

# Transitional Justice in Aparadigmatic Contexts: Accountability, Recognition, and Disruption

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## Chapter 2

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Overcoming the Justice Impasse in Syria

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# Overcoming the Justice Impasse in Syria<sup>1</sup>

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### Introduction

After the start of the 2011 Syrian uprising, Syrian and international stakeholders advanced the transitional justice paradigm to support the hoped-for transition. The regime's obliteration of the protest movement and the transformation of the uprising into a civil war, along with the international disagreement over the conflict's resolution, have undermined efforts to pursue accountability and justice. Despite the fading transitional moment, Syrian and international stakeholders, whom we refer to as justice actors, continue to use transitional justice concepts and mechanisms to mobilise for justice, including but not limited to court cases. In so doing, Syrian justice actors are seeking both to address the accountability gap and to further resistance by foregrounding their demands for freedom and justice that unleashed the uprising. We argue that the transitional justice paradigm has allowed Syrian and international justice actors to counter the pervasive defeatism about the pursuit of justice for Syrians. This has taken place through justice actors' blending of standardised and non-standardised approaches to transitional justice. Moreover, the ingenious use of the transitional justice toolkit in this paradigmatic context has important implications for other justice efforts in situations of ongoing conflict. It demonstrates that even when the international justice architecture is impaired, justice actors can still develop concrete initiatives to overcome the accountability gap and make a tangible difference for victims. In this chapter, we demonstrate how transitional justice's potential for accountability, recognition, and disruption has inspired a broad group of justice actors to overcome the justice impasse in Syria.

The crystallisation of the no-transition scenario has forced both Syrian and international justice actors to reconsider the initial transitional justice programme. Consequently, they have moved away from a comprehensive approach to a more limited practice, focusing strongly on criminal accountability with the prioritisation of documentation efforts and court cases under the principle of universal jurisdiction. However, the zeal for criminal

1 This research was partly funded through ERC-StG-804154 VictPart.

accountability initiatives does not reflect a conviction by Syrian and international justice actors that trials ensure the strongest form of justice. By and large, they acknowledge that criminal accountability can only provide a modicum of justice. Importantly, however, it can open a crack in the wall of impunity. In order to address pressing justice needs, such as clarity about the fate of the forcibly disappeared and the missing, NGOs and victim groups are increasingly turning to other transitional justice initiatives, such as truth-seeking.

In the first section, we describe the evolution of the initial transitional justice programme, looking into the intentions of justice actors who embraced transitional justice mechanisms as a way to defy the accountability gap. In the following section, we analyse how the materialisation of a non-transitioning scenario has forced Syrian and international actors to change strategies, bringing to life a transnational justice network. Finally, we examine how, despite the evolution towards a non-transition and growing apprehensions about the feasibility of the transitional justice paradigm, innovative justice efforts saw the light in the field of criminal accountability, documentation, and victims' activism. For this chapter, we draw on secondary sources and empirical material, collected throughout professional activities with CSOs and victim groups and semi-structured interviews with 14 representatives of Syrian and international NGOs and CSOs. The topic list for these interviews was centred around the introduction and the relevance of the transitional justice paradigm in the Syrian context, the role of international and local justice actors, and developments with regard to the application of the transitional justice toolkit, formal justice avenues and victim groups' initiatives.

## **Transitional Justice: From a Way out of The Deadlock to a Metaphor for Comprehensive Justice**

In this section, we examine how, early on in the uprising, Syrian civil society embraced the concepts and mechanisms of the transitional justice paradigm as a way to uphold the revolutionary demands for freedom and justice, and to initiate the quest for accountability, for past human rights violations perpetrated by the Assad regime as well. Syrian justice actors proactively developed ways to pursue some form of justice in this fluid context, focusing strongly on documentation (Aboueldahab 2018). The introduction of transitional justice concepts and tools, along with best practices implemented in other countries, allowed Syrian justice actors to probe avenues that have been unexplored in the Syrian context, such as criminal accountability and truth-seeking, to defy the justice impasse at the international level, and to pursue a victim-centred, locally relevant approach.

The protests that erupted in 2011 initiated the hope for a transition away from a long history of regime-sponsored human rights violations (Ziadeh 2020). Despite the hostile climate for civil society activism and restricted space for self-expression in the public realm, dissent and resistance are by no means

new phenomena in Syria. Throughout the 2000s, human rights activists, artists, and dissidents increasingly chipped at the wall of fear, thus laying the basis for civil society mobilisation and the creation of dozens of CSOs after 2011 (Salamandra and Stenberg 2015, 3). Some individuals even precociously played with the concept of truth-seeking to determine the fate of those disappeared during the 1982 atrocities, when the regime killed thousands of people during a military assault in Hama (Darwish 2020). This experiment in truth-seeking was by no means imagined as a prelude to a broader transitional justice programme as it was inconceivable to lead to any kind of recognition or accountability at that time. It was seen as a way to prevent the erasure of victims' experiences and to enable memorialisation and potentially even some form of disruption (Darwish 2020; Sawah 2020). The 1982 atrocities and the regime's efforts to erase these crimes provided a strong motivation to document crimes after the 2011 uprising (Nassar 2021).

