All transitional justice mechanisms must fall under Syrian jurisdiction:

1- National reconciliation: National reconciliation cannot be defined effectively or definitively, as it takes many forms, paths, and names. It is necessary to take into account the variables that preceded the process of addressing the legacy of past violence in a positive manner and rebuilding broken relationships through mutual recognition of past suffering and changing destructive attitudes and behaviours into relationships that contribute to the establishment of sustainable peace⁸¹. where the concept of supporting reform must be instilled among all groups in society, including the elite, former combatants, and members of previous (non-criminal) ruling regimes. All of them must be assured that they will be protected from any illegal or unfair punishment and that they will have a real opportunity to apologize and reintegrate into their communities in post-conflict situations, where transitional justice processes are under consideration. There is a particularly important category of victims of human rights violations. Victims deserve the utmost attention from society⁸². The United Nations General Assembly has repeatedly emphasized that achieving reconciliation and sustainable peace requires any political process aimed at resolving the crisis in the Syrian Arab Republic to ensure credible and comprehensive accountability for violations of international humanitarian law and human rights violations and abuses committed in Syria⁸³. Countries suffering from prolonged conflict may resort to general amnesty to implement a political strategy aimed at bringing about peace for the following reasons:

-The state may not work to resolve sectarian, religious, and ethnic conflicts from a structural perspective, as if the state considers itself a third party in the conflict.

-If the state wishes to adopt a new constitution that requires the approval of both victims and perpetrators by facilitating a participatory process for drafting the constitution, transitional justice becomes weak in the view of some, failing to achieve its objectives due to the focus on peace⁸⁴.

-The state's political and economic agendas may take precedence over the rights of victims and directly contribute to impunity⁸⁵.

It is possible that when implementing measures that seek social justice and restorative justice, practices that exclude victims and their families may emerge with the aim of establishing restorative justice, which may conflict with criminal justice⁸⁶.

Therefore, it can be said that transitional justice can only be achieved if those who seek to manage a social system in which members of society who strive to end conflict and establish peace and balance in society participate take the reins of power and achieve criminal justice against war criminals⁸⁷. Furthermore, support for the new national leadership is a powerful factor that stimulates the development of institutions

⁸⁰ United Nations, Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice (March 2010), p. 5.

⁸¹ Raash, Serhan, and Nour-Eddine Hachoud, op. cit., p. 160.

⁸² United Nations Security Council, The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies, Report of the Secretary-General, UN Doc. S/2004/616 (23 August 2004), p. 10.

⁸³ United Nations General Assembly, International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011, A/RES/71/248 (11 January 2017), p. 2.

⁸⁴ Mcevoy, Kieran, and Lorna McGregor, op. cit., p. 11.

⁸⁵ Ibid., p. 13.

⁸⁶ Ibid., p. 9.

⁸⁷ Dekna, Asma, op. cit., p. 11.

through political support from all segments of society⁸⁸. Therefore, from our point of view, we propose that, no matter what happens, senior criminals and their accomplices must be brought to justice for the sake of the victims, and that civil peace and the achievement of security should not stand in the way of this. Therefore, in order to focus on national reconciliation and ensure that government agencies operate professionally and serve the reconstruction process, it is essential to enable judicial and security institutions to carry out their duties to increase public confidence in state institutions so that they are able to enforce court rulings and apply the law. Building the security capabilities of the new state must go hand in hand with progress in the area of transitional justice⁸⁹. Focusing on individual civil and political rights rather than seeking transitional justice, and failing to focus on economic crimes, corruption, and theft, and seeking to establish civil peace without redressing victims, may lead to support for trends that those who carried out the revolution may not desire⁹⁰.

2-Managing challenges: In post-conflict societies, security and justice institutions strive to manage the social and political challenges that accompany economic recovery. The actors controlling these institutions may be unable or unwilling to pursue accountability for serious crimes committed in the past, and civil society may not be in a position to hold institutions accountable. If the government fails to respond to the demands of those who brought about change, these groups may turn to the warring parties again to meet their needs for justice and security, which legitimizes the warring elements that helped perpetuate the war. and public confidence in state institutions would plummet, undermining collective efforts to address challenges to the rule of law and increasing the risk of a slide into violent conflict over time. It is therefore useful to have a deep understanding of the challenges and risks posed by the rule of law to peace and security, and of the impact of insecurity on sustainable development and the achievement of society's development goals at all levels⁹¹. Nevertheless, it is undeniable that societies torn apart by war find it difficult to enforce the rule of law and resolve widespread past transgressions, and to do so within a framework of destroyed institutions, depleted resources, compromised security, and a divided and traumatized population. This is a risky undertaking, often beyond the capacity of a new government, requiring attention to a variety of deficiencies, including: a lack of political will for reform, a lack of institutional independence within the justice sector, a lack of local technical capacity, a lack of material and financial resources, public distrust of government, lack of official respect for human rights, and consequently, lack of peace and security⁹².

