



How Syrians in the diaspora, as victims of international crimes, think about transitional justice?

Which mechanisms do they seek to fulfil their justice needs?

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Chapter One: Introduction

The uprising in Syria is one of a series of upheavals in the Middle East called The Arab Spring. It was triggered in December 2010 when a Tunisian man, Mohammad Bouazizi, set himself on fire after police burned the goods he used to sell as the only source of income for him and his family. This incident led to widespread protests in Tunisia, which subsequently led to the ousting of Zine El-Abidine Ben Ali, the Tunisian president, in January 2011.¹ As a consequence, people in the Arab region were encouraged to call for substantial political and social changes.

Eventually, the domino effect of the Arab Spring reached Syria in 2011. In March of the same year, uprisings sparked in Daraa city, southwestern Syria, when the Syrian intelligence service arrested fifteen young boys between the ages of ten and fifteen from prominent families.² They were charged with painting graffiti on the school's wall that demonstrated anti-government slogans.³ These boys were tortured (beaten, wounded, burned and had their fingernails pulled out) and their families protested outside the house of the mayor, asking for the release of their kids. Instead of releasing them, the forces opened fire, killed the demonstrators and prevented ambulances from reaching them.⁴ All this aggression did not scare people off. To the contrary, Daraa became the "cradle of the revolution" and the number of protesters increased.⁵

Although the boys were released two weeks later, photos of their bodies showing torture marks were published on the internet and fueled the rage among Syrians.,

In his first statement on the crisis, the Syrian president Bashar Al Assad neither apologized to the people nor reproved the aggressors. Instead he blamed the "foreign conspirators and satellite television channels pushing an Israeli agenda" and justified killing as a sacrifice for national stability.⁶

Peaceful demonstrations spread all over the country and became a weekly activity after Friday prayers. Protestors chanted slogans that indicate their desire to remove the government.⁷ Despite the peaceful nature of these demonstrations, the government responded with brutal force. What started as peaceful gradually turned to armed clashes in September 2011 and increased rapidly to a civil war in July 2012⁸. Throughout the years, the brutality of this war increased to the extent

¹ Noor, N. (2011). Tunisia: The revolution that started it all. *International Affairs Review*.

² Families are: the Baiazids, the Gawabras, the Masalmas and the Zoubis.

³ Saleh, L. (2013). " We Thought We Were Playing": Children's Participation in the Syrian Revolution. *Journal of International Women's Studies*, 14(5), 80-95.

⁴ Macleod, H. (2011). *Syria: How it all began*. Retrieved from: <https://www.pri.org/stories/2011-04-23/syria-how-it-all-began>

⁵ South, C., Jermyn, L., & Spence, K. (2016). *Syria*. Cavendish Square Publishing, LLC.

⁶ Marsh, K., Chulov, M. (2011). *Assad blames conspirators for Syrian protests*. Retrieved from: <https://www.theguardian.com/world/2011/mar/30/syrian-protests-assad-blames-conspirators>

⁷ Spindel, C. (2011). The people want to topple the regime: Exploring the Arab spring in Egypt, Syria, and Jordan. *Sage Open*, 1(3), 2158244011428648.

⁸ The United Nations High Commissioner for Refugees. (2012). *Global Report 2012*, Retrieved from: <https://www.unhcr.org/gr12/index.xml>.

that prompted the United Nations human rights chief, Zeid Ra'ad Al Hussein in March 2017 to describe it as “the worst man-made disaster since World War II”.⁹ In the same year, the United Nations Development Program reported that “many basic infrastructure systems including provision of water, electricity and sanitation, in addition to social infrastructure such as schools and healthcare centers, have been damaged or destroyed, eroding the living conditions of people in affected communities.”¹⁰

In 2018, the United Nations High Commissioner for Refugees (UNHCR) reported that over 5.6 million people have fled Syria since 2011, 6.6 Million are internally displaced and 2.98 million people are in hard-to-reach and besieged areas.¹¹ Moreover, the Syrian Center for Policy Research reported that the war in Syria has seen the death of half a million people.¹² Further, the basic infrastructure were severely damaged and “the lack of sustained access to health care, education, housing, and food have exacerbated the impact of the conflict and pushed millions of people into unemployment and poverty”.¹³ Filippo Grandi, the UNHCR High Commissioner, has also referred to Syria as “the biggest humanitarian and refugee crisis of our time, a continuing cause of suffering for millions which should be garnering a groundswell of support around the world.”¹⁴

Generally speaking, war is the “oldest human-made disaster.”¹⁵ The impact of the Syrian war is not only affecting people contemporarily, but will also have an impact on the Syrian community for generations to come since millions of society members are deprived of education, health care, recruited as soldiers, trapped under siege or detained in jail¹⁶. Therefore, reaching a suitable transitional justice system in Syria may prove difficult in the future since the vast majority of Syrians experienced the atrocities in this war as participants, witnesses or victims. Although there is no sign yet that the current government will be replaced soon, this research seeks to collect data that may form the foundation on which to rebuild and innovate justice mechanisms in Syria by shedding light on the prospective justice needs of Syrians.

Framework

⁹ Collins, D. (2017). Syria War: ‘Worst Man-Made Disaster since World War II.’ *Al Jazeera*, 15.

¹⁰ The United Nations Development Program. (2017). *Annual report 2017*, Retrieved from: <https://annualreport2017.undp.org/>

¹¹ The United Nations High Commissioner for Refugees. Retrieved from: <https://www.unhcr.org/syria-emergency.html>

¹² Syrian Center for Policy Research. (2016). Retrieved from: <https://www.scpr-syria.org/>.

¹³ The World Bank. (2019). *The World Bank In Syrian Arab Republic*. Retrieved from: <http://www.worldbank.org/en/country/syria/overview>

¹⁴ The United Nations High Commissioner for Refugees. (2016). *Syria conflict at 5 years: the biggest refugee and displacement crisis of our time demands a huge surge in solidarity*. Retrieved from: <https://www.unhcr.org/news/press/2016/3/56e6e3249/syria-conflict-5-years-biggest-refugee-displacement-crisis-time-demands.html>

¹⁵ Ursano, R. J., Fullerton, C. S., & Norwood, A. E. (1995). Psychiatric dimensions of disaster: Patient care, community consultation, and preventive medicine. *Harvard Review of Psychiatry*, 3(4), 196-209.

¹⁶The United Nations Children's Fund. (2018). *Seven years of war in Syria in numbers*. Retrieved from: <https://www.unicef.org/mena/stories/seven-years-war-syria-numbers>

The framework of this research is elaborated along two axes. The first concerns itself with the perception of Syrian victims who live in the diaspora of transitional justice. The second explores justice needs of these victims and the way of fulfilling them. To achieve that end, ten Syrians who live in the Netherlands and suffered the consequences of the ongoing conflict were interviewed. Participants answered questions that shed light on fundamental issues that will probably surface while establishing a transitional justice system in Syria. Arguments around victimhood, how Syrians perceive war crimes perpetrators and the process of prosecution emerged in the course of data collection. Other concepts that emerged during the interviews were related to the mechanisms in which Syrians want to remember their experience, such as: monuments and teaching the history of the conflict for new generations. Furthermore, participants gave their opinion on financial compensation, granting access to properties, rehabilitation, and recognition of disappeared persons.

In addition, this research integrates another essential aspect that relates to the Syrian legal system whereby the provisions of Syrian legislations were discussed to gain an understanding on how these provisions charge and prosecute war crimes. For that purpose, I have interviewed two Syrian lawyers who are expert in Syrian law. They were asked whether existing laws (provisions, case law...etc) may constitute grounds for post-conflict justice and how far the national justice system is capable of taking the responsibility of prosecuting perpetrators of international crimes¹⁷.

In the next chapter, existing literature on transitional justice theories will be discussed. The chapter will draw from the Rwandan experience of transitional justice mechanisms and discuss whether compare it with Syrians can learn and benefit from it. A brief explanation of international crimes will be addressed as well with the purpose of understanding what sort of international crimes are committed in Syria. The chapter will also navigate the concept of victimhood and discuss different justice needs of Syrian victims. This will enable us to discuss these needs in the following chapter from their perspective. In chapter three, a detailed discussion on the methodology of data collection and analysis will be provided. The chapter will also provide a rationale for the choice of data collection methods and justify the analysis approach this thesis has taken. Chapter four will deal with the research findings and chapter five will discuss them through two main themes: How Syrian victims in the diaspora perceive transitional justice, and the mechanisms that should be followed to fulfil their justice needs.

Lastly, the conclusion will give a general overview of the different chapters of the research, summarize the main points mentioned in the discussion and discuss the limitations and finally answer the research question by finding out how Syrians in the diaspora see justice in the transitional period while focusing on their justice needs.

¹⁷ Please refer to Appendix I and Appendix II for participants' information and interview questions.

Chapter Two: Literature review

In this chapter the input of academic studies on post-conflict communities will be discussed. These studies enable researchers today to analyze the expected situation in Syria when the war ends. More specifically, the paradigm of transitional justice and the different types of its mechanisms that may help victims to reach justice are the theoretical basis of this research.

The framework of this chapter is elaborated along several axes. The first concerns itself with transitional justice, including reparation. The second refers to international crimes which Syrian people are victims of. This will be followed by a discussion on victimhood and victims' needs.

2.1 Transitional justice

In the early literature on transitional justice, two fundamental aspects were discussed. The first deals with revealing the truth on what really happened, and the second is how to find the perpetrators and hold them accountable for their crimes.¹⁸ These two issues are important in order to break the impunity and move forward.¹⁹ However, in recent literature two other aspects are addressed. One is related to repairing the victims.²⁰ According to Bassiouni (2000), this could be achieved by restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. The other aspect relates to the need of reconciling the different sectors of the society to constitute the new democracy,²¹ aiming for peacebuilding and sustainable respect for human rights and the rule of law, along with achieving maintainable security, political, economic and justice spheres.²² These two aspects are rarely to be found separately since the individual and the social features are frequently connected in practical terms.

Should transitional justice model be applied in Syria, it will be a way of recognizing the dignity of individuals, acknowledging the violations. It will also play a role in preventing these violations from happening again. As such, this potential experience will contribute to the existing knowledge on transitional justice, considering the unique features embedded in the Syrian conflict. These features revolve around the ethnical and sectarian nature of the Syrian conflict in its current form as well as the involvement of various international and regional powers in this war. It will also

¹⁸ Huyse, L. (1995). Justice after transition: On the choices successor elites make in dealing with the past. *Law & Social Inquiry*, 20(1), 51-78.

¹⁹ Mathews, S. (2001, November). Shifting Boundaries: A conference on moving from a culture of impunity to a culture of accountability. In *Conference Report, November* (pp. 26-28).

²⁰ Bassiouni, M. C. (2000). Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law, UN Doc. E/CN. E/CN, 4, 62.

²¹ HUYSE, L., BLOOMFIELD, D., & BARNES, T. (2003). Reconciliation after Violent Conflict. A Handbook, Stockholm. *IDEA*.

²² Jeong, H. W. (2005). *Peacebuilding in postconflict societies: Strategy and process* (p. 124). Boulder, CO: Lynne Rienner.

advance the generation of further theories, since transitional justice can be manifold and highly diverse depending on the country and circumstances it is applied to.

Transitional justice was first known after World War II with the establishment of the International Military Tribunal in Nuremberg. Contemporarily we use this term to describe specific mechanisms and institutions, such as tribunals, truth commissions, reparations and provide justice in times of transition. As an interdisciplinary field of scholarship, transitional justice is still relatively new and lacks theoretical frameworks to some extent. Lambourne (2009) says that the concept of transformative justice must be extended beyond the scope of transitional justice and to include psychosocial processes, socioeconomic conditions and political contexts in order to build sustainable peace. This happens only through involving local communities in the process. She also invites us to step beyond Western notions of law because this is the only way to learn and to reach transitional justice.²³ On the other hand, Aiken (2008) looks at transitional justice through the framework of theories of social learning. He comes down with a model that consists of three dimensions: instrumental learning, socioemotional learning and distributive learning.²⁴ Instrumental learning may have the power of achieving reconciliation by bringing together the former parties to the conflict and building confidence between them, and socioemotional learning holds perpetrators accountable and acknowledging the victims. Revealing the truth of the past can be a tool to counter collective memories based on group affiliations²⁵. Further, inequalities, from distributive learning perspective, need to be tackled in transitional justice processes in order to prevent the continuance of conflicting identities on the basis of socioeconomic inequalities. Aiken criticizes the present practices of the system and asserts that they may have a negative impact on reconciliation process²⁶.

Moreover, Laplante (2013) presents a theory where reparations are formed as a means to serve the ends of justice. She talks about “the continuum of justice” which is divided into four different dimensions of justice (compensation, restorative justice, civic justice, socio-economic justice)²⁷. In the same vein, Andrieu (2013) employs John Rawl’s theory of justice to understand the normative aspect of transitional justice in political liberalism. She argues that there is a conflict between transitional justice and some aspects of liberal political ideas. She also calls for strengthening liberal theories of justice which will result in making them receptive to the uniqueness of periods of transition.²⁸

²³ Lambourne, W. (2009). Transitional justice and peacebuilding after mass violence. *International journal of transitional justice*, 3(1), 28-48.

²⁴ Aiken, N. T. (2008). Post-conflict peacebuilding and the politics of identity: Insights for restoration and reconciliation in transitional justice. *Peace Research*, 9-38.

²⁵ id.

²⁶ id.

²⁷ Laplante, L. J. (2013). The plural justice aims of reparations. In *Transitional justice theories* (pp. 78-96). Routledge.

