



Addressing Atrocity in Syria: New Challenges for Transitional Justice

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Introduction

The war in Syria has been ongoing since 2011. What began as a protest against the regime has resulted in the deaths of 180,000 people, with many more wounded, more than 100,000 'disappeared' and over 11 million displaced (Lederer 2019). As the conflict enters its tenth year, a peaceful solution to the violence looks as distant as ever. Nonetheless, in the midst of conflict, civil society and other actors are working hard to hold perpetrators accountable, and to ensure that victims are acknowledged and compensated for their suffering through reparations. The quest for truth and justice has not been put on hold.

This report takes stock of these transitional justice efforts in the midst of conflict. What emerges is a multifaceted transitional justice process, and innovative initiatives such as using international jurisdiction to hold perpetrators accountable, large-scale collection of documentation, digital displays of street art as a space for commemoration, and preparations for reparation through new documentation techniques among dislocated populations in order to reverse property expropriation. These developments are locally specific. Studying them helps us better understand the Syrian conflict, while also bringing new insights to the study of transitional justice more generally. The practice and knowledge of transitional justice are being transformed by the Syrian challenges and experience. This study generates theoretical insights regarding the *timing of, space for and actors* in transitional justice, which have a bearing beyond the Syrian case and add to our understanding of how conflict develops, and

whether it could be possible to establish the foundations for peace while war rages. The hope is that the report can contribute to the wider discussion on the role of transitional justice in societies transitioning from conflict, and specifically regarding how to understand and address continuities of violence across war and peace.

The report begins with an introduction to the field and a short overview of the Syrian conflict and its particular challenges for transitional justice. It then identifies and discusses a number of key transitional justice interventions and ends with a discussion of the theoretical insights on the timing of, spaces for and actors in transitional justice that can be drawn from these examples.

Transitional justice: an evolving agenda

Societies emerging from war and mass atrocities face huge challenges. Violence tears societies and communities apart. Survivors must deal with the loss of relatives and loved ones, infrastructure including housing in tatters, and significantly weakened legal and political institutions. The practice of and knowledge on transitional justice have developed as a means of addressing these challenges and laying a violent and difficult past to rest. The United Nations defines transitional justice as "the full range of processes and mechanisms associated with a society's attempt to come to terms with a legacy of large scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation" (UN Rule of Law 2010). In



other words, for societies and communities to move on to a peaceful future, the crimes of the conflict need to be accounted for, the truth about what happened must be established and shared, victims have to be assisted and society must be reformed to prevent a recurrence of violence.

Transitional justice is structured around three key pillars that form "...the moral repertoires which carry legitimacy" (Gready and Robins 2020: 287): accountability, acknowledgement and reparation. The first pillar, accountability, concerns justice and the need to identify and prosecute the perpetrators of war crimes through judicial mechanisms such as tribunals and courts. The punishment of perpetrators serves multiple functions. With key players removed from society, security for survivors is increased and it is easier to make the transition to a durable peace. To see crimes punished is a first step to the reestablishment of a moral order post mass atrocity. Punishment can also serve as a powerful deterrent that makes a recurrence of violence less likely. The second pillar, acknowledgement, is about seeking, establishing and acknowledging the truth. All parties have the right to know, but especially victims and their families. Truth commissions, for example, can achieve public recognition and gain collectively shared knowledge about the past, which is especially important in avoiding recurrence. Societal dialogue mechanisms aimed at reconciliation can also be included here. The third pillar, reparation, builds on the idea that victims have the right to compensation, or the "provision of payment or other assistance to someone who has been wronged" (Quinn 2017:19). The

purpose is to compensate victims who have experienced gross human rights abuses. Reparation measures include but are not limited to economic compensation at the individual or community level. This is sometimes in the form of monetary payments but sometimes in the form of common goods such as, for example, rebuilding schools or roads in regions that have been targeted for destructive violence (ibid.). Symbolic reparation can also play an important role, such as in the form of memorialization practices and public apologies.

In practice, the three pillars intertwine and often support each other, as various mechanisms often have multiple functions and are complementary. For example, the collection of evidence for court cases is an important truth-seeking activity. Truth commissions also provide a form of accountability, where perpetrators are held morally accountable for their actions. Sometimes, however, the goals are perceived to be in opposition. For example, fear of prosecution can lead perpetrators to refrain from coming forward with information about crimes. In addition, transitional justice is defined by its constantly evolving character. Highly formalized undertakings in the form of trials happen side by side with local community dialogue meetings of an informal nature. An array of actors can be mobilized that includes domestic as well as international actors, institutional bodies, local civil society and transnational social movements.

The "transitional" aspect of transitional justice has two characteristics. First, it is



extraordinary justice that specifically addresses the crimes of the conflict or repression and is therefore set apart from ordinary and ongoing justice processes. Second, it is part and parcel of the transition from conflict and violence to a more peaceful future (cf. Rostow 2013: 1). Hence, transitional justice measures are both fragile and powerful, in the sense that they are always conducted in a volatile and ever-changing environment that also has the potential for transformation. Peace can thus never be separated from justice.

Transitional justice was coming of age as a field of research when the Syrian conflict broke out. The post-Cold War world faced the challenge of addressing the fallout from a number of bloody intra-state conflicts, as well as the legacy of repressive states in the former Eastern Bloc, the military dictatorships in Latin America and apartheid South Africa. It was in response to the different types of atrocities that took place in these contexts that transitional justice began its rapid development. By default, every peace process now involves transitional justice measures, and worldwide networks of activists and civil society initiatives are well-established. In proposing engagement with transitional justice in the midst of conflict, however, the early advocates of transitional justice in Syria made a move that was novel in various respects. It meant new challenges for transitional justice as it is normally understood, which is as a post-conflict mechanism that seeks to draw a line between war and peace. The Syrian case therefore brought with it new thinking regarding the sequencing and timing of transitional justice (cf. Fletcher et al. 2009).

