

Research Paper

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# Breaking the Cycle of Violence

## Transitional Justice for the Victims of ISIS in Syria



## Summary

- Following the territorial defeat of Islamic State of Iraq and Syria (ISIS) in northeastern Syria, the Kurdish-led autonomous administration in the region is now grappling with the task of quickly dealing with thousands of the group's detained members while bringing justice to their victims. To that end, local authorities are focusing on the use of counterterrorism laws and courts to charge captured ISIS members and determine their guilt accordingly.
- The piecemeal approach to justice is deeply flawed, and raises particular concerns about due process. No precise instruments exist to determine the personal responsibility of ISIS individuals for specific crimes, or for their role in war crimes committed by the group. In any event, the scale of the crimes and the number of victims – as well as severe shortages of resources and workers – make dispensation of justice extremely difficult through the traditional legal system.
- Not all detained ISIS members receive prison sentences. Individuals who did not hold senior roles in the group's apparatus and are not accused of 'major' crimes (in practice, largely defined as fighting for ISIS and murder) are being released under limited reconciliation deals with tribal leaders. But the involvement of local community leaders in those efforts is not enough to ensure positive results. Many victims are upset at seeing ISIS members walk free without even admitting their guilt publicly or apologizing for the pain they caused.
- To overcome the limitations of the current, counterterrorism-focused framework, a 'transitional justice' approach could provide judicial and non-judicial instruments to establish accountability for ISIS crimes and reduce community resistance to the reintegration of group members. A combination of non-judicial mechanisms such as truth commissions, missing persons' committees, and reparations and victim-healing programmes could play a vital role in providing ISIS victims with a sense of justice while contributing to peacebuilding and stability.
- Ignoring the urgency of developing a long-term plan to serve justice and contribute to community healing will almost certainly allow ISIS to continue to prevent the recovery and development of northeastern Syria. This, in turn, risks undermining the stability of the country and the region at large.

## Introduction

Following the territorial defeat of Islamic State of Iraq and Syria (ISIS) in northeastern Syria, the Kurdish-led autonomous administration, dominated by the Syrian Democratic Forces (SDF), is grappling with the task of quickly dealing with thousands of the group's detained members while also bringing justice to their victims. Whenever possible, the administration is using counterterrorism laws and courts to prosecute local ISIS members, who are the main focus of this paper.<sup>1</sup>

The process appeals to local prosecutors because it is straightforward. They determine the guilt of the detainees mainly by establishing whether these individuals fought with ISIS or not.<sup>2</sup> However, the scale of the crimes and the number of victims – on top of severe shortages of resources and workers – make dispensation of justice extremely difficult to achieve through the traditional legal system. As a result, not all detained ISIS members suspected of criminal activity receive prison sentences. Individuals who did not hold senior roles in the group's apparatus and were not combatants are often being released under limited reconciliation deals with local communities.<sup>3</sup>

**Many victims are unhappy at seeing some ISIS members walk free without publicly admitting their guilt, especially in the absence of public information on court proceedings.**

Despite the importance of its efforts, the administration's piecemeal approach to justice is deeply flawed. Because it is mostly designed to deal with ISIS members accused of fighting for the group, a wide range of other crimes (including rape, theft and even torture) are unaddressed. Moreover, there are no precise instruments to highlight the personal responsibility of individuals for specific crimes, or for their role in war crimes and crimes against humanity that were committed by ISIS.<sup>4</sup>

The regional administration seems to have adopted the mistaken view that detaining or prosecuting ISIS members will be sufficient to serve justice and provide stability. But many victims are unhappy at seeing some ISIS members walk free without publicly admitting their guilt, especially in the absence of public information on court proceedings.<sup>5</sup> Failing to recognize those shortfalls risks pushing victims to seek revenge not only against ISIS members but also against their extended families. Quite apart from the moral considerations involved, this has the potential to undermine stability in the region.<sup>6</sup>

To overcome the limitations of the current, counterterrorism-focused framework, adoption of a 'transitional justice' approach could provide mechanisms to establish accountability for ISIS crimes without allowing the group to benefit from the harms it has caused. According to the United Nations, 'transitional justice is the full range of processes and mechanisms associated with a society's attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve

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<sup>1</sup> Those counterterrorism laws were written and adopted by the Kurdish-led autonomous administration in 2014, based mainly on the counterterrorism laws used by the Syrian government. For more information, see The Self-Administration (2016), 'The Counterterrorism laws', 29 March 2016, <http://encumenacibiciker.info/20-المرسوم-التشريعي-رقم-20> (accessed 11 Jan. 2020).

<sup>2</sup> Haid, H. (2019), 'Transitional Justice Could Help Deal With ISIS Crimes', Chatham House, November 2019, <https://bit.ly/30K9PXL> (accessed 12 Jan. 2020).