²⁸ Andrieu, K. (2013). Political liberalism after mass violence: John Rawls and a ‘theory’ of transitional justice. In *Transitional justice theories* (pp. 97-116). Routledge.

Based on these theories, and in order to be able to understand what sort of transitional justice can be applied in Syria, a closer look at the following four aspects related to transitional justice is needed. Namely: accountability, truth, reparation and reconciliation.

Accountability

The accountability of perpetrators who committed brutal crimes during conflicts is a fundamental step for any new government for two main reasons.²⁹ The first is to meet the concept of “justice should be done”, and the second is to reassert the principle of the “rule of law” and human rights in order to empower the delicate society. As explained by Huyse (1995), this concept does not come without challenges.³⁰ The question raised here deals with which perpetrators should be held accountable, leaders and planners, followers who executed the crimes, or bystanders who did not participate but benefited from the conflict. A second challenge is related to the type of accountability³¹ because usually victims tend to demand the prosecution of perpetrators based on the legal argument of “a duty to prosecute in international human rights law”.³² Having said that, this prosecution is not easy when talking about mass violation crimes because of the capacity needed to accomplish this mission,³³ beside the fact that potential resistance of the old government elites may threaten the new democracy. Understanding these challenges highlights the dilemma that Syrians may face after the conflict is ended when they decide to determine who should be prosecuted and how.

Truth

Revealing the truth is important for victims to know what has really happened to people they love. Moreover, it is an asset in studying the patterns of crimes committed in the conflict. It is also an essential step toward the acknowledgment of victims and a collective memory of what really happened during the conflict.³⁴ However some important challenges remain untackled. The South African Truth and Reconciliation Commission explained in its interim report of 1998 several concepts of truth. The first is the truth obtained from reliable forensics and evidences. The second is narrative truth acquired from stories that individuals have told about their own experiences. The third kind of truth is social and is established through interaction and discussion, while the fourth is healing and restorative truth that allocates facts within the context of human relationships.³⁵

²⁹ Weitekamp, E. G., Parmentier, S., Vanspauwen, K., Valiñas, M., & Gerits, R. (2006). How to deal with mass victimization and gross human rights violations. A restorative justice approach. *NATO SECURITY THROUGH SCIENCE SERIES E HUMAN AND SOCIETAL DYNAMICS*, 13, 217.

³⁰ Huyse, L. (1995). Justice after transition: On the choices successor elites make in dealing with the past. *Law & Social Inquiry*, 20(1), 51-78.

³¹ Kritz, N. J. (1996). Coming to terms with atrocities: A review of accountability mechanisms for mass violations of human rights. *Law & Contemp. Probs.*, 59, 127.

³² Orentlicher, D. F. (1991). Settling accounts: The duty to prosecute human rights violations of a prior regime. *Yale Law Journal*, 2537-2615.

³³ Weitekamp, E. G., Parmentier, S., Vanspauwen, K., Valiñas, M., & Gerits, R. (2006). How to deal with mass victimization and gross human rights violations. A restorative justice approach. *NATO SECURITY THROUGH SCIENCE SERIES E HUMAN AND SOCIETAL DYNAMICS*, 13, 217.

³⁴ Amadiume, I., Naim, A. A. A., An-Na'im, A. A., & An-Naim, A. (Eds.). (2000). *The politics of memory: Truth, healing and social justice*. Zed Books.

³⁵ Truth and Reconciliation Commission of South Africa. (1998). *Truth and Reconciliation Commission of South Africa Report*. Volume One (Cape Town: Juta Publishers).

Since each of these concepts has its own significance and its special mechanisms to uncover it, it is important to know how Syrian victims think about the truth and how they aim to reveal it.

Reparation

Reparation plays a role in addressing the injustices. The UN Commission on Human Rights recommends that reparation has to be wide concept that includes several measures. These measures could be individual or collective, such as restitution of properties, financial and symbolic compensation, building monuments, rehabilitation (social and medical care), and guarantees of non-repetition.³⁶ Similar to accountability and truth, reparation can be challenging to implement for various reasons.³⁷ First, the definition of reparation is not narrow, which leads to a broad explanation of what to consider a reparation. Second, who should be held responsibility for reparation? Perpetrators? The new government? Or bystanders who benefited? Moreover, who has the right of reparation? All victims or only a certain group of them? How can the new government enforce the right of reparation? Realizing that all these challenges are critical in proceeding with reparation during the transitional period³⁸ and learning about the kind of reparations victims may accept, if any, is vital.

Reconciliation

Focusing on creating trust and understanding between former enemies is a main challenge in post conflict countries where numerous number of victims and perpetrators are produced. Reconciliation can be distinguished on several levels: The individual level where people have to deal with painful truth, the interpersonal level of victims and their offenders, the community level when addressing the conflict between local communities, and finally on the national level, where the role of the state and non-state institutions is the focal point.³⁹ In addition, there is a connection between reconciliation and reparation.⁴⁰ Krog found that people do not get reparation, they will not forgive. If people are not forgiven, they will not offer reparation".⁴¹ Realizing the importance of reconciliation in a post-conflict country is the reason why it is essential to see whether Syrian victims are willing to reconcile with the past and with former enemies.

The aforementioned aspects are significantly related to applying transitional justice in post conflict countries. This is noticed for example in the Rwandan scenario after the 1994 genocide whereby applied justice mechanisms there focused on holding the perpetrators accountable, revealing the

³⁶ Bassiouni, M. C. (2000). Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law, UN Doc. E/CN. E/CN, 4, 62.

³⁷ Weitekamp, E. G., Parmentier, S., Vanspauwen, K., Valiñas, M., & Gerits, R. (2006). How to deal with mass victimization and gross human rights violations. A restorative justice approach. *NATO SECURITY THROUGH SCIENCE SERIES E HUMAN AND SOCIETAL DYNAMICS*, 13, 217.

³⁸ Vandeginste, S. (2004). Legal norms, moral imperatives and pragmatic duties: Reparation as a dilemma of transitional governance. In *To repair the irreparable: reparation and reconstruction in South Africa/Villa-Vicencio*, C. (pp. 88-105).

³⁹ Truth and Reconciliation Commission of South Africa. (1998). *Truth and Reconciliation Commission of South Africa Report*. Volume One (Cape Town: Juta Publishers).

⁴⁰ Doxtader, E. (2004). *The Matter of Words in the Midst of Beginnings: Unravelling the 'relationship' Between Reparation and Reconciliation*.

⁴¹ Krog, A. (1998). *Country of My Skull*. Johannesburg.

truth, building monuments, and making it possible for all ethnicities to live together in peace. In the next section, this experience will be discussed to understand the concept of transitional justice and some of the challenges people faced as a result of the process.

The Rwandan Scenario

Although many scholars have discussed transitional justice, we cannot ignore the fact that it is a relatively young field driven by practice. Theories in this domain are based on historical experiences.⁴² They are influenced by post-conflict practices such as Nuremberg and Tokyo trials, international criminal tribunals like the tribunal for the former Yugoslavia, the Truth and Reconciliation Commission in South Africa or Gacaca courts in Rwanda. To gain a better understanding of the concept of transitional justice, I participated in the trip that was organized by Rwanda University under the subject of “2019 Transitional Justice Study Tour Rwanda” to study the Rwandan experience after the 1994 genocide where about one million Tutsi civilians were killed.⁴³ To appreciate the Rwandan experience, I will first explain what happened in Rwanda. This will be followed by some details about transitional justice mechanisms applied there along with the way Rwandan people perceive them.

In 2001, the new government in Rwanda led the efforts to establish peace through Truth commissions. More than 250,000 Gacaca judges were elected by their communities.⁴⁴ The restorative role of the Gacaca courts was to provide a platform for both victims and perpetrators to discuss the truth about the genocide that claimed a million lives. These efforts were further supported and complemented by the establishment of the International Criminal Tribunal for Rwanda (ICTR) in 1995. In its capacity, the ICTR prosecuted 93 military leaders, government officials, politicians, religious, and media leaders who played a key role in committing the genocide.⁴⁵ Moreover, several memorials were built as a transitional justice mechanism, such as Camp Kigali which is a memorial site for the Belgian/ UN soldiers killed in the genocide. The Centre associated with the Camp serves as an education center on the genocide and a burial site where over 250,000 people. Similarly, Murambi Genocide Memorial Site stands in honor of 30,000 people who were killed in a technical school during the genocide.⁴⁶ In this sense, it could be argued that transitional justice in Rwanda is based on both restorative and retributive models. In the former case, Gacaca courts were managed by community members and based themselves on the participation of the victims while aiming to reveal the truth in the overall efforts to achieve

⁴² Buckley-Zistel, S., & Beck, T. K. (2013). Transitional justice theories: An introduction. In *Transitional justice theories* (pp. 13-28). Routledge.

⁴³ Ingelaere, B. (2008). The gacaca courts in Rwanda. In *Traditional justice and reconciliation after violent conflict: learning from African experiences/Huyse, Luc [edit.]; ea* (pp. 25-59).

⁴⁴ Clark, P. (2010). *The Gacaca courts, post-genocide justice and reconciliation in Rwanda: Justice without lawyers*. Cambridge University Press.

⁴⁵ ICTR is famous for being the first international tribunal to deliver verdicts in relation to genocide, to interpret the definition of genocide stated in Geneva Conventions 1948, and to consider rape an international crime. See the United Nations International Residual Mechanism for Criminal Tribunals. Retrieved from: <http://unictr.irmct.org/en/tribunal>

⁴⁶ Genocide Archive of Rwanda. Retrieved from: <https://genocidearchiverwanda.org.rw/index.php/Category:Memorials>

justice and reconciliation. However, in the case of the retributive model, the ICTR adopted a selective approach on whom to indict. All detainees were influential because of their position in the government, society or politics. By adopting such a criteria, the ICTR arguably demonstrated that international tribunals can stretch the hand of justice far beyond where the national system is able to do.

Despite these accomplishments, both models are not without a number of serious challenges. Rwandans have criticized these transitional justice mechanisms for various reasons. For instance, the Gacaca courts were seen to be 'victors' justice⁴⁷ and victims did not feel safe during the testimonies.⁴⁸ They also expressed the feeling that genocide atrocities and the huge loss of lives and property should not be compensated through forgiveness,⁴⁹ and many survivors confessed that they pretended to forgive the killers for crimes they committed rather than meaning it genuinely⁵⁰. Rwandans were also unsatisfied with the small number of cases which ICTR has handled. The high running cost, the length of trials, bureaucratic processes, and the location of the courts were all additional sources of dissatisfaction. As a result, "many victims feel that the entire process has little to do with them and their suffering."⁵¹ Moreover, the perpetrators who were prosecuted in the ICTR were given lenient punishments and served their sentences in 'luxury' prisons.⁵²

In Rwanda, people were victims of several kinds of international crimes: genocide, war crimes and crimes against humanity.⁵³ International crimes form the most atrocious violations of human rights, representing the most threatening crimes of concern to both the national and international communities.⁵⁴ The question of which international crimes have taken place in Syrian will be discussed in the next section.

2.2 International crimes

Since this research targets Syrian refugees as victims of international crimes⁵⁵, this section will define these crimes and discuss whether such crimes were committed in the course of the Syrian

⁴⁷ Corey, A., & Joireman, S. F. (2004). Retributive justice: the Gacaca courts in Rwanda. *African Affairs*, 103(410), 73-89.

⁴⁸ For example, in Kaduha in 2003: three Tutsi survivors intended to testify in Gacaca but were assassinated. Umbrella organisation for genocide survivors Ibuka. (2004). "these are not isolated cases": *Interview with Benoit Kaboyi, Executive Secretary (20 April 2004), Ibuka, Kigali*

⁴⁹ Kubai, A. N. (2007). Between justice and reconciliation: The survivors of Rwanda. *African Security Studies*, 16(1), 53-66.

⁵⁰ id.

⁵¹ Human Rights Watch. (2004). *Leave None to Tell the Story-Genocide in Rwanda*. Retrieved from: <http://www.hrw.org/legacy/reports/1999/rwanda/rwanda0399.htm>

⁵² Id.

⁵³ Trahan, J. (2010). *Genocide, War Crimes and Crimes Against Humanity: A Digest of the Case Law of the International Criminal Tribunal of Rwanda*. Human Rights Watch.

⁵⁴ The United Nations General Assembly. (1998). *Rome Statute of the International Criminal Court*, 17 July 1998, ISBN No. 92-9227-227-6

⁵⁵ As mentioned in the introduction and will be detailed further in Chapter three: Methodology.

conflict, and contextualize them if so. The Rome Statute of the International Criminal Court ICC⁵⁶ provides that international crimes are “the most serious crimes of concern to the international community as a whole”. Under this definition, the ICC has jurisdiction over the following crimes: the crime of genocide, crimes against humanity, war crimes, and the crime of aggression. Drawing a comparison between these crimes, they appear to have at least three features in common: “First, the government agencies are complicit in the behavior that is criminalized. Second, the definitions consistently point to instances of mass victimization, and third, the complete absence of ‘normal’ human relationships.”⁵⁷

In the course of the Syrian conflict, the government appears to have violated the international criminal law continuously by committing war crimes⁵⁸ including but not limited to the killing of civilians and prisoners, deployment of child soldiers, rape, plundering, torture and the use of chemical weapons.⁵⁹ In addition, article 7 of the statute qualifies certain crimes as crimes against humanity if these crimes are “committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack”. Under this definition several international crimes are and have been committed in Syria such as murder, torture,⁶⁰ and enforced disappearance of persons.⁶¹

In its 2015 report, the Independent International Commission of Inquiry on the Syrian Arab Republic stated that:

*“Missed humanitarian opportunities have been aggravated by the exponential rise in the perpetration of war crimes, crimes against humanity and human rights violations. The civilian population continues to bear the brunt of the pain and suffering, while the perpetrators are shielded from accountability. The responsibility for this unrelenting tragedy is shared by a variety of national, regional and international actors.”*⁶²

Drawing from the existing evidence, it suffices to say that war crimes and crimes against are taking place in Syria in the course of the ongoing conflict. Therefore, Syrians are and continue to be victims of international crimes.

