

Trials, Truth, and Trust: A Model for Transitional Justice in Post-War Syria

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Abstract

The fall of the Assad regime in December 2024 marked a turning point for Syria, ending decades of authoritarian rule and over thirteen years of brutal civil war. As the country embarks on reconstruction, transitional justice emerges as a critical mechanism for addressing mass human rights violations, fostering reconciliation, and preventing future atrocities. This paper explores a multidimensional approach to transitional justice in post-war Syria, advocating for a hybrid court model, truth commissions, and institutional reforms. Drawing on case studies from South Africa, Rwanda, and Sierra Leone, the essay examines the challenges and opportunities of implementing transitional justice in Syria.

I. Introduction

The Syrian Civil War has witnessed some of the most appalling violations of international law of the twenty-first century. During the past thirteen years since the failed Arab Spring uprising in Syria in 2011, over 300,000 civilians have been killed, at least 15,000 of whom were tortured to death by the Syrian government (OHCHR). The conflict has been marked by countless war crimes, including the Assad regime's shocking use of chemical weapons against its own people, which drew widespread condemnation from the international human rights community (Koblentz and Hall). After months of declining international support for the Syrian government, rebel forces successfully overthrew the Assad regime in December 2024, forcing its leaders into hiding (Arab Center Washington DC). Though armed clashes persist, the victorious group, Hay'at Tahrir al-Sham (HTS), has established a transitional government. Now, Syria faces the daunting challenge of rebuilding a nation devastated by over a decade of war and half a century of despotic rule. As reported by the World Bank, poverty affects nearly 70% of the Syrian population, and much of the country's housing, medical, and educational facilities have been destroyed (World Bank Group). Beyond repairing the physical destruction to the country, the emotional loss and trauma of the Syrian people demands to be addressed.

This paper argues that transitional justice—the process by which societies confront and repair the harms caused by mass human rights violations—offers a framework for reckoning with Syria's grim legacy. The hybrid court model offers a

crucial balance by providing the physical proximity of a national court while maintaining the impartiality of an international one. A truth commission would complement this model by documenting atrocities that trials may not fully uncover, ensuring a more comprehensive historical record. Finally, democratic reforms serve as the foundation for preventing future atrocities, establishing institutional safeguards, and upholding legal rights. Implementing transitional justice will be complex, and this paper does not propose a definitive blueprint. Instead, this paper seeks to provide broad recommendations informed by scholarship and past case studies and recognizes that the Syrian people must ultimately have the agency to decide the form of justice that will bring them the greatest closure.

I. Methods of Transitional Justice and the Minow Framework

In the wake of a catastrophe as profound as Syria's civil war, no form of justice or accountability can fully restore a society shattered by widespread murder, torture, and sexual violence. Inaction, however, causes even greater damage. As lawyer and scholar Martha Minow argues in the book *Between Vengeance and Forgiveness*, "Dwelling in the frozen space of inability and incapacity is unacceptable, unresponsive to victims, [and] unavailing to the waiting future" (4). Legal action may seem fragile in the face of such immense cruelty, but apathy grants perpetrators another symbolic victory. Thus, transitional justice is a necessary step in the collective healing of a society, and lays the institutional foundation to protect against potential future atrocities. In her writing, Minow underscores the dual imperatives driving these responses to collective violence: justice and truth (9). Building on her framework, this paper evaluates the goals and limitations of various transitional justice strategies in the Syrian context. Minow is a leading scholar of transitional justice studies, and her seminal work *Between Vengeance and Forgiveness* was among the first scholarly pieces to articulate a vocabulary for justice in post-conflict societies, offering a useful foundation from which this paper will analyze Syria's path forward.

Within these guiding pillars of truth and justice, transitional justice encompasses several tangible mechanisms, which the following section attempts to categorize to provide context for the paper's recommendations. One such mechanism is the truth commission, a non-judicial inquiry aimed at uncovering and documenting past violations. Typically, truth commissions collect testimonies from victims and perpetrators, hold public hearings, and examine historical records to construct an official account of atrocities (Milne and Dettman). By centering the voices of victims,

these commissions seek to acknowledge past crimes and foster societal recognition of the suffering endured. Ideally, they culminate in a comprehensive public report detailing the scope of human rights violations. Often, the process of gathering and documenting testimonies is as valuable as the final report itself, offering victims long-denied recognition and contributing to collective historical memory (Minow 128).