At that time, Syrian human rights activists and CSOs initially adopted a holistic approach to transitional justice, premised on the aspiration of a transition, despite the regime's prompt escalation of violence. International actors were paramount in this early justice mobilisation. Notably, Western states and institutions sought to play a role in the transition and attempted to lay the groundwork of an – overtly – ambitious transitional justice programme. In this context, Syrian justice actors translated transitional justice concepts and mechanisms to the local context, despite their general lack of experience with the paradigm and despite the regime's persecution of justice actors, forcing them into exile. A milestone in this early mobilisation was the report 'Supporting a Democratic Transition in Syria' by a diverse group of Syrian justice actors aiming to design a strategy for a transition away from dictatorship (The Day After Project 2012). The international passivity after the regime's first use of chemical weapons in 2013 entrenched the non-transitioning scenario and gradually demoted the transitional justice programme in the Syrian context (Sawah 2020). While most Syrian justice actors continued to explore the potential of transitional justice for accountability, recognition, and disruption, a more classic understanding of transitional justice moored to state-sanctioned mechanisms gained ground.

In this early justice mobilisation, justice actors insufficiently acknowledged the consequences of the military escalation and the difficulty of establishing a fully-fledged transitional justice programme in the absence of a transition. As we discuss in the next section, international institutions and states contributed to this as they promoted plans that often proved disconnected from the local reality (Nassar 2020). The transformation of the uprising to a civil war and the dissolution of the hope for change, prompted Syrian civil society to explore avenues to advance justice while violations were ongoing. This resulted in a second early mobilisation milestone: the establishment of a transitional justice coordination group uniting 15 to 17 NGOs. This coordination group served as a laboratory to develop relevant transitional justice initiatives in an increasingly

messy situation (Sawah 2020). While the evaporation of the transition led to this group's gradual demise, Syrian justice actors remained determined to tailor initiatives to the Syrian context in order to assert control over justice efforts (Nassar 2020).

Despite the unavoidable elimination of initial transitional justice plans, justice actors have not formally renounced the application of the paradigm in the Syrian context. This has led to an interesting situation in which theorisation about the desired, standardised model was not abandoned while in practice justice actors increasingly experimented with transitional justice in a non-standardised way. The absence of effective multilateral initiatives to prevent atrocity crimes and overcome the accountability gap has emboldened Syrian CSOs to experiment with transitional justice initiatives (Al Abdallah 2020; al-Bunni 2021). Their implementation in this no-transition scenario is also marred by the multiplication of perpetrators, and the absence of a unified vision within the Syrian justice community (Kawabat and Travesi 2018).

As we discuss in the next section, many early believers became disillusioned with the utility of transitional justice claims in the short term, eliciting lively debates about the effectiveness of the paradigm in the current context. Several respondents indicated that they do not consider justice efforts focusing predominantly on criminal accountability as transitional justice. In the long run, they estimate that a transition is required to provide a comprehensive framework to address justice and accountability (Alhaj Saleh 2021; al-Hallaq 2021; Darwish 2020; Ghazi 2021; Nassar 2021). A classical transitional justice programme would allow for the prosecution of the main perpetrators to provide redress for victims and mitigate the risks of revenge or amnesty (al-Bunni 2021; Sawah 2020). We contend that given the obstacles to the application of this model version of transitional justice, the paradigm turned into a metaphor for a comprehensive justice programme within Syria.

## **A Moving Justice Landscape**

In this section, we critically reflect on how international, multilateral, and Syrian stakeholders adopted, modified, or contested transitional justice claims and initiatives. We argue that a diverse collection of Syrian justice actors, including lawyers, NGOs, and victim groups, was the driving force for a move away from justice efforts solely related to existing judicial mechanisms, testing more grounded ways to centralise victims' experiences and justice needs. The implosion of the early mobilisation forced Syrian and international actors to relinquish the holistic approach to overcome the accountability gap. As a result, different forms of cross-sectional cooperation arose between international institutions, governments, and civil society actors that either joined efforts in a variety of spaces or developed their own, distinct justice initiatives.

The transformation of the conflict into a civil war involving multiple perpetrators was a critical game-changer for international justice mobilisation. When

the Assad regime perpetrated its first large chemical weapons attack in 2013, an international agreement mediated by Russia initiated a shift away from conflict resolution and accountability for mass atrocities to feasibility politics.<sup>2</sup> The situation on the ground became increasingly complicated: Russia and Iran enabled the regime through their military interventions to reacquire control over the majority of the areas held by the opposition, while the Gulf States and Turkey supported armed opposition groups that gradually became radicalised. Furthermore, the emergence of Islamic State (IS) in 2014 decreased attention in the Global North for the government's crimes as the narrative in many policy and media circles evolved from a regime having lost legitimacy to a government fighting violent jihadist groups (Stokke and Wiebelhaus-Brahm 2019; Üngör 2019). On the multilateral level, the UN Security Council reserved its strongest accountability language for IS and violent jihadist groups (Van Schaack 2020a, 60). The predominant focus on jihadi violence has paralysed the 'justice imagination', i.e. the faculty to generate new ideas about how to curb injustices and to stretch the boundaries of what is conceivable in terms of justice and accountability beyond present mechanisms and potentially beyond the judicial realm (Herremans and Destrooper 2021). The regime's strategy of narrative warfare, discrediting oppositional narratives, augmented the climate of uncertainty about the evidence of atrocity crimes.

