A holistic approach to Transitional Justice and Constitutional reform
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Background

Transitional Justice is a set of policies and strategies aimed at offering a wide-range of tools to countries and societies undergoing political unrest, widespread violence and conflict, with the aim to bridge the gaps between local communities, provide accountability for past crimes and, foremost, recognise the rights of all victims as citizens and human beings. Transitional Justice mechanisms can set the path for developing a renewed social compact to address past human rights abuses, mass atrocities and facilitate a transition into a more democratic or peaceful future.

The importance of Transitional Justice stems from the fact that it is the bridge through which societies that experience crises, conflicts and political turmoil permeated by serious violations of human rights and international criminal law, can move from a state of instability and chaos to a process of reconstruction of a shared social and political fabric of the country. Transitional Justice has neither a single definition, a single purpose, nor a single mechanism or set of mechanisms. This is a natural consequence of the diversity of its application among the countries that have applied it. Each country has a different motive to initiate a Transitional Justice process, which leads to different methodologies, developments and, ultimately, outcomes, depending on the specific goals it wishes to achieve. Transitional Justice is a continuous and dynamic process that needs the involvement of all parts of society to be effective; it also needs to address in a holistic approach appropriate social, political and legislative reforms that can set up proper mechanisms and procedures to protect victims’ rights, provide redress for victims, including non-repetition of the crimes, ensure accountability and a shared understanding of what has happened and develop a renewed social compact to bring together local communities.

Therefore, there is an intimate and very strong relationship between Transitional Justice and Constitutional reform. Constitutional reform has at its core the need to foster justice and the rule of law; constitutions are also the tool to achieve those goals.

Structure of the training

The training took place over two days, during which Professor Awak gave an in-depth presentation of the concept of Transitional Justice and its linkages with constitutional building-processes, as well as practical examples and an historical overview of different processes of Transitional Justice mechanisms applied in a variety of countries and historical moments and their relevance in the framing of new constitutional set-ups.

Starting from the root causes of the violence in Syria, examples were given to develop a new Syrian discourse to empower Syrian civil society with the necessary tools to monitor the developments inside the country and at the international level with regards to possible Transitional Justice strategies and scenarios and their linkage with the development of a Constitutional-building process.

Each session was very participative, Professor Awak actively engaged with participants who asked questions and shared their views openly, in the attempt to play a coordinating role and build up a unanimous voice for the best future for Syria. Professor Awak built a truthful atmosphere where each participant had the chance to discuss and outline their thoughts, priorities and interests.
The trainer

One Syrian expert provided guidelines and supported the participants during the training. Professor Abdul Hamid Al Awak is a trainer and advisor in the fields of constitutional and administrative law, human rights and international humanitarian law. He holds a doctorate in constitutional law, a Master degree in administrative law and is a Doctor at the Turkish University of Artcolo Mardin in the Faculty of Political Science and International Relations. He served as Director of Administrative and Legal Affairs in the Directorate of the Dajleh and Al-Khabour and served as a judge until he was appointed adviser and lecturer at the University of Euphrates. Professor Awk published several books on the impact of Arab revolutions on the legal status of Heads of State, federalism and contemporary problems in Syria and constitutional jurisprudence. He served as an advisor during the Geneva II Middle East peace conference in January 2014 and during the Astana I conference in January 2017.

Participants

The participants consisted of representatives from Syrian CSOs and NGOs who work in the field of transitional justice, constitutional reform and human rights protection with a focus on smaller organisations that could particularly benefit from this training course. The organisations represented included: Women Now for Development, an organisation dedicated to women’s rights and empowerment; the Free Syrian Lawyers Aggregation, which works towards the strengthening of the rule of law and justice in a way that protects freedoms, public and private rights, achieves equality and preserves human dignity; Adalah, a Syrian CSO that works on promoting the dissemination of human rights, democracy and values of citizenship; LDHR, a network of Syrian lawyers and physicians devoted to support Human Rights, fight against violence, documentation and empowering women in the Syrian community; the Syrian Center for Studies and Human Rights, a human rights organisation that works on transitional justice and capacity building for Syrian CSOs; the Syrian Federation for the Defense of Detainees, an international humanitarian human rights organisation based in Vienna, Austria, which works to prepare case-files on war crimes and crimes against humanity committed in Syria; Justice for Life, a Syrian organisation composed of human rights activists and defenders who work on documenting human rights violations and advocacy campaigns; Civilians for Peace and Justice, an independent civil society organisation concerned with political and legal development, peace building and the promotion of a culture of communication and dialogue; Aman Syria Network, an independent, non-profit Syrian network composed of active local community leaders who seek to contribute to building a secure society in which justice and peace will prevail in order to achieve stability and coexistence; Zanoubia Syrian women association and AlFurat center for Human rights; Tamas, an alliance of independent non-governmental and non-profit Syrian civil society organisations.