The mapping below shows how the steps taken in Syria by the actors involved in transitional justice raised new questions, changed assumptions about timing, moved interventions to new contexts and engaged with new actors. All these developments have taken place in the midst of one of the most destructive conflicts of recent times.

The war in Syria: no end in sight?

In 2011, inspired by activists in neighbouring states such as Tunisia and Egypt, Syrians took to the streets to demonstrate against the rule of Bashar Al-Assad. The president had assumed power in 2000, succeeding his father, Hafez Assad, who had taken power in 1970 in a military coup. He had created a presidential monarchy that rested on the Baath party, the army and the security services (Hinnebusch 2019: 1360, 1370). At the time of the Arab Spring in 2011, Syrians had been suffering political repression, police brutality and economic stagnation for generations (Lynch 2016: 183). On taking power, Bashar Al-Assad had attempted certain modernizations and reforms, but with little success, and socio-economic inequality was increasing in 2011 (Hinnebusch 2019: 1378–1379).

The Assad regime initially handled the protests in the same way as most of the authoritarian leaders in the region, with a mix of symbolic political reform and violent crackdowns on the protesters (Lynch 2016: 184–185). The situation changed in March 2011 when Assad's forces opened fire on people in the city of Deraa who had taken to



the streets to protest against the arrest and torture of teenagers who had painted revolutionary slogans against the regime, murals and graffiti on a school wall (Lynch 2016: 185). Events in Deraa paved the way for similar protests throughout Syria in cities such as Aleppo, Hama, Homs and the capital, Damascus, all of which were met with a similarly violent response.

The regime's violence led to a militarization of the conflict. Defectors from the regime formed the Free Syrian Army (FSA), which was initially the core of the armed resistance. Many protesters joined armed Islamist groups, including the Islamic State group, which deployed tens of thousands of fighters and foreign jihadists. It was these groups that would come to dominate at the expense of secular civil society and the FSA, having the most motivated fighters and being the best resourced in financial terms (Hinnebusch 2019: 1393). The conflict followed different trajectories, depending on local dynamics and actors. According to Husam Alkatlaby of the Violations Documentation Center (VDC): "We are not talking about one Syria. We are talking about multiple Syrias. Damascus is different from Homs, from Idlib, from Deir el-Zour, and so on" (cited in Aboueldahab 2018:10). Moreover, the protests and the subsequent violence, as well as the chaos that followed, opened up opportunities for several regional actors to intervene and shape future political outcomes in the country.

By the spring of 2012, Syria was in a state of full-scale civil war, fuelled by external sponsors such as Iran, Russia and Hezbollah, which joined the war on the side of the regime in 2015. A variety of Gulf actors such

as the United Arab Emirates, Saudi Arabia, Qatar and Turkey aided the different groups that formed the opposition. External backing increased the challenges of ending the war as there was with little chance of negotiations on either side. There was a widespread feeling that Assad would relent if he felt threatened, but this did not happen. In fact, the opposite was the case as the regime took harsher measures against the opposition, such as relentless bombing and sieges in opposition-held areas and the indiscriminate killing of civilians (Lynch 2016: 217).

War Crimes in Syria

Throughout the war, human rights violations have been numerous and, in many cases, systematic. All sides have committed war crimes and other severe violations of international humanitarian law (Van Schaack 2016). The Syrian regime and its allies have carried out deliberate, indiscriminate and disproportionate attacks on civilians and civilian objects (ibid).

The most common tactic adopted by the warring sides, and which has affected civilians the most, has been brutal siege warfare. This has been a consistent feature of the war, leading to restrictions on the freedom of movement and the right to life, as well as the supply of water, food, education and health care (UN General Assembly 2018: 15). One of the most devastating sieges was of eastern Aleppo by pro-government forces in July–December 2016. Opposition groups have besieged government-controlled groups such as Fuua and Kefrya in Idlib province. The Syrian



government has used starvation as a weapon of war by blocking or denying humanitarian aid to populations in hard-to-reach areas (Van Schaack 2016: 316). The inhabitants of the city of Madaya, for instance, were reduced to eating grass for several months during a siege in 2016 (Van Schaack 2016: 315).

The regime has carried out a number of massacres since the uprising began in 2011 (Lynch 2016: 189, 192, 212), such as in Houla in 2012 and Douma in 2015 (Chulov 2015, Chulov and Mahmood 2012, Lynch 2016), and through the use of chemical weapons in Ghouta in 2013 and Khan Shakhoun in 2017 (Solvang 2017). Another horrific, brutal and defining aspect of the war in Syria has been the abuses and deaths in detention (Van Schaack 2016, Human Rights Watch 2020). Since 2011, tens of thousands of people have been detained, the majority by government forces, and huge numbers have disappeared. In addition, thousands have died from the terrible conditions or torture in Syrian prisons (Amnesty International 2017). The most notorious is the Sadnaya Military Prison, where government forces have committed war crimes involving extrajudicial executions, torture, brutal treatment and murder, as well as rape and other sexual offences (Amnesty International 2017).

The destruction of infrastructure has been massive, and civil structures such as hospitals and schools have been deliberately targeted. More than one in four schools have been destroyed and hundreds of hospitals have been attacked. Moreover, the intentional destruction of cultural property and world heritage sites has led to

an unprecedented loss of cultural heritage that will have long-lasting effects on Syrian society (Lostal and Cunliffe 2016: 250).