⁵⁶ The United Nations General Assembly. (1998). *Rome Statute of the International Criminal Court*, 17 July 1998, ISBN No. 92-9227-227-6

⁵⁷ Groenhuijsen, M. S., Pemberton, A., Letschert, R. M., Haveman, R., & de Brouwer, A. M. (2011). Genocide, crimes against humanity and war crimes: A victimological perspective on international criminal justice. *Supranational Criminal Law*, (13).

⁵⁸ The United Nations Human Rights Council. (2014). *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic A/HRC/27/60*. Retrieved from: <https://www.ohchr.org/en/hrbodies/hrc/iicisyria/pages/independentinternationalcommission.aspx>

⁵⁹ Charbonneau, L. (2018). *Ensure Justice for Victims of Syria Chemical Weapons Attacks*. Retrieved from: <https://www.hrw.org/news/2018/11/19/ensure-justice-victims-syria-chemical-weapons-attacks>

⁶⁰ Anadolu Agency. (2014). *AA reveals new set of photos documenting Syria war crimes*. Retrieved from: <https://www.aa.com.tr/en/world/aa-reveals-new-set-of-photos-documenting-syria-war-crimes/157423>

⁶¹ Amnesty International UK. (2018). *Between prison and the grave – enforced disappearances in Syria*. Retrieved from: <https://www.amnesty.org.uk/enforced-disappearances-syria-between-prison-grave>

⁶² The United Nations Human Rights Council. (2015). *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic A/HRC/28/69*.

2.3 The needs of Syrian victims

Identification of victims is not a simple process.⁶³ The term “victim” can be emotional and have a negative impact on individuals labeled as victims (i.e. giving wrong indication of weakness). However, it is difficult to avoid not using this label as a victim, because victims may then appear self-sufficient who do not need any assistance. This complexity results from the contradiction between external and internal definitions of the concept. External definition is referred to as “formalized, codified and objectified systems of categorization”, that are assembled by forceful institutions, whereas the internal definition applies to “a self-identification with the condition of victimhood”. When victims refuse to use the word “victim” to avoid the impact of labeling, they still have to use the external definition when they need to shed light on their experiences⁶⁴ because people tend to sympathize with victims who express their vulnerability rather than strength and independency. According to Nils Christie, ideal victims are those who do not show a high level of resilience, but admit their weakness (usually appears as innocent old lady). In other words, the ideal victim should be strong only in daring to talk but they must at the same time be weak enough not to become a threat to other important interests.⁶⁵ On the other hand, Bouris (2007)⁶⁶ argues that following this theory is problematic for thoughtful scholars of peace building. First, when the international community relies on this image to represent victims, it is more likely that a big group of victims with more complicated images will be ignored, which will have numerous consequences on the support provided for harmed individuals. Second, the policies of response are likely to be shaped by this simple image of the victim. As a result, these policies will not be effective for the engagement and healing of more complex victims. Finally, establishing a stable peace can be undermined when depending on the simple image of the victim.

This complexity in identifying victims can be a reason for several consequences on victims’ needs in the Syrian context. Determining which group of people are to be considered victims, does not only affect their right and access to support, but also to acknowledging their right to reparation.

Victims have not always had a central role in research on post conflict societies. Back in the 1990s, transitional justice processes had no in-depth discussions about the needs of victims. The international community was concentrating on peacebuilding and the attention was on societies⁶⁷ rather than on the individual victim. In the 2000s, the focus on victims has increased⁶⁸ through setting up the compensation schemes and support programs which empowered victims. Moreover, laws have given victims participatory and information rights beside the improved treatment by organizations within the criminal justice system. This development was on the UN

⁶³ De Waardt, M. (2016). Naming and shaming victims: The semantics of victimhood. *International Journal of Transitional Justice*, 10(3), 432-450.

⁶⁴ Id.

⁶⁵ Christie, N. (1986). The ideal victim. In *From crime policy to victim policy* (pp. 17-30). Palgrave Macmillan, London.

⁶⁶ Bouris, E. (2007). *Complex political victims*. Kumarian Press.

⁶⁷ Williams, P. (2002). The role of justice in peace negotiations. *Post-Conflict Justice*, 115-133.

⁶⁸ Garland, D. (2012). *The culture of control: Crime and social order in contemporary society*. University of Chicago Press.

level as well through establishing the Basic Principles and Guidelines on the Right to a Remedy and Reparation.⁶⁹ A decade later, the International Criminal Court accepted victims' participation as well. Today, several mechanisms are established to provide reparations to the victims.⁷⁰ Hence, focusing on victim-oriented mechanisms has increased in the last few years.

In this sense, Pemberton has drawn up a victimological framework for the needs of victims of terrorism, within and outside the criminal justice system⁷¹ where he divided them into eight needs: three procedural and five outcome needs. The first procedural need is respect and recognition, which is a universal need since everyone wants to be respected. The second is the need for information about the progress of the case, and the third revolves around participation which is particularly important in severe crimes or when there is a chance of reoccurrence of victimization. On the other hand, there are five outcome needs. First, acknowledgement of the harm done. Second, material compensation whose importance depends on the intensity of the damage and whether it can be repaired. In the cases of severe violent crimes that results in homicide, permanent physical disability and rape, the effectiveness of compensations is questionable. The third outcome need deals with protection and providing safety to insure that there is no chance of recurrence. Fourth, coping with anxiety and loss and finally the urge for retribution as a consequence of feelings of anger and injustice. Based on this framework, participants in this research will be asked about these eight needs to highlight which of them are more important to Syrian victims.

In this chapter, we examined the existing literature on transitional justice and we drew, where possible, from the Rwandan scenario. The chapter has also examined the link between transitional justice and international crimes along with key concepts such as victims and victimhood. This review does not only provide us with the necessary understanding of transitional justice mechanisms and victims' needs that may or may not be applicable to the Syrian scenario, as we will see later, but also (e.g. the concept of victimhood) raises methodological points to be taken into consideration in the process of sampling, data collecting and data analysis. This will be demonstrated in the following chapter discussing the methodology which this thesis has undertaken and why these methods appeared to be the appropriate ones.

⁶⁹ UN General Assembly Resolution 147.

⁷⁰ Kritz, N. J. (Ed.). (1995). *Transitional justice: how emerging democracies reckon with former regimes* (Vol. 2). US Institute of Peace Press.

⁷¹ Pemberton, A. (2009). Needs of victims of terrorism. In *Assisting Victims of Terrorism* (pp. 73-141). Springer, Dordrecht.

Chapter Three: Methodology

3.1 Research aim and objectives

It is arguable that transitional justice is vital for the recovery and development of war-torn countries. In other words, it brings about a leap towards the future through reparations, reconciliation, truth and other measures of justice. Should we aim at delivering an efficient transitional justice in Syria, fulfilling the justice needs of victims of war atrocities is imperative. Otherwise a revenge circle will continue to exist and take other forms in an uncertain future, resulting in further atrocities.

Having said that, transitional justice in Syria will not be a straightforward matter. This could be attributed to two factors. First, the authoritarian nature of the Syrian government which operated for decades in the absence of accountability mechanisms despite its long standing breach of the most basic human rights⁷², such as the right to freedom, freedom of speech, and the right not to be discriminated, tortured or disappeared⁷³. Second, although transitional justice in Syria has been addressed by Syrian academics, intelligentsia and other Syrian figures in the diaspora,⁷⁴ the perception of the Syrian layperson of transitional justice has neither been explored nor addressed. Therefore, my aim in this research is not only to add to the general knowledge of the discipline of transitional justice and the literature surrounding it, but also to bridge the gap in the Syrian context by providing the victims with an appropriate and safe platform (the thesis) to voice their opinion. Moreover, I plan to research whether transitional justice can have a place in Syria or provide a mechanism of reparation for victims (especially through memorials, teaching history in schools' curricula, financial compensation, rehabilitation, and granting access to properties). Lastly, this research aims to explore the rule of law in Syria to understand how far the Syrian legal system can deal with the perpetrators of international crimes after the conflict ends.

3.2 Data collection

Data

Primary data was collected by interviewing ten Syrians who live in the Netherlands and who were victims during the conflict in order to gain their insights about transitional justice. Moreover, two Syrian experts in Syrian national law, also living in the Netherlands, were interviewed to explain

⁷² Heydemann, S. (1999). *Authoritarianism in Syria: Institutions and social conflict, 1946-1970*. Cornell University Press.

⁷³ Human Rights Watch. (2009). *World Report 2009*. Retrieved from: <https://www.hrw.org/world-report/2009/country-chapters/syria>

⁷⁴ See for example: *Transitional Justice: A Handbook for Journalists, Citizens and Activists*. Available at: <https://iwpr.net/printed-materials/transitional-justice-handbook-journalists-citizens-and-activists>

how the Syrian law deals with perpetrators of international crimes.⁷⁵ I chose to interview refugees outside Syria because I am not able to be physically in the country since it is neither safe nor legal for me to visit Syria. Further, interviewing people under the eyes of the Syrian security raises an ethical issue and I do not intend to place participants in danger when discussing a sensitive topic such as the topic of this research while they are inside Syria.

Interviews were face-to-face and semi-structured in the form of interactional exchange of dialogue with participants because this is the appropriate method often used to generate the kind of data I seek⁷⁶ Qualitative research is regarded to be inductive and theory generating.⁷⁷ Therefore, the approach of qualitative interviews is used in this research, defined as “the conversations with a purpose,”⁷⁸ since they enable my interviewees to explain their ideas, beliefs, feelings, fears, and perception of transitional justice. They also improve the “understanding of social and cultural phenomena and processes rather than to produce objective facts about reality and make generalizations to given populations.”⁷⁹ Moreover, through the open-ended questions, I could go deep beneath the surface of shallow responses to get the real opinions of interviewees. Interview questions were divided into four groups. The first one was related to victimhood, while the second focused on perpetrators and the importance of holding them accountable. A third group of questions discussed how Syrians in the future want to remember what happened during the Syrian conflict and what kind of reparation they may seek. The last main question in the interview is about the definition of justice from the participants’ perspective. This structure of questions helped me understand how participants thought about transitional justice and victims’ needs while allowing participants’ perceptions to flow uninterruptedly.⁸⁰

The secondary data were collected from secondary sources that were available in various literature sources, including but not limited to books, journal articles, government publications, official records and international reports. I used search themes such as victims, justice needs, reparation, truth, victims’ participation, etc.

Samples and recruitment

Ten victims of International crimes that took place in Syria were interviewed. To ensure that the samples are as representative as possible and reflect the population accurately, participants were chosen from different Syrian regions, various professions, ages, genders, and educational backgrounds who settled in the Netherlands after fleeing Syria due to the ongoing conflict.⁸¹

⁷⁵ Ethical considerations were included and the research received favorable opinion by the University Ethics Community on 01-04-2019.

⁷⁶ Mason, J. (2002). *Qualitative Researching*, London: Sage Publications.

⁷⁷ Seale, C. (Ed.). (2004). *Researching society and culture*. Sage.

⁷⁸ Burgess, R. G. (1984). *In the field: An introduction to field research*.

⁷⁹ Pettigrew, K. E., Fidel, R., & Bruce, H. (2001). Conceptual frameworks in information behavior. *Annual review of information science and technology (ARIST)*, 35(43-78).

⁸⁰ Please refer to Appendix II for interview questions.

⁸¹ Please refer to Appendix I for participants’ information.

With the literature definition of victims in mind, and since interviewees should have considerable ties with the research topic, purposive sampling was adopted⁸². Diversifying the sample in terms of professions, ages, genders, and educational backgrounds in relation to the Syrian war, ensured representing the Syrian communities subject to this research and generates an in-depth opinion.

3.3 Analysis

The data was subject to a qualitative analysis of the respondents' narratives. The interviews were made in a period of three weeks. However, data analysis began simultaneously with data collection which enabled me to familiarize myself with the generated data and emerging themes that informed subsequent interviews.⁸³

Face to face interviews were audio recorded and then transcribed by me. Collected data was coded manually in two stages. The first stage was deduced by literature reviews and the second by obtaining codes from the data itself.⁸⁴ These codes were put in groups⁸⁵ which allowed the findings to arise from the important themes into a final report.⁸⁶ To ensure accuracy and that no data was left unnoticed, I used Microsoft Office Excel program that allowed me to filter codes and keep track of each and every data I collected from participants.

The interviews were conducted in Arabic. However, the audio recordings were transcribed into English. Although this process may raise an ethical issue since it can affect the accuracy of data analytical validity,⁸⁷ it is fundamental to know that language is an essential part of people's reality, and it plays a major role in understanding and expressing their opinion. For that reason, it was important to provide participants with the space to express their opinions in their native language. Translating legal documents and interviews (from Arabic to English and vice versa) is well tracked in my professional experience since 2010. I overcome the challenges of translating legal words and capturing the meaning of certain terminologies through the accumulated experience I gained in dealing with similar situations.

3.4 Reflexivity

Researchers run the risk of "becoming rigid and lacking in terms of reflexivity, presenting subjective and arbitrary representations as self-evident and robust findings."⁸⁸ Therefore, I had to

⁸² Bryman, A. (2016). *Social research methods*. Oxford university press.

⁸³ Riessman, C. K. (1993). *Narrative analysis* (Vol. 30). Sage.