Day One – 14 July

Mr Ghashim from NPWJ welcomed the participants, explained the background of the workshop and laid down its key objectives. The participants introduced themselves and their organisations. Professor Awak was introduced and explained how he will start from a very broad concept of Transitional Justice and its linkages to constitutional building processes, in order to provide a framework in which participants have the chance to elaborate specific strategies in the current Syrian context. Mr Ghashim noted the value of this training as rarely the interactions and linkages
between the Constitution and Transitional Justice processes have been discussed and analysed by the civil society community.

1) **What is Transitional Justice**

Professor Awak started the session asking to the participants their view on what Transitional Justice is. From the discussion that followed, it emerged that in the view of most participants TJ has a negative meaning, it is understood as a way of surrender, a “political game” which lead to forget the atrocity committed instead of reconciling the victim with the perpetrators and recognising the rights of all victims as citizens and human beings. According to Professor Awak, the lack of knowledge and understanding of TJ as well as the negative narrative put in place by some actors involved in the Syrian war to discourage any TJ process, has a significant impact on how Transitional Justice is perceived and understood by the Syrian people and create a real misunderstanding on the aims of TJ, which is neither a way of revenge nor a way of surrender. The fact that for decades justice in Syria was associated with the regime, leads people to mistrust any attempt to reconciliation. Moreover, the conflict is still occurring and, nowadays, Syria does not have strong, independent bodies which could support and develop an effective TJ process.

In Professor Awak’s opinion, people who lives outside Syria, civil society representatives, lawyers, specialists, professionals should work to develop national tools for TJ processes, which need to be understood and supported by the population.

**Origin of TJ**

Professor Awak described TJ as a process which historically has been implemented in many countries: from Greece to the socialist block’s countries, from Latin America to South Africa and in some Arab countries. These processes and policies, leading from a situation of political unrest, widespread violence and conflict to a new social compact aimed at facilitating a transition into a more democratic or peaceful situation, have never been defined in advance. Countries that embarked in TJ processes, first experienced the process and only in a second time they attempt to define it. In many of these countries the term used was Transitional Justice: but this term is a descriptive term, not an academic one, and it is not sufficient to understand the overall spectrum of the process. Indeed, TJ relates to many field which spans from sociology to economy, from Human Rights to criminal law; as a multi-disciplinary matter, each field might generate a different definition of TJ. This complex and multi-layered meaning of TJ can very often lead to misunderstandings and to a negative interpretation of what TJ is about.

From the fact that TJ experience takes place in countries in transition (stable countries do not need TJ), we can identify two necessary conditions for the development of TJ: transition and violation. In Egypt, for example, it is impossible to talk about TJ as during the transition between monarchy to democracy no violation occurred. On the other hand, war is not necessary, but the transition can be related to human rights, freedom, political issues or forms of government.

Professor Awak then described three common patterns of TJ process. First of all, gradualism. TJ experiences cannot tackle everything at the same time. Professor Awak took the example of corruption within public institutions: the fight is gradual, it takes time as it requires a change in the society’s mentality. During TJ experiences, many aspects of the society are touched, aspects as such regard common responsibility, it shakes the values among people, and many accepted aspects of the society must be dismantled to reach a new equilibrium. The second pattern consists in a participatory approach: the wider the participation, the better the experience.
Transition cannot be achieved only by the elite of the society, on the contrary, it should touch society as a whole. The third necessary aspect to have effective TJ experiences is time, as TJ is not an instant process.

**Definition of TJ**

The variety of definitions options include definitions based on its tools, on its process or on its goals. TJ can be defined as the integrated process and mechanisms that aims to understand the legacy of the past to achieve accountability, justice and reconciliation. Reconciliation comes only after justice and accountability, never before.

The second definition describes TJ as a group of judicial and non-judicial mechanism that are applied to tackle graves violations and can include disclosing truth, repairing victim and hold perpetrators accountable.

The last given definition is based on the object, where the process seeks compensation for victims rather than revenge.

Therefore, it can be said that TJ is not an alternative to conventional justice but rather is a temporary, specific process that must be carried out hand in hand with conventional justice. To better benefit from the experience, Syrian civil society must understand the importance of creativity, to learn from other’s mistake and to conceive a structured plan suitable for Syrians.

At the end of the session, Professor Awak remarked the importance of an integrated and holistic approach to TJ: no plan is perfect without the political will and the willingness of the society to achieve the goal.