<sup>3</sup> Haid, H. (2018), *Reintegrating ISIS Supporters in Syria: Efforts, Priorities and Challenges*, London: International Centre for the Study of Radicalisation (ICSR), August 2018, <https://bit.ly/3asZSTf> (accessed 11 Jan. 2020).

<sup>4</sup> Houry, N. (2019), 'Bringing ISIS to Justice: Running Out of Time?', Human Rights Watch, 5 February 2019, <https://bit.ly/36j4IPE> (accessed 8 Jan. 2020).

<sup>5</sup> Author interview via Skype with a resident based in Raqqa, 6 December 2018.

<sup>6</sup> Author interviews via Skype with several victims of ISIS based in Raqqa and Deir ez-Zor, November and December 2019.

justice and achieve reconciliation'.<sup>7</sup> Transitional justice may include a combination of judicial measures (prosecution) and non-judicial ones (such as truth commissions and reparations programmes) to reach outcomes desired by local communities.

Currently, however, the administration does not seem to view transitional justice as a suitable tool for alleviating the enormous burden of dealing with captured ISIS members. This is due partly to the lack of local expertise in finding alternatives to criminal prosecution, and partly to the absence of precedents for using transitional justice to deal with the crimes of violent jihadi groups.

This paper therefore aims to assist the region's local authorities, and their key foreign backers, in understanding how transitional justice can provide alternative avenues for holding local ISIS members to account while contributing to the healing of communities.<sup>8</sup> It examines the limitations of the autonomous administration's current approach to dealing with detained ISIS members, and of its policies towards their family members who are held in camps. It then presents several non-judicial instruments that could be used to investigate ISIS crimes and provide victims with a sense of justice. It concludes by providing fundamental principles and policy recommendations to help design such a process.

Central to this study is a set of 40 semi-structured interviews with Syrian officials, analysts, residents, ISIS victims and former ISIS members. These were conducted by the author online – via Skype, WhatsApp or email – or in person between November 2018 and January 2020. The interviewees were assured of anonymity to allow them to talk freely and mitigate the risks involved for them in sharing their experiences.

While this paper focuses on transitional justice in northeastern Syria, the proposed framework could be used to guide policymakers elsewhere in dealing with mass crimes committed by violent extremist groups. Moreover, the paper seeks to contribute to the broader discussion on how to provide justice and improve stability without hindering the ability of local communities to achieve reconciliation.

### The limitation of the anti-terrorism lens

The efforts of the autonomous administration in northeastern Syria to bring justice to ISIS victims mainly focus on detaining group members, charging them with offences under counterterrorism laws, or releasing them under tribal-sponsored reconciliation deals. On top of several procedural flaws that hinder fair treatment of ISIS members (see below), these mechanisms have fallen short of providing justice for ISIS victims.

### Criminal prosecution

The number of ISIS-linked individuals in the custody of the SDF continues to increase, due to the ongoing security operations against the group's active members. Guarding and processing detainees – currently estimated to number 11,000 – is becoming ever harder.<sup>9</sup> To prosecute local ISIS members, the administration established terrorism courts (known as 'People's Protection Courts')

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<sup>7</sup> United Nations (2010), 'Guidance Note of the Secretary General: United Nations Approach to Transitional Justice', March 2010, <https://bit.ly/2ReZWOJ> (accessed 10 Jan. 2020).

<sup>8</sup> This paper only focuses on Syrian ISIS members. The group's foreign members, whether from elsewhere in the region or overseas, are not covered.

<sup>9</sup> Haid, H. (2019), 'Can the SDF Continue to Secure ISIS Prisoners?', Chatham House, October 2019, <https://bit.ly/2RhpwCL> (accessed 11 Jan. 2020).

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and adopted special counterterrorism laws in 2014.<sup>10</sup> The legal proceedings in these courts are typically brief. ISIS members are tried individually in front of a panel of three judges. After being read the charges, suspects are sentenced in accordance with their crimes and with the evidence provided.<sup>11</sup> The process usually results in three main verdicts:

- Members implicated in certain (though not all) violent crimes are typically condemned to between a few years and life in prison, which technically means a 20-year sentence.<sup>12</sup> The autonomous administration abolished the death sentence.<sup>13</sup>
- Individuals who played non-military roles receive reduced sentences, as do fighters who joined ISIS when they were minors, cooperated with the authorities, surrendered and/or showed good behaviour while in custody. The reduced sentences mostly vary between six months and one year in duration.<sup>14</sup>
- Members found not to have fought for ISIS (the basis on which innocence is determined is not clear) are mostly released in coordination with local tribal figures, or detained in camps for internally displaced persons (IDPs) after the investigation is over.<sup>15</sup>