Therefore, international support was key in laying the groundwork for the mobilisation of transitional justice, as governments in the Global North hoped to play a role in this transition. In an era when the regime appeared to falter, several states implemented projects on the ground (Van Schaack 2020b, 249). As in other countries in the Middle East and North Africa, the transitional justice industry often presented concepts and templates that could not be easily adapted to the local context (Nassar 2020). The United States were, for instance, intent on developing a full transitional justice programme, with the State Department establishing projects on the rule of law and draft laws before there was any clarity about the outcome of the uprising (Nassar 2014, 70).

The unravelling of the initial transitional justice programme obliged Western governments, which had not sufficiently anticipated a scenario in which the Syrian government and Russia would initiate an annihilation campaign, to abandon their holistic perspective (Haugbølle 2019; Ismail 2018, 55). The United States, for example, halted its transitional justice programme on the

2 On 21 August 2013, the Assad regime fired rockets containing sarin on the Damascus suburb al-Ghouta. Although the use of chemical weapons crossed President Obama's 'red line', following negotiations with Russia the United States agreed to suspend its attack on the condition that the Syrian government destroyed its arsenal of chemical agents under the supervision of the Organization for the Prohibition of Chemical Weapons. However, the Assad regime has continued its use of chemical weapons. Since the start of the conflict, there has been at least 336 chemical weapons attacks, of which 98% can be attributed to the regime while IS is responsible for the rest (Schneider and Lütkefend 2019).

ground and developed a preference for prosecution (Sawah 2020). To that end, it supported the establishment of organisations such as the Commission for International Justice and Accountability to bolster documentation efforts in the framework of (future) accountability processes. Yet, as we discuss in the next section, Syrian justice actors refuse a narrow criminal accountability focus, insisting that criminal prosecutions cannot be equated with justice. In light of the justice impasse, they recognised the feasibility of a justice-centred approach to documentation. However, there is a risk that the prioritisation of documentation creates unrealistic expectations among victim communities, raising false hopes with regard to the potential impact of documentation on criminal prosecutions.

While the UN Security Council has constituted a major source of frustration and an obstacle to further accountability, documentation was prioritised at the multilateral level with the establishment of important judicial and truth-finding UN entities. In August 2011, the Human Rights Council established the Independent International Commission of Inquiry on Syria. Since the beginning of its work, it has produced over 20 mandated reports as well as papers on specific issues such as sexual and gender-based violence and detention in Syria. To circumvent the Russian and Chinese veto in the Security Council, the General Assembly established a new justice mechanism for Syria in 2016, the International Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Those Responsible for the Most Serious Crimes under International Law Committed in Syria since March 2011 (the so-called 'IIIM'). While the UN Security Council's role became increasingly marginal, it managed to set up a Fact-Finding Mission in 2014 to investigate allegations of the use of chemical weapons. The Mission's findings provided the basis of a Joint Investigative Mechanism by the Organisation for the Prohibition of Chemical Weapons and the United Nations to identify the perpetrators of the chemical weapons attacks.

The justice-centred approach to documentation generated responses among UN bodies, states, and non-governmental sectors and gave rise to a new justice architecture (Nassar and Rangelov 2020; Van Schaack 2020b, 7). New international entrepreneurial mechanisms emerged, with private justice entrepreneurs collecting evidence and cooperating with states to launch criminal prosecutions. One of the most influential actors is the Commission for International Justice and Accountability, which gathers and preserves evidence from Syria and supports domestic and international justice institutions, such as national prosecutors and the IIIM (Burgis-Kasthala 2019). In collaboration with Syrian justice actors, NGOs, such as the European Centre for Constitutional and Human Rights (ECCHR) and the Open Society Justice Initiative, are leading the strategic litigation efforts before European courts focusing on forcible disappearance, torture, sexual and gender-based violence, and chemical weapons use.

The international justice impasse has led individual states to seek remedies outside the multilateral framework, with some states also pursuing new justice

avenues. In September 2020, the Netherlands announced its decision to ‘hold Syria responsible under international law for gross human rights violations and torture in particular’, indicating that it is prepared to formally submit a case before the International Court of Justice for Syria’s violation of the UN Convention Against Torture if diplomatic routes fail and arbitration attempts are unsuccessful (Guernica 37 2020; Nahlavi and Sekkarie 2020). Canada followed suit in March 2021, announcing that it also requested formal negotiations under the Convention Against Torture. As we describe below, another important development is the strategic use of universal jurisdiction in European countries to prosecute international crimes.

Beyond any doubt, the main driver behind the pursuit of new justice avenues is the Syrian justice community. Its determination to identify new opportunities has entailed a diversification of Syrian civil society with NGOs and CSOs that continue to work in Syria, and NGOs and victim-led initiatives that mostly operate in the diaspora. Several Syrian NGOs continue to work inside Syria, both in opposition-controlled areas and in regime-controlled areas, despite the security conditions that prevent a broader involvement at the domestic level. These initiatives strongly focus on women, youth, and community empowerment to continue documentation efforts to pursue awareness raising about criminal accountability and other ways to address victims’ needs, such as truth-seeking (Nassar 2021). Other specific initiatives have involved lawyers living in Syria in training on justice-related issues. These projects also aim at tackling the growing distance between the diaspora and the lived reality of Syrians within the country. Even if a lot of these efforts are focused on the future, enabling domestic mobilisation remains a key aspiration as many Syrian civil society actors esteem that change will have to come from inside the country (Al Abdeh 2020).