The violence has subsided in recent years as the regime has consolidated its gains, but new forms of terror and oppression have emerged. In 2019, for example, government forces arrested hundreds of activists and opposition figures, and their family members, in areas retaken from the opposition, such as eastern Ghouta, Daraa and southern Damascus, even though both sides had signed up to so-called reconciliation agreements that included guarantees of no arrests (Human Rights Watch 2020: 541–544). Returning refugees have also been detained, and some are still missing.

Peace talks and the "peace versus justice" dilemma

There have been several attempts at peace negotiations since 2011, none of which have succeeded in ending hostilities. In 2012, former UN Secretary-General Kofi Annan tried to convince the warring sides to end the hostilities by signing up to a six-point plan, but neither side was willing to compromise. (Lynch 2016: 213–214; Lund 2018: 35). Annan's successors as the United Nations and Arab League Special Envoy to Syria, Lakhdar Brahimi and Staffan de Mistura, faced similar challenges in their efforts to persuade the warring sides to



implement the Geneva Communiqué¹, which seeks to create a transitional governing body (Lund 2018: 36). Talks were later suspended due to disagreements on sequencing (<https://dppa.un.org/en/syria>). There was also diplomatic engagement between Russia, the United States and other key actors, which resulted in UN Security Council Resolution 2254 of 18 December 2015. The resolution called for a political transition within six months, a process for drafting a new non-sectarian constitution, and free and fair elections within 18 months under the auspices of the UN, in which the diaspora would be included. This resolution formed the focus of intra-Syrian talks between 2016 and 2018, but these had little success. There was no attempt to convene the warring sides in direct talks and Assad refused to accept any idea of a political transition (Lund 2018: 36). Moreover, the talks in Geneva “pitted Syrian government delegations against exiled rebel representatives” which were sponsored by external powers such as the US, the United Kingdom, France, Saudi Arabia, Qatar and Turkey (Lund 2018).

The UN deadlock led to new negotiations instigated by Russia in collaboration with Iran and Turkey. These talks favour Assad, for instance, by focusing on mapping out military zones of influence and ending hostilities in regime-controlled areas, and aiming to bypass UN initiatives (Lund 2018: 36–37). Meanwhile, the current Syria Envoy, Geir Pedersen, continues to work towards

implementation of Resolution 2254 and the Geneva Communiqué.

Throughout the shifting aims of and actors in the peace negotiations, the lack of gender parity has been notable as Syrian women have either been underrepresented or excluded from negotiations (CFR 2020). For instance, it was not until 2016 that Staffan de Mistura appointed an advisory board of 12 women leaders as third-party observers. Women have for the most part been blocked from participating in the Russia-led talks in Sochi and the Astana Syria talks. Moreover, Syrian women are also underrepresented in official roles in both the UN-led talks and the Russia-led talks (CFR 2020). Nonetheless, Syrian women have made important contributions to securing peace in local communities by broadening the agenda, working across lines, negotiating local ceasefires, stepping in in the absence of local government and documenting human rights violations (Personal interview, Ola Saleh, 17 December 2020). Their advocacy has led to a number of improvements, and Syrian women made up 28 per cent of the delegates representing the Syrian government, the opposition and civil society at the 2019 UN talks in Geneva.

There is a tendency to treat peace and justice as mutually exclusive; the so-called the peace versus justice dilemma. War criminals from different warring parties will probably be active participants and even key actors during negotiations and transition periods. Thus, the idea of accountability is often perceived as an

¹ The UN-backed Geneva IV, V, VI, VII VIII talks were a series of negotiations between the Syrian regime and opposition.



obstacle to consideration of a hand over of power or even aspects of power. Frankly, many prefer war to prison. There is therefore a risk that justice may be bargained away during the peace negotiations, and observers often warn against negotiators avoiding the topic of accountability (Personal interview, Noha Aboueldahab, 17 November 2020; Haid 2017: 10). From such a perspective, the demand for justice is seen as a threat to peace negotiations. Transitional justice has therefore never been properly brought to the table. For example, former UN Special Envoy Di Mistura is reported to have stated that justice is something that comes *after* peace, and is not a *prerequisite* for peace (Personal interview with Noha Aboueldahab, 17 November 2020). However, experts and activists take the opposite perspective, arguing that “justice is what can bring about a political transition in Syria—not the other way around” (ibid.). Civil society actors are fighting to keep the topic of transitional justice on the agenda at the peace talks, and civil society, especially women’s organizations, have been vocal in demanding accountability measures (Personal interview with Ola Saleh, 17 December 2020).

Mapping transitional justice in Syria

The reluctance to engage with justice-related topics in the stalled and struggling peace negotiations does not mean that the core demands of transitional justice have not been made throughout the conflict. On the contrary: “Accountability and justice were among the first demands that

triggered the popular Syrian revolution in March 2011” (Haid 2017:2). There are already a multitude of practices of and policies on transitional justice, and the field is characterized by a shifting, dynamic array of actors and projects that stretch from local to global contexts. Syrian activists and experts are active in both domestic and diasporic communities, often linked with transnational organizations with funding from the international community or from private initiatives.

In the early years of war, transitional justice activities focused on preparations for after the peace accord and awareness-raising through advocacy work to allow people to be familiarized with the core concepts. Following the realization that the war was developing into a frozen conflict, actors eventually began to ask questions about the types of accountability measures, acknowledgement and reparations they could strive for in the midst of war, however imperfect these might be. What hands-on action could be taken (Haid 2017) before a transition to peace? Some of the developments that moved transitional justice from a goal for a future post-conflict realm to a practice in the present are examined in more detail below.