Despite the apparent good intentions of officials, these terrorism courts were established by non-state actors and lack international recognition. They also do not have sufficient human resources, especially experienced judges.<sup>16</sup> This is evident in the relatively small number of individuals – around 1,500, in comparison to the much larger number of detainees in pre-trial facilities – who were tried between 2015 and April 2018.<sup>17</sup> At this rate, the authorities will need more than 10 years to process the thousands of ISIS prisoners currently in custody. Besides, the approach of the courts has several procedural flaws, as trials mainly focus on establishing whether ISIS members were fighters as a gauge of guilt or innocence with regard to violent crimes. The courts fail to capture the full range of crimes committed by ISIS or its individual members.<sup>18</sup> In addition, the terrorism courts do not prosecute female ISIS members, who instead are either released or held in IDP camps.<sup>19</sup>

There is no clear method for investigating other crimes (such as theft, rape or torture) or highlighting individuals' responsibility for mass abuses. Additionally, the terrorism courts do not allow victims to make complaints to law enforcement, or to provide evidence against ISIS members. Victims do not have access to the courts or proceedings to know who was convicted of what. Thus, even when perpetrators are held accountable, their victims have no way of knowing that justice, to a certain extent, has been served.<sup>20</sup>

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<sup>10</sup> Houry, N. (2017), 'Difficult Justice Questions', Human Rights Watch, 6 November 2017, <https://www.hrw.org/news/2017/11/06/difficult-justice-questions> (accessed 15 Jan. 2020).

<sup>11</sup> Author interview via WhatsApp with an official of the Syrian Democratic Forces in Qamishli, 16 November 2018.

<sup>12</sup> Al-Ghadhawi, A. (2019), 'Will Freeing Local ISIS Militants Come Back to Bite the Kurds?', Chatham House, May 2019, <https://bit.ly/2NcT95L> (accessed 8 Jan. 2020).

<sup>13</sup> Associated Press (2018), 'A look at the Kurdish-run courts trying IS in northern Syria', 7 May 2018, <https://bit.ly/38vMc85> (accessed 8 Jan. 2020).

<sup>14</sup> Al-Ghadhawi (2019), 'Will Freeing Local ISIS Militants Come Back to Bite the Kurds?'.

<sup>15</sup> Author interview via WhatsApp with an official of the Syrian Democratic Forces in Qamishli, 16 November 2018.

<sup>16</sup> Houry (2017), 'Difficult Justice Questions'.

<sup>17</sup> Associated Press (2018), 'A look at the Kurdish-run courts trying IS in northern Syria'.

<sup>18</sup> Houry (2017), 'Difficult Justice Questions'.

<sup>19</sup> Author interview via WhatsApp with a human rights activist based in Deir ez-Zor, May 2019.

<sup>20</sup> Author interview via Skype with a human rights activist based in Raqqa, March 2019.

Observers have also pointed out significant concerns about the fairness of legal proceedings inside the terrorism courts. For example, ISIS members are not allowed to hire defence lawyers, nor they are allowed to challenge court decisions.<sup>21</sup> There are no clear regulations regarding the time that ISIS detainees can legally spend in prison prior to trial. Thus, some might spend years in custody before they get a chance to appear in front of a judge.<sup>22</sup> There is also no clear policy on how their family members, most of whom are held in camps, should be dealt with. Most family members who are not specifically suspects are thus trapped in legal limbo: they are not formally detained, yet they are not allowed to leave the facilities they are held in.<sup>23</sup> Similarly, locals have raised alarming concerns about civilians being arrested in anti-ISIS campaigns despite inadequate evidence.<sup>24</sup> Such suspects could be detained for months until proof of their innocence is obtained.<sup>25</sup>

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Analysts have frequently warned that collective detention centres and camps may become recruiting bases for ISIS as a result.<sup>26</sup> Group members in the custody of the SDF do not all have the same level of commitment to ISIS and its goals. Many individuals joined ISIS for reasons other than religion (such as money, power or protection). Other detainees might have been arrested by mistake and have no links to the group. Many are held in camps alongside IDPs, without sufficient measures to protect the latter from ISIS members, both men and women.<sup>27</sup>

The vast majority of those held in camps, regardless of gender or age, have limited access, if any, to recreation, vocational training or job opportunities. While living under such dire conditions does not automatically lead to radicalization, ISIS might be able to exploit their suffering as a recruiting tool. Such a task is potentially made easier by the inability of the SDF to monitor everything that happens inside crowded camps or detention facilities.<sup>28</sup>

### Ad hoc reconciliation deals

Not all detained ISIS members end up receiving prison sentences. Those who did not fight locally, and who joined the group for non-ideological reasons, are judged as low-risk and as having reasonably high chances of reintegration. Thus, the terrorism courts take a lenient approach towards them.<sup>29</sup> While some serve short prison sentences, as discussed above, others are released in accordance with prior agreements with tribal figures in their communities.<sup>30</sup>

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<sup>21</sup> Houry (2019), 'Bringing ISIS to Justice: Running Out of Time?'