The most prominent and comprehensive example of this approach is South Africa's Truth and Reconciliation Commission (TRC), a restorative justice body established in 1995 to investigate human rights violations committed during the country's decades-long apartheid regime. A defining feature of the TRC was its amnesty provision, which allowed lower-level perpetrators to avoid prosecution if they provided a full and truthful account of their crimes. This mechanism aimed to balance accountability with reconciliation, prioritizing truth-telling as a means of national healing.

A second approach to transitional justice is the prosecution of offenders through national, international, or hybrid courts. These trials serve to publicly expose perpetrators, acknowledge their crimes, and impose legal consequences (Milne and Dettman). International courts, such as those established in response to the Rwandan and Cambodian genocides, operate under the mandate of the United Nations or other global entities, ensuring legitimacy and international support. Hybrid courts, or mixed tribunals, are typically based in the country where the crimes occurred but include both local and international judges and lawyers. This model fosters national ownership, enhances regional legitimacy, and strengthens domestic judicial capacity (Naughton). National courts, while offering the highest degree of local authority, often face challenges in maintaining impartiality, particularly in deeply divided post-conflict societies, where they may be perceived as instruments of victor's justice.

Most post-conflict societies choose to carry out some form of judicial accountability, as should Syria. However, the choice of legal mechanisms depends on the specific circumstances of each case; in many instances, multiple prosecution methods are employed simultaneously. In Rwanda, for example, the International Criminal Tribunal for Rwanda (ICTR) was established in Tanzania by a UN Security Council mandate to hold perpetrators accountable and restore confidence in international justice. However, many Rwandans criticized the tribunal's structure, citing issues such as its high operating cost, relatively few prosecutions, and distance from Rwanda (*Rwanda Human Rights Watch*). Despite initially opposing the creation of ICTR, Rwanda ultimately cooperated with ICTR's proceedings but prioritized the

country's own judicial processes through national courts and *Gacaca* courts, traditional community-based tribunals. However, these domestic trials faced their own criticisms, particularly for denying defendants legal representation and imposing the death penalty. Minow herself argued that “the trials themselves were revenge,” underscoring the fragile balance between what is perceived as accountability versus vengeance in the pursuit of post-conflict justice (124).

While both commissions and trials aim to establish official records of violence, their methods shape fundamentally different narratives. Courts operate within strict legal frameworks that prioritize due process, often protecting defendants from self-incrimination—much like the Fifth Amendment in the United States, the right to remain silent. As a result, judicial proceedings may obscure the full extent of a perpetrator's actions in favor of legal safeguards. In contrast, truth commissions forgo adversarial cross-examinations, focusing instead on amplifying victims' voices. As Minow explains, the “truth” that emerges from these commissions is often more psychological than historical, offering victims acknowledgement and validation though it may not result in a corroborated record of facts (129).

Transitional justice can take other forms beyond trials and truth commissions: reparations, such as financial compensation or the restitution of property; educational initiatives to memorialize the conflict and preserve historical accountability; and institutional reforms designed to prevent future atrocities, such as enshrining minority rights in law and strengthening democratic governance (*What is Transitional Justice* ICTJ).

II. A Transitional Justice Model for Syria

The evaluation of a suitable model of transitional justice for Syria requires an understanding of the country's complex social and political environment. First, Syria's extreme sectarian divisions pose a significant challenge to reconciliation. As a multiethnic and multireligious state, Syria is home to Arabs, Kurds, Armenians, and various other ethnic minorities. The Assad family, which ruled from 1971 to 2024, belonged to the Alawite sect of Islam, a minority group in Syria, where the majority population is Sunni Muslim (Sergie). This religious divide has fueled long-standing tensions; now, any actions taken by Syria's new Sunni-led leadership risk exacerbating partisan animosity, making it imperative that transitional justice mechanisms include robust protections for marginalized communities. While HTS has publicly pledged to uphold minority rights, such promises should be met with skepticism—historical

precedents, such as the Taliban reneging on assurances of women's rights, serve as cautionary examples (Atlantic Council).

Second, Syria remains in a state of profound instability. After years of civil war, the country's economy, public infrastructure, and societal institutions are near collapse. Armed skirmishes continue to erupt, creating a highly volatile political and security situation. Additionally, the fate of approximately 136,000 individuals who were forcibly disappeared or arbitrarily detained under the Assad regime remains unknown (Bigg). Identifying their whereabouts and uncovering the circumstances of their disappearances should be a top priority for the new administration.

Given Syria's unique and rapidly evolving situation, this paper recommends a transitional justice model that combines prosecutions through hybrid courts, truth commissions, and democratic institutional reforms to balance accountability, reconciliation, and long-term stability.