However, the majority of Syrian civil society activists were forced into exile, from where they continue to promote concrete justice efforts. This diasporic activism created new opportunity structures in the field of documentation and truth-seeking as a wide variety of actors mobilised in different global locations (Orjuela 2018; Tenove 2019). Civil society groups that also remained active in Syria, such as The Day After Project, the Syrian Justice and Accountability Centre, Women Now For Development, Dawlaty, and Release Me, became major laboratories for experimenting with practitioner-driven transitional justice initiatives. By 2016, these practices had concretely resulted in a focus on strategic litigation and the conception of victim groups initiatives (Nassar 2020). As we discuss in the next section, this innovation was also rendered possible through transnational cooperation between international and Syrian NGOs.

While the scholarship and broader analysis of transitional justice efforts in Syria have focused largely on the work of institutionalised NGOs, victim/survivor-led groups have opened new spaces and approaches rooted in victims’ perspectives, allowing them to occupy a central position in justice efforts. This



activism thrived mainly as a result of partnerships with Syrian NGOs, which either provided support to groups during or after their founding process, or as groups that had been conceived as NGO programmes became independent. Overall, these victim groups refuse the passive notion of ‘victims’, highlighting that their pivotal role in justice efforts derives from their ownership of experiences of victimhood (Alhaj Saleh 2021; al-Hallaq 2021; Mahmoud 2021; Serriya 2021). Their creation was rooted in the conviction that the role of survivors and their families cannot be reduced to directly supporting survivors or being witnesses, depriving them of agency and decision-making (Helmi 2021). Participation in victim groups has enabled survivors and families to mobilise for their needs and demands before UN bodies and other international avenues. Moreover, several groups started working independently on justice initiatives which we discuss below, thus effectively adopting the transitional justice toolkit to prioritise their most urgent justice needs, such as knowing the fate of the missing and the disappeared.

### **Transitional Justice Contested: Between Resistance and Innovation**

Despite transitional justice being the sole paradigm to advance justice, it provokes resistance, not only among the regime and the warring parties, but also among justice actors such as Syrian NGOs and victim groups. As we discussed earlier, the entrenchment of a non-transition and the multiplication of perpetrators, entailed doubts about the aptness of transitional justice, especially among victim groups who increasingly challenge the relevance of ongoing—criminal—justice efforts for victims and question the power dynamics within the Syrian and international justice community. Transitional justice interventions in the Syrian context have created a Syrian civil society elite that has advanced an understanding of what justice efforts should look like, also inspired by the prioritisation of retributive justice initiatives by the international transitional justice industry that have initially dominated the justice efforts. Moreover, donor patronage relations and the disavowal of the capacities of nascent victim groups entailed power inequalities within the burgeoning civil society scene, resulting in rivalries between NGOs and victim groups (Stokke and Wiebelhaus-Brahm 2019). The changing local and international context confronted Syrian and international justice actors with the need to review the suitability of the transitional justice toolkit (Al Abdallah 2020; Darwish 2020; Ghazi 2021).

The transformation of the conflict also entailed questions about the possible success of transitional justice initiatives among citizens as the assumptions on what they could and should achieve became more removed from their experiences, especially in the growing refugee community (Ghazi 2021; Macdonald 2013; Nassar 2021). Whereas the human rights movement embraced transitional justice at the start of the uprising, for most Syrians it was a new concept that needed to prove its merits. This originally prompted civil society to

focus on awareness raising, as many citizens associated transitional justice with forgiveness and reconciliation and feared it might increase impunity (Sawah 2020). Furthermore, generous donor funding and the development of an NGO elite strengthened apprehensions among many citizens that transitional justice initiatives are a fantasy, even evoking disdain (Darwish 2020; Nassar 2021). Moreover, the transformation of the conflict has created different justice needs among diaspora communities. Over 12 million Syrians have been displaced, among whom 6 million are internally displaced and 6 million are refugees, creating distinct justice needs that are mostly linked to immediate and concrete forms of justice, such as addressing and remedying violations of housing, land, and property rights (Al Abdallah 2020). While some victims, notably within communities present in Europe, advocate for criminal accountability, this endeavour has only symbolic or even no meaning for other victims who are primarily concerned with socio-economic needs (Ghazi 2021). Moreover, victims' conceptualisations of justice can be very different from what transitional justice practice promotes (Al Abdeh 2020). As surveys conducted by Syrian NGOs indicate, a lot of Syrian citizens adhere to the notion of divine justice and have very different perspectives on punishment (Charney and Quirk 2014; *The Day After Project* 2020).

It might seem that the transformation of the conflict, the evolving justice needs and the growing grassroots resistance abolished the momentum for transitional justice in the Syrian context. Nonetheless, we argue that the paradigm has enabled Syrian – and international – justice actors – to develop concrete and creative initiatives in the domain of criminal accountability, documentation, and victims' activism. Even if these initiatives do not offer innovations to the transitional justice framework as such, they are innovative as they open the justice imagination, advancing possibilities beyond existing mechanisms and even beyond the judicial realm. First, criminal prosecutions in foreign national courts under the principle of universal jurisdiction became the main justice avenue in the absence of an effective adjudicative multilateral mechanism. While the focus on criminal accountability is not innovative in itself, strategic litigation in the Syrian context is breaking new ground as it illustrates the ongoing resistance of Syrian victims/survivors and justice actors against both the injustices and the reigning international defeatism. Second, Syrian justice actors have advanced innovative and forward-looking documentation initiatives for purposes beyond criminal prosecutions. Third, a coalition of victim groups managed to present a unified vision to reconnect justice efforts increasingly to the grassroots level by proposing concrete initiatives, moreover with regard to the fate of forcibly disappeared and missing people.