<sup>22</sup> Author interview via WhatsApp with a former ISIS member who was detained by the Syrian Democratic Forces in Hassakeh, April 2019.

<sup>23</sup> Author interview via WhatsApp with a father of an ISIS member who was detained by the Syrian Democratic Forces in Raqqa, March 2019.

<sup>24</sup> Haid, H. (2017), 'Concerns Grow for Civilians Caught up in Anti-ISIS Hunts', Chatham House, December 2017, <https://bit.ly/2Riav3K> (accessed 12 Jan. 2020).

<sup>25</sup> Author interview via WhatsApp with a human rights activist based in Deir ez-Zor, May 2019.

<sup>26</sup> Haid (2018), *Reintegrating ISIS Supporters in Syria: Efforts, Priorities and Challenges*.

<sup>27</sup> Author interview via WhatsApp with a humanitarian worker in Raqqa, June 2019.

<sup>28</sup> Author interview via WhatsApp with a human rights activist in Raqqa, June 2019.

<sup>29</sup> Author interview via WhatsApp with an official of the Syrian Democratic Forces in Qamishli, 16 November 2018.

<sup>30</sup> Author interview via WhatsApp with a local resident from Deir ez-Zor, October 2019.

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Apart from helping local authorities to cope with the rising number of detainees, tribal-sponsored deals aim to improve relations with Arab-majority communities, to which the vast majority of detainees belong.<sup>31</sup> This theoretically involves local communities in supporting the released ISIS members and stopping them from restoring their ties with the group.<sup>32</sup> The administration has frequently used reconciliation agreements to discharge certain categories of ISIS members.<sup>33</sup> Although there is still no detailed information on the number of people freed, local sources indicate that at least a few thousand have been released through this process.<sup>34</sup> Notably, the number also includes family members who were allowed to leave IDP camps and return to their communities.

Although the impact of tribal-sponsored deals is yet to be thoroughly assessed, it is clear that the engagement of some local leaders in the process is insufficient on its own to ensure success.<sup>35</sup> Largely due to a lack of resources and knowledge, the reconciliation deals do not provide rehabilitation programmes for released former fighters or contain follow-up mechanisms to assess their reintegration progress.<sup>36</sup> The process also lacks transparency, especially with regard to the proceedings that determine the innocence of those released and the criteria used to prioritize their discharge over others who fit the same profile.<sup>37</sup>

People in areas where reconciliation deals have been implemented claim that the agreements have facilitated the release of many ISIS members, including ones responsible for committing or ordering crimes. A resident in Raqqa states:

Those criminals, who are known to locals, were released only a few weeks after they had been captured. Even if the SDF did not know about the crimes that they had committed, which is doubtful, this means that their vetting process is flawed. In other words, people might be benefiting from those deals not due to their innocence but rather connections to influential tribal figures.<sup>38</sup>

Similarly, an SDF official has said on the record that some ISIS affiliates who agreed to provide intelligence while still working for the group have been granted immunity. The beneficiaries of such arrangements have been allowed to walk free without questions being asked about any violations they may have been involved in.<sup>39</sup> Some ISIS members have even been allowed to join the SDF as fighters or informants.<sup>40</sup> Such practices, which undermine justice and accountability, have a negative impact on local communities. An ISIS victim based in Deir ez-Zor says:

It does not feel right to see a criminal walking free without a fair trial. But such actions do not come with no consequences. The families of the victims might take the law into their own hands when they feel that justice is not served.<sup>41</sup>

The overwhelming dependence of the regional administration on the abovementioned ad hoc approaches to accountability and reconciliation are exacerbating existing problems while contributing little to healing.

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<sup>31</sup> Author interview via WhatsApp with a tribal leader from Deir ez-Zor, November 2019.

<sup>32</sup> Author interview via WhatsApp with an official of the Syrian Democratic Forces in Deir ez-Zor, 16 December 2019.

<sup>33</sup> Georgy, M. (2017), 'Syrian group releases 83 former ISIS militants to promote stability at the end of Ramadan', Reuters, 24 June 2017, <https://bit.ly/2Rh9Cbp> (accessed 12 Jan. 2020).

<sup>34</sup> International Crisis Group (2019), 'Squaring the Circles in Syria's North East', 31 July 2019, <https://bit.ly/2RgWWRQ> (accessed 10 Jan. 2020).