In fact, focusing on building police forces, public prosecutors, the judiciary, and prisons is a major challenge in the context of a comprehensive approach to strengthening the rule of law. and the considerable efforts made to recruit and train police may not be matched by similar investments in capacity building in the judiciary and prison sectors, resulting in high rates of pretrial detention, and prison overcrowding. More support is therefore needed to provide human resources and infrastructure to ensure humane conditions for detainees. More efforts are needed to use local courts and establish legal systems to track cases in order to reduce delays in the adjudication of cases, which lead to prison overcrowding. As deprivation of liberty remains a common form of punishment for offenders, greater emphasis should be placed on diversion from the justice system, finding alternatives to detention, and achieving restorative justice⁹³. Therefore, the State's current national consultations are essential prerequisites for ensuring that transitional justice mechanisms reflect the needs of conflict-affected societies and are one way to overcome these challenges. There is also growing evidence that transitional justice measures that evolve over time and involve strong national consultations, lead to greater political stability in the post-conflict phase⁹⁴. Another challenge relates to property, the restoration of rights to their owners, and the policy of providing housing for returning

⁸⁸ United Nations Security Council, *The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies*, Report of the Secretary-General, UN Doc. S/2011/634 (12 November 2011), p. 13.

⁸⁹ Mcevoy, Kieran, and Lorna McGregor, *op. cit.*, p. 27.

⁹⁰ *Ibid.*, p.8.

⁹¹ United Nations Security Council, *The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies*, Report of the Secretary-General, UN Doc. S/2011/634 (12 November 2011), p. 5.

⁹² United Nations Security Council, *The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies*, Report of the Secretary-General, UN Doc. S/2004/616 (23 August 2004), p. 4.

⁹³ United Nations Security Council, *The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies*, Report of the Secretary-General, UN Doc. S/2011/634 (12 November 2011), pp.13–14.

⁹⁴ *Ibid.*, p. 8.

refugees⁹⁵.

Therefore, justice, peace, and democracy are not mutually exclusive goals. but rather imperatives that reinforce each other. Working to achieve all three in post-conflict situations requires strategic planning of activities, careful integration between them, and a well-thought-out arrangement. An approach that focuses on only one institution to the exclusion of others, or that ignores civil society or victims, will not be effective. The approach taken by the state towards the justice sector must be comprehensive in terms of the attention it gives to all its interrelated institutions, taking into account the needs of key groups in society, in order to achieve integration between transitional justice mechanisms⁹⁶. Experience throughout history has shown that failure to achieve transitional justice leads to widespread chaos⁹⁷, and that the application of transitional justice is necessary and inevitable, because individuals' lives need to be preserved and protected through the recognition of the rights granted by transitional justice, and because living and securing a dignified life is also important for citizens, and the two are interrelated. Transitional justice helps individuals to improve their behavior after the intellectual and behavioral distortions that were deliberately instilled by the former state authorities. The path to peace and security must pass through transitional justice⁹⁸. Tarek Mohamed Bouazizi, who sparked the Arab Spring, was not unemployed, but a young man in his twenties working on the outskirts of the city who, like many Tunisians, did not receive sufficient attention from the state. His despair and resort to suicide stemmed from his lack of a decent livelihood, as he did not live a life that met his needs and did not enjoy a decent standard of living. Therefore, this challenge must be addressed by working to tackle the core issues of development and allowing all members of society to contribute to economic growth without excluding certain groups, as this leads to their marginalization and makes them feel that they are neither here nor there⁹⁹.

