

Episode 1, season 3 (September 2021)

## How do we talk about justice for Syrians?

Welcome to *Justice Visions*, the podcast about everything that is new in the domain of Transitional Justice (TJ). *Justice Visions* is hosted at the Human Rights Centre of Ghent University. For more information visit [Justicevisions.org](http://Justicevisions.org).

**Sangeetha:** Welcome to this new season of the *Justice Visions* podcast in which we will continue to discuss developments in the domain of transitional justice. My name is Sangeetha Yogendran, I am one of the researchers on the Justice Response team, and I'm very excited to host the new season of the podcast. In this season, we're going to zoom in on our own research through the question of 'How do we talk about'... We are going to join practitioners, victims and other researchers into the conversation. And today we shed a light on justice efforts for Syrians with our colleague Brigitte Herremans, who is sitting here with me in the recording studio. So welcome, Brigitte.

**Brigitte:** Hello, Sangeetha.

**Sangeetha:** So you're keen to talk about justice efforts for Syrians and make the case for opening what you call the 'justice imagination', sharing some insights from [an article that you and Tine Destrooper](#) have recently published on which justice efforts exist in the Syrian context. And also, how can we open up the debate on what is possible? So if I can ask you here, why do you feel it's important to talk about this issue now?

**Brigitte:** Personally, I feel it's always important to talk about Syria, because that's what I'm studying on a daily basis and also because the impact of the conflict is heavily underestimated. Feasibility politics has really determined the way how we discuss this conflict and the way how we're dealing with the Assad regime. And this regime managed to crush the uprising and launched what I would call an annihilation campaign against the majority of its citizens. And this really numbed a lot of people.

**Sangeetha:** In what sense, Brigitte, do you think it has numbed people?

**Brigitte:** This generated a feeling that we have to put up with Assad, and this has overshadowed the justice debate. And of course, people don't wait for the end of the conflict or for Assad to leave, to really start the pursuit of justice and accountability. And that's really why we wanted to spark the debate with this article amongst academics, ideally, but also, of course, with practitioners. And we've interviewed a couple of these practitioners on how they conceive of justice efforts and also what the shortcomings are in the current climate.

**Sangeetha:** That's great to hear. To demonstrate what these endeavours concretely are, you also spoke to [Mariam al-Hallak](#) and [Yasmine Fedda](#). Maryam's son Ayham was forcibly disappeared and killed by the Assad regime, and she never retrieved his body. She is now the founder of [Caesar Families Association](#), gathering families who identified their missing relatives through a collection of photographs known as the [Caesar Files](#). Currently, she is based in Berlin. Yasmin Fedda is an award winning

filmmaker from a Palestinian and Syrian background and lectures in film at Queen Mary University of London. She directed the documentary *Ayouni*, chronicling the story of media activist Bassel Safadi and Italian priest Paolo, who are respectively disappeared and executed by the regime and kidnapped by ISIS. The film was released in February 2020, and it did not screen as widely as hoped because of COVID, but it can be watched online via the site of Ayouni. These must have been very rich conversations, Brigitte.

**Brigitte** Yes, indeed. I really wanted to bring in Maryam and Yasmin because they want to overcome the absence of the disappeared and the missing. And through civil society activism on the one hand and artistic practices on the other hand, they really both in their own way, make the voice of victims and survivors heard. And it's really hard to fathom how to stop injustices in that big black place that Syria currently is. And often outsiders, when I speak to them, they're very pessimistic about the potential and the value of justice initiatives. And in my understanding, this defeatism also overshadows, and it even undermines, the activism of activists, NGOs and even formal institutions, whereas they're putting daily justice on the international agenda.

**Sangeetha:** This pessimism must be really hard for these justice actors and the lack of accountability and also criminal proceedings must be devastating for survivors and victims.