III. Hybrid Courts

When it comes to securing accountability through public trials, Syria benefits from a database of evidence compiled over the years by NGOs, international organizations, and human rights advocates. In order to formally investigate and document human rights violations in Syria, the UN Human Rights Council created the Commission of Inquiry for Syria in 2011. In 2016, the UN General Assembly established the International, Impartial, and Independent Mechanism (IIIM) to focus specifically on collecting evidence to assist in future criminal proceedings against Syrian war criminals. These initiatives provide tribunals with a strong foundation, which is particularly valuable given Syria's severely weakened and compromised judicial system.

Hybrid courts, rather than purely domestic or international tribunals, offer a pragmatic solution for Syria, given the deeply fractured nature of the conflict. For a regime seeking international recognition while facing concerns over retaliatory justice, a degree of external oversight would lend credibility to convictions. Moreover, after decades of the judicial system being weaponized for political repression, public trust in domestic courts has been severely eroded (Milne and Dettman). Hybrid tribunals would not only introduce impartiality but also help rebuild the capacity of Syria's legal institutions—an outcome that a fully international court could not achieve.

However, given that HTS, a US-designated terrorist group, has become the de facto government of Syria, complete judicial impartiality may prove unattainable. The UN Commission of Inquiry for Syria has documented war crimes committed on all

fronts, including HTS' indiscriminate shelling of civilian areas (UN News). Yet, it is highly unlikely that HTS will permit investigations into its own actions, effectively shielding itself from accountability. As explored in the next section, a concurrently operating truth commission could help address this gap.

HTS has already signaled its commitment to a trial-driven approach. In December, Syrian leader Ahmed al-Shara posted on Telegram: "We will not relent in holding accountable the criminals, murderers, and security and military officers involved in torturing the Syrian people." He announced plans to soon release a "List No. 1" of high-profile perpetrators, adopting a "naming and shaming" strategy to publicly expose offenders (Yee). However, prosecuting Bashar al-Assad himself will be immensely challenging, as he has secured refuge in Russia, and many other top officials that would otherwise face charges have long since fled the country.

While the extent to which HTS can pursue high-ranking figures remains uncertain, the group has indicated an intention to pardon rank-and-file soldiers and lower-level officials. Across Syria, so-called "Reconciliation Centers" have begun offering three-month amnesty guarantees to former regime conscripts who surrender their documents, weapons, and equipment. However, it's unclear whether these guarantees are being granted in an equitable and just manner; on-the-ground sources have reported that "individuals seeking reconciliation often face complex bureaucratic hurdles, with decisions influenced by security agencies rather than an independent and impartial judicial process" (ISPI).

While temporary amnesty may be necessary for stabilizing the country and reducing active conflict, the reconciliation process must ultimately be led by civil society organizations rather than government authorities. This would help ensure that transitional justice prioritizes a victim-centered framework rather than serving as a political tool for the ruling regime.

IV. Truth Commissions

Society faces the difficult choice between pursuing justice through punishment or fostering reconciliation after widespread crimes against humanity. Minow notes, "Either response is better than silence, but comparing prosecutions and reconciliatory steps brings tough choices legally and politically" (1). Adversarial criminal prosecution, she argues, ensures a level of accountability, but are "inevitably selective (...) and indifferent to the goals of social peace" (1). Alternative dispute-recognition, by contrast, provides opportunities for direct apology and healing, but

“can also be marred by corruption, compromise, and an appearance of condoning terrible acts” (1). Minow examines the dual mechanisms with the aim of determining whether alternatives to prosecution alone are enough to encompass national justice-seeking. However, this paper argues that a combination of both may be most successful in Syria: truth-telling in exchange for amnesty for lower-level perpetrators to accelerate the rebuilding process, while investigating and sanctioning higher-level officers through hybrid tribunals. While the absence of direct punishment for some complicit individuals is likely to provoke public frustration, the ambition to prosecute every offender is impractical for a society in recovery. Prioritizing truth-telling over mass incarceration helps to break the cycle of retribution, centering healing and nation-building.

Urgent priorities for Syria’s transitional government are to locate the more than 136,000 individuals arbitrarily detained by the Assad regime and to identify bodies in mass graves (Hubbard et al.). For families who have endured years of uncertainty, uncovering the fate of their loved ones could serve as a crucial step toward justice and healing. A truth commission offering conditional amnesty in exchange for vital information could serve as a mechanism for addressing this humanitarian imperative, providing answers and a semblance of solace to relatives and friends of victims. This amnesty is directly tied to the perpetrator’s full and honest participation in later justice processes; if they attempt to lie, evade the courts, or flee, they are once again vulnerable to prosecution.