According to Professor Awak, the effectiveness of TJ processes is closely dependent on the end of the violence. As a transitional moment, it cannot be done during the conflict, it needs the end of the atrocities. The necessary conditions to secure the process are sum up as following:

1. Legitimate government: legitimacy of power is a necessary. More important when we have ethnic conflict;
2. Impartial authority;
3. Exclude revenge;
4. Victims involvement;
5. Due rights for the victims;
6. Active role of third parties to transform passive bystanders in positive energy for the transition;
7. Accountability for perpetrators.

**Conventional justice and TJ**

Many points differentiate TJ from conventional justice, nonetheless these two are not two contradictory processes. Conventional justice is vital for TJ processes, and the authority in charge of the process should not be tempted to produce new retroactive legislation, as this has been in the past the source and reason for a considerable number of TJ failures.

Despite the complementarity of the two processes, many differences can be drawn up. TJ experience is limited in time and scope, whether conventional justice is a long-lasting process. Conventional justice merely focuses on violation and punishment, while TJ seeks the overall
solution that best suits the society; its final aim is a reform in the country, giving great importance to the social, political and economic framework of the society as a whole. On the contrary, in conventional justice the judges focus on specific cases and not on the wider framework. In conclusion it can be said that whether conventional justice focuses its attention on the specific case regarding the individual, TJ aims at wide scale violation, thus at the authority.

**2) Mechanisms of transitional justice and the achievement of its objectives**

**Judicial and non-judicial mechanisms**

Despite the fact that mechanisms used in TJ process can differ from country to country these could be divided in judicial and non-judicial. Judicial mechanisms are represented by national or international courts. These could be fully judicial or semi-judicial. Professor Awak illustrated, as an example, the South African Truth and Reconciliation Commission (TRC), which is a semi-judicial mechanism, closely connected to the judicial and where individuals provide information to the authorities and get amnesty. This is the judicial connotation of the mechanism. Recognising the truth is the major part for achieving reconciliation. Sometimes facts-finding committees goes hand in hand with courts, as the case of Rwanda. The main objective of the judicial mechanisms is to recognise the truth, understand what happened and achieve justice. On the other hand, non-judicial mechanism tackle material and moral compensation. These mechanisms develop symbolic tools, such as the establishment of a memorial or naming schools or hospitals with victims’ names, to remember the past and provide dignity to the victims.

**The absence of justice mechanisms and its consequences – The Iraqi case**

An example of TJ failure can be found in Iraq. This study is crucial for the development of a Syrian TJ process to understand that when TJ is not well applied, the conflict might explode again soon.

Iraq gained independence from the British in 1932. The 1941 coup d’état staged by Rashid Ali al-Gaylani can be viewed as the starting point of the bloody history of the country, characterised by a feeling of revenge which fuelled new waives of violence and thousands of people killed just because of their relations with the previous regime. This continuous process of political violence and revenge continues into our days. When, in 2003, Saddam Hussein was killed, the process of TJ started in Iraq. Professor Awak identified the in the international leading role one of the main mistakes of TJ process in Iraq. The non-involvement of the Iraqi society in the experience and the lack of a political plan lead to a situation where TJ was impossible to be achieved and political violence continued to characterise the country. Contrary to what many can say, the negative results that this process produced were not a legacy of Saddam Hussein’s regime, rather a germ that can be found since the early years of the Iraqi independence. Revenge is still a feeling that fuels Iraqi politics.

In 2003, under the US presidency of George W. Bush, Mr. Lewis Paul Bremer III, a diplomats and American politician, was sent to Iraq with the mandate to “direct and control” the TJ process. With his first executive order, Order Number 1, he banned the Ba’aath party in all of its forms and, with Order Number 2 he dismantled completely the Iraqi Military Forces, basically firing 400.000 soldiers who found themselves without job and salary. Bremer formulated the TJ process in the way to serve his political agenda rather than the Iraqi society.

Under the leading role of Ahmed Chalabi, Iraq experienced the so-called de-Ba’athification, a removal procedure of all senior officers that have been close to the deposed Saddam Hussein. Surely, it is understandable that perpetrators need to be excluded by the political life of the new-
born country, but the Chalaby’s eradication was closer to a cleansing, with the result to fuel the revenge that characterise the Iraqi society. According to Professor Awak, here ideology is confused with autocracy: freedom of think must be preserved. The de-Ba’athification Commission chased political leaders, officials, institutions and everyone who might be related with the former regime, a mass army expulsion took place. Basically, the same regime’s narrative was used to eradicate Ba’ath supporters. The Commission was extremely powerful, no control was exercised on it as it has both the power to identify people and the power to expel them, without any duty to provide for any reasons. This dualistic role of the Commission lead to corruption and bribes; plus, target was only Arab nationalists and any other political party, which lead to a feeling of injustice and exclusion. The political situation deteriorated between 2005 and 2008 when a new government lead by Ibrahim al-Jaafary issued a law that prohibits Arab nationalist to play a political role. Later in those years, the ban was expanded to encompass also administrative positions. De-Ba’athification in Iraq got through different steps, creating more and more fear and divisions between the Shi’a and Sunni community and contributing to damaging previous improving relations between them.