3-Consolidating the exercise of Syrian jurisdiction during transitional justice proceedings: Jurisdiction is defined as the state's authority to influence persons, property, and actions, and reflects the fundamental principles of state sovereignty. It is a vital and central feature and a sovereign right, as it is based on the exercise of power to change, create, or terminate legal positions by applying its laws, issuing judgments, and enforcing them¹⁰⁰. The meaning of jurisdiction generally appears in the authority of sovereign bodies to rule and control¹⁰¹. When a state emerging from war and conflict is unable or unwilling to exercise its jurisdiction and initiate transitional justice procedures, including prosecutions, this task may be entrusted to the International Criminal Court or to special or hybrid courts, and the principle of complementarity contained in the Rome Statute of the International Criminal Court may be applied¹⁰². However, in the case of Syria, it is able and willing to carry out all transitional justice programs based on the idea that public institutions that helped to exercise oppression, tyranny, injustice, and continued repressive rule have been transformed into institutions that support civil peace, protect human rights, and promote respect for the rule of law. In addition, the new authority in Syria has taken steps to build institutions and reform what remains of them. This is a decisive factor in preventing human rights violations, especially the abolition of the military and security institutions, which played the largest role in oppressing the people¹⁰³. Since the means of establishing transitional justice require the adoption of national legislation emanating from the national judiciary to prosecute those responsible for war crimes and crimes against humanity¹⁰⁴, The European Union has indicated that the implementation of transitional justice programs must be carried out using national

⁹⁵ Ibid., p. 20.

⁹⁶ United Nations Security Council, The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies, Report of the Secretary-General, UN Doc. S/2004/616 (23 August 2004), p. 2.

⁹⁷ Searle, Kerry Anne, op. cit., p. 12.

⁹⁸ Searle, Kerry Anne, op. cit., p. 13.

⁹⁹ Abdel Samad, Ziad, Salah Eddin Jourchi, Zahra Bazzi, Farah Shami, Ghassan Makarem, Balsam Halawi, and Aida Younes, Informal Work (Arab NGO Network for Development, 2016), p. 19.

¹⁰⁰ Malcolm N. Shaw, international law, fifth edition, Cambridge university press, United Kingdom, 2003, p. 572.

¹⁰¹ John A. Trenor, "Jurisdiction and the Extraterritorial Application of Antitrust Laws after Hartford Fire," The University of Chicago Law Review, 62 (1995): 1585, [https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=4902&context=uclev] (accessed 9 February 2021).

¹⁰² United Nations, Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice (March 2010), p. 8.

¹⁰³ Ibid, p. 9.

¹⁰⁴ Ibid, p.10.

capacities and means (exercising national jurisdiction) and with the participation of civil society, victims, and vulnerable groups. The response to transitional justice must first be national, as it is one of the stages of conflict resolution, the establishment of civil peace, and the spread of security and sustainable development¹⁰⁵. The European Union has adopted the concept of transitional justice as an integrated set of national judicial and non-judicial procedures and measures, in which international organizations may or may not participate, including individual prosecutions, reparations, truth-seeking, and institutional reform¹⁰⁶. Thus, the jurisdiction of international courts, including the International Criminal Court, cannot replace national criminal jurisdiction but rather complements it, and they may not investigate and prosecute individuals unless the Syrian state, which has jurisdiction over those crimes, is unwilling or unable to conduct investigations or prosecutions, or if the Syrian state is completely failing to take any action. Under the principle of complementarity, the Syrian state retains its jurisdiction to prosecute human rights violators for crimes subject to the jurisdiction of the International Criminal Court¹⁰⁷, and Syria is able, willing, and has the capacity to do so. In fact, experiences of transitional justice in countries that have suffered from conflict confirm the importance of national courts in punishing perpetrators, with international courts being used only as a last resort. An example of this is the system of gacaca courts in Rwanda, which played a major role in prosecuting war criminals and contributed to the establishment of a degree of social harmony¹⁰⁸. This was clearly evident in Syria through the reform of the judiciary and the issuance of orders to remove corrupt judges. The Syrian state is moving forward with the establishment of special courts to try war criminals who have committed systematic crimes against the Syrian people. The obligation of states to exercise their jurisdiction over serious crimes such as gross violations of human rights and serious violations of international humanitarian law has become an established principle under treaty law and customary rules—as confirmed by the International Criminal Court and the United Nations General Assembly¹⁰⁹—ensuring that Syrian officials responsible for crimes committed during the Syrian revolution are brought to justice requires the exercise of Syrian jurisdiction. The state has full and fundamental responsibility for conducting investigations and prosecutions and enforcing national legislation consistent with international human rights law and international criminal law. Jurisdiction in this regard is not limited to judicial matters, but also includes the exhumation of bodies, forensic analysis, investigation of serious human rights violations, preservation of evidence, and the search for missing persons¹¹⁰. It should be noted that the new Syrian state needs to support national efforts to disarm and dismiss corrupt officials or those who participated in bloodshed, including the removal of former military personnel who committed or participated in serious human rights violations. The exercise of Syrian jurisdiction must go hand in hand with all transitional justice measures, including the restructuring of state institutions and the prosecution of employees and fighters accused of committing crimes against the Syrian people¹¹¹. The UN General Assembly noted the efforts made by states to investigate and prosecute, in accordance with their national legislation and international law, crimes committed in the Syrian Arab Republic that fall within their jurisdiction. and encourages States to provide relevant information for this purpose; because the Security Council repeatedly refused to refer the situation in the Syrian Arab Republic to the International Criminal Court during the rule of the authoritarian regime¹¹², it is only natural that the Syrian state should exercise its jurisdiction over all transitional justice proceedings. At a time when Syrian officials from the former regime should have been referred to the International Criminal Court, this was not done, and they were protected internationally. Therefore, we believe that no state or international court should exercise jurisdiction over transitional justice