Hosting trials and truth commissions are not mutually exclusive actions; numerous countries have attempted both. Indeed, the former US Ambassador for Global Criminal Justice Beth Van Shaack stated that “criminal prosecutions could and must operate within the larger framework of other transitional justice mechanisms” to holistically address victims’ needs (US State Department). In contexts where judicial systems are weak or overwhelmed by the sheer volume of cases, a dual-track approach—granting amnesty to lower-level offenders while prosecuting key perpetrators—has proven useful. For instance, South Africa’s Truth and Reconciliation Commission supplemented national trials, allowing a broader acknowledgment of past atrocities while reserving legal accountability for those most responsible (LII). This choice to grant hundreds of perpetrators amnesty was not without its consequences—many people felt that justice was incomplete without sufficient discipline. However, the South Africa case is complicated by the frailty of the reparations and economic recovery

programs that were supposed to complement the TRC, which weakened the overall justice process.

Another case study is post-civil war Sierra Leone, which carried out hybrid trials through the Special Court for Sierra Leone in 2002, while concurrently operating a Truth and Reconciliation Commission (*Challenging the Conventional* ICTJ). Interestingly, the commission's final report also implicated members of the Sierra Leonean government itself in addition to rebel fighters (Sierra Leone TRC). Syria could adopt a similar model, led by independent commissioners with UN and civil society support, to ensure that accountability extends beyond regime figures to include documented crimes committed by rebel forces, including HTS. This approach would address the reality that national or hybrid trials alone—particularly under an HTS-led government—would likely overlook rebel-led atrocities.

However, if multiple forms of justice are to be pursued, courts and truth commissions must collaborate effectively and establish clear jurisdictional boundaries. For a truth commission's amnesty provisions to be effective, they must be reinforced by a credible threat of prosecution from the judicial system. In Sierra Leone, where the TRC and SCSL lacked a formal relationship agreement and largely functioned as separate entities, individuals had less incentive to cooperate in the truth-telling process, weakening the TRC's impact (Jalloh).

V. Institutional Reform

Though measures such as prosecutions and reports of abuses attempt to retroactively provide justice, efforts to proactively prevent future abuses from occurring are equally important. Thus, institutional reforms to strengthen human rights and promote democracy are an integral aspect of the transitional justice process. This may include constructing a new constitution, codifying minority protections into law, as well as judicial and police reform. Given decades of institutional corruption and repression, restoring public trust will require transparency and meaningful collaboration with civil society actors.

Democratic reforms may not be an immediate priority for the transitional regime. Syria's economy, society, and infrastructure have been devastated by years of war, and HTS will need to fight against internal and international actors in order to maintain power over the state (World Bank). However, Syria can not indefinitely postpone reforms or justice processes. Deep sectarian divisions create the risk of unchecked vigilante retribution—already, there are reports of “scattered revenge

killings and threats against minorities who were favored by the Assad regime” (Bigg). Moreover, the experiences of other post-authoritarian Arab states illustrate Martin Luther King Jr.’s warning that “justice too long delayed is justice denied.” In post-revolution Tunisia, the sluggish pace of prosecutions contributed to public disillusionment with democracy, while Egypt and Iraq similarly failed to implement comprehensive transitional justice measures (Bigg).

The international community also bears responsibility in Syria’s reconstruction. The American Bar Association noted that “sustained political, financial, and technical support from international actors is vital to advance institutional reforms—including financial and technical assistance to bridge capacity gaps through the sharing of expertise and training.” International actors should consider easing sanctions on the new regime, in order to expedite Syria’s reconstruction and recovery, while closely monitoring the regime’s attitude towards civil liberties and human rights.

VI. Exclusion of the ICC

In any discussion of transitional justice, it would be remiss not to address the most well-known mechanism for international accountability: the International Criminal Court (ICC). Given its mandate to prosecute those responsible for the most serious violations of international law, one might ask: why not turn to the ICC in Syria? While this may appear to be the most direct route to justice, this paper argues against relying on the ICC due to the complexities of its referral process and the minimal involvement it grants to local actors.

Many scholars have advocated for ICC intervention in Syria. In his article “*Syria Needs the International Criminal Court*,” Princeton Professor Kenneth Roth asserts that solely entrusting Syria’s judicial system with such trials would be a mistake. He argues that even with international support, rebuilding Syria’s legal institutions would “take time” and be “unlikely to make enough progress to satisfy Syrians’ understandable quest for justice.”