In 2010 the unjust criteria of the ban touched most of the Sunni and Arab electoral nominees, 15 political parties were dissolved without due process or rights to appeal. People were just banned from the political life of the country based on their position and not of their actual responsibility in crimes. The position of the vice-PM was fragile, from an external point of view, he left the US lead the process giving the impression that he refused to stand for his population’s rights. The most qualified people started to leave the country for fear of threats, most of the expelled soldiers joined terrorist groups, leaving the country into an explosive situation.

The Iraqi experience demonstrates how even positive tools of TJ, such as accountability, when misused, can lead to catastrophic consequences. This experience should teach how much an effective TJ is given by a holistic approach, from the basics to the core values, where the theoretical principles are understood and shared by the population and used to develop their own methodology. The efforts of the TJ process were not enough, the lack of expertise resulted in a lack of concrete results: after trials, no compensations were provided to the victims; the new government investigated property appropriation but, in the meantime, it behaved as the perpetrator he wanted to convict; the capital punishment was re-introduced despite it was not envisaged in the Constitution and some new institutions were created but not functioning.

Professor Awak concluded that a better political transition would have led to a better Iraq. The absence of integration, the misuse of the tools and the lack of awareness were the perfect recipe for the failure of the Iraqi TJ experience.

The TJ process in Iraq was paired with the elaboration of a new Constitution for Iraq. In 2003, a constitutional declaration was issued, it was a sort of administrative law which served as a constitutional declaration. Limited time created huge problems around the new constitutional declaration which was not the reflection of the Iraqi society’s expectations. As an example, in Tunisia, following the overthrow of the previous regime in 2011, it took 4 years to produce the constitution or the constitution declaration, as in South Africa. The duration of the constitution-building process can influence the relations with the TJ process and its effectiveness.

3) Constitutional building processes in times of transition
Usually, permanent constitutional texts are produced in stables countries, where its legitimacy derives from the people, either from an assembly or from a referendum or from a combination of the two. A temporary constitution is more focuses on the ideology of the winning party, it envisages the basics of the society and for this reason is shorter.

Every TJ experience in history has known either a constitutional declaration or a temporary constitution and only in later time a permanent constitutional text. The state can benefit from a text based on common points and shared acceptance. Usually then, these kinds of text include the theory of division of power and humanitarian principles.

In remarking the importance of having a clear and structured TJ project, Professor Awak shared his concern regarding the ongoing Syrian experience, where it seems that the Constitutional Committee lacks in political ideas and a clear project for the future. He also added that that it is still unclear how much freedom this Committee will have, considering the international diplomatic dynamics around Syria.

**Connection between constitutional declaration and transitional justice**

Haste might seriously negatively affect the outcomes of any TJ experience, which, as a process, needs various steps and a radical change in the society to be effective.

The Iraqi, Egyptian, and Libyan experiences failed for a misuse of tools and for lack of strategy. In Libya for example, after the death of Gheddafi and the collapse of the regime, no party took the leading role in TJ, leaving the country without any clear objective to achieve. On the other hand, in Tunisia a declaration was issued straight after Ben Ali’s downfall, but it was only in 2011, when basic law about TJ was written by the national assembly, that the reconstruction of the country was drawn. To conclude, all countries started from a declaration and then move to a permanent declaration. Tunisia is the only successful example so far.

**The separation of powers**

The theory of the separation of powers has its roots in Greek society. However, Greeks had only contemplated the theoretical ideas related to the theory which was developed in later times. It was only in 1660 when John Locke, an advocate of the English revolution, published his treaty Tract of Government, that we heard for the first time the distinction between legislative power, executive power and power of the crown where the latter included the power to declare war. Locke did not spoke about the judiciary power because it was not considered to be a prerogative at that time. Less than a century later, in his *De Esprit des Lois*, Montesquieu introduced the idea of political freedom.

Separation of powers might have different connotations; France and the US have absolute and flexible separation of power. It must be clear that separation of powers cannot prevent dictatorship or excessive abuse of powers, as it is just a tool. In many countries there is a mixture in the legislative and executive power. Despite the freedom that countries representative has in structure of the state, it must be clear that separation of power cannot guarantee against dictatorship, rather it must to be creative and create its own best way to prevent it. Examples could be the shadow government as in the UK or a system of institutions’ monitoring.