⁸⁴ Boyatzis, R. E. (1998). *Transforming qualitative information: Thematic analysis and code development*. sage.

⁸⁵ Tuckett, A. G. (2005). Applying thematic analysis theory to practice: a researcher's experience. *Contemporary Nurse*, 19(1-2), 75-87.

⁸⁶ Bazeley, P. (2009). Analysing qualitative data: More than 'identifying themes'. *Malaysian Journal of Qualitative Research*, 2(2), 6-22.

⁸⁷ Temple, B., & Young, A. (2004). Qualitative research and translation dilemmas. *Qualitative research*, 4(2), 161-178.

⁸⁸ Alvesson, M., & Skoldberg, K. (2009). positivism, social constructionism, critical realism: Three reference points in the philosophy of science. *Reflexive methodology: New vistas for qualitative research*, 15-52.

consider the influence of my own background over this research, especially my familiarity with the Syrian community and the crimes committed during the war.⁸⁹ I remained conscious that my knowledge may affect my objective views or those of the interviewees. Being objective in this situation might be an impossible task.⁹⁰ I nevertheless ensured to separate between my personal experience and the process of collecting the data and analyzing it. For instance, I used my knowledge to overcome the language barrier. Speaking Arabic was an asset to communicate easily with participants. Further, it gave me access to various literature resources in both languages: English and Arabic, including but not limited to: books, journals, government publications and international reports.

In addition, listening to victims' accounts of events was not an easy task. However, my experience of being a Syrian myself enabled me to understand what participants were describing and to learn how to see their suffering from a researcher perspective. Also, having a legal background was a challenging factor to me while conducting an empirical data. This was overcome by following several classes on research methodology that equipped me with the necessary research skills to conduct this study.

3.5 Limitation

The findings of this study have to be seen in light of some limitations. Due to the fact that it was neither safe nor legal for me to visit Syria to conduct interviews with victims there, and since interviewing people under the eyes of the Syrian security raises an ethical issue, my research focused only on exploring the opinion of Syrian victims in the diaspora and particularly in the Netherlands. Moreover, since the interviewees should have considerable ties with the research topic, purposive sampling was adopted. As a result, only participants with high level educational background were interviewed. Furthermore, due to the limited number of words I could use in this research, only ten participants were interviewed which may affect the concluded valid research results. These limitations could be addressed in a further future research.

⁸⁹ Malinowski, B. (2014). *Argonauts of the western Pacific*. Routledge.

⁹⁰ Gilbert, N. (Ed.). (2008). *Researching social life*. Sage.

Chapter Four: Findings

4.1 Victimhood in Syria

4.1.1 Introduction

Since several issues might surface when establishing a transitional justice system in Syria, it is essential to know who the victims are and which justice needs they demand. Before exploring what and how participants think about justice, I had to examine first whether they consider themselves to be victims and what their conception of victimhood is. “Justice is seen to be done when it is seen in the eyes of the victimized population.”⁹¹ Additionally, in order to answer my research question, it is important to pay closer attention to participants’ perceptions on justice, and victims themselves have to determine what justice means and which mechanisms might achieve it. Moreover, in order to know how Syrians victims think about transitional justice, it is important to comprehend who, from Syrians’ perspective, should be held accountable for war crimes committed during the conflict. Keeping in mind that the aim of this research is not to collect personal stories about their victimhood, I did not ask them to give me details about their own experience of victimhood. However, observing responses on perpetrators and victims provided me with a general overview of participants’ own experiences.

4.1.2 Victims of the Syrian conflict

In the Syrian civil conflict, everyone is involved in a way or another. For that reason, seven participants out of the ten that I have interviewed considered every Syrian as a victim, while the rest excluded military men who participated in the conflict. Because in their opinion, these men committed severe crimes and played an essential role in criminalizing civilians. When asked about their own victimhood or whether they consider themselves victims, only two participants denied being victims. Participant D believes that every action has a reaction, and his suffering today is the price of his uprising. Therefore he is not a victim but a rebel. He explained:

“I don’t consider myself a victim. I see myself as a person who believed in a principle and faced the consequences of this belief [...] I am a person who asked for his rights, I am not a victim”.

On the other hand, participant E believes he was able to change his destiny. Being a victim is something he did not choose, but he chose to end his victimization when he left Syria. He said: *“[...] In the past, I was a victim of many things, not only the war”.*

The rest of participants believe that they were victimized by the government, the extreme islamic groups and the international community that did not act to help them.

⁹¹ Balta, A., Bax, M., & Letschert, R. (2018). Trial and (potential) error: Conflicting visions on reparations within the ICC system. *International Criminal Justice Review*, 1057567718807542.

When asked about victims' needs, participants emphasized the vulnerability of victims of sexual crimes in detention centers, especially where the Syrian government uses rape as war weapon during the conflict.⁹² Moreover, children, political prisoners, Internally Displaced Persons (IDPs) and refugees were highly victimized in the opinion of the participants. Thence, all participants agreed on the fact that victims have different needs, depending on their loss. Families who lost a member cannot overcome the agonizing pain but by allowing time to heal it. The majority (six) believe that victims need financial support to rebuild their lives, to reduce their desire in taking revenge and to be able to have medical care. Half of the participants think victims will mostly need housing after losing their houses because of shelling or confiscations. It is also essential for other participants (five) to have a closure for their stories and to be recognized as victims of war crimes and crimes against humanity. In other words, they want their victimhood to be acknowledged, to know the truth about the fate of people they lost and to see perpetrators held accountable. Also, half of the participants discussed the need for social cohesion, which they literally called "social rehabilitation". Since people from both sides of the conflict are going to live in the same neighborhoods again, they need to re-learn how to accept, tolerate and understand each other despite the catastrophe they experienced. For example, participant C has illustrated this by saying:

"Revenge is horrifying, therefore, I hope we can find social rehabilitation in order to end this period of sadness. We need a new Syria that makes us forget the suffering we experienced all these years. We need to accept each other again"

Four participants see that victims will not feel better unless they know that war criminals are prosecuted for their crimes. they see justice in holding perpetrators accountable for their atrocities. Finally, the majority (seven) emphasized the importance of achieving what they referred to as "the chief goal of the revolution" which is: to live in a safe and democratic country, to have equality and dignity, and subsequently to replace the current government. These participants think that their pain and suffering will be in vain if the Syrian community does not progress.

The fate of enforced disappeared persons and what Syrians should do in order to find the truth about what happened to them was another topic discussed with participants. They all agreed on the importance of this topic because every Syrian family has lost a member and does not know whether they are alive or not. For that reason, they all emphasized the urgency of searching for them during and after the conflict. Participant I believes that knowing the fate of missing persons *"is the most important thing to know, even before prosecuting the perpetrators,"* while participant B expressed that *"mothers from their deathbed are calling the names of their sons who disappeared and they know nothing about them."*

Half of the participants suggested that the first step is to document their names and the location where they were last seen. Also, five participants agreed on looking into the registrations of the government and intelligence forces, because the prison keepers used to register each prisoner.

⁹² The United Nations Human Rights Council. (2018). *Conference room paper of the Independent International Commission of Inquiry on the Syrian Arab Republic, "I lost my dignity": Sexual and gender-based violence in the Syrian Arab Republic*. Retrieved from: <https://www.ohchr.org/Documents/HRBodies/HRCouncil/CoISyria/A-HRC-37-CRP-3.pdf>

This can be a way to know the fate of these people. For example, participant G suggested that *“we should search for the data that was registered by the regime in order to know the truth about their fate”*.

Moreover, two participants believe that all political prisoners must be released because the majority of them are the disappeared persons we are looking for.

In the same vein, participant F suggested reaching a deal with the perpetrators to reduce their punishment in return for giving information about disappeared persons. Moreover, participant J highlighted the necessity of finding hidden places of Islamic groups because she believes they might have prisoners there. She also mentioned searching for mass graves and DNA tests. In addition, three participants think a potential transitional government should seek the support of international organizations and post-conflict countries, to learn from their experience and knowledge. Participant D considered this approach a priority.

The problem of “inheritance” has been raised upon discussing enforced disappeared persons. Since people are disappearing without any reference to or news on their fate, their properties, bank accounts, business, and transactions remain under their name and no one else can have the authority to control them. This, according to four participants, is a difficult issue. Participant B said:

“Revealing the truth is important [...] because many official procedures related to ‘inheritance’ are hung on knowing a person is dead”.

After understanding participants’ opinions over the victims and their needs, I moved on to the next questions related to perpetrators.

4.1.3 Perpetrators of the Syrian conflict

When asked about the perpetrators, participants were generally very confident with their answers. They did not hesitate before giving a reply. Four participants have pointed out that both Al-Assad and his supporters and the opposition including the radical Islamic groups on the other, are perpetrators. These participants are of the view that both the government and the radical Islamic groups have committed crimes against the people and both are responsible for their suffering. In response to who may be considered a perpetrator, participant I said:

“First, the regime represented by the president Al-Assad, because he could avoid all this pain and save the lives of Syrians but he did not. Second, during the war, extreme Islamic groups started to appear and committed severe crimes as well”.

Participants also demonstrated a firm belief that the international community has played an essential role in fueling the conflict. They reasoned that some regional powers supported the parties to the Syrian conflict. For instance, Iran and Russia supported the Syrian government while Turkey and the gulf countries supported the opposition forces. They added that the

international community witnessed brutal crimes against Syrians without taking any action to stop these atrocities. Participant B argued that:

“The first perpetrator is Al Assad, his regime, his militia, and other foreign military forces like Iran and Russia. Second, is warlords who benefited from the chaos. Third, everyone who harmed Syrian civilians from both sides of the conflict [...] Every state that participated in the conflict: Iran, Russia, Saudi Arabia, Qatar, United Arab Emirates, Egypt, and Turkey. Since they participated in fueling the conflict, they should take a part of the consequences. Also other countries like the EU who was able to stop the conflict but did not. It had an ethical responsibility to help”.

Meanwhile, three participants believe that only Al-Assad, his family, militia and intelligence forces are behind the conflict. Participant D explained that:

“Although the revolution started with holding flowers, it was faced with killing. We couldn’t go on peacefully because the regime was killing people demanding their rights. The responsible is the regime and the intelligence”.

Some of the participants (three) were very detailed in referring to the severe crimes they know about, emphasizing the fact that these crimes were a source of anguish for so many Syrians. These crimes include killing civilians, stealing properties, raped women, and human trafficking. For example, participant A has accused

“Everyone who was blindly controlled by politicians, every selfish person who was able to prevent blood and protect people but did not, everyone who killed, stole, and raped, Syrian and foreigner bystanders who did not take any action and stayed still. People who decided to profit from the war and make money out of our blood”.

What was also remarkable in the answers that seven participants out of ten accused warlords of contributing to the crimes while protecting and maintaining the gains they made in the course of the conflict at the expense of Syrian people.

All participants agreed that, perpetrators should be held accountable for what they did. However, three participants were skeptical and shared their concern that real perpetrators might escape prosecution by finding a scapegoat that will be blamed on all the crimes that have been committed in Syria. In that regard, participant E said:

“Nothing is going to happen, real perpetrators will always live in their castles. They will find a scapegoat to be held responsible [...] while the real perpetrators will stay safe”.

Although they all agreed on the necessity of holding perpetrators accountable, they had different opinions on the possibility of doing that. In other words, participants were asked who in their opinion is more important to be brought to justice: leaders who organized the crimes or followers who obeyed orders. Answers to this question are mainly split into three groups. The first group includes four participants who believe both; leaders and followers should be prosecuted, although

leaders are more responsible since “followers were sometimes forced to commit crimes, threatened, and scared.” Participant D has emphasized this by saying:

“Some of the agents obeying orders are forced. [...] I have seen followers hiding civilians and protecting them, although they might have been killed if they were caught. Followers from both sides: pro and opposition are our brothers. The main problem is in the leaders”.

The second group includes four participants who think it is only essential to prosecute leaders since they are the ones in control, they are stronger and followers have been constantly brainwashed. One of the participants, J, for example, illustrated that by saying:

“Followers, no matter how evil they are, they can’t act systematically without taking orders from the leader, and usually they are brainwashed. However, leaders can always create followers if they don’t have ones. In the appropriate circumstances, it is very easy to convert from “human” to “monster”.

Moreover, only two participants are of the view that both leaders and followers should be prosecuted. In that regard, participant A said: *“If followers said ‘we will not kill or steal’, then leaders will not be able to act alone.”*

Now whether reducing the punishment to “community service” is an option for perpetrators who help revealing the truth, participants were more hesitated before giving an answer. Some of them (three) cannot even imagine the committers escaping justice outside jail. They completely reject any kind of reduction on the sentences. For example, participant C expressed his rage of this suggestion by saying:

“I think it is very difficult for victims and their families to understand how perpetrators who committed brutal crimes will only have to do community service because they provided information. He should suffer as much as we suffered”.

One participant, G, expressed his concern that this kind of leniency will be a reason to wreak vengeance:

“[...] people will take revenge since no justice was achieved by reducing the punishment to community services”.

Three other participants thought that this is a good idea as long as perpetrators regret their deeds and give useful information. Participant D said:

“It is accepted as long as they give information that brings the good to the society and the families of victims. If they go to prison and keep the truth hidden, what good may I get?”.

In fact, the theme “depending on their crimes” emerged four times in response to this question. The main idea was to look into the crime of the perpetrator, then assess whether it is possible to reduce their sentence. For participants, killers are the worst. Therefore, they should not be given

lenient sentences. On the other hand, one participant, J, expressed her concerns on how dangerous these perpetrators can be. On that, she explained:

“For leaders and perpetrators who committed severe crimes: if they give valuable information that we can’t get in another way, i accept reducing their punishment, but not to community services, they should stay in prison cells. For followers who committed lighter crimes: it is a good way to rebuild Syria, to reduce the pressure in prisons, to help perpetrators rehabilitate and reintegrate in the community, but we should be careful that these perpetrators are not dangerous anymore”.