Syrian civil society actors, mostly located in the diaspora, acted on the need to reassess the potential of the transitional justice framework. With the aim of opening an initial formal justice avenue, several Syrian justice actors promoted the application of universal jurisdiction by European domestic courts to prosecute internationally recognised crimes committed in Syria (Kaleck and Kroker

2018). In several European national jurisdictions, judicial authorities initiated or concluded court cases on war crimes or crimes against humanity committed in Syria, mostly the result of Syrian justice actors' investment in strategic litigation in cooperation with lawyers, victims, and their families, teaming up with European NGOs (Elliot 2017; Kroker 2021).<sup>3</sup> The first trial against Syrian torture worldwide that started in the Higher Regional Court in Koblenz, in which two former officials of President Bashar al-Assad's security apparatus were charged with crimes against humanity, is the result of such intense cooperation between the ECCHR, the Syrian Centre for Media and Freedom of Expression, the Syrian Centre for Legal Studies and Research, and the Caesar Files Group (ECCHR 2020). The al-Khatib trial, named after the Damascus detention centre where the accused worked, became the first judicial avenue in which victims of the regime could testify in court. Alongside, civil society managed to draw attention to the widespread practice of torture by government officials. The central place of witness testimony in the proceedings has given victims and survivors a forum in which to raise hitherto underexplored issues, such as sexual and gender-based violence.

The cases under universal jurisdiction illustrate the importance of diaspora-initiated justice activism for awareness raising about the erasure and invisibilisation of crimes. The al-Khatib trial has outcomes that reach far beyond the logic of criminal proceedings. It has stimulated debate within diverse Syrian communities on the potential and limitations of concrete justice initiatives and on difficult questions of justice, such as about who is considered a perpetrator and who is not. The trial has also served as a catalyst to foreground sexual and gender-based violence and the need to prosecute it as a crime against humanity. Moreover, it sparked a debate on transformative justice-related perspectives on gender-based violence, for example, on the predominant focus on violence that women endure, while Syrian men and children have also been subjected widely to sexual violence (Al Abdeh 2020; Kroker 2021). However, the al-Khatib trial also provoked dismay, mainly among victim groups that argue that victims benefit little from this type of criminal accountability given the lack of genuine participation of victims. They deem that it is largely symbolic and cannot replace a future tribunal in Syria (Alhaj Saleh 2021). Additionally, the inability of European courts to fully address the experiences of victims in Syria, highlighted by the refusal to include enforced disappearance in the charges against defendants in the al-Khatib trial, also triggered criticism (Schmitz-Buhl 2021).

3 Since 2016, the ECCHR, for example, has been filing torture cases together with more than 50 Syrians (torture survivors, relatives, activists, and lawyers) in Austria, Germany, Norway, and Sweden. The two countries that have initiated the largest number of investigations under universal jurisdiction are Germany and Sweden.

A second important innovation is the multiple uses of documentation by Syrian civil society (Tenove 2019). While documentation in the transitional justice paradigm is conceived as a precursor to other mechanisms, documentation efforts in the Syrian context also open possibilities for truth-seeking, reparations, and memorialisation and could almost be seen as a stand-alone mechanism because of its centrality and its transformative potential (Aboueldahab 2018; Kabawat and Travesi 2018; Nassar 2021). Therefore, Syrian justice actors criticise the disposition within institutional circles to view documentation predominantly from a criminal justice perspective. Victim groups, for example, document their experiences as former detainees and victims to resist the erasure and invisibilisation of their experiences of harm, as they understand the dramatic effects of the regime's and Russia's narrative warfare, the discrediting of evidence of atrocity crimes and of oppositional narratives (Üngör 2019). Through documentation, they forbid forgetting and also preserve and highlight their agency (Alhaj Saleh 2021; Serriya 2021).

In this respect, documentation is part and parcel of Syrian justice actors' non-violent resistance. This way of looking at documentation is a rebuttal of the adage that 'history repeats itself', as justice actors are determined not to let the regime suppress the memory of atrocity crimes as happened in 1982. Syrian justice actors increasingly address legacies of rights violations and multiple victimisations through truth-seeking and memorialisation initiatives, notwithstanding the limitations such as the impossibility of establishing an official truth commission and the complexity of truth-seeking in an ongoing conflict (al-Bunni 2021; Darwish 2020; Nassar 2021). Artistic practices play an important role in these efforts to offer more complex understandings of truth.<sup>4</sup> This is not a new phenomenon, as socially-engaged artists have traditionally challenged and stretched the boundaries of permissible public discourse (Bank 2020, 101; cooke 2016, 31). The artistic response to the current conflict has focused strongly on experiences of harm, with many artists bearing witness and 'presencing' the plight of victims, resisting the erasure of their stories and offering counternarratives to hegemonic discourses about the Syrian conflict.