Criminal justice employing international jurisdiction

Criminal accountability is a key aspect of transitional justice. It is built on the principle of retribution, and a moral understanding that crimes are to be punished. It is a step towards the collective restoration of basic principles of the rule of law and a stark warning to leaders that they cannot get away with war crimes. It also sends a



message of acknowledgement to victims. With regard to the serious war crimes committed in Syria, much attention has focused on ways to punish the perpetrators of the horrific crimes—a daunting challenge as the oppressive regime shows no sign of falling. Early hopes that crimes would be tried in national courts have diminished or at least been put on hold. Similarly, there is only a slim possibility that the International Criminal Court (ICC) will be able to investigate the war crimes. Syria has not ratified the Rome Statute, which means that the ICC can only act on an instruction from the UN Security Council—and Russia and China have so far blocked this possibility. Although defined as the “central normative and institutional locus” of international criminal law (Burgis-Kasthala 2019:1166), the ICC is therefore a lame duck.

In this deadlock, transitional justice actors have thrown open new doors. Innovative activists, international scholars and Syrian lawyers examined the established principle of universal jurisdiction to investigate how it could be put to work to bring criminals to justice not in the Syrian courts or the ICC, but in the courts of other states (Bdiwi 2019). The principle of universal jurisdiction allows states to prosecute individuals for war crimes and crimes against humanity,

regardless of where the crime took place and of the nationality of the perpetrator or victim. Use of this strategy was first geared to less significant figures, such as individuals (often Europeans) who had joined IS. As hopes for a change of government in Syria waned, there was a concerted effort to bring to trial high-profile members of Al-Assad’s circle. With the help of international human rights organizations, individuals have filed complaints against Syrian regime officials. Central to this work is a network of independent organizations such as the European Center for Constitutional and Human Rights (ECCHR),² TRIAL International,³ the International Federation of Human Rights (FIDH) in Paris,⁴ and Civil Rights Defenders.⁵ These organizations have collected evidence and witness statements to take to government prosecutors in states that apply universal jurisdiction in order to ask them to file charges. Among these countries are Germany, Sweden, Norway, Spain and the Netherlands. Currently, the most high-profile cases are the trials in Koblenz, Germany, of Anwar Raslan, a former prison director of Branch 251 (also known as al-Khatib), which is notorious for widely documented systematic torture, and of Eyad al-Gharib, who is accused of arresting

² The European Center for Constitutional and Human Rights (ECCHR) is an independent, non-profit legal organization that works to enforce civil and human rights worldwide. The ECCHR aims to end impunity for those responsible for serious human rights violations and war crimes through legal means, see <https://www.ecchr.eu/en/about-us/>

³ TRIAL International is an NGO that aims to stop immunity for international crimes and support victims in their quest for justice. It provides legal assistance, litigates cases, develops local capacity and pushes the

human rights agenda forward, see <https://trialinternational.org/who-we-are/>

⁴ FIDH is an international human rights NGO with 192 organizations from 117 countries working at the national, regional and international levels to help its member and partner organizations to address human rights abuses, see <https://www.fidh.org/en/#>

⁵ Civil Rights Defenders is an expert organization on human rights working to globally defend people’s civil and political rights through advocacy, litigation and public campaigns, see <https://crd.org>



protesters and taking them to the prison⁶. The trial, which began on 23 April 2020, is an example of how suspected perpetrators who reside in various European countries can be forced to face justice outside of Syria (www.ECCHR.eu; ECCH 2020). In the words of the human rights lawyer Anwar al-Bunni: “(t)he path to justice has started. We are not dreaming of it any more. We are making justice with our bare hands” (Haid 2017: 8).

Universal jurisdiction can also be used to issue warrants against senior members of the regime who are still in Syria and thus not currently within reach. Trials are unlikely, but the warrants will have a restraining effect as they will risk arrest every time they leave Syria. For example, the ECCHR filed a criminal complaint against the former head of the Syrian Air Force Intelligence Service, Jamil Hassan, in 2017. Hassan lives in Syria but the German Federal Court of Justice issued a warrant for his arrest based on allegations that he led a prison where grave crimes such as torture and sexual violence took place. While he cannot be arrested in Syria, the German warrant has direct consequences for Hassan and others like him who will have to think twice about leaving Syria for a long time to come (Bailey 2020).

Furthermore, there have been suggestions that a special court should be established in the region in lieu of the ICC, similar to the ad hoc tribunals set up in response to atrocities in Rwanda and the former Yugoslavia (e.g. Vukusic 2019). The International Criminal Tribunal for the

former Yugoslavia (ICTY) was established at The Hague in 1993 while the war was still raging in Bosnia-Herzegovina and Croatia. Although it had little initial impact, the ICTY did eventually manage to both try and convict the most serious criminals. Importantly, in Bosnia-Herzegovina the tribunal conducted a handover to the national and local levels, to the Sarajevo War Crimes Court and to local courts that try local crimes (Trahan 2017). This path could be further explored and provide a future pathway to a transfer to Syria in order to localize justice processes.

How to make such processes part of acknowledgement and how to feed them into collective truth-seeking represent challenges for accountability processes in the courts and tribunals. The ICTY failed in its outreach activities (Mannergren Selimovic 2015). Misinformation and propaganda around ICTY proceedings created a more divisive postwar climate, which had far-reaching consequences for reconciliation and acknowledgement processes. This will be a challenge for criminal prosecutions on Syria, regardless of whether the trials happen inside the country or outside.

Documentation: an activity in its own right

Documentation is key if the possibility of bringing perpetrators to trial and the goal of accountability are to be achieved. All criminal investigations are dependent on multi-layered evidence. This section examines the role of documentation and

⁶ While Raslan awaits his verdict, al-Gharib has been sentenced to four and a half year for crimes against humanity (<https://www.bbc.com/news/world-europe-56160486>)



how its various aspects and functions in transitional justice processes have developed during the conflict. The process of documentation is important in judicial processes and serves as acknowledgement in reparation processes.