**Balance between power and responsibility**

Usually, kings are not responsible or accountable before anyone; this has its root causes in the context in which they developed: in Europe for example, democracy come from monarchy in a gradual way. In England, first was introduced the accountability for the king and, in a later time,
accountability for the executive. However, this was only the first step. The English parliament reached a larger mandate while the power of the king was shrinking, when a law to prevent the king to dissolve the House of Lord was introduced. In 1741, England knew its first minister resignation after a disagreement with the parliament. In the 1783, another PM resignation, followed by all his ministers: another step was reached in the balance between power and responsibility.

Many European Constitutions provided for the accountability of their president or the PM. In the Arab constitution there is a provision for the accountability of the head of state rarely applied. The criminal accountability is only relevant when there is a breach of criminal law. In monarchy, the monarch is not accountable, neither politically, nor criminally.

The idea that emerges is that if you have strict political accountability people would not run for elections because there is not room for freedom. The head of the state should have a margin of manoeuvre to run the country.

**Democratic mechanisms for taking and exchanging power**
In parliamentary systems a precise distinction between legislative and executive does not exist. The agenda of the government should be agreed by the parliament who has the power to investigate a minister. Moreover, the parliament can withdraw the trust from a Minister of even from the whole government. When the trust is withdrawn from the PM, the whole cabinet resigns. The executive branch has the right to attend the meeting of the Parliament; it can be said there is a mutual influence between the two branches. Syrians should consider the distinction of power in writing the constitution in order not to give one branch too much power.

Parliamentarianism is a system where there is absolute separation of powers. Usually, the Parliament issues laws and no interference of the executive can be exercised. However, it depends from country to country.

In presidential systems, a duty of the Parliament is to check the bills, and the Parliament can appoint diplomats and head officers, but ministers are appointed only by the Head of State, and the President is only criminally accountable, not politically accountable.

The third model is the council system, as in Switzerland; it is a sort of federalism (16 cantons). The parliament elects the ministers and has power to withdrawn trust, but only after 4 years.

**Day Two – 15 July**

1) **Rights and freedoms**
Constitutions provides for the rights and freedoms of the citizens. Human rights are the rights that every human being has as defined by the society and regulated by the law. Professor Awak stressed the requirement of regulated by law, as the society can neither relate to common sense nor to international law, which provide for human rights in international treaties, but needs national laws to recognise and protect human rights. Liberties and freedom can be defined as the capacity of someone to do what he will without damaging others and any limits to freedom should be provide by law.

The legal value of human rights relates to their sources, for this reason is better to have a constitution which provides for human rights as to limit the chances for their restriction.
Unfortunately, in a dictatorship, the definition of the rights and liberties of the citizens and the power that the government has are vague and frequently used as an escamotage to deny human rights protection. This vagueness facilitates waving and violation in ways that serve the regime.

As an example, Professor Awak recalled his contribution to a study done few years ago on the Security Services in Syria. The study demonstrated how, from a constitutional point of view, all processes were perfectly legal, finding their basis in the provisions of the Syrian Constitution. The law was written in a way to allow them. The State of Emergency Law, for instance, which has been on the book for 47 years is perfectly legal, even if has been used by the Assad regime to impose its rule, oppress the opposition and ultimately deny fundamental human rights to the Syrian citizens. The same applies to the recently adopted Law n.10 of 2018 on property rights. Despite critics, the formal aspect of this law is fully constitutional, even if there are doubts on its content. Again, the regime has customised the law to serve its own interests. Dictatorship starts with the Constitution and the last step to put an end to a dictatorship is the Constitution. It is important in this context to understand that the process of writing the Constitution is vital, and not allowing any vagueness or loopholes will avoid space for violations in the future.

The supremacy of the Constitution is given by the procedure that has to be followed to modify its text. Constitutions cannot be modified as a normal legislative bill, otherwise no supremacy would be guarantee. For what concerns formal supremacy, no law can be against the Constitution. The role of the Constitutional Court is to guarantee the supremacy of the Constitution.

Sometimes, in transitional periods Constitutional Courts have other tasks, but the primary goal is to guard the supremacy of the Constitution. It assures that all the laws go along with and not against the Constitution. Other task might be guarantee the rule of law or to guarantee for basic liberties and human rights, sometimes have the role to solve the disputes between different State institutions.

The selection of members of the Constitutional Court is one of the process which can guarantee the supremacy of the Constitution. The judges should not be appointed only by the executive authority; for instance, in Germany Constitutional Judges are elected by the Parliament with a 2/3 majority. This method prevents the executive to have the power to appoint judges alone. Another used method to appoint the judges is a mixed procedure: the legislative branch presents a list of names of people who are not affiliated to any political party, and the executive chooses based on this list. This method assures coordination and participation between the two branches of the State.

A third method, used in multi-party systems, is structured in a way that allows the judicial, executive and legislative powers to choose a certain number of Constitutional judges, as for example in Italy.