¹⁰⁵ European Union, The EU's Policy Framework on Support to Transitional Justice, Implementation of the EU Action Plan on Human Rights and Democracy 2015–2019, 1, [https://www.europarl.europa.eu/meetdocs/2014_2019/documents/dand/dv/40_eupolicy_frmwrk_suptrans_justice_en.pdf] (accessed 1 October 2025).

¹⁰⁶ Ibid, p. 2.

¹⁰⁷ Ibid, p.5.

¹⁰⁸ Dekna, Asma, op. cit., pp. 16 - 17 .

¹⁰⁹ European Union, The EU's Policy Framework on Support to Transitional Justice, op.cit., p. 10.

¹¹⁰ United Nations, Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice, op.cit., p. 7.

¹¹¹ Ibid, p.11.

¹¹² United Nations General Assembly, International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011, A/RES/71/248 (11 January 2017), p. 2.

measures in Syria, as this would infringe on its sovereignty. Our evidence for this is that the International Court of Justice has ruled that jurisdiction is derived from the territorial sovereignty of the state and emanates from it in the form of authority over events and persons within the territory of the state¹¹³. Consequently, the Syrian state must urgently initiate judicial proceedings and receive complaints from victims as a sign that it is beginning to activate transitional justice mechanisms.

Section V. The current path of transitional justice in Syria

Since the fall of the previous regime, the new Syrian government has taken several initial steps toward achieving transitional justice. These include embedding transitional justice principles in the constitutional declaration, followed by the establishment of the Transitional Justice Commission and the Commission for Missing Persons, and the abolition of special courts (particularly the military field court and terrorism courts established under the previous regime and after the outbreak of the revolution). It also abolished legal security restrictions and created conditions for the voluntary return of displaced persons, which it is still working on. These steps are positive indicators of a new and growing political will to address the violations of the previous regime and pave the way for genuine transitional justice.

At the institutional level, the Transitional Justice Commission, established by decree in 2025¹¹⁴, combines members with professional experience and those directly affected by past violations¹¹⁵, enhancing its legitimacy and credibility in society. It engages in regular consultations with victims, civil society, and local communities across governorates to gather input and respond to concerns. However, in our opinion, it would be better to expand the commission's work through specialized and qualified permanent committees operating in various Syrian cities (during the commission's term), which would contribute to expanding its scope of work through these committees and thus ensure the success of the national commission's work and effectively support the implementation of the transitional justice process.

Despite these advances, transitional justice in Syria remains largely confined to the pre-legislative stage, raising the question of why it is still in its infancy. We can say that this is due to the absence of a law defining the commission's mandate, powers, and relationship with other state institutions, which is a major structural obstacle. At the same time, we can explain this delay by the fact that Syria is going through a transitional phase and, at the time of writing this report, the legislative authority has not yet been formed, despite the fact that the People's Assembly elections were held in October 2025 and the results announced. However, one-third of the members remain to be appointed by the President of the Republic, in accordance with Article 24 of the Constitutional Declaration, which states (The President of the Republic shall appoint one-third of the members of the People's Assembly to ensure fair representation and efficiency)¹¹⁶. It may be noted that the Commission has adopted its internal regulations and is currently working on drafting a transitional justice bill to be submitted to the People's Assembly once it is formed. Perhaps accelerating this process and giving priority to the establishment of the People's Assembly will contribute significantly to filling the legislative vacuum that has existed for more than a year, and this responsibility falls on the current executive authority.