A former forensic photographer in the Assad regime with the code-name "Caesar" managed to smuggle around 55,000 photographs of deceased detainees to the Syrian National Movement, an anti-government political group. It later gave a full set of the images to Human Rights Watch. The Caesar Photographs constitute a "striking documentation and awareness effort" (Williams et al. 2017: 473) with enormous potential to assist accountability and acknowledgement efforts. Caesar is just one individual among many Syrians who have participated in the crucial work of collecting documentary evidence.

The role of testimony and documentation in transitional justice is significant on multiple levels (Baumgartner et al. 2016: 1). First, it is crucial in dealing with past human rights violations and ongoing human rights campaigns. The dissemination of personal testimonies can lead to recommendations on "new forms of human rights practices" and contribute "to the embedding of a new human rights culture" (ibid.).

Documentation also helps victims of human rights abuses to achieve acknowledgement, as the testimonies help to create an accurate and rich historical record. Such evidence is required when it comes to deciding who will receive reparations in a post-conflict setting and constitutes legal evidence to support victims and their right to truth, justice and reparations (Bickford et

al. 2009: 3). In addition to the written and oral testimony of those who have suffered or witnessed human rights violations, documentation can comprise several kinds of material, including audio and video recordings of the atrocities and recordings of perpetrators' confessions. Other documents central to transitional justice include papers such as birth certificates, marriage licences, house deeds of ownership and court documents.

The Syrian war is the most documented in history (Lynch 2016, Aboueldahab 2018). Since 2011, in addition to the Caesar Files, tens of thousands of images, videos and documents have been uploaded, photocopied, scanned, smuggled or disseminated, and stored in safe havens (Aboueldahab 2018: 11). During the uprisings, citizen journalists and activists recorded the force they met with from the regime (Lynch 2016: 395–396). As this became more violent and Syria plunged into a seemingly never-ending war, dozens of organizations were formed with the purpose of documenting the atrocities committed by the regime and other actors involved in the war (Kabawat and Travesi 2018: 5). At the same time, organizations focused on providing humanitarian aid also began to prioritize collecting documentation to assist victims (ibid.).

The organizations that make up the documentation efforts in Syria are a broad network of Syrian activists, journalists, lawyers, witnesses and survivors, some of whom still live in Syria (Aboueldahab 2018, Kabawat Travesi 2018). Each organization differs to some extent regarding its mission and definition of documentation. Some



focus on quantitative data and qualitative analysis, while others pursue advocacy and creative approaches to storytelling. There are also differences in methodology and level of detail, often linked to organizational capacity, location and security risks, as well as the existence of collaboration with international organizations, independent international lawyers, and foreign or third states (Tenove 2019, 1958; Kawabat & Travesi 2017:5). Teams on the ground usually collect information that is then recorded, uploaded, scanned, photocopied or smuggled to organizations where activists and experts can handle the data, which is then inspected, tagged, labelled and verified (Aboueldahab 2018:14). Perhaps most importantly, Syria's diaspora has played a crucial role in creating and maintaining databases of human rights abuses (Tenove 2019: 1958), such as the Syrian Archive, Violations Documentation Center and the Syrian Justice and Accountability Center.⁷

The documentation process in Syria differs from other conflicts, in that its main focus is not to support prosecution and other judicial efforts in post-conflict settings (Williams et al. 2017: 473). Aboueldahab argues that documentation of the Syrian conflict should be viewed as a stand-alone mechanism within transitional justice and underlines that "writing atrocities is, in and of itself, a healing process that acknowledges and remembers

victimization" (ibid.: 1–2: 30). According to Aboueldahab, the documentation process in Syria is essential in several ways. Documentation is a powerful form of non-violent resistance to an ongoing violent conflict, for instance, by defying the hijacking of false and competing narratives and the destruction of evidence, history and memory (ibid.: 4).

This is particularly important during an ongoing conflict such as the Syrian War. While it is a vital tool in itself, documentation can also lay the ground for *future* justice goals. This is also underlined by Wessels (2016: 1–2) who specifically highlights the role of digital video in future transitional justice.

Another critical feature of Syria's documentation efforts is that it involves a plethora of actors such as activists, lawyers and ordinary citizens, in addition to victims and eyewitnesses (Aboueldahab 2018: 2, 26). This can bring about a transitional justice process that is victim-led and localize an international transitional justice process (ibid.: 1, 26). The fact that the vast documentary archives in the Syrian conflict have come about through *crowdsourced documentation* has opened up new opportunities in pursuit of transnational advocacy and action, particularly with regard to the role of the Syria diaspora in achieving transitional justice (Tenove 2019: 1950–57). The Syrian diaspora is

⁷ The Syrian Archive was co-founded in Berlin and has 5,743 videos, verified and indexed according to date, location, use of weapons and violation type. The Syrian Archive collaborates with Amnesty International and the University of Berkley, California. The *Violations Documentation Center* in Syria is an independent NGO registered in Switzerland and led by Syrian human

rights activists. The *Syrian Justice and Accountability Center* is a non-profit based in Washington, DC, that collects, manages and tags data based on international humanitarian law criteria (Aboueldahab 2018: 14).



participating in the collection, archiving and verification of evidence of mass violence and rights violations in its homeland (Tenove 2019: 1951). One example is the Spanish case against Syrian government of state-terrorism (Williams et al. 2017: 473).

The role of digital communication technologies has been significant for documentation efforts, making it possible to produce new kinds of evidence, such as remote sensing imagery from drones and satellites (Tenove 2019: 1957). This has enabled the production and spread of extraordinary amounts of evidence on social media, such as images and audio on mobile phones, and in turn made it possible for the Syrian diaspora to participate in crowdsourced documentation and transitional justice (Tenove 2019: 1957).