Each country has its own legacy and its own reasons for choosing its own model, Syria should do the same. During the transitional period Syrians should nominate the Constitutional Court with the function of supervising the supreme judiciary council. Once the Constitution will be written, it could be fully functioning. 1/3 from the regime, 1/3 from the opposition, 1/3 nominated by the UN might be the proposal.

2) The History of the Syrians Constitutional Court
In 1918 Arab Kingdom of Syria ruled the country. During this period, the Constitutional Court supervised the senior or top officials but not the supremacy of the Constitution.

The 1950 Syrian Constitution provided that the President nominated 14 Constitutional judges and the Parliament selected 7 judges from the list. The 1950 Constitution allows only to challenge the law before they are passed, not after. On the other hand, in the later three temporary constitution the constitutional supervision was not even provided. Unfortunately, as time passes the power of the parliament decreased and the power of the president increased and not vice-versa.

In 1973, the president took the power to appoint 5 judges without any guarantee upon this appointing process.

3) Constitutional context and transitional justice in Europe

Historically, transitional justice processes do not start in trial courts; for example, the Nuremberg Tribunal was just a way to take perpetrators to trial, not a way to establish a Transitional Justice process. The starting point of the transitional period in Italy and Germany, following the II WW, was the elaboration of the new Constitutions. These provide for the main aspects of transitional justice context such a Federal Court, Constitutional Court, and human rights protection. As Syrians, we need to start from a Constitutional reform which would lead to a TJ process, and not vice-versa.

The second example of TJ process is when perpetrators are taken to trial by national courts and not by international courts, as what happened in Eastern Europe after the fall of Communism and in Argentina. In Argentina arbitrary detentions and enforced disappearances created a huge challenge for the TJ process. President Raul established a commission to trial the perpetrators allegedly responsible for 9000 disappearances. In Eastern Europe we knew two different TJ approaches: in Hungary and Poland there was continuity between the two systems, rather than disconnection with the past. On the contrary, Germany and Czechoslovakia provided for stricter processes.

4) Constitutional context and transitional justice in South Africa

The colonisation of South Africa begun in the middle of the seventeenth century, when the Dutch East India Company decided to establish a permanent settlement at the Cape of Good Hope. A codified system of racial stratification began to take form in South Africa under the Dutch Empire in the late-eighteenth century, although informal segregation was present much earlier. These policies were strengthened and became increasingly rigid once the British settlers established, at the inception of the XX century, the South African Union. Legislation that discriminated specifically against Black South Africans began appearing shortly before 1900, including the Land Law of 1913, which severely restricted the African people in their ownership of land, and their residence and control, and represented the hallmark of repression in that period. In reactions to these increasing pervasive legislative measures, the opposition to them by the African people took on an organisational character with the formation of the African National Congress in 1912. Following the end of the II World War, South Africa institutionalised its racial policies into Apartheid, a system of institutionalised racial segregation that existed in South Africa from 1948 until the early 1990.
The first apartheid law was the Prohibition of Mixed Marriages Act of 1949, followed closely by the Immorality Amendment Act of 1950, which made it illegal for most South African citizens to marry or pursue sexual relationships across racial lines. The Population Registration Act of 1950 classified all South Africans into one of four racial groups based on appearance, known ancestry, socioeconomic status, and cultural lifestyle: Black, White, Coloured and Indian. Places of residence were determined by racial classification. From 1960 to 1983, 3,500,000 Non-White South Africans were removed from their homes and forced into segregated neighbourhoods, in one of the largest mass evictions in modern history. While the economic, social and political power remained in the hands of whites, the resistance to these racist policies grew with the black majority that took organised forms and armed resistance, met with the imposition of a ban on people and their organisations, house arrest, detention without trial, torture in custody and death in detention. In the latest period of apartheid has been characterised by practices such as police and army invasions during demonstrations, indiscriminate killings of suspected militants and enforced disappearances.

The reasons that led to the opening of the bilateral negotiations between the National Party and the African National Congress, the leading anti-apartheid political movement, for ending segregation and introducing majority rule, have been very much discussed over the years. The first opinion is that the negotiation took place because of the change in the positions of some members of the white regime, who recognised the inhumanity of the previous policies while aiming at ensuring a constitutional equal transparent system in South Africa; in the second view the negotiations were a result of the negative consequences of the repression and the increasing international isolation of South Africa, which was the target of frequent condemnation in the United Nations and brought about an extensive arms and trade embargo on South Africa; the third view is that the armed ANC’s opposition could not continue the struggle indefinitely, as it was unlikely that guerrilla warfare would succeed in bringing down a coherent and armed regime. Professor Awak’s opinion is that the negotiations were the results of all these three factors. After 7 years of negotiations, between 1987 and 1993, South Africa witnessed its first fully democratic, multiracial elections in April 1994. The newly elected South African Parliament established the Truth and Reconciliation Commission (TRC) in 1995.