Another concern with hybrid courts, in contrast to the ICC, is their reliance on inconsistent funding. As a permanent institution, the ICC is not as vulnerable to financial instability or perceptions of inefficiency if it acquits defendants. Hybrid courts, however, often face pressure to secure convictions, as their legitimacy is tied to perceptions of success through prosecution numbers (Naughton). Many, including the SCSL, have operated on tight budgets without guaranteed funding. As outlined in

Penelope Van Tuyl's paper *Effective, Efficient, and Fair? An Inquiry into the Investigative Practices of the Office of the Prosecutor at the Special Court for Sierra Leone*, this model places high pressure on court personnel to "prioritize fiscal and political imperatives over noble institutional aspirations and core legal principles" (17). This can result in "an arrangement that consigns court principals to spend valuable time fundraising from donors rather than delivering justice", as described by Beth Van Shaack concerning the SCSL (US State Department). However, the Syrian case benefits from an existing financial foundation: the UN's International, Impartial, and Independent Mechanism (IIIM), which has already allocated resources for evidence collection, reducing the risk of political manipulation by external donors.

Additionally, deferring prosecutions in favor of ICC involvement presents several challenges. First, as Syria is not a party to the Rome Statute, the ICC lacks automatic jurisdiction over crimes committed within its borders (*Q&A Human Rights Watch*). A UN Security Council referral could override this limitation, but Russia—a longtime Assad ally—would almost certainly exercise its veto power to block such a move. An alternative approach could be to invoke ICC jurisdiction by linking Syrian crimes to cross-border offenses, such as the mass displacement of refugees into Jordan, under the legal framework of forced deportation. However, this remains a legally and politically fraught process.

Another possibility is for Syrian officials to ratify the Rome Statute or grant the ICC retroactive jurisdiction. Yet, the transitional government may be understandably hesitant to do so, prioritizing local agency and national sovereignty over foreign intervention. This paper argues that justice should be pursued *for* Syrians, *by* Syrians, with international assistance only where strictly necessary. A trial process that is both geographically and symbolically distant—given that the ICC operates thousands of miles away from The Hague—risks diminishing the direct engagement of Syrian society in its own justice process. Furthermore, given the history of foreign powers—including the US and Russia—exploiting Syria's conflict for their own strategic interests, establishing a court that includes Syrian nationals may help counter perceptions of justice being externally imposed.

Ultimately, despite budgetary concerns, embarking upon the arduous and politically sensitive process required to establish ICC jurisdiction over Syria is unjustifiable, as it would divert attention from more immediate and locally driven justice efforts. Instead of waiting for an unlikely ICC referral, investing in a hybrid

court model would not only enhance Syria's judicial capacity but also ensure that justice remains rooted in the voices and experiences of the Syrian people.

VII. Conclusion

Transitional justice is neither swift nor straightforward, and can be as contentious as it is restorative. However, the experiences of nations like South Africa, Sierra Leone, and Rwanda demonstrate that accountability and peace are not only achievable but also worth the arduous journey required. In Syria, transitional justice is more than a means of addressing past atrocities—it is a foundational pillar for rebuilding society and preventing future cycles of violence. While various approaches exist, this paper identifies three key priorities: hybrid courts, truth commissions, and institutional reforms. The primary goals of transitional justice are to provide accountability, truth, reconciliation, and peace. Trials serve to provide tangible punishment to key perpetrators of harm, as well as signaling a commitment to rule of law. Unlike other trial formats, a hybrid court could combine the advantages of a national court—proximity to victims and the strengthening of domestic judicial institutions—with those of an international court, such as greater resources, impartiality, and legitimacy (Naughton). Truth commissions can complement this process by providing a broader record of atrocities, granting victims a voice, and mitigating historical revisionism (Milne and Dettman). Finally, democratic institutional reforms are critical to restoring public trust and ensuring legal and political safeguards against future abuses.

This paper does not delve into the logistical complexities of implementing these mechanisms—such as timelines, funding, oversight, and structural design—all of which are important considerations. There is no universal blueprint for transitional justice; every post-conflict society must tailor its approach to its own historical, political, and social realities. Ultimately, it is the Syrian people who must determine the form and function of their justice system to ensure it meaningfully addresses their needs and aspirations.

The fall of the Assad regime presents a historic opportunity to dismantle a legacy of impunity and rebuild a society rooted in human rights and peace. To close this painful 54-year chapter, transitional justice must not be an afterthought—it must be the cornerstone of Syria's future.

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