4.1.4 Conclusion

In the Syrian conflict all civilians are victims. However, some participants have broader definition of victims whereby they consider all Syrians “victims”, even those who participated in the conflict. Furthermore, only a small percentage of participants the label ‘victim’, as per their argument. This point was demonstrated in the theoretical framework where it was shown that the term “victim” may be emotional and indicate a negative impact on individuals such as giving wrong sign of weakness. In order to answer the research question related to fulfilling victims’ justice needs, participants illustrated the main needs as follows: access to properties, financial support, medical care, and education. Furthermore, the majority have mentioned the initial aims of the uprising included freedom, dignity and democracy. Although participants have different approaches to deal with the problem of disappeared persons, they all agreed on the urgency of knowing the truth about their fate.

The identification of perpetrators in the Syrian conflict differed from a participant to another. Overall, they recognized three main categories: the Syrian government and its militia (including the president), the opposition forces (including radical Islamic groups), and the international community who supported them. Participants also agreed on the necessity of prosecuting the leaders who planned the crimes and gave orders. In their opinion, those leaders are the reason behind the severe crimes committed in Syria. In addition, participants have diverse perspectives about reducing the punishment to community services in return of providing information that reveals the truth. Most of them consider this a good option as long as the information is important, people are safe, and the perpetrators regret their deeds.

4.2 Perspectives of Transitional Justice

4.2.1 Introduction

To understand how Syrians think about transitional justice and how far they believe retribution is the key need to achieve it, it was essential to know whether they are willing to accept the apology of perpetrators or to forgive them under any condition. Moreover, participants asked questions

related to truth, accountability, reparation, and reconciliation. I have also enquired on the way victims of war crimes think about the conflict as a history and past event. For instance they were asked on topics that relate to financial compensation, granting access to properties, memorials, teaching history in schools' curricula, and rehabilitation.

4.2.2 Justice and forgiveness

In this section I aim to examine the connection between accepting an apology and achieving justice, from the perspective of Syrian victims.

Discussing forgiveness, half of the participants were totally against the idea of accepting an apology from the perpetrator. Participant G has expressed her concerns regarding the repetition of these crimes. She cannot forgive because she does not think criminals will repent of their crimes. In that regard, she said: *"I will never believe their regret or the claim that they will not do it again"*.

However, three participants were more lenient and said their decision will be based on the severity level of the committed crime. For example participant A asked for a combination of punishment and apology in order to forgive, he also thinks the apology should be a verbal apology combined with an action. Also, participant J shared that she may forgive if the committed crime was not brutal, and she thinks it is essential to understand the circumstances of the perpetrators. In the same vein, two participants agreed on accepting the apology of all perpetrators. One of them, E, also agrees with J on the importance of understanding the perpetrators. He adds that they should really regret their actions. in his own words:

"If you do something wrong, you have first to acknowledge it, and second to apologies. [...] I still believe that perpetrators should not apologies because they were ordered to, but because they really regret what they did, for me this is enough to forgive if I believe it. [...] for everyone to understand other groups in the conflict, understand what they lost, their opinion, and their circumstances".

Another participant, D, believes forgiveness is the only way to achieve justice. However, he knows this takes time. He argued that open wounds need to heal first before accepting the apology of perpetrators.

"Now I can't forgive, but I know that I cannot keep looking at the past. Personally I accept the apology but not now. Right now the wound is still open. I know if we don't forgive we will go into a new social crisis because even in one family, brothers have hurt each other. Without forgiveness, no justice can be achieved".

4.2.3 Justice and financial compensations

When asked about the role of compensations in healing the pain of victims and achieving justice, the opinions of participants were equally divided between agreement and rejection. The concept

of accepting money as a recognition of the suffering, or as a means of strengthening their lives, was not only far from justice, but also humiliating for some participants. In that regard, participant C said:

“It doesn’t feel good to give money to a person who lost his whole family. For example, I know a woman who lost her thirteen children in the prison, she was informed of their death without seeing their bodies, I can never give her money and ask her to feel better or to forgive, this is not the justice”.

One of the participants, H, thinks it is enough if every ‘thief’ gives back what they have stolen. In this case, as per his argument, no compensation needs to be paid. Also, participant E have made a simple calculation on his mobile before telling me his opinion. He does not consider the symbolic financial compensation. In his opinion, it should be high value of money. Otherwise, such symbolic compensation could be humiliating as well. He thinks that the Syrian government should pay this money from its GDP, and it needs decades before it meets the end of its debt. In his words, this is the equation he used:

“I will consider that we have 6 million victims in Syria, each of them will take a compensation of 10000 euro. This is 60 billion euro. Syrian GDP in 2010 was 5 billion. Today during the conflict it is about 1.5 billion. That means the Syrian gross income for 48 years will be paid to victims. This is not an option”.

On the other hand, participant B, like many others, accepts compensation and consider it a way of helping victims feel secure. Moreover, it can be an asset to stop revenge. He said:

“When someone loses everything, enhancing his financial situation may be an asset for him to start a new life, however, it will not make him forget his pain. At least improving his living conditions may stop him from taking revenge. This is personal, financial compensation can recognize victim’s harm depending on their situation”.

Overall, participants did not agree on the source of the compensation money. In other words, who should pay all this cash to victims? Three participants argued that it is the responsibility of the new transitional government, while others (three too)⁹³ believe the members of the current government must pay this money from their own bank accounts and the fortune they stole from Syrians during the period in which they ruled the country. Participant I said:

“It can be a good idea to confiscate the properties and bank accounts of leaders and presidential family and give them back to Syrian victims”.

Other three participants⁹⁴ think this is also the responsibility of the countries that supported either the government or the opposition. Participants named: Russia, Iran, Saudi Arabia, United Arabs Emirates, Qatar, Turkey, USA, and Israel. Participant C said:

⁹³ Participants A, I, and J.

⁹⁴ Participants B, C, and G.

“Each country that was involved in the conflict: Russia, Iran, Saudi Arabia, United Arabs Emirates, Qatar, Turkey, USA, and Israel, has to pay compensation and rebuild the country because they played a role in killing people”.

What was also remarkable, is that 3 participants have mentioned the international community that did not play any role in this conflict, precisely because in their opinion, it did not try to help or to stop the “bloodstream.”

Moreover, participant E rules out the idea of asking the international community to pay the compensation. In that regard he explained:

“Former Israeli Defense Minister, Moshe Dayan, have once said ‘Our American friends offered us money, guns and advice, we took the money and the guns but we declined the advice’. It is obvious that we have the choice not to listen to other countries. Syria is supposed to be wiser and not listen to other countries knowing they don’t care about us. It is easy to blame other countries for what has happened. Even though these countries may be ready to pay compensation, but is it fair? We can get benefits out of our stupidity but this is our problem and our mistake, therefore, we should pay the price. We had the choice not to listen but we did”.

4.2.4 Justice and granting access to properties

For several reasons, Syrians remain unable to access their properties In Syria. Some of them cannot prove their ownership either because they do not have the required documents or because the official registration is destroyed or compromised. Others were prosecuted in the anti-terrorism courts because the government considers them terrorists as a result of their uprising.⁹⁵ All participants interviewed believe this is an essential right for victims and need to be given back to them should we aim to achieve a sustainable and maintainable justice. However six of them referred to the challenges behind giving this right back. Also three participants highlighted the demographic change as an outcome of the confiscation of properties belonging to members of the opposition. Participant J referred to the same factors by saying:

“Theoretically, it is very important to grant access to properties and this is even one of the first things to do, especially if we want to solve the problem of demographic change. Practically, this is very complicated because many owners have lost the documents that proves their ownership, registrations were forged or burnt, bona-fide purchasers may own the properties now, therefore, it is very difficult today”.

Participant B gives an example from Homs city:

“[...] it is not only about taking your property but also faking the records related to Land Registry. In Homs for example, today many people have their own properties registered

⁹⁵ According to Syrian Law No.19 of 2012: Counter-terrorism Law.

under someone else's name. This is very complicated because there is no proof for ownership any more, also this played a role in the demographic changing in Aleppo and Homs. Many Iranian now have Syrian names and own our properties”.

4.2.5 Justice and memorials

Monuments:

The majority of the participants (6) view monuments as a way of respect for the victims of the conflict. They believe that it is a symbol of recognizing the pain they suffered, and a way of remembering people who disappeared or were killed. For those reasons, they see it as a good way of giving victims the justice they need to heal. On the other hand, the rest of participants (4) believe that depending on the victor, monuments would be either a very good way to remember the innocent victims, or a very ugly way to remember the loss and pain. About that participant D commented saying:

“Depending on how the conflict will end. The history is written by victors, therefore, monuments will be built by the victor. For that reason, these monuments can be either a blessing or a curse”.

Teaching the history of the conflict:

The current school curriculum in Syrian is written according to Al-Baath, the ruling party, ideological theory. It is based on the idea of glorifying its assumed and ill-founded victories. Thus, teaching the history of the conflict can be a dilemma for Syrians. Six of the participants believe that teachers cannot be neutral and they do not guarantee the new generation will not be manipulated by teachers especially that they believe “history is written by the victors.” Although the participants realize the importance of teaching history to the upcoming generations, only three of them encourage this idea, the rest see it as a threat to the solidity of the country after the conflict ends. Participant I said for example:

“Yes it is very important to teach the history of the conflict in schools, but you should see how it is going to be taught. It is very difficult to find a version of history that everyone accepts in order to teach it to the new generation”.

4.2.6 Justice and rehabilitation

When discussing rehabilitation, I asked participants whether offering medical care to victims might be considered as a part of providing justice to them, and to what extent it is important for their well-being physically and psychologically. All participants agreed, without any doubt, on the need of rehabilitation. They all see that Syrians in and outside Syria are tired, depressed and traumatized for several reasons such as: losing their properties, being forced to leave the country,

the exposure to dangerous situations during shelling and siege, beside the fact that many of them were victims of unlawful detention, rape and torture. Therefore, participants consider rehabilitation an essential approach of justice, because people need to be healed in order to overcome their grief and go on with their lives. Participant J explained saying:

“I think many Syrians need physical care, and all of them need psychological care. All of them, from all conflict parties and all ages. The rehabilitation should start with children, prisoners, and raped women”.

However, it is anticipated that this approach is going to be challenging for various reasons. Mobilizing support at such a level that may accommodate the whole Syrian population could be challenging for logistic reasons. Also, Syrians in general struggle with the concept of asking for help.

Participant I has explained these challenges clearly by saying:

“It is also challenging because if the experts working on rehabilitation were foreigners, Syrians may see this as an intervention in the Syrian culture and their way of living, however, if the experts were Syrians, people will not take them seriously and will not be comfortable dealing with them, moreover, we don't have many Syrian experts in rehabilitation after war”.

4.2.7 Transitional Justice in the Syrian perspective

By the end of the interviews, participants gave several definitions for the justice they seek. Some of them were talking about justice in general while others described the type of transitional justice they aim to achieve. 80% of participants want their initial goal of the “revolution” to be reached. Namely, living in a democratic country where they can enjoy their rights in freedom, dignity, equality, peace, and respect. Without meeting these justice needs, they consider all the suffering in vain. One of these participants, F, also said: *“To achieve our initial aim: to have a fair president leading a democratic government that cares about the people and their best interest”.* In the same context, participant J said: *“Justice after the conflict is [...] to provide medical care, education, respect, dignity, equality [...]”.*

Three participants made the case that justice will not be considered without knowing the truth and being recognized as victims who lost everything. Further, it was noticed that two participants only mentioned the right to return and to have their properties back. Meanwhile, the majority believe that justice is to prosecute perpetrators, for example, participant C said:

“We need transitional justice that brings peace to Syria. This will not happen unless we prosecute all the perpetrators of war crimes, everyone who committed a crime against a civilian. No justice will be achieved without prosecuting the head of the political hierarchy, the dictator president Bashar Al-Assad and his regime. Also prosecuting leaders of the opposition who committed crimes against civilians. Transitional justice should prosecute all the criminals starting from Al Assad”.

However, one participant D said it is a long way, that we can end only by forgiveness:

“I only hope it will not be vengeance. If we see other international experiences, we see that ideal justice does not exist. Because achieving the ideal justice in Syria means more than half of the Syrians going to jail. I believe we should forgive and if we want to punish perpetrators, they should be the leaders. I will forgive anyone, and if every Syrian did the same, we can live together again”.

On the other hand, three participants seek justice through rebuilding the country. Two of these participants want people to be rehabilitated, and one wants a good education to be provided for children. Finally, one participant, E, has mentioned an extreme definition of justice. This participant believes in forgiveness. He does not want to think about Syria anymore and he does not ask for any revenge. However, he sees justice in killing all the perpetrators. He said earlier that he knows no justice will be achieved and a scapegoat will be taking the responsibility of all these crimes, He elaborated saying:

“I see justice in one way: I want strong countries like USA and Russia, not the UN, to make a study to name 1000 individuals who were involved in starting the conflict, including: 100 leaders from the regime side, 100 from the opposite side, 100 from civil society, 100 from political parties, 100 scholars, 100 from religious communities. These 1000 persons are the worst in Syria. They should be burnt by a dragon in the middle of Damascus with video recording. This should be broadcasted and every Syrian has to watch it. After that we can forget about the war, rebuild our country, change the government, change the curriculum in schools. We don't need compensations, or transitional justice, this is a ‘bullshit’”.