Many justice actors sense that the merit of documentation also lies in its future possibilities. To date, the entire spectrum related to reparations, compensation, restitution, rehabilitation, and guarantees of non-recurrence has largely been left out of transitional justice claims in Syria. However, some Syrian CSOs started documentation work to collect property documents to record and challenge housing, land, and property rights violations, with a view

4 Families for Freedom and The Syria Campaign, a human rights advocacy group, initiated activities such as a European tour with the *Freedom Bus* to ask for freedom for the detained and forcibly disappeared in Syria. Together with the Caesar Families Association, these groups organised sit-ins outside the Koblenz court with pictures of their beloved ones. Visual artist Khaled Barakeh set up the installation *Mute*, involving Families for Freedom and The Syria Campaign, to remember those who asked for freedom and dignity in 2011.

to laying the foundation for a future restitution and compensation mechanisms (Enab Baladi 2020).<sup>5</sup> Despite the impossibility of establishing an official reparations programme, the question of how reparations may address victims' needs and overall Syrian society, is not left unaddressed. Yet, invoking the restorative justice paradigm in the Syrian context is a sensitive undertaking as many Syrian justice actors and victims deem it incompatible with criminal accountability (al-Omari 2020).<sup>6</sup> Furthermore, there is a fear that invoking restorative justice claims could be interpreted as an openness towards reconciliation or a sign of victims' willingness to waive rights in return for material compensation. We believe that this fear stems from a lack of acquaintance with the restorative justice paradigm, fuelling an inadequate understanding of what remedy and reparations could entail in practice.

The third, and possibly most surprising innovation in ongoing justice efforts is led by victim groups that initiated ingenious efforts to address the priorities of the primary beneficiaries of justice, such as survivors of torture, families of the disappeared, and the detained. Activities taking mostly place in informal spaces, such as workshops, protests, or sit-ins, foreground issues and voices that risk being erased or invisibilised in formal spaces. In the absence of judicial avenues other than universal jurisdiction cases, only a fraction of the international crimes, such as torture and arbitrary detention, are raised in formal processes, which had as an unintended consequence the erasure of other issues (Herremans and Destrooper 2021). This has prompted victim groups to claim a larger space in justice efforts to highlight crimes that have hitherto not received sufficient exposure, such as sexual and gender-based violence. Furthermore, this activism has reinvigorated the justice landscape at a moment when justice efforts were largely equated with criminal accountability.

In this respect, the Truth and Justice Charter of the Association of Detainees and Missing of Sednaya Prison, Caesar Families Association, the Coalition of Families of Persons Kidnapped by IS-Massar, Families for Freedom, and the Ta'afi Initiative (2021) presents a milestone. This joint Charter is primarily promoting collective mobilisation and cooperation among victims and their families, besides appealing to NGOs, states, and international institutions to strengthen their commitment to victim participation. The Charter is built upon the idea of providing small, cumulative steps in the short, medium, and long term to eventually achieve truth and justice for victims and their families. It provides a victim-centred reading of what transitional justice efforts should look like in the Syrian context, pursuing a timeline based on the urgency of

5 The Day After Project and Free Syrian Lawyers have been leading the work in collecting and safeguarding property-related documents.

6 A reference to the concept of restorative/reparative justice in a UN Security Council briefing by the Special Envoy for Syria, Geir Pedersen, on 16 December 2020 was met with criticism by some Syrian civil society representatives. While it related to a translation error, their outrage reveals a malaise about restorative justice.

certain measures for victims and their families. Key short-term justice demands are the release of the detainees, information about the fate of the disappeared, an immediate halt to torture, inhuman treatment and sexual crimes, and the return of the remains of those killed under conditions of enforced disappearance and detention.

As more than 100,000 persons have been forcibly disappeared or kidnapped by several parties to the conflict (Syrian Network for Human Rights 2020), clarity about their fate is a central justice priority. Hence, the Charter's associations initiated a campaign for a mechanism to find Syria's disappeared and detained in order to fulfil Syrian families' right to the truth (Sarkin 2021). Even though victim groups have continuously called for attention to the fate of the disappeared and the missing, the issue did not figure strongly on the international agenda until March 2021, when both the UN Commission of Inquiry and the High Commissioner for Human Rights supported their call for the establishment of a mechanism. The victim groups' action for change has highlighted the importance of justice initiatives centred upon the lived reality of victims and their families. Moreover, it reinvigorated the international community's efforts, spurring other stakeholders and UN actors to adopt a victim-centred approach in processes or initiatives conducted in the Syrian context.

## **Conclusion**

Despite the transformation of the conflict, the absence of prospects for a transition, and the gradual shift of international attention to perpetrators other than the Assad regime, Syrian and international justice actors have spearheaded ingenious transitional justice initiatives. Yet, the evolution to a non-transitioning scenario has fundamentally altered the understanding of the transitional justice paradigm in the Syrian context, nurturing apprehensions among practitioners and victims regarding the paradigm's relevance. Justice actors nevertheless continue to draw upon it to overcome the justice impasse. Dwindling international mobilisation for justice hampered their efforts as the belief in advancing justice subsided and governments in the Global North prioritised the fight against IS. Thereby they unwillingly exacerbated the fragmentation among Syrian and international justice actors who designed different, and sometimes competing, justice pathways.

Nonetheless, Syrian NGOs and victim groups have used the transitional justice toolkit as a conduit for resistance, brokering accomplishments in the field of documentation, criminal accountability, and victim group activism. Victim groups, in particular, have demonstrated a prodigious capacity to reflect on and advance their own participation in justice processes. Intuitively and forcibly, they adopted an eco-systemic approach that eschews neat categories and views victims' trajectories as ongoing processes which have an inherent meaning and value (Evrard et al. 2021). The non-transition compelled them to stall a comprehensive transitional justice programme in favour of concrete actions.