<sup>35</sup> *Ibid.*

<sup>36</sup> Author interview via WhatsApp with former ISIS member from Raqqa who was released in a reconciliation deal, October 2019.

<sup>37</sup> Author interview via WhatsApp with a local resident from Deir ez-Zor, November 2019.

<sup>38</sup> Author interview via WhatsApp with a resident in Raqqa, May 2019.

<sup>39</sup> Hamlo, Kh. (2018), 'The Mystery of How ISIS Members Disappeared', Salon Syria, 25 January 2018, <https://bit.ly/2TOMXFo> (accessed 18 Jan. 2020).

<sup>40</sup> Author interview via WhatsApp with a media reporter based in Deir ez-Zor, May 2019.

<sup>41</sup> Author interviews via Skype with a victim of ISIS based in Deir ez-Zor, November and December 2019.

## Multidimensional justice

While prosecution is one vital means of achieving justice, several other instruments could potentially be used to hold ISIS members accountable for their crimes. A transitional justice framework would provide various judicial and non-judicial instruments to give victims a sense of justice while contributing to peacebuilding and stability.

## Truth commissions

The inability of the autonomous regional administration to prosecute all ISIS members should not violate the right of people to know or tell the truth about what happened. Truth commissions provide a platform for individuals to tell their stories (in private or through public hearings) and highlight the abuses committed against them. Gathering evidence in such a way would allow commissions to investigate the personal responsibility of ISIS members, help local authorities build legal cases, and identify suspected perpetrators and their crimes. It would also empower possible witnesses in helping security forces to speed up the processing of thousands of ISIS members.

Likewise, the use of truth commissions could provide more in-depth analysis of the full range of crimes committed by ISIS, thus contributing to the creation of a comprehensive judicial record of its atrocities and deepening understanding of the inner workings of the group. Through extensive consultations with locals, commissions could play a crucial role in identifying mechanisms (such as monetary compensation or public apologies) for providing justice to ISIS victims.

In most settings, truth commissions are typically organized at a national level, but the ongoing conflict in Syria does not allow the undertaking of such a process across the country. That said, the relatively stable security situation in northeastern Syria and the high percentage of ISIS abuses that have allegedly been committed there (in comparison to other parts of the county) could facilitate the formation of local truth commissions.

## Missing persons' committees

Human rights groups have documented the detention or forcible disappearance by ISIS of more than 8,000 people.<sup>42</sup> The fate of these victims is still unclear. The SDF does not seem to have the capacity to provide their families with answers, given that it is overwhelmed by dealing with ISIS prisoners and sleeper cells.<sup>43</sup> There is an urgent need for this task to be carried out by an external actor. While investigating the fate of the missing could in theory be undertaken by truth commissions, the extensive efforts required make forming a separate entity or entities to handle that task a necessity.

Working under the umbrella of truth commissions or in coordination with them, missing persons' committees could be set up to oversee the gathering of information from the families of victims and handle their queries. Such committees could also collect and process information from the mass graves that have been discovered in northeastern Syria, as none seem to have been properly examined by the local administration.<sup>44</sup>

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<sup>42</sup> Human Rights Watch (2019), 'Reveal Fate of Missing Victims of ISIS', 14 May 2019, <https://bit.ly/2TLur00> (accessed 13 Jan. 2020).

<sup>43</sup> Author interview via Skype with a human rights activist based in Raqqa, March 2019.

<sup>44</sup> Human Rights Watch (2019), 'Reveal Fate of Missing Victims of ISIS'.

Information obtained from the interrogation of captured ISIS members (especially those who were in charge of prisons) and from debriefings with former prisoners of the group could also shed light on what happened to those who had been in ISIS custody.<sup>45</sup>

### Victim reparations

Some sort of justice based on consultations with local communities could still be brought to ISIS victims even if the perpetrators are freed. Compensation could be provided to victims to contribute to their emotional, moral or economic recovery from the group's brutalities. This could also help mitigate tensions arising from the limited number of prosecutions and the lenient approach to sentencing. If handled correctly, reparations could boost the legitimacy of local reconciliation deals brokered with tribal leaders.

Property restitution is one mechanism that could be used for this purpose. ISIS confiscated a significant number of assets from the region's residents (who include ethnic and religious minorities and displaced people); the assets included dwellings and buildings that were seized for occupation, rental or sale by ISIS and its members.<sup>46</sup> Reviewing and resolving property disputes, and providing the dispossessed with financial rehabilitation grants, could have a significant impact on victims' ability to recover. Compensation could be paid by former ISIS members who had lived in the relevant homes during the group's rule, or who are deemed responsible for damage to them. Alternatively, former members could help repair private or public property damaged by the group.