The law provided for the establishment of an Investigation Unit headed by a member of the Commission. At the first stage, the Unit was concerned with investigating the testimonies submitted by the victims, as well as identifying witnesses, gathering evidence and preparing questions for institutional and political testimony. After a year of hearings, the unit focused on investigating and comparing testimonies. In the last quarter of the Commission's work, another committee called the Amnesty Commission needed considerable investigative support to handle the many amnesty requests that accumulated. The Commission also established a Research Unit to analyse the large volume of information gathered by the Commission. This unit analysed almost all of the information collected by the Commission, whether individuals, institutions or parties, as well as information provided to the Amnesty Commission. A series of investigations and interrogations by the experts assisted the Committee on Human Rights in its conclusions, and the Amnesty Commission assisted in its discussions. This Research Unit contributed to the Commission's writing of the chapters of its final report.

The TRC's report, published in 1998, included testimony from over 22,000 victims and witnesses. More than 2,000 testified at public hearings.

An integral part of the negotiations to end apartheid in South Africa was the creation of a new constitution. Formal negotiations began in December 1991 at the Convention for a Democratic
South Africa. The parties agreed on a process whereby a negotiated transitional constitution would provide for an elected constitutional assembly to draw up a permanent constitution. In April 1993, the parties returned to negotiations, in what was known as the Multi-Party Negotiating Process (MPNP). A committee of the MPNP proposed the development of a collection of "constitutional principles" with which the final constitution would have to comply, so that basic freedoms would be ensured and minority rights protected, without overly limiting the role of the elected constitutional assembly. The parties to the MPNP adopted this idea and proceeded to draft the Interim Constitution of 1993, which was formally enacted by Parliament and came into force on 27 April 1994.

The Interim Constitution contained 34 constitutional principles with which the new constitution was required to comply. These included multi-party democracy with regular elections and universal adult suffrage, supremacy of the constitution over all other law, a quasi-federal system in place of centralised government, non-racism and non-sexism, the protection of "all universally accepted fundamental rights, freedoms and civil liberties," equality before the law, the separation of powers with an impartial judiciary, provincial and local levels of government with democratic representation, and protection of the diversity of languages and cultures. The Constitutional Assembly engaged in a massive public participation program to solicit views and suggestions from the public. The Constitution was signed by President Mandela on 10 December 1996 and come into force on 4 February 1997.

Conclusions

Although many Syrian civil society groups have worked, during the last eight years, both on issues related to Transitional Justice and Constitutional reform, they have done so mostly in a disjoined way. The training’s discussion and conclusions highlighted how they might still not be sufficiently prepared to develop and engage in sustained work both on the elaboration and the support to any comprehensive and holistic transitional justice process, that includes and is informed by the constitution and constitutional principles. The training engaged Syrian organisations and civil society activists on a holistic approach to Transitional Justice and the constitution to increase the technical and political awareness of Syrians on issues related to Transitional Justice processes and constitutional reform; and foster a discussion among Syrian civil society actors on how to coordinate initiatives and activities to promote Transitional Justice and constitutional reform, thereby developing a renewed social compact to bring together local communities. All participants expressed their eagerness to continue working on these issues and to participate in future trainings and initiatives. Most of the participants felt the organisation of the workshop was excellent. Participants’ evaluation of the various sessions ranged between good and excellent and most felt that they benefited well from the expertise of the facilitator. Some participants expressed their wish to have more information provided in written documents rather than simply presented during the discussion.
Annex 1 – Biography of the expert

Curriculum vitae
Dr. Judge Abdul Hamid Al Awak PhD in constitutional and administrative law

Abdulhamid.alawak66@gmail.com
+58657783509

Nationality: Syrian
Residency: Turkey

Target Job

- PhD in Constitutional Law and Political Systems.
- Member of the teaching staff at the University of Mardin, ARTUKIO Turkey - Faculty of Political Sciences and International Relations.