4.2.8 Conclusion

When asked about giving granting amnesty to perpetrators, half of participants refused the concept of forgiving the perpetrators. They do not see any justice or value in forgiveness which consists with Pemberton's findings in that retribution is a consequence of feelings of severe anger and injustice. The rest of the participants are divided into two main groups: those who are prepared to forgive perpetrators of minor crimes, and those who forgive all of them. For the latter, the absence of forgiveness is the beginning of a new crisis.

Participants' opinions were equally split between agreeing and rejecting the financial compensations as a way of achieving justice for victims. However, they did not agree on the resources of the compensation money. While some want the transitional government to compensate, others want the current government members to pay. Some participants suggested the international community to play a role in paying compensation. This variation in answers supports what Huyse (1995) arguments in that reparation process is not a straightforward matter., There will be questions on who should be held responsible for reparation: is it the perpetrators, the new government or the bystanders who benefited?

Participants seem to be on the same page when it comes to granting access to properties. They highlighted the latter as a fundamental right for victims that should be given back should we aim

to achieve justice. This too will not come without facing challenges. However, it is important to solve this problem because it played an essential role in increasing the demographic change in Syria. This change was imposed by the Syrian government under forced migration operations and policies, “siege and starvation” strategy and confiscation of property that aim to displace inhabitants and replacing them with another demographic group.⁹⁶

The symbolism of monuments was present in the discussions too. The majority of participants see in monuments the symbol of recognizing and respecting the victims of the conflict and a way of achieving justice. However, some were somewhat skeptical and argued that monuments can be either a curse or a blessing, depending on who the victor is. Moreover, the majority of the participants found the idea of teaching the history of the conflict in schools as a threat to the stability of the country.

Rehabilitation remain a vital way to achieve justice for those victims who lost everything, as per the participants’ argument. Although this is going to be challenging, providing all Syrians with medical care remains vital.

Finally, participants argued that prosecuting perpetrators will allow for a successful transitional justice and for rebuilding the country, giving properties back, rehabilitating people, and educating the children. Some of them find justice in forgiveness and recognition, while others do not believe in transitional justice unless it means they reach their initial goal of living in a democratic country where they can enjoy their rights in freedom, dignity, equality, peace, and respect. These findings will be elaborated further in the discussion chapter.

4.3 Syrian Legal/ Justice system

4.3.1 Introduction

In this chapter I integrate another fundamental aspect related to the legal system in Syria aiming to understand whether the national legal system can criminalize perpetrators of international crimes, or should Syrians resort to international institutions for this mission. For this purpose, I have interviewed two Syrian experts in national Syrian law. Both participants, K and L, live in the Netherlands as refugees and have practiced law back in Syria from 1990s till 2013. Further, I analysed their answers to establish how far the provisions of the Syrian legislation are capable of holding perpetrators of international crimes accountable for their offenses. Moreover, I assessed the role of the national justice system in prosecuting the perpetrators.

4.3.2 International crimes in the Syrian legislation

⁹⁶ Qutrib, H. I. (2016). *“Useful Syria” and Demographic Changes in Syria*. King Faisal Center for Research and Islamic Studies.

According to both experts, no provisions in the Syrian law constitute for the prosecution of war criminals. However, there are two laws that may be related to war crimes: Military law and Anti-terrorism law (passed in 2012). These provisions punish military personnel in the former and terrorist organizations in the later as individuals who committed crimes against other individuals, and does not punish their leaders who commanded these crimes. In other words, the nature of these crimes is not considered different than any other crime. Moreover, Syria has not ratified the Rome Statute that criminalizes war crimes and crimes against humanity as international crimes. Expert K said:

“[...] There are also few articles that criminalize some crimes committed during the war, but it is about crimes committed between the civilians, not by the government. For example if a civilian steals a house during the shelling, his punishment will be increased. These laws criminalize the individuals but not the leaders”.

Expert L added that the Human Rights Law was recently introduced to law students in the Syrian universities as one of the optional modules but not an obligatory one. Therefore, only a group of students study it if they choose to. He also shared that: *“the term ‘human rights’ is even new in Syria”.*

When asking the experts about case-laws that may be related to war crimes, both have rejected this assumption. K gave an example of the 1980s massacres where no perpetrator was prosecuted. L even added examples of Legislative Decrees that protect perpetrators and criminalize civilians who try to prosecute officials who work for the government.

“Syrian constitution protects the freedom of individuals, however on the ground things are different. Any intelligence personnel can stop a civilian without giving an explanation, the worse is that civilians are not allowed to ask for the prosecution of this agent because he is protected under Legislative Decree 549, dated 25/05/1969, Articles 74⁹⁷ and 101.⁹⁸ Similar articles can be found in Legislative Decree 14 dated 25/1/1969 (Articles 16 and 30). This means I cannot sue the agent who committed a crime against me unless his director gives me permission! Usually these agents are only obeying the orders of their directors, for that reason no one will be punished. Moreover, as you see these articles are not published. For all these reasons, according to the current legal system, we are unable to prosecute anyone unless the government and its forces accept that”.

4.3.3 International crimes in the Syrian justice sector

⁹⁷ Article 74: Any person employed by the State Security Department or assigned to, or directly engaged with it, shall not be prosecuted for offenses arising out of or in the performance of their duty before being referred to the Disciplinary Board of the Department and only after issuing an order of prosecution by the Director.

⁹⁸ Article 101: This Decree shall not be published and shall be effective from the date of the entry into force of Decree No. (14) of 15/1/1969.

International crimes are not criminalized in the Syrian law. Therefore, the justice system is limited and unable to prosecute the perpetrators of these crimes. In other words, since the Syrian law does not state these acts as crimes, victims remain unable to resort to the national justice system to try the perpetrators. In addition, the justice sector does not prosecute elite people because it is corrupt and this may become a reason for victims to aim for revenge as long as they do not reach justice by law. Expert L has explained:

“In Syria we, as lawyers, are scared of people trying to achieve justice by vengeance because the current judicial system is limited. Let us imagine that we want to prosecute the perpetrator Bashar Al Assad as the president of Syria and the first criminal in the conflict. According to the current constitution, the president is only prosecuted by The Supreme Constitutional Court, however, this Court consists of judges selected by the president. That is why I am saying that the current system is not able to prosecute these criminals”.

4.3.4 Justice and The Legal System

When both experts were asked about the role of the legal system in Syria in achieving justice, participant K illustrated that a new legal system should be established in order to find convenient ways to compensate the victims and to provide reparation, rehabilitation and recognition of victims' pain. He stressed the fact that new legislations are fundamental to change the current situation. He also believes that the justice sector should be reformed in order to first, stop the immunity of high level perpetrators and to subsequently, prosecute them. Otherwise, perpetrators should be tried in international courts like the ICC or in a special tribunal for Syria.

On the other hand, expert L did not give an answer for the role of law but he only mentioned that the justice sector should be careful and refuse the prosecution of scapegoats instead of real perpetrators. He also focused on the reconciliation as a sort of transitional justice. He said in that regard:

“[...] The crack is within the family, we need reconciliation in the Syrian community before anything else. This can be achieved through transitional justice. But we should be careful not to accept scapegoats from both sides of the conflict instead of real perpetrators”.

Remarkably, all participants concurred with the experts opinion in that current national legal sector is unable to look into cases related to this conflict. The reason behind that is mainly based on the assumption that the Syrian justice system is corrupt and that it lacks the necessary law provisions that addresses war crimes explicitly.

4.3.5 Conclusion

When the two Syrian experts in national Syrian law were asked whether the Syrian legislation have the required tools and capacity to prosecute the perpetrators of the conflict, they explained that the Syrian legislation does not provide for provisions that criminalize war crimes. Quite the contrary, it includes articles that protect high-ranking officers and personnel in the army and security sector. Moreover, the current justice system is limited, corrupt and unable to prosecute the perpetrators of the conflict. The analysis of these findings demonstrates that Syrians have to choose between either changing the laws and reforming the system followed by prosecuting the perpetrators, or trying to take war crime cases to the international courts when the conditions for that are met.

Chapter Five: Discussion

During the interviews, I sought to inquire how participants think about transitional justice and whether they accept the notion of reparation it provides. Through the answers of participants illustrated in the ‘findings’, the connotation of justice needs were identified, and in this chapter, I aim to unpack the implications of the findings.

5.1 Victims as vulnerable groups

Victims who reject using the term ‘victim’ are usually avoiding the stigma that assigns to victims a social role of passivity.⁹⁹ This passivity has a strong connection with powerlessness and is always linked with the word ‘victim’. The stigma influences the ways victims are viewed as fragile and unable people.¹⁰⁰ The stereotypical image of the victim as weak and passive could explain why two male participants did not agree on calling themselves ‘victims’ but rather showed their resilience and strength in facing the consequences of the crime. This approach is consistent with the general conceptual understanding of masculinity in the Syrian society that is related to everyday life, publicly and domestically, including but not limited to the economy, history, sexuality, social relations and culture. Hence it is important that masculinity in Syria is approached and analyzed because traditional masculinity norms play a role in whether men admit being vulnerable and seek help or not.¹⁰¹ Existing research found that the endorsement of dominant masculinity corresponds to higher levels of self-stigma and less favorable attitudes toward seeking help. This conceptual understanding of masculinity also features in symbolic fashion. Daoud¹⁰² explained for instance how the moustache represents ‘the maleness’ in its full sense. He also described how ‘a luxurious moustache was a boundless treasure, given that a single hair would suffice as surety for a loan or a promise’. In this sense, Spalek found that “if the stereotype of victim as ‘passive’ and ‘helpless’ is perpetuated in dominant representations of victimhood, during a time when individual strength is valued in society, then both males and females may increasingly refuse to situate themselves in terms of victimhood”.¹⁰³

Drawing from the findings of this thesis, Syrian victims belong to a vulnerable group resulting from the conditions which the conflict has created and continues to do so. Many find it hard to cope with the new situation. In particular, Internally Displaced Persons who lost all basic living means in a country which is not a party to any international conventions that safeguard their rights.

⁹⁹ De Waardt, M. (2016). Naming and shaming victims: The semantics of victimhood. *International Journal of Transitional Justice*, 10(3), 432-450.

¹⁰⁰ id.

¹⁰¹ Yousaf, O., Popat, A., & Hunter, M. S. (2015). An investigation of masculinity attitudes, gender, and attitudes toward psychological help-seeking. *Psychology of Men & Masculinity*, 16(2), 234.

¹⁰² Cohen-Mor, D. (Ed.). (2018). *Cultural Journeys Into the Arab World: A Literary Anthology*. SUNY Press.

¹⁰³ Spalek, B. (2016). *Crime victims: Theory, policy and practice*. Macmillan International Higher Education.

Moreover, another vulnerable group is raped women. According to the Independent International Commission of Inquiry on the Syrian Arab Republic,¹⁰⁴ Syrian security forces use sexual violence against opponents to force them to confess to charges, to extract information from them, and finally to intimidate and pressure them. Most of the documented cases concern women detainees in government's prisons. Although there are no clear figures for women who have been subjected to sexual violence, the commission¹⁰⁵ confirms that the number is in thousands. After their release, these victims suffer from real threats of rejection from their families and even from honor killings.¹⁰⁶ Victims are not only stigmatized by blame¹⁰⁷ and considered "damaged goods,"¹⁰⁸ but they were also victims of shame, because shame is socially constructed¹⁰⁹ and originates from the disapproval from others.¹¹⁰ Eventually, this will cause raped women to suffer from a secondary victimization.

5.2 The urgent justice needs in Syria

When asked about victims' justice needs, all participants agreed that victims do not have the same necessities because their victimization is not equal and the effect of the committed crimes differs from a person to another. In other words, the needs of a person who lost a property are not similar to those who lost loved ones. Moreover, the resilience of victims plays a role in the impact of this crime on their lives.¹¹¹

The majority of participants believe that victims need financial support which will enable them to afford basic needs such as food and shelter. Devastated infrastructure, internal displacement and a collapse in the value of the Syrian currency has contributed to this dire economic situation. According to the United Nations Office for the Coordination of Humanitarian Affairs,¹¹² around thirteen million people in Syria today are facing an ongoing crisis related to providing essential needs for their daily living. A research done by the Hague Institute for Innovation of Law (Hiil)

¹⁰⁴ The United Nations Human Rights Council. (2018). *Conference room paper of the Independent International Commission of Inquiry on the Syrian Arab Republic, "I lost my dignity": Sexual and gender-based violence in the Syrian Arab Republic*. Retrieved from:

<https://www.ohchr.org/Documents/HRBodies/HRCouncil/ColSyria/A-HRC-37-CRP-3.pdf>

¹⁰⁵ id.

¹⁰⁶ id.

¹⁰⁷ Skjelsbaek, I. (2006). Victim and survivor: Narrated social identities of women who experienced rape during the war in Bosnia-Herzegovina. *Feminism & Psychology*, 16(4), 373-403.

¹⁰⁸ Brownmiller, S. (1975). *Against our will: Women, men and rape*. New York: Simon & Schuster.

¹⁰⁹ Weiss, K. G. (2010). Too ashamed to report: Deconstructing the shame of sexual victimization. *Feminist Criminology*, 5(3), 286-310.

¹¹⁰ Scheff, T. J. (2003). Shame in self and society. *Symbolic interaction*, 26(2), 239-262.

¹¹¹ Green, S., & Pemberton, A. (2017). The impact of crime: Victimisation, harm and resilience. In *Handbook of victims and victimology* (pp. 77-102). Routledge.