Acknowledging guilt and offering private or public apologies are examples of moral reparations. One resident of the region who was detained and tortured by ISIS says: 'While nothing can really help undo what happened to me, receiving a genuine public apology from those who violated my rights can still be satisfying. I simply want the world to know what happened to me.'<sup>47</sup>

### Healing programmes

The current prosecution-based approach in northeastern Syria has been unable to help communities recover. Former ISIS members are still stigmatized and socially isolated, including those who have served their sentences or were found not guilty of committing violent crimes.<sup>48</sup> The lack of interaction between local residents and former ISIS members makes reintegration of the latter even harder. Creating platforms for victims and former ISIS members to interact could play a crucial role in helping communities heal.

Drawing on traditional or religious practices to create such programmes generally increases their effectiveness. Since northeastern Syria is widely identified as a tribal community, local tribal leaders could play an active role in supporting the establishment and promotion of healing platforms to create community buy-in. These could complement the ongoing tribal-sponsored reconciliation deals. They could enable released former ISIS members to tell their personal stories, highlight the factors that pushed them to affiliate themselves with the group, and explain the roles they played in it. Former members could use such platforms to show remorse and highlight the various remedies they may be employing to compensate for their actions. Doing so could contribute to greater

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<sup>45</sup> Information gathering should also include going through graffiti in ISIS prison cells.

<sup>46</sup> Author interview via WhatsApp with a local resident from Raqqa, October 2019.

<sup>47</sup> Author interview via WhatsApp with a local resident from Raqqa who was detained and tortured by ISIS members, September 2019.

<sup>48</sup> Author interviews via WhatsApp with several former ISIS members based in Raqqa and Deir ez-Zor, November and December 2019.

understanding among residents of the individual responsibility of former ISIS members, and facilitate informed decisions as to who should still be considered a threat and who can safely co-exist with local communities.

Giving victims and local communities a voice in designing or implementing justice mechanisms could contribute to their healing. This could include allowing communities to have a say in the prosecution of ISIS members through jury trial – although it is vital that this should happen without endangering jurors' safety. Giving communities the ability to contribute to the reconciliation process, by hearing and questioning its beneficiaries, could help increase its legitimacy. Such healing programmes could be implemented by the autonomous administration in northeastern Syria even before the beginning of a comprehensive transitional justice process.

A combination of the above-mentioned mechanisms could play a vital role in addressing the violations committed by ISIS, and thus in reducing community resistance to the reintegration of its members and in initiating a healing process.

### Key principles and considerations

While there is a general understanding of the main mechanisms of transitional justice, implementation typically varies from one country and community to another. This is mainly due to variations in the type and scale of violations committed in each conflict, the objectives of the particular transitional justice process, the type and sequencing of the mechanisms involved, and the resources available. Such processes can only be successful if they are tailored to, and based on comprehensive and inclusive consultations with, the communities involved.

### Authority

In northeastern Syria, the ability of truth commissions to provide an accurate and comprehensive report will depend on the investigation of all crimes associated with the rise of ISIS, whether committed by the group itself or by others during the fight against it. The commissions should have free and full access to all ISIS members, both locals and foreigners, in the custody of the regional administration. That includes those in collective detention centres as well as in maximum-security prisons. The commissions should also be allowed to interview the families of ISIS members, as well as IDPs who live in camps or unofficial settlements.

The truth commissions should have the authority to investigate crimes allegedly committed by the SDF and the US-led international coalition during the fight against ISIS. Such authority should cover the military operations to retake territories from ISIS, as well as the security operations against sleeper cells or ISIS members. To have accurate data, the commissions should have full access to the records of military and security operations against ISIS. Similar access to the records of terrorism courts and reconciliation deals should be granted to the commissions. The commissions should be able to interview members of the SDF and other internal security forces implicated in human rights violations.

### Independence

While the autonomous regional administration can support and contribute to post-ISIS transitional justice, the process itself has to be handled independently. This is partially due to the local defiance in former ISIS-held territories *vis-à-vis* the administration. Communities in Arab-majority areas, such as Raqqa and Deir ez-Zor, generally reject the governance structure established by the administration, as it does not allow them to be in charge of running their localities directly.<sup>49</sup>

Ensuring that the administration does not control or have authority over the transitional process is also essential for its legitimacy. While the self-government system in the region theoretically allows communities to rule themselves, in practice the administration is using its authority to impose extensive and centralized control over governance, political and military bodies in Arab-majority areas.<sup>50</sup> Any transitional justice process that is established under the control of the administration will thus likely make people suspicious and less keen to participate. Besides, the SDF is also accused of committing crimes during and after the fight against ISIS; excessive involvement by the regional administration in transitional justice arrangements would likely increase popular perceptions of bias, and reinforce assumptions that its agenda is to protect itself.<sup>51</sup>

**Ensuring that the administration does not control or have authority over the transitional justice process is essential for its legitimacy.**

Instead, the process should be led by community leaders and influential figures who are known to be independent, credible and respected. This could help mitigate the lack of trust towards official authorities, lend legitimacy to the process and increase popular participation.