Syrian and international justice actors' achievements also highlight the murkiness of non-paradigmatic transitional justice contexts. Rather than waiting for a transition to happen, justice actors tailor the transitional justice toolkit to substantial needs, insisting on the need to prioritise other elements besides criminal accountability, such as truth-seeking, reparations, and guarantees of non-recurrence. They prove that even in dark times, when advancing justice for victims of international crimes seems futile, the transitional justice paradigm can provide a way to push the boundaries of a realistic justice and make a tangible difference for victims.

## References

- Aboueldahab, N. (2018) 'Writing Atrocities: Syrian Civil Society and Transitional Justice'. *Brookings Doha Center Analysis Paper 21*, May. Available at: <https://www.brookings.edu/research/writing-atrocities-syrian-civil-society-and-transitional-justice/>
- Al Abdallah, M. (2020) Interview. Director, Syrian Justice and Accountability Centre, 8 December.
- Al Abdeh, M. (2020) Interview. Director, Women Now for Development, 6 December.
- Al-Bunni, A. (2021) Interview. Director, Syrian Centre for Legal Studies and Research, 8 January.
- Alhaj Saleh, K. (2021) Interview, Member, Coalition of the Families Kidnapped by IS-Massar, 20 April.
- al-Hallaq, M. (2021) Interview, Member, Caesar Families Association, 29 April.
- al-Omari, M. (2020) 'Al-adalah al-tasalahiya fi siyaq al-'adalah al-intiqaliya' [Restorative Justice in the Context of Transitional Justice]. *Enab Baladi*, 27 December. Available at: <https://www.enabbaladi.net/archives/443424>.
- Association of Detainees and Missing of Sednaya Prison, Caesar Families Association, the Coalition of Families of Persons Kidnapped by ISIS-Massar, Families for Freedom, and Ta'afi Initiative (2021) 'Truth and Justice Charter'. February. Available at: [https://www.impunitywatch.org/\\_files/ugd/f3f989\\_ea2bcacb68664b52a2b9dc090b3c775e.pdf](https://www.impunitywatch.org/_files/ugd/f3f989_ea2bcacb68664b52a2b9dc090b3c775e.pdf).
- Bank, C. (2020) *The Contemporary Art Scene in Syria: Social Critique and an Artistic Movement*. London: Routledge.
- Burgis-Kasthala, M. (2019) 'Entrepreneurial Justice: Syria, the Commission for International Justice and Accountability and the Renewal of International Criminal Justice'. *European Journal of International Law* 30(4), 1165–1185.
- Charney, C. and C. Quirk (2014) 'He Who Did Wrong Should be Accountable: Syrian Perspectives on Transitional Justice'. Washington, DC: Syrian Justice and Accountability Center. Available at: [https://syriaaccountability.org/content/files/2022/04/SJAC\\_Syrian\\_Perceptions\\_2014\\_EN.pdf](https://syriaaccountability.org/content/files/2022/04/SJAC_Syrian_Perceptions_2014_EN.pdf)
- cooke, m (2016) *Dancing in Damascus: Creativity, Resilience, and the Syrian Revolution*. New York: Routledge.
- Darwish, M. (2020) Interview. Director, Syrian Centre for Media and the Freedom of Expression, 11 December.
- ECCHR (2020) 'First Criminal Trial Worldwide on Torture in Syria before a German Court'. Available at: <https://www.ecchr.eu/en/case/first-criminal-trial-worldwide-on-torture-in-syria-before-a-german-court/>.

- Elliot, I. (2017) 'Meaningful Step towards Accountability? A View from the Field on the United Nations International, Impartial and Independent Mechanism for Syria'. *Journal of International Criminal Justice* 15(2), 239–256.
- Enab Baladi (2020) 'Syrian Human Rights NGO Calls on Real Estate Owners to Document their Properties to Avoid Palestine's West Bank Scenario'. 11 December. Available at: <https://english.enabbaladi.net/archives/2020/06/syrian-human-rights-ngo-calls-on-real-estate-owners-to-document-their-properties-to-avoid-palestines-west-bank-scenario>.
- Evrard, E., G.M. Bonifazi, and T. Destrooper (2021) 'The Meaning of Participation in Transitional Justice: A Conceptual Proposal for Empirical Analysis'. *International Journal of Transitional Justice* 15(2), 428–447.
- Ghazi, N. (2021) Interview. Director, No Photo Zone, 23 April.
- Guernica 37 (2020) 'Guernica 37 Assists the Government of the Netherlands in Holding Syria Accountable'. 18 September. Available at: <https://www.guernica37.com/post/press-statement-guernica-37-assists-the-government-of-the-netherlands-in-holding-syria-accountable>.
- Haugbølle, S. (2019) 'Holding out for the Day After Tomorrow: Futurity, Memory and Transitional Justice Evidence in Syria'. In: I. Bramsen, P. Poder and O. Wæver, eds. *Resolving International Conflict: Dynamics of Escalation, Continuation and Transformation* (pp. 229–244). Abingdon: Routledge.
- Helmi, A. (2021) Interview. Founder, Ta'afi Initiative, 29 April.
- Herremans, B. and T. Destrooper (2021) 'Stirring the Justice Imagination: Countering the Invisibilization and Erasure of Syrian Victims' Justice Narratives'. *International Journal of Transitional Justice* 15(3), 576–595.
- Ismail, S. (2018) *The Rule of Violence: Subjectivity, Memory and Government in Syria*. Cambridge: Cambridge University Press.
- Kaleck, W. and P. Kroker (2018) 'Syrian Torture Investigations in Germany and Beyond Breathing New Life into Universal Jurisdiction in Europe?' *Journal of International Criminal Justice* 16(1), 165–191.
- Kawabat, N. and F. Travesi (2018) 'Justice for Syrian Victims Beyond Trials: The Need for New, Innovative Uses for Documentation of Human Rights Violations in Syria'. New York: International Center for Transitional Justice.
- Kroker, P. (2021) Interview. International criminal lawyer, ECCHR, 29 April.
- Macdonald, A. (2013) 'Local Understandings and Experiences of Transitional Justice: A Review of the Evidence'. Justice and Security Research Programme, London School of Economics and Political Science. Available at: <http://eprints.lse.ac.uk/56354>.
- Mahmoud, F. (2021) Interview. Member, Families for Freedom, 27 April.
- Nahlavi, Y. and S. Sekkarie (2020) 'We'll See You in Court: How the Netherlands May Finally Bring Syria to The Hague'. *Opinio Juris*, 2 October. Available at: <http://opiniojuris.org/2020/10/02/well-see-you-in-court-how-the-netherlands-may-finally-bring-syria-to-the-hague>.
- Nassar, H. (2014) 'Transitional Justice in the Wake of the Arab Uprisings: Between Complexity and Standardisation'. In: J.F. Fisher and R. Stewart, eds. *Transitional Justice and the Arab Spring* (pp. 54–74). Routledge: Abingdon.
- (2020) Interview, Director, Policy and Research at Impunity Watch, 25 November.
- Nassar, S. (2021) Interview, researcher and human rights defender, 2 April.
- Nassar, S. and I. Rangelov (2020) 'Documentation of Human Rights Violations and Transitional Justice in Syria: Gaps and Ways to Address Them'. Conflict Research