¹¹² UN Office for the Coordination of Humanitarian Affairs. (2017). *Humanitarian Needs Overview: Syrian Arab Republic*. Retrieved from: <https://reliefweb.int/report/syrian-arab-republic/2018-humanitarian-needs-overview-syrian-arab-republic-enar>

International about justice needs of Syrians in Lebanon and Jordan,¹¹³ revealed that more than 60% of participants have mentioned that they do not earn enough money for their basic needs. In the same study 68% of participants in Jordan have expressed their need for housing as a future (after the conflict ends) justice needs. Similar to findings in this research, participants have also mentioned the urgent need for housing and granting access to properties, especially after a large number of houses were destroyed due to shelling. Another reason for losing properties is the recent Legislative Decree¹¹⁴ which criminalize individuals who actively participate in actions against the government, accusing them of being terrorists and confiscating their properties as a result. Moreover, the Syrian government continues to use displacement as a tactic to forcibly transfer a great number of the population from areas opposing its rule such as Homs city, and preventing IDPs from returning to their houses there.¹¹⁵

The problem of properties is complicated in Syria, not only under these new laws but since long time because of the registration system used there. Although there are some recent efforts to digitize records, Syrians continue to need tangible documents to prove property ownership. During the conflict, land registry offices were destroyed in several cities. This will potentially lead to tragic consequences for the system of property ownership in Syria. Furthermore, 32% of the Syrian population lives in informal housing¹¹⁶ that is not registered under the 'land cadaster' and therefore are unable to prove its ownership.

Other justice needs were discussed by participants. The need for social cohesion have surfaced during the conversations. War represents the ultimate collapse of communication, relationships and social systems.¹¹⁷ People within the same family were divided between supporters and opponents, which led to divorce cases, hassle, and feuds within the same family and tribe. This same situation was expanded along neighbors, friends, and colleagues, which led to the widespread of hatred among people in the society. After several years of conflict, it is very difficult to regain some form of social cohesion that is essential for the future development.

Participants emphasized the need to know the truth of what really happened even if that means reducing the sentences of perpetrators who provide valuable information. The South African Justice Minister, Dullah Omar, emphasized that "by providing victims a platform to tell their stories and know the destiny of their loved ones, one can help to achieve a nation reconcile with its past

¹¹³ The Hague Institute for Innovation of Law (Hiil) International. (2018). *Justice Needs of Syrian refugees: Legal problems in daily life*. Retrieved from: <https://www.hiil.org/wp-content/uploads/2018/09/Justice-Needs-of-Syrian-refugees.pdf>

¹¹⁴ Law No. 19 of 2012 on combating terrorism. Retrieved from:

http://menarights.org/sites/default/files/2016-11/SYR_CounterTerrorism3laws_2012_AR.pdf

¹¹⁵ Qutrib, H. I. (2016). "Useful Syria" and Demographic Changes in Syria. *King Faisal Center for Research and Islamic Studies*.

¹¹⁶ The United Nations. (2013). *Briefing Note - Emergency response to Housing Land and Property issues in Syria*. Retrieved from:

<https://reliefweb.int/sites/reliefweb.int/files/resources/Emergency%20response%20to%20Housing%20Land%20and%20Property%20issues%20in%20Syria.pdf>

¹¹⁷ Martz, E. (2010). *Trauma and Rehabilitation after War and Conflict* (pp. 2245-2252). New York, NY: Springer.

and at peace with itself".¹¹⁸ Moreover, participants have stressed the importance of being acknowledged as victims of the conflict. Acknowledgement is a need that can be fulfilled when other needs are met,¹¹⁹ such as when people are treated respectfully, when they have the chance to participate in the prosecution process and by receiving compensations. Therefore, acknowledgement for victims is a key issue in the relationship with the judiciary and the absence of acknowledgement can lead to secondary victimization.

In terms of revealing the whereabouts of disappeared persons, participants agreed on the importance of this matter which concerns them all. While there is no exact number of people who are subject to enforced disappearance in Syria, it is well established by various humanitarian organizations (including Amnesty International and Human Rights Watch) that tens of thousands of people in the country have vanished without a trace. In other words, they are victims of enforced disappearance, cut off from the outside world, packed into overcrowded and secret cells where torture is routine and death is common. The implications of enforced disappearance and its dilemma are numerous. Consequences of enforced disappeared exceed the well-being and safety of individuals subject to disappearance themselves to their families and friends who experience slow mental and emotional anguish due to the lack of information about the whereabouts of their siblings, relatives and friends who simply vanished without any trace. Searching for the truth may put the whole family of the disappeared person in great danger. Not knowing if their loved ones will ever return often leaves their relatives living in limbo. What renders the situation even more horrendous is that the Syrian government is using a policy of subjecting thousands of people to enforced disappearance as both a means to crush opposition and to make large amounts of money for itself. The authorities continue to profit from enforced disappearance, which amounts to crimes against humanity, through a black market in which family members desperate to find out the fate of their disappeared relatives are ruthlessly exploited for cash.

The problem of enforced disappearance also has many potential deleterious effects for the human rights of the relatives of the deceased, including their housing, land, and property (HLP) rights. Given that HLP documents often exclude the names of women, female-headed households may face further challenges to secure tenure or prove inheritance rights or marital status.¹²⁰

Disappeared persons and unrecovered dead bodies, constitute emotionally charged symbols in the aftermath of conflict. Their stories often become instruments that serve propaganda, and demobilize agents of conciliation.¹²¹ The case of disappeared persons carries huge symbolic and emotional meaning. In that context Lederach said (1998) "the graves are held present in people's

¹¹⁸ Abdullah M.O. (1997). *The South African Truth and Reconciliation Commission*. written remarks of the justice minister, presented to the Facing History, 12th Annual Human Rights and Justice Conference, Harvard University, 10 April 1997, 22-23

¹¹⁹ Van Mierlo, F., Pemberton, A., & Van Tol, R. (2009). Van tevredenheid naar kwaliteit: een meetinstrument voor de slachtofferzorg. *Tilburg: IN*.

¹²⁰ Women now for development, Dawlaty. (2018). *Shadows of the Syrian Disappeared: Testimonies of Female Relatives Left with Loss and Ambiguity*.

¹²¹ Kovras, I., & Loizides, N. (2009). Delaying Truth Recovery for Missing Persons. *Nations and Nationalism*, 17(3), 1-20.

minds because they represent the sacrifice, the loss, the trauma, the deep pains of years and generations of conflict”.¹²²

5.3 Sweeping the dust under the carpet

When discussing how this conflict will be remembered, people were apprehensive about the fact that monuments will only reflect the justice from the victor’s perspective focusing on the idea that these monuments will only be constructed by the government. Eventually, this raises the following question: What if this perspective differs from what people think? Then monuments will not only be meaningless, but they will also illustrate pain and prejudice. Same applies to teaching the history of the conflict in schools, whereby curricula may not be neutral and/or objective. Subsequently they can be a tool for brainwashing the new generation and the coming ones in favor of the victor. When major politics are disjunctured, and the identity of people is challenged, “the politics of memory rises to the fore, and monuments, in particular, become sites of great conflict”.¹²³ As such, Forest and Johnson found that “the analysis of lieux de mémoire (places of memory) provides an ideal way to trace underlying continuities and discontinuities in national identity politics”.¹²⁴ In this case, political elites try to control the past and the collective memory about it in a way that benefits the state by controlling the meanings related to monuments. In this sense, Halbwachs argued “exists a collective memory and social frameworks for memory; it is to the degree that our individual thought places itself in these frameworks and participates in this memory that it is capable of the act of recollection”.¹²⁵ Despite the fact that people are likely to better understand aspects of the conflict that were previously hidden after transitional justice processes are finished, they can still be driven by the new government that control the memorialization on national level through memorials and education by engaging schoolchildren in a dialogue about the past. For that reason, who suffered war atrocities at the hand of the Syrian government do not trust that monuments can reflect their needs or their victimization.

Now although Syrians reject monuments, their openness and need for rehabilitation fly in the face of any attempt to portray such refusal as an effort to sweep the dust of the past under the carpet of present.

Rehabilitation has been defined as a right for medical and psychological care as well as legal and social services.¹²⁶ In the interviews, the term ‘rehabilitation’ was referring to the well-being of victims and their need for psychological and physical care. All participants condensed on the

¹²² Lederach, P. J. (1998), Building Peace: Sustainable Reconciliation in Divided Societies, *United States Institute of Peace*, Washington, DC

¹²³ Mitchell, K. (2003). Monuments, memorials, and the politics of memory. *Urban Geography*, 24(5), 442-459.

¹²⁴ Forest, B., & Johnson, J. (2002). Unraveling the threads of history: Soviet–Era monuments and Post–Soviet national identity in Moscow. *Annals of the Association of American Geographers*, 92(3), 524-547.

¹²⁵ Halbwachs, M. (1992). *On collective memory*. University of Chicago Press.

¹²⁶ Bassiouni, M. C. (2000). Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law, UN Doc. E/CN. E/CN, 4, 62.

importance of this need. Wars are a reason for severe mental illness¹²⁷ because during wars people are at the risk of “chronic communicable diseases; poor health and nutrition; inadequate perinatal care; birth injuries; separation from caregivers or other support systems; risk of traumatic epilepsy; and prolonged exposure to stress”. Among psychiatric issues, symptoms of posttraumatic stress may be developed.¹²⁸ A study¹²⁹ from the post-conflict countries (Algeria, Cambodia, Ethiopia, and Palestine) was done on 3048 participants and indicated that being in an armed conflict was a principal risk factor for suffering from common mental disorders (including mood disorders, somatoform disorders, PTSD, and anxiety disorders). Studies show an interlink between mental illness, traumatic experiences and criminal behavior,¹³⁰ which may threaten the stability of the country and impact the implementation of transitional justice. Based on that, rehabilitation for Syrians exposed to armed conflict is a basic justice need to help them recover from the trauma and go on with their lives. This is not only for people in Syria, but also for Syrians in the diaspora. According to The World Health Organization 2018, a high percentage of Syrian refugees are suffering from noncommunicable diseases, including mental health.¹³¹

Participants in this research have discussed the justice need for compensation. Beside the notion of symbolic compensation suggested by one participant, two main arguments have emerged. The first emphasizes the urgency of compensations because people are in need, especially those who suffered from injury or lost their properties during the conflict, while the second is totally against the concept and considers it humiliating. This conflict in opinions can be, as discussed earlier in Pemberton’s findings (2009),¹³² attributed to the extent to which the effects of victimization are repairable. If this effect is (completely) repairable, the need and importance of compensations is going to be higher. For example, when this compensation is for a property crime, it can help restore the property to its original state, which may encourage victims to forgive and accept the compensation which may reduce the urge for retribution. On the contrary, when the damage cannot be undone the value of the compensation is going to be questionable and accepting it may even be impossible, especially when such compensation involves rape crimes, homicide, and physical disability. In these cases the damage is permanent and compensations can never repair the effect of the crimes.

Drawing from the literature review, determining who may be responsible for paying the compensation appears to be difficult in the Syrian scenario. Participants had different ideas about who is the duty-bearer of compensation. Although only a minority of them agreed on the fact that

¹²⁷ Silove, D., Ekblad, S., & Mollica, R. (2000). The rights of the severely mentally ill in post-conflict societies. *The Lancet*, 355(9214), 1548-1549.

¹²⁸ Harvey, M. R. (1996). An ecological view of psychological trauma and trauma recovery. *Journal of traumatic stress*, 9(1), 3-23.

¹²⁹ De Jong, J. T., Komproe, I. H., & Van Ommeren, M. (2003). Common mental disorders in postconflict settings. *The lancet*, 361(9375), 2128-2130.

¹³⁰ Jakupcak, M., Conybeare, D., Phelps, L., Hunt, S., Holmes, H. A., Felker, B., ... & McFall, M. E. (2007). Anger, hostility, and aggression among Iraq and Afghanistan war veterans reporting PTSD and subthreshold PTSD. *Journal of Traumatic Stress: Official Publication of The International Society for Traumatic Stress Studies*, 20(6), 945-954.

¹³¹ The World Health Organisation. (2018). *Health of refugees and migrants, European Region 2018*. Retrieved from: <https://www.who.int/migrants/publications/EURO-report.pdf>

¹³² Pemberton, A. (2009). Needs of victims of terrorism. In *Assisting Victims of Terrorism* (pp. 73-141). Springer, Dordrecht.

the new government emerging following ceasefire should be mandated to compensate victims, what history shows is that reparations are not financed by repressive regimes or perpetrators themselves but by their democratic successors.¹³³ In other words, although the newly established governments may be consisted of opponents and victims of the removed government, they still have to take the responsibility of compensating for crimes they did not commit and to allocate resources for these payments. This new government is expected to improve people's quality of life on several aspects such as housing, education, health care and all other areas that benefits a broader section of the society. This task becomes more difficult when the deeds of the prior government resulted in both poverty and human rights abuse.

It is remarkable that only one participant gave signs of rage and desire to burn the perpetrators, benefited bystanders, warlords and everyone who played a role in fueling the conflict in Syria. He followed this by expressing his ability to forgive. This participant may consider this as a reasonable punishment for those who victimized people. However, there is a big difference between punishment and vengeance whereas vengeance is the "lust for blood." While retributive punishment is "righteous", vengeance is "angry".¹³⁴ Bradley illustrates this by arguing that "punishment is punishment, only where it is deserved. if punishment is inflicted for any other reason whatever. It is a gross immorality, a crying injustice, an abominable crime, and not what it pretends to be".¹³⁵ In other words, when punishment is not justified on punitive grounds, then it is not a punishment, but rather an immorality.