Memorialization: from digital spaces to art

Memorialization as part of transitional justice can take many forms. Ongoing conflict in Syria makes it far too early to conceive of material memorialization in the form of building monuments or museums. There are, however, memorialization activities that are more fleeting but still comment on and offer remembrance of victims. Art is one realm that has developed into a powerful space for remembering in the form of a living forum for comment. This may not be surprising, as art has played a significant role from the beginning of the conflict in Syrian resistance and demands for accountability. As noted above, the Syrian Revolution began in an artistic act of resistance by a group of teenage boys in the rural town of Dara'a, who in March 2011 painted murals and graffiti as a protest

against the president. They were arrested and tortured, which lit the spark that ignited the mass protests.

Street art and other forms of artistic expression of memorialization run the risk of being targeted for destruction by the regime. In response, the Creative Memory digital platform has created a space for the preservation of artworks (www.creativememory.org). More than 11,500 artistic expressions have been stored, from graffiti to murals, photographs, poems, songs and theatre performances produced during the revolution and the ensuing conflict. The Creative Memory project is documenting and memorializing the horrific experiences that the Syrian population has suffered over the past decade, but also actively engaging in ongoing dialogue and commentary. Run by a Syrian graphic designer, Sana Yazigi, the website reflects the restorative, reflective and resistant power of art, using digital spaces to mourn what has been lost, and to protest the ongoing violence and destruction. Although launched in 2018, the site is continuously updated, functioning as a living, breathing archive, and ensuring that transient artworks survive and become part of a shared collective memory.

The main collection on the Creative Memory website is called the AdLib wall. It celebrates and memorializes street art, and features more than 500 artworks that have been painted on walls around the country. The fascinating murals depict and comment on all aspects of life during the war, including the pain of losing family members and the exhilaration of participating in protests. The most recent theme concerns



the struggle to navigate the threat of COVID-19 in the midst of oppression and insecurity. The Creative Memory site also contains “The Map”, which links a wide collection of documents and cultural expressions from more than 200 locations across Syria. A map of Syria unfolds on the screen and the visitor can zoom across the map and dive into intimate locations—a street or a neighbourhood—to find local expressions of resistance against the war. In this sense, the project becomes embedded in local memorialization: “Geography itself is not the goal here but the proposed journey to cross into ‘the memory of the event and the people behind it’” (<https://creativememory.org/en/map/>).

Another memorialization project that uses art is a portrait series of people who have been forcibly disappeared in Syria: a staggering 100,000 people. The series came about through the Syrian Network for Human Rights (SNHR), a civil society organization, which commissioned an artist to draw 100 portraits in a gesture intended to individualize the victims and disaggregate the anonymous number. The portraits have been gifted to the victims’ families, thereby entering into intimate memorialization practices, but also distributed to international realms of remembrance, such as an exhibition at a side event in connection with the meeting of the United Nations General Assembly in New York in September 2019. Another project initiated by the SNHR is a collection of graphic drawings of 70 methods of torture used in the notorious Syrian prisons. Again, the strategy is based on the knowledge and expertise of victims, whose testimonies were translated into drawings—

a medium that makes it possible to transmit the horror of torture. Art here crosses into the realm of advocacy: “These drawings also serve as a public record... an important source of public shaming for all who were, and remain, complicit in perpetrating these acts of torture” (El Bunni 2020).

Art and cultural heritage, and its restoration, is another arena in which transitional justice efforts can play a role. The war has led to widespread destruction of art and cultural heritage in the form of buildings, artworks and museums. Working with this historical heritage is in itself a restorative practice that can also be part of memorialization. The marks of the war on these spaces can be understood as yet another layer of cultural and historical significance that is worth preserving as part of the historical narrative. The rich legacy of Syria includes several World Heritage sites. The loss of cultural heritage has been enormous, through either the smuggling out of artefacts or the destruction of archaeological and other sites. For example, the entire city of Aleppo is a World Heritage Site. The destruction of the minaret of the Umayyad Mosque as well as the burning down of the souk have caused fundamental damage (Lostal and Cunliffe 2016: 252). Syrians have testified to the pain this loss has generated, and there are many accounts of people risking their lives to try to restore it (ibid.). It is well known from other conflict regions that addressing the topic of cultural heritage and its reconstruction can be an occasion for confrontation, but also a forum for dialogue, as work to restore values that transcend sectarianism can create spaces



for dialogue and even reconciliation (e.g. Kalman 2017).

Reparations: the problem of property and land rights

Reparations are a controversial issue. They are often the subject of legal, political and social complexities that mean that states fail to implement them for victims. As noted above, claims to reparations can be individual or collective, as well as symbolic or material, for instance in the form of a monetary payment or the return of property (Quinn 2017: 19, Moffet 2017: 377).

Restitution of property is one of the most complex issues (Mégret & Vagliano 2017, 108). In Syria, the process involves the implementation of legal concepts tailored to postwar Housing, Land and Property (HLP) restitution and claims application from several hundreds of thousands of returnees (Unruh et al. 2017: 5). In the Syrian context, the issue of reparations is also complicated because of the frozen nature of the conflict and because the regime uses the system of land rights as a weapon in the conflict (Personal interview with Aron Lund, 2 November 2020; personal interview with Rhodri Williams, 13 November 2020). While the official government stance is to welcome returning Syrians who have fled the violence, there are no guarantees of safe return being discussed in the peace talks, which makes it highly unlikely that people will return (Unruh et al. 2017: 3).

Control over HLP has played a vital role in the war. The Assad regime has engaged in property expropriation through a series of new laws that impose demographic change

in its favour and for economic gain (Stubblefield and Joireman 2019:1-2; personal interview with Rhodri Williams). While the laws do not seem to target a specific ethnic group, the effects on displaced persons prevent property restitution and a return home (Stubblefield and Joireman 2019: 3).