The principle of independence (including the impartiality of truth commissions) should underpin prosecution and reconciliation deals. Evidence collected by the truth commissions should be shared with courts, after addressing the gaps discussed above, to build cases against ISIS members alleged to have committed crimes. The commissions should be able to coordinate with the courts to reduce the sentences of convicted ISIS members who provide credible and relevant confessions, as this could encourage the disclosure of crucial information. Reconciliation deals could also be made conditional on beneficiaries providing evidence in front of truth commissions.

### Transparency

Establishing clear, accessible and efficient communication channels to keep stakeholders informed about the objectives, mechanics and progress of transitional justice will be important for increasing trust. Due to the current lack of popular trust in the regional administration, locals should be informed about the extent of the latter's involvement in and authority over the process. Transparency about the dynamics of this relationship could enable the team leading the process to use public support to insulate itself from external pressure.

Local communities should have access to the proceedings of terrorism courts, including details of which ISIS members are being prosecuted, the charges against them, findings and verdicts. Similarly, they should be informed of which members are released through reconciliation deals or individual

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<sup>49</sup> Haid (2018), *Reintegrating ISIS Supporters in Syria: Efforts, Priorities and Challenges*.

<sup>50</sup> Author interviews via WhatsApp with several residents from Deir ez-Zor and Raqqa, July–October 2019.

<sup>51</sup> Author interview via WhatsApp with a human rights activist in Raqqa, June 2019.

amnesties, and of the criteria that qualified these people for such treatment. While victims of ISIS are not currently receiving compensation, the criteria that will be used to assess who qualifies for reparations – and how the type and scale of reparations are determined – should also be made public.

Truth commissions should be clear about how information will be collected, what it will be used for, who will have access to it, and whether it will be made public or not. To that end, it will be crucial to inform local communities about the objectives and limitations of the transitional justice process, to ensure realistic expectations. Providing the public with regular and digestible updates is also important to ensure people remain engaged.

### Due process in prosecutions

The actors involved in efforts to secure justice for ISIS victims should treat the group's members according to international law. As mentioned above, the terrorism courts do not currently provide due process to ISIS members. In order for that to change, the courts should allow suspects to hire defence lawyers and to challenge the evidence against them. ISIS members who are convicted should have the ability to appeal against their sentences in front of a different court.

Likewise, military and security forces should not be allowed to detain or keep suspects in custody when evidence is absent or inadequate. Confessions given under torture should not be used as evidence. ISIS members' family members who are unlawfully detained should be released if charges against them cannot be filed. Non-judicial measures could still be used, when appropriate, to serve justice.

Lack of expertise in the legal system remains a key challenge. The staff of terrorism courts, among others, should be trained how to investigate and prosecute ISIS members in accordance with due process under international law. Implementing a non-discriminatory approach to justice can help break the cycle of violence by preventing ISIS from using grievances over the mistreatment of its members and their families as a recruiting tool.

### Agency for victims

Ensuring the centrality of ISIS victims in the design and implementation of any transitional justice process will be crucial to its success. To that end, consultations with local communities should be conducted with an explicit focus on those communities and traditionally excluded groups (such as women, IDPs, children), using the needs and priorities of these stakeholders to shape the process.

This will require using victim-sensitive mechanisms to ensure that victims' voices are heard. Those running the process should be trained in protecting the dignity, anonymity and safety of victims. Ensuring safety is of particular importance, as many ISIS victims might be scared to participate due to fear of retribution. Actors involved must mobilize victims and encourage them to contribute to the process. This includes facilitating the creation of survivors' groups and supporting such groups in playing an active role.

On top of being allowed to participate in court proceedings, victims should play an essential role in selecting the mechanisms through which transitional justice is dispensed, such as determining the preferred types of compensation and healing programmes.

### Civil society participation

In contexts such as northeastern Syria, where the capacity of official institutions is low and mistrust towards local authorities high, civil society groups can become more active in leading the transitional justice process. Since the start of the uprising, Syrian civil society actors have been familiarizing themselves with the concept and tools of transitional justice. They have been building the capacity of groups and organizations across the country. Likewise, they have organized community-based activities to raise awareness among locals of the importance of the process and their participation in it.<sup>52</sup> Other organizations have worked on documenting human rights violations committed during the conflict.<sup>53</sup>

In order to cooperate with the administration without losing their credibility, civil society organizations need to have protection guarantees and space to operate independently.