Scientific qualifications and certificates

<table>
<thead>
<tr>
<th>Qualification</th>
<th>Institution</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>PhD in constitutional law</td>
<td>Beirut Arab University</td>
<td>2015</td>
</tr>
<tr>
<td>Master of administrative law</td>
<td>Islamic University of Lebanon</td>
<td>2009</td>
</tr>
<tr>
<td>Diploma in Public Law</td>
<td>Islamic University of Lebanon</td>
<td>2007</td>
</tr>
<tr>
<td>B.Sc of Law</td>
<td>Aleppo University</td>
<td>1990</td>
</tr>
</tbody>
</table>

Job History

From October 01, 2010 up to February 02, 2015

Lecturer in addition to work in the judiciary

Al Furat University, Law School

Lecturer of constitutional law, administrative Law, Criminology and Penology

- Specify the general framework of the curriculum
- Specify references and subjects
- Give entire curriculum lectures
- Preparation and issuance of examination result

From January 01, 1998 up to date

Judiciary

March 01, 2005 up to date

Counsellor of Court of first- instant
From December 1, 2004 up to January 31, 2005
Director of Public Prosecutions in the province of Hasaka

From January 01, 1998 up to November 31, 2004
Magistrate Criminal Court

From January 07, 1993 up to January 01, 1998
Director of the Legal and Administrative Affairs at the General Directorate of the basin of the Tigris and Khabur

- Organize all supply and public works contracts.
- Follow up all lawsuits in the relative courts.
- Issuance of all administrative memos for the Directorate.
- Respond to all legal inquiries for all departments

Current job:
Assist Prof. at Mardin Artuklu University – Mardin – Turkey

Books and Research

- Liability for damages of public works contracts.
- Comparative research study between the laws of Syria, Lebanon and France.
- The Impact of Arab Revolutions on the Legal Status of the Head of State (Comparative Study between Egypt and Tunisia with Contemporary Political Systems, 200 pages)
- Federalism in Syria and Contemporary Problems (A Comparative Analytical Study on the Form of a Future State 160 pages)
- Brief study (Syrian security forces and the need for constitutional and legal reform).
- A study published in the form of a series of articles (the legitimacy of constitutional rules in the transitional period).
- Trainer for many courses including:
  - Formulation of constitutions and contemporary political systems.
  - Constitutional mechanism for the protection of public rights and freedoms.
  - Gender in the Constitution.
  - Between the diagnosis and concentration of power and the sharing of power.

- Publishing of a range of studies and research’s in the following medias
  Lawyers, magazine belongs to the Bar Association in Syria.
  Ishraqat Ashtaroot Magazine.
  ❇️ Justice Magazine, magazine published by the Syrian Ministry of Justice
  Al Manar newspaper (Iraqi)
## Annex II - Program

### Day One – Saturday 14 July 2018

<table>
<thead>
<tr>
<th>Time</th>
<th>Session</th>
<th>Presenter</th>
</tr>
</thead>
</table>
| 9.30 – 10.15 | *Welcome remarks*  
Introduction of participants and workshop orientation. Identification of expectations | Mustafa Ghashim, NPWJ      |
| 10.15 – 11:15 | *What is transitional justice?*  
Origin - Development - Definition - The reasons for its existence | Mr. Awak                   |
| 11.30 – 12.30 | *Mechanisms of transitional justice and the achievement of its objectives*  
- The judicial and non-judicial mechanisms  
- The absence of justice mechanisms and its consequences Iraq as a model | Mr. Awak                   |
| 13.30 – 15.00 | *Making constitutions in the transitional period*  
- The origin of constitutions  
- Types of constitutions  
- Where constitutional rules exist in the transitional period | Mr. Awak                   |
| 15.30 – 17.00 | *General constitutional reform*  
For example: the general principles that must be found in every constitution - the separation of powers - democratic mechanisms for taking and exchanging power - the balance between power and responsibility | Mr. Awak                   |

### Day Two – Sunday 15 July 2018

<table>
<thead>
<tr>
<th>Time</th>
<th>Session</th>
<th>Presenter</th>
</tr>
</thead>
<tbody>
<tr>
<td>09.30 – 9.45</td>
<td><em>Welcome remarks</em></td>
<td>Mustafa Ghashim, NPWJ</td>
</tr>
</tbody>
</table>
| 9.45 – 10.45 | *Rights and Freedoms*  
Guarantees (the principle of the supremacy of constitutions and the monitoring of the constitutionality of laws - the activation of the judiciary - the | Mr. Awak                   |
<table>
<thead>
<tr>
<th>Time</th>
<th>Session</th>
<th>Speaker</th>
</tr>
</thead>
<tbody>
<tr>
<td>11.00-12.30</td>
<td><strong>Coffee break</strong></td>
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<tr>
<td></td>
<td>- Constitutional context and transitional justice in Europe</td>
<td>Mr. Awak</td>
</tr>
<tr>
<td></td>
<td>- A study of the experiences of European countries after the fall of communism</td>
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<tr>
<td>13.30-16.00</td>
<td><strong>Lunch</strong></td>
<td></td>
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<tr>
<td></td>
<td><strong>Constitutional context in South Africa</strong></td>
<td>Mr. Awak</td>
</tr>
<tr>
<td></td>
<td>- The Constitution protects justice</td>
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<tr>
<td></td>
<td>- Justice produces a constitution</td>
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