Participants were equally divided between supporters and opponents of the idea of forgiving perpetrators. Although "Forgiveness is a personal matter",¹³⁶ practically it is not always a matter of choice. In Rwanda for example, survivors are forced to say they forgive, because otherwise this is considered discrimination¹³⁷ and is liable to heavy punishment under Article 136 of the Penal Code of Rwanda.¹³⁸ Not only the law in Rwanda is forcing people to pretend they forgive, but the church as well is playing a role in this process. A Rwandan woman admitted in 2007 she cannot forgive the killer of her children and her siblings. However, she has to pretend that since the church ordered her. Thus, she suffers everyday by seeing the killer in the neighborhood and remembering her loss.¹³⁹ Mama Lambert, a survivor who lost her whole family members in Rwanda 1994 genocide, shared in an interview with the Dutch Association for the United Nations

¹³³ Van Zyl, P. (1999). Dilemmas of transitional justice: The case of South Africa's Truth and Reconciliation Commission. *Journal of international Affairs*, 647-667.

¹³⁴ Feinberg, J. (1970). *Doing & deserving; essays in the theory of responsibility*.

¹³⁵ Bradley, F. H. (1988). *Ethical studies* (Vol. 28). Oxford University Press.

¹³⁶ Abdullah M.O. (1997). *The South African Truth and Reconciliation Commission*. written remarks of the justice minister, presented to the Facing History, 12th Annual Human Rights and Justice Conference, Harvard University, 10 April 1997, 22-23

¹³⁷ My field notes from trip to Rwanda "2019 Transitional Justice Study Tour Rwanda" on 01 April 2019.

¹³⁸ Article 136 of the Penal Code of Rwanda "Any person who commits the crime of discrimination and sectarian practices shall be liable to a term of imprisonment of more than five (5) years to seven (7) years and a fine of one hundred thousand (100,000) to one million (1,000, 000) Rwandan francs."

¹³⁹ Kubai, A. N. (2007). Between justice and reconciliation: The survivors of Rwanda. *African Security Studies*, 16(1), 53-66.

2013¹⁴⁰ that no one is able to proceed with their life after being a victim of mass violent crime unless they forgive. Describing her experience in forgiving the man who killed her family, she said: “One day, I decided to forgive him and then I felt comforted, I felt at peace. Forgiving does not mean forgetting. I am without my children because of him. I remember my past. I remember my parents, my children, my husband, my siblings”. To be able to leave the past behind, to accept the present and to build the future, victims have to forgiving, she suggests.

In the field of transitional justice, forgiveness is considered a tool of reconciliation and healing, because it provides “a means by which victims’ backward-looking bitterness and anger are transformed into a forward-looking individual healing and collective renewal and restoration”.¹⁴¹

Analyzing participants’ opinions on forgiveness, this can be a complicated process depending on the brutal nature of crimes committed in the Syrian conflict. Although forgiveness can be a tool for healing and for reconciliation, it is still difficult for Syrian victims to live in the same neighborhood with the perpetrators who victimized them.

5.4 Justice that Syrians seek

Based on the data collected from the participants, transitional justice that Syrian victims look forward to achieve consists of several elements presented here in order of importance (from most to least): Removing the current government, prosecuting the perpetrators, revealing the truth, rebuilding the country, granting access to property, rehabilitation, education.

First, reaching the initial goal of the ‘revolution’. This involves removing the current government. People do not accept any transitional justice system that consists of members of the ruling family (the Assad family), current officials who support the government, militia personnel, or any other parties that support the current president. The aim behind this demand is the desire to democracy, freedom, dignity, equality, peace, and respect. In this regard, Syrians are convinced that justice is unachievable without fulfilling these aims.

Second, justice after the conflict may be achieved by prosecuting the perpetrators who committed the crimes. This prosecution will be complex because according to the experts in Syrian law who were interviewed, the Syrian justice system is unable to hold the responsibility of this procedure for several reasons. The Syrian legislation contains no provisions to criminalize war criminals, and subsequently, no similar case-laws were delivered by Syrian courts. Quite the contrary, Syrian law and its provisions protect officials when they commit a crime. Beside the fact that not only the legislation is limited, but also the justice sector itself is corrupt.¹⁴² National criminal justice systems in post-conflict countries have always shown little hope with regards to the issue of

¹⁴⁰ The Dutch Association for the United Nations NVVN. (2013). *Forgiving the unforgivable? 19 years after the Rwandan genocide*. Retrieved from: <http://nvv.nl/forgiving-the-unforgivable-19-years-after-the-rwandan-genocide/>

¹⁴¹ Amstutz, M. R. (2005). *The healing of nations: The promise and limits of political forgiveness*. Rowman & Littlefield.

¹⁴² Al-Sheikh, A., & Hamadah, A. (2014). *Corruption in Syria: Causes, effects, and anti-corruption strategies*.

accountability since the challenges they face are more complicated.¹⁴³ All national systems in such countries are fragile and not capable to work efficiently, including the justice system, where the courts, police departments, and correctional service need to be rebuilt. In such circumstances, the national jurisdictions are often unable to prosecute the offenders because the judiciary does not exist anymore, is overthrown or corrupt.

The other way that Syrians may take is through resorting to international courts. However, the work of the two ad hoc tribunals (the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda) suggests that any new court that may be established for Syria is only going to prosecute and try small numbers of perpetrators. Also, courts may be established outside the country, which will be a challenge for witnesses and victims to reach and the access for information will not be easy or clear. Beside the fact that this kind of courts is very expensive to run and sentences are lenient, the potential of establishing an international body to work on Syria's case should not be overestimated because it operates subsidiary to national courts based on the approval of the United Nations Security Council.

Having said that, it is argued that both the national and international courts are limited and unable to prosecute the perpetrators of the conflict. Therefore, this component of justice is very difficult to achieve.

Participants' inclination to the prosecution of perpetrators is a sign of their tendency to retributive justice rather than transitional justice to achieve reconciliation. People who Support the notion of punishment believe that it can reach the reconciliation in three ways: "by seeing that justice is done; establishing the truth about crimes committed; and by individualizing guilt".¹⁴⁴ This is based on the Preamble of the United Nations Security Council Resolution 995 of 1994 that states "[T]he prosecution of persons responsible for serious violations of international humanitarian law would [...] contribute to the process of national reconciliation and to the restoration and maintenance of peace".¹⁴⁵ Syrians who consider themselves a group of victims, refer to perpetrators as members of a salient outgroup, and they lack a common identity. Hence "victims would be more likely to endorse retributive justice, revenge, and stronger punishment" according to Wenzel et. al.¹⁴⁶ Although participants agreed on the necessity of holding perpetrators accountable for their deeds, only a small percentage wanted both the leaders and followers to be equally punished. Subsequently, we may deduce here that people tend to be more retributive with those whom they think are planning and controlling the situation while dealing with brutal crimes in Syria.

¹⁴³ Weitekamp, E. G., Parmentier, S., Vanspauwen, K., Valiñas, M., & Gerits, R. (2006). How to deal with mass victimization and gross human rights violations. A restorative justice approach. *NATO SECURITY THROUGH SCIENCE SERIES E HUMAN AND SOCIETAL DYNAMICS*, 13, 217.

¹⁴⁴ Clark, J. N. (2008). The three Rs: retributive justice, restorative justice, and reconciliation. *Contemporary Justice Review*, 11(4), 331-350.

¹⁴⁵ Kamatali, J. M. (2003). The challenge of linking international criminal justice and national reconciliation: The case of the ICTR. *Leiden Journal of International Law*, 16(1), 115-133.

¹⁴⁶ Wenzel, M., Okimoto, T. G., Feather, N. T., & Platow, M. J. (2008). Retributive and restorative justice. *Law and human behavior*, 32(5), 375-389.

Other components of justice that were mentioned to a lesser degree by participants are revealing the truth about the fate of people who were missing or killed during the conflict, rebuilding the country and granting access to property.

Chapter Six: Conclusion

The Syrian conflict has been globally recognized as one of the worst humanitarian crises of our time. As of 2019, people continue to suffer the effects of nearly nine years of conflict, including disruption of community networks and rule of law. The effects of this conflict impacted the lives of Syrians negatively and forced them to face brutal crimes that victimized them all. With the country's future in mind, this research aimed to study how Syrians in the diaspora, as victims of international crimes, think about transitional justice, and which mechanisms do they seek to fulfil their justice needs.

It is clear thus far that Syrian victims have different justice needs depending on their own victimization. However, what was noticeable that three needs were in common: the need to know the truth about enforced disappeared people, the need for rehabilitation and the need of granting access to properties. Participants emphasized the urgency of knowing the fate of disappeared people and relatives because of the consequences of their disappearance whose impact include the well-being and safety of individuals subject to disappearance as well as their families and friends. They also referred to the human rights of their relatives which involve their housing, land, and property rights. Finally, the impact of the disappearance on proving inheritance rights and marital status was also present. Moreover, participants emphasized the urgency of granting access to their properties in order to solve a bigger problem of demographic change in Syria. Furthermore, people emphasized the importance of rehabilitation for all Syrians because the conflict was not only the reason for physical disabilities but also a cause of severe mental illnesses. Beside understanding the justice needs, collected data indicates that masculinity hinders expressing vulnerability or seeking help when and where needed, which may indicate weakness among Syrian men.

Moreover, transitional justice that Syrian victims look forward to achieve is composed of two main elements. First, removing the current government which was the initial goal of the 'revolution'. Achieving this component will lead, according to Syrians, to democracy, freedom, dignity, equality, peace, and respect. Second, the majority of participants demand the prosecution of the perpetrators who committed war crimes and crimes against humanity in Syria, which suggests that Syrians have more tendency to retributive justice rather than transitional one. This is evident in their wish to see leaders and planners of the crimes to suffer from heavier punishment. Another important point that the data revealed is that female participants were mostly refusing any aspect of forgiveness and insisting on the importance of punishing perpetrators. This probably mirrors the immeasurable suffering of Syrian women during this conflict. It also indicates that they will be unsatisfied with a justice that does not prosecute whom they (Syrian woman) view as perpetrators.

As the Syrian legislation does not have any article that criminalizes war crimes or crimes against humanity, this thesis suggests that Syrian courts are unable to prosecute the perpetrators, especially with the current status of corruption and disorder. Meanwhile, resorting to international courts have several obstacles such as the ones discussed in the Rwandan case: the high running cost, the length of trails, lenient punishments and bureaucratic processes. The lack of domestic

and international law mechanisms narrows the options available to Syrians. Hence the justice that Syrians seek is retributive rather than transitional one. They do not consider any justice that does not include removing the current government and prosecuting perpetrators.

Finally, I would like to end this thesis by stating a testimony of one participant¹⁴⁷ hoping that Syrians will find justice and peace they seek:

“I only hope people will not seek justice by vengeance. If we look at other post-conflict experiences we notice that ideal justice does not exist. I believe seeking to achieve the ideal justice in Syria means that more than half of the Syrians will go to prison. For that reason I believe we should forgive and if we decide to punish perpetrators, those should be the leaders of this conflict. I will forgive everyone, and I believe if every Syrian did the same, we can finally live together again. Our community is totally damaged, in all its aspects. We should do something different if we want to move on”.

¹⁴⁷ Participant D.

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Appendix I: Interview Questions

Questions for (10) participants:

- In your opinion, who are the victims of the Syrian conflict?
- Do you consider yourself a victim?
- What do victims need most, and why?
- How should the harm you suffered be repaired?

- Who are perpetrators according to you?
- What should happen to those who committed war crimes?
- Who could prosecute perpetrators?
- What is the role of courts according to you?
- Do you accept the apology of perpetrators, and how should this look like?
- What do you think about reducing the punishment to “community services” for perpetrators who help revealing the truth?
- Who is more important to be held accountable: leaders who gave orders, or individuals who obeyed orders and committed crimes, and why?

- Imagine you go back to Syria, if you see monuments for victims in Syrian cities, what do you feel about it?
- Should the history of the war be taught in Syrian schools, and why?
- Do you think that financial compensation means a recognition of victims' harm?
- Who should give the money for the compensation?
- How important is it to grant access to properties?
- How far do you think Syrian people need rehabilitation after the end of the conflict?
- How important is it, according to you, to find the truth about disappeared persons?
- How should their disappearance be recognized?

- In your opinion, what is justice?

Questions for (2) legal experts (lawyers):

- Are there provisions of the Syrian legislation that hold war crimes perpetrators accountable for their offenses? If yes, in your opinion, do they provide justice?
- In case the Syrian law criminalizes war crimes, is there any case-law that applied this law practically?
- Do you think the Syrian justice system will be capable of executing these provisions after the conflict?
- Which is the justice that Syrians will seek when the conflict ends?

Appendix II: Participants' Information

Participants							
Code	Age	Gender	Syrian Region	Profession	Education	Legal Status in the NL	Date of Interview
A	34	M	Hama	Administrator	English Literature	Resident	08 May 2019
B	38	M	Idlib	Engineer	Civil Engineering	Resident	12 May 2019
C	31	M	Aleppo countryside	Human Rights Specialist	Political Science	Resident	13 May 2019
D	42	M	Damascus countryside	Lawyer	Law	Resident	17 May 2019
E	30	M	Homs	Filmmaker	Film Studies	Resident	22 May 2019
F	45	F	Aleppo	Engineer	Engineering	Resident	10 May 2019
G	37	F	Idlib	University Lecturer	Agriculture	Resident	12 May 2019
H	36	F	Daraa	Finance Student	Finance	Resident	14 May 2019
I	32	F	Damascus	Researcher	Criminology	Resident	16 May 2019
J	27	F	Deir Al Zour	Journalist	Journalism	Resident	20 May 2019

Legal Experts							
Code	Age	Gender	Syrian Region	Profession	Education	Legal Status in the NL	Date of Interview
K	49	M	Aleppo	Lawyer	Law	Resident	10 May 2019
L	41	M	Yabroud	Lawyer	Law	Resident	16 May 2019