According to Unruh et al., conventional transitional justice mechanisms cannot handle the scope and complexity of forced displacement, of which the Syrian war provides an example. It argues the need for an improvement in dealing with HLP claims (Unruh et al. 2017: 1, 12). There should be a focus on new documentation efforts and techniques (Unruh et al. 2017: 12), as well as better collection, storage and corroboration. Hence documentation will also play a key role in facilitating the future return of 8 million displaced Syrians and halting enforced demographic change (Aboueldahab 2018: 12).

The statements and corroboration of the dislocated population can create “a mutually beneficial spatial network of evidence for ownership, occupancy and boundary corroboration in a text-map combination” (Unruh et al., p 10). This is already taking place using Google Maps and Wikimapia, which Syrians use to draw virtual boundaries around their HLP and to upload photographs. Unruh et al. also underlines the importance of raising awareness of the types of evidence that refugees, for instance in Jordan, Lebanon and Turkey, have already used, as well as the laws and institutions, and the services and options for pursuing claims for HLP restitution.



Hence, reparation processes benefit from beginning in the midst of conflict, as crucial evidence might otherwise be lost. Again, documentation activities appear key, as well as engaging with the refugee diaspora to ensure that they keep important evidence. The problem of property expropriation also highlights how material conditions are part of the conflict and must be addressed in order to achieve transformation towards peace.

Timing, space, actors: new theoretical insights for transitional justice

This overview has brought out key aspects of transitional justice initiatives with regard to the mass atrocities in Syria that challenge and transform established discourses on and practices of transitional justice. It is possible to draw from it a number of theoretical insights on the *timing of, spaces for* and *actors in* transitional justice that have a bearing beyond the Syrian case. These prompt us to partly reconceptualize the field of transitional justice in order to adjust to a changing landscape of war and peace. They also provide some new answers to the central questions of “when, where and who by”.

Timing

It is possible to commence transitional justice processes before there is a settlement of the armed conflict. In the absence of a clear commitment from international actors to ending the conflict, transitional justice advocates can find new paths to accountability, acknowledgement

and reparation. The creativity of transitional justice actors with regard to Syria has not been without tensions, as indicated by the reluctance of the international community to make transitional justice part of the peace negotiations. However, study of the long recovery processes from atrocities in the 1990s (e.g. in the former Yugoslavia and Rwanda) shows that the goals of transitional justice—from a durable peace to strong rule of law and democracy—are strengthened by the *process*. Hence, transitional justice should not be instrumentalized as an outcome or a set of measures that are employed in a certain sequence at certain entry points. Transitional justice is an ongoing process. Efforts made in the middle of a conflict may not de facto be able to bring peace and justice in the present, but the process is normative and will affect the post-conflict future (Al Jazairi 2015; see also Fletcher et al. 2009). In other words, it may not have the power to transform structures of violence in the midst of conflict, but it can at the very least lay the foundations for a future transformation process.

It is, however, a risky undertaking to advocate for and engage in transitional justice in the midst of conflict, as these efforts may be curbed or even crushed in backlashes or by a deterioration in the peace process. It may be difficult to get back on track if donors and other key actors perceive transitional justice as a cul-de-sac that only delivers disappointment. In the case of Syria, the early enthusiasm of the international community waned as the conflict wore on, and civil society in the country and the diaspora had to compete for funds as donor interest turned to more



immediate needs, such as fighting terrorism and addressing acute and extreme humanitarian crises (Stokke and Wiebelhaus-Brahm 2019: 1931, 1942).

Another worrying aspect of conflict-related transitional justice is that organizations and networks may not have enough time to consolidate a common agenda. In the case of Syria, this led to some degree of division among actors, as noted by Stokke and Wiebelhaus-Brahm (2019: 1932–1933). A common agenda is often considered a prerequisite for success, but such coherence can also create exclusions. The fact that women’s rights organizations were able to gain ground as the peace process proceeded has meant that gender parity is now a topic of transitional justice, albeit still at the margins. It is often in the gaps and shifts in time that such windows of opportunity open up. It can be too late once a peace accord is in place. Thus, a more chaotic and heterogeneous process during conflict may make such inclusions possible.

The Syrian case also demonstrates that it is necessary to take a long-term perspective on the past when thinking about timing. The problem of property restitution shows that violent conflict has its roots in political and economic systems of oppression that were put in place long before the armed violence broke out. When transitional justice efforts are instigated by a peace accord, there is a risk that a reluctance among peace negotiators to address tensions arising from before the period of conflict will lead to a myopic focus on the direct consequences of the war. Transitional justice efforts that begin before a settlement are not restricted to a peace

accord that draws somewhat artificial lines between grievances before and during the armed conflict. This is crucial in the case of Syria, as the protests began in direct response to decades of political and economic oppression.

Initiatives to support acknowledgement show that when conflicts drag on, some stories get lost if the process of documentation is not begun during the conflict. Victims possess knowledge and have narratives to share. It is important to ensure that story-telling processes of various kinds as well as memorialization activities can happen before this factual and narrative knowledge, concerning both experiences in Syria and refugee experiences, is lost forever. The creation of an archive will also play a vital role in justice processes and the eventual reconciliation of coming generations of Syrians.

Spaces

Transitional justice has developed in pluralistic forums and contexts that can be conceived of as spaces. Several new spaces have emerged as increasingly important in response to the Syrian conflict, bringing with them some notable changes in the field. The two central changes drawn out from the above overview are each linked to a decoupling from the national context.