Accountability measures have been partially implemented, including the arrest of some former officials accused of war crimes. However, the lack of clear mechanisms for prosecuting senior perpetrators highlights persistent legal gaps, particularly the absence of domestic legislation criminalizing war crimes and crimes against humanity in line with international standards¹¹⁷. In our view, developing a robust legislative framework and clarifying accountability mechanisms are therefore essential to ensure that transitional justice moves beyond rhetoric into enforceable practice.

In the context of internal efforts, and as a step to redress years of deprivation and exclusion of the Kurdish component and open the door to healing some of the wounds of the past, Decree 13 of 2026 was

¹¹³ International Court of Justice, Case of Jurisdictional Immunities of the State (Germany v. Italy: Greece Intervening), Judgment of 3 February 2012, para. 57.

¹¹⁴ Decree No. 20 of 2025 establishing the National Commission for Transitional Justice and Decree No. 149 of 2025 forming the committee of the National Commission for Transitional Justice. Available at: <https://sana.sy/presidency/2273842/> (accessed 7 February 2026).

¹¹⁵ Daraji, Ibrahim. "Analyzing Syrian Politics in the New Era: The Path of Transitional Justice". Arab Center for Contemporary Syrian Studies, 8 December 2025, p. 18

¹¹⁶ Text of the Syrian Constitutional Declaration 2025. Available at: <https://www.aljazeera.net/encyclopedia> (accessed 13 October 2025).

¹¹⁷ Daraji, Ibrahim, op. cit., p. 19.

issued, which established the rights of the Kurds and officially recognized Kurdish culture and language. This step will promote transitional justice. Transitional justice means that social justice and full citizenship rights are the right of all Syrians, and that no component should be left outside a unified Syria.

To consolidate progress, the Syrian state must continue to strengthen its national institutions in order to build trust with citizens and ensure broad participation by victims and civil society. In this way, transitional justice can become an effective and credible process that aims to preserve sovereignty, promote accountability, and advance a just peace and genuine national reconciliation. Justice is the foundation of every healthy society and the only way to guarantee the rights of all.

Conclusion:

The findings of this study indicate that the essence of transitional justice in Syria is to address the legacy of corruption, injustice, and systemic human rights violations and into a state of rule of law and equality. Transitional justice contributes to achieving the goals of peacebuilding, and social cohesion. The dynamics of transitional justice cannot be predicted in advance, so government activities in support of transitional justice should take into account current developments without neglecting the longer time frame and the fact that the transitional justice process requires a comprehensive approach.

The study also further that an effective transitional justice framework in Syria requires a coherent institutional and legislative structure. This includes establishing specialized judicial bodies, forming independent fact-finding and documentation commissions, providing comprehensive reparations to victims, and, of course, ensuring accountability for serious violations. All of this must be linked to the implementation of institutional reforms that strengthen trust in public institutions. The findings demonstrate that the effectiveness of transitional justice depends on maintaining a careful balance must be struck between amnesty and criminal justice, between national reconciliation and preventing impunity, between dismissing employees and ensuring the sustainability of institutions, and between national interests and individual interests. The Syrian government cannot import a model for transitional justice from countries that have practiced it because the nature of the Syrian revolution and Syrian society are not similar to those countries, not to mention that the legal, social, intellectual, political, and cultural systems in those countries differ from the nature of the legal, social, political, and cultural systems in Syria.

The results of this study confirm the need to develop a model for transitional justice that is appropriate to its context and the complex Syrian situation, and to move away from any approach applied in other countries. Although comparative experiences offer valuable and important lessons for us, the Syrian context is completely different and requires a special approach that is compatible with reality and that meets aspirations and fulfills hopes.

-The exercise of Syrian jurisdiction is indispensable; indeed, it is the duty of the state to exercise its jurisdiction as a sovereign right and not to seek assistance from any international organization or foreign government until it becomes apparent that this is difficult to achieve in certain circumstances, such as when the accused is outside the territory of the Syrian Arab Republic. In such cases, it is acceptable to seek the assistance of other states and international organizations to prosecute war criminals located outside Syria.

In Syria, the challenges are numerous and significant, encompassing economic, political, and social dimensions. This underscores the necessity of a comprehensive strategy for achieving successful transitional justice. Ultimately, transitional justice is not merely about addressing past grievances; it extends to genuinely and effectively building a viable state by establishing the necessary legal, institutional, economic, and social foundations. Transitional justice is, in essence, justice for the past and justice for the future...

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