While most of the work has been done outside northeastern Syria in preparation for a national post-conflict process, the knowledge and expertise gained by those involved can assist in tailoring transitional justice mechanisms for ISIS violations, as well as in monitoring the prosecution of the group's members. However, in order to cooperate with the administration without losing their credibility, civil society organizations need to have protection guarantees and space to operate independently. For that to happen, the administration should change its laws to allow civil society groups to operate freely, including those not aligned with its political agenda.

Actors involved in transitional justice should also draw on and coordinate with relevant community-led initiatives. These could include groups such as the Coalition of Families of Kidnapped by ISIS, an organization established in March 2019 by families to learn what had happened to missing relatives.<sup>54</sup> Inclusion of such groups could contribute to the process of providing information, mobilizing other victims to give evidence, and monitoring implementation and progress.

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<sup>52</sup> Haid, H. (2017), *Towards Tangible Actions for Transitional Justice in Syria – Where to go from here?*, Heinrich Böll Stiftung, October 2017, [https://lb.boell.org/sites/default/files/transitional\\_justice\\_paper\\_final.pdf](https://lb.boell.org/sites/default/files/transitional_justice_paper_final.pdf) (accessed 15 Jan. 2020).

<sup>53</sup> Ibid.

<sup>54</sup> Human Rights Watch (2019), 'Reveal Fate of Missing Victims of ISIS'.

## Conclusion

Northeastern Syria is a clear example of the limited ability of counterterrorism laws to provide ISIS victims with justice. Likewise, offering ad hoc amnesties or reconciliation deals, without accompanying non-judicial justice mechanisms, risks encouraging the mistreatment of former ISIS members. This may in turn allow ISIS to exploit resentments. While much time has been lost, it is not too late for the regional administration to support Syrian civil society groups in developing more coherent transitional justice mechanisms, in order to hold ISIS members to account for their full range of crimes without harming reconciliation efforts in local communities.

Designing a successful transitional justice process will require investigating and addressing the root causes of the conflict that allowed ISIS to emerge and flourish in northeastern Syria. Truth commissions should have the mandate to comprehensively examine violations of cultural, political, economic, social and civil rights, whether committed by ISIS or by the Syrian regime, the regional administration or local tribes. Victims (including women and other marginalized groups) must be consulted on the various mechanisms that could be used to redress abuses, and should be allowed to propose inclusive reparations programmes accordingly. Truth commissions should also provide recommendations on key legislation that should be introduced or revised in order to protect the rights of all citizens, with a special focus on under-represented groups.

At the same time, the enduringly broad influence of ISIS – due to its having ruled communities for years – has made the reintegration of those who lived under its control a challenge that cannot be addressed by transitional justice mechanisms alone. The regional administration and its international partners have not invested much effort in rehabilitating individuals and communities that were influenced by the group's ideology.<sup>55</sup> Disregarding such needs may allow ISIS to continue to exist as an insurgency for years, and thus destabilize northeastern Syria. Navigating the social and ideological complexity of this situation to prevent such an outcome requires hybrid programmes drawn from multiple frameworks to complement justice and reconciliation mechanisms with rehabilitation instruments. The international community should also use its influence with, and support for, the current administration in northeast Syria to push for a transitional justice process without undermining the administration's independence or legitimacy.

Ending the cycle of violence will require addressing the issue of collective punishment of the families of ISIS members. Truth commissions, or committees coordinating with them, should investigate extrajudicial violations committed against civilians (during anti-ISIS hunts, or in IDP camps or detention centres) due to their social ties with ISIS members. Following consultations with stakeholders, the commissions should develop programmes to tackle the needs of ISIS members' families, including wives and children, most of whom have no legal documents (such as marriage or birth certificates) nor any place to go.<sup>56</sup> Meanwhile, the regional administration should accelerate and support the voluntary return of the thousands of residents who have been unlawfully detained, especially those held in displacement camps.

Neither the administration nor Syrian community and civil society groups can develop and undertake this alone. The international community has much to gain from the success of a transitional justice approach. While ensuring full Syrian ownership of the process,

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<sup>55</sup> Haid (2018), *Reintegrating ISIS Supporters in Syria: Efforts, Priorities and Challenges*.

<sup>56</sup> Ibid.

Western governments can offer a broad range of much-needed support. In addition to facilitating the return of foreign ISIS members to their own countries, the West should increase financial and technical assistance to official and community-based initiatives.

Ignoring the urgency of developing a long-term plan to serve justice, and contribute to community healing, will almost certainly allow ISIS to continue to prevent the recovery and development of northeastern Syria. This in turn risks further destabilizing the country and the wider region.

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Cover image: A fighter with the Syrian Democratic Forces monitors prisoners accused of being affiliated with ISIS, at a prison in the northeastern Syrian city of Hassakeh on 25 October 2019.

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