- Programme, London School of Economics and Political Science. Available at: <http://eprints.lse.ac.uk/106206>.
- Orjuela, C. (2018) 'Mobilising Diasporas for Justice. Opportunity Structures and the Presenting of a Violent Past'. *Journal of Ethnic and Migration Studies*, 44(8), 1357–1373.
- Sarkin, J. (2021) 'The Case for an International Mechanism to Address the Detainees and Disappeared Crisis in Syria'. Available at: <https://taafi-sy.org/wp-content/uploads/2021/05/Humans-Not-Numbers-EN-FINAL-20MAY2021.pdf>.
- Sawah, W. (2020) Interview. Independent transitional justice expert, former director, the Day After Project, 30 November.
- Salamandra, C. and L. Stenberg (2015) 'Introduction'. In: C. Salamandra and L. Stenberg, eds. *Syria from Reform to Revolt. Volume 2: Culture, Society, and Religion* (pp. 12–27). New York: Syracuse University Press.
- Schmitz-Bühl, L. (2021) 'Missing Perspectives'. *Völkerrechtsblog*, 30 August. Available at: <https://voelkerrechtsblog.org/missing-perspectives/>.
- Schneider, T. and T. Lütkefend (2019) 'Nowhere to Hide: The Logic of Chemical Weapons Use in Syria'. February. Berlin: Global Public Policy Institute. Available at: <https://www.gppi.net/2019/02/17/the-logic-of-chemical-weapons-use-in-syria>.
- Serriya, D. (2021) Interview. Director, Association of Detainees and the Missing in Sednaya Prison, 26 April.
- Stokke, E. and E. Wiebelhaus-Brahm (2019) 'Syrian Diaspora Mobilization: Vertical Coordination, Patronage Relations, and the Challenges of Fragmentation in the Pursuit of Transitional Justice'. *Ethnic and Racial Studies* 42(11), 1930–1949.
- Syrian Network for Human Rights (2020) 'Record of Enforced Disappearances'. <https://sn4hr.org/blog/2021/08/04/record-of-enforced-disappearances1>.
- Tenove, C. (2019) 'Networking Justice: Digitally-enabled Engagement in Transitional Justice by the Syrian Diaspora'. *Ethnic and Racial Studies* 42(11), 1950–1969.
- The Day After Project (2012) 'Supporting a Democratic Transition in Syria: Vision, Principles, Objectives, Challenges, and Recommendations'. August. Available at: <https://www.swp-berlin.org/en/publication/the-day-after-democratic-transition-in-syria>.
- (2020) 'Conditions of Victims and Their Attitudes Towards Accountability and Reparations'. Available at: <https://tda-sy.org/2020/05/05/conditions-of-victims-and-their-attitudes-towards-accountability-and-reparations>.
- Üngör, U. (2019) 'Narrative War is Coming'. *Al-Jumhuriya*, 7 June. Available at: <https://www.aljumhuriya.net/en/content/narrative-war-coming>.
- Van Schaack, B. (2020a) 'The International Community's Efforts in Syria'. In: H. Moodrick-Even Khen, N. Boms, and S. Ashraph, eds. *The Syrian War: Between Justice and Political Reality* (pp. 243–267). Cambridge: Cambridge University Press.
- (2020b) *Imagining Justice for Syrians. Lieber Studies Volume 4*. Oxford: Oxford University Press.
- Ziadeh, R., ed. (2020) *Accountability in Syria: Achieving Transitional Justice in a Postconflict Society*. London: Lexington Books.