The first concerns the shift to other states as spaces for pursuing criminal justice. National and international dynamics have moved the quest for accountability beyond the state and the international courts. The warrants issued and trials held in a number of European states based on international



jurisdiction have real consequences for suspected perpetrators, but also function as a form of acknowledgement as the crimes are made more widely known. A key challenge when moving judicial processes from the local context is how to make the process of accountability known and anchor it in local peacebuilding processes. This has proved challenging when it comes to trials held in international courts. At the same time, this work is very important to the large refugee communities of Syrians who form a significant diaspora. Importantly, they often maintain close ties with individuals and communities still in Syria, which makes knowledge transfer possible.

The second shift concerns the de-territorialized development of digital spaces for transitional justice. Syrian activists have taken full advantage of these spaces as part of their transnational advocacy. In the face of ongoing conflict, activists turned to the internet in order to mobilize processes of accountability, acknowledgement and reparation. As outlined above, digital spaces have become incredibly important on an unprecedented scale when it comes to evidence collection and crowd-sourced documentation (Tenove 2019:1955). Digital spaces have become central to memorialization activities, for example in the form of sharing artwork, thereby maintaining and building community. When it comes to reparations, virtual boundaries can be drawn using google maps and Wikimapia, which shows how digital technologies can be put to unexpected uses.

The concern here may be that the information loop back to Syria may not always work, creating a gap between

victims inside and outside of the country. Are the digital spaces truly reachable for everyone? While there are obviously large marginalized groups that will not have access to these spaces, many will have access to a mobile phone and a wifi connection. Importantly, online activities do not form an isolated space but are another layer of the palimpsest of transitional justice, generating new forms of creative cooperation (Tenove 2019: 1955). A further warning is required. The regime and extremist groups have also realized the productive potential of digital spaces, and “digital repression” is a powerful tool for the supporters or agents of a repressive state. Tenove warns that activists have been targeted through “...four tactics of digital repression: hacking, surveillance, intimidation and counter-messaging” (Tenove 2019: 1960). The blessing of digital spaces thus comes with a threat within that must be taken seriously.

Actors

A plethora of actors are involved in transitional justice efforts with regard to Syria. Given the nature of the conflict, which has forced large parts of the population to flee, much of this work has taken place in the Syrian diaspora. In their analysis of its role, Stokke and Wiebelhaus-Brahm (2019: 1937) list 33 transitional justice organizations linked to the Syrian diaspora. Given that the field of transitional justice was already well established before the Syria conflict broke out, experts in transnational professional organizations and donors quickly linked up with Syrian activists to offer them a platform and a focus for their advocacy. There is thus



possibly a risk that Syrian actors may have been overtaken by the transnational machinery of transitional justice, with little chance to influence strategies. On the positive side, however, it is clear that regional experience and expertise are abundant and also well established.⁸ Furthermore, through crowdsourcing and other pluralistic activities that are clearly victim-centred, it has been possible to include a weave of different voices and experiences in truth-seeking endeavours, and transnational organizations are able to work alongside these efforts to provide both knowledge and monetary support.

Nonetheless, to involve victims at the grassroots level, especially those still living in harsh and precarious conditions in Syria, is a continuous challenge, and there has been criticism that diaspora organizations prioritize networking with transnational elite organizations rather than building strong ties with the Syrian grassroots (Stokke and Wiebelhaus-Brahm 2019). However, it is difficult to draw a sharp line between inside and outside. As Tenove (2019:1956) points out, among digital activists, it can be impossible to define who belongs to the 'global diaspora' and who is a 'local Syrian' as identities and roles shift and merge. Furthermore, refugees and displaced persons have generally been excluded from or marginalized in transitional justice processes (see e.g. Al Jazairi 2015). There is a growing realization of the negative consequences of excluding those parts of the population that may be most affected, and the need to pay special

attention to refugees was emphasized by the UN in 2004 (United Nations 2004). The changeable characteristics of the timing, spaces for and actors in transitional justice with regard to Syria might also help to counter such exclusions and make transitional justice relevant for victims both inside and outside of the country. An important take-away is thus the growing importance of the diaspora to transitional justice processes.

Conclusion

Studying processes of transitional justice in Syria adds to our understanding of how the conflict developed, and whether or how it may be possible to establish the foundations for peace even while war rages. We hope that this report can contribute to a wider discussion on the role of transitional justice in societies transitioning from conflict, and how to address continuities of violence across war and peace. It is important to keep asking the questions 'when, where and who by' of transitional justice as the answers will affect the type of peace that will be formed, who will participate and which aspects of peacebuilding will be prioritized.

Transitional justice as a field and practice runs the risk of having to carry the load of too broad a collection of efforts in response to mass atrocities. At the same time, the field also suffers from a lack of theoretical thinking as a consequence of being an "over-burdened and under-conceptualised

⁸ See for instance: <https://www.brookings.edu/series/innovation-in-transitional-justice/>



idea”, as Anna MacDonald put it in 2013 (cited in Gready and Robins 2020: 280). As the case of Syria shows, the paradigm of transitional justice needs to be fine-tuned but also flexible, in order to be applicable to expanding times and locations involving new subjects.

The aim of transitional justice is ultimately to draw a line between the atrocities of the past and a peaceful future. It is thus a social imaginary with strong normative underpinnings. Today’s conflicts tend not to shift from war to peace in a definitive manner, but rather to morph into uneasy states of grey zones that are not quite war

but definitely not peace. The lesson from Syria is that transitional justice can and should adjust to this reality. As explored above, transitional justice aims for a “recognition of the dignity of individuals, the redress and acknowledgment of violations” and “to prevent them from happening again”

(<https://www.ictj.org/about/transitional-justice>). Given the bleak and highly precarious situation for the long-suffering civilians in Syria, these goals might sound utterly far-fetched. Nonetheless, transitional justice for Syria is already ongoing and influencing both the current conflict and the future peace



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