**Brigitte:** Yes, indeed. And it also forces them, of course, to look for other avenues. And by zooming in on these particular projects of Maryam and Yasmin, I wanted to demonstrate that the right to truth is really of utmost importance for victims. And for example, Maryam, after a quest of almost two years, she wanted to find out about her son Ayham. And her first and foremost demand is really to have a grave for her son. And Yasmin, she wants to demonstrate how forcible disappearances and kidnappings are often used to silence people. And she wants to counter this by presenting those who are missing.

**Sangeetha:** Now, that was really interesting information to learn about. But if I can maybe take a step back before we dive into these complex topics of overcoming absences, erasure, invisibilization, could you provide us with some background on the Syrian conflict? What are currently the most important obstacles to justice?

**Brigitte:** Well, of course, at the heart of the problem lies a lack of political will. And there's an international stalemate, of course, that is reflected by the Russian and Chinese veto in the UN Security Council, and that blocks a referral to the International Criminal Court. And, of course, Russia is not only opposing accountability efforts, it is also actively participating in the crimes as an ally of the Syrian regime. So that's one issue. Secondly, of course, there are the intricacies of the conflict with international, internal and regional dimensions. And when we look at the civil war, this was really caused principally by the regime's determination to resort to every form of violence, to crush contestation, and thus it transformed the original protest movement that was peaceful, into violent conflict. And what we saw, of course, were hostilities between the regime and violent jihadi groups with increasing international involvement by Russia and Iran, backing the regime on the one hand, and then Gulf states and Turkey backing the rebel groups, on the other hand.

**Sangeetha:** And at this junction could you tell us about the emergence of the Islamic State in Iraq and Syria, or Da'ish as it is known?

**Brigitte:** Well, the emergence of ISIS in 2014 changed the nature of the conflict and really turned it into an international conflict. It has led to the US led military intervention with air strikes in Syria and Iraq. And then lastly, there is the Turkish invasion and occupation of large parts of northern Syria since 2016. So this entails a high level of complexity, along with terrible violence by a growing number of perpetrators. And this has led to a complexity that prompted a kind of Syria fatigue, where people are disinterested in the conflict and it makes them turn their gaze away.

**Sangeetha:** I mean, this is indeed a very complex and almost impossible to capture and explain in just a few sentences, although I think you did a wonderful job at it. But another thing that we seem to see here is that the emergence of ISIS was one of the major turning points in this conflict. It seems to have led to a shifting narrative in media and policy circles from the Assad regime as the main perpetrator of international crimes to the regime that has to fight a violent jihadist group. So how did this turn affect the international mobilization for justice?

**Brigitte:** Well, maybe it got the regime off the hook and it entrenched a tendency of creeping impunity. And this tendency already manifested itself in 2013 when the regime got away with the use of chemical weapons for the first time and started to demographically reengineer the country through annihilation policies. And it didn't have to pay an important price. Then, of course, the horrific violence of ISIS and the real security threat that it also poses in the global North, made it much easier to forget that the regime is responsible for the majority of the crimes. And of course, this has led to a de facto, I would say, acceptance of the regime, even if it's a reluctant one, that there is no prospect of a transition any soon.

**Sangeetha:** This is indeed very worrying phenomenon, also coupled with that creeping impunity you described.

**Brigitte:** What makes matters worse of course, is the regime's successful strategy of disinformation along with Russia that helps it there. I refer to it as narrative warfare. And it aims at discrediting the evidence of crimes and also the narratives of opposition leaders and activists. And we saw this, again, in the case of the use of chemical weapons by the regime, that decided to pass on the responsibility to opposition groups and Da'ish and denied flatly that it had any responsibility. So the effect of narrative warfare and the Syria fatigue really pushed the experiences of victims to the background. And it somehow made these injustices abstract, as if they don't pertain to this world.

**Sangeetha:** And I mean, if you think about it, the sheer numbers itself are just shocking. We're looking at over 500,000 Syrians who have been killed, 12 million who have been displaced, and 130,000 who have been forcibly disappeared. It seems as if these numbers no longer touch us as much as they used to, and rather, they make victims fade away. So in your article, you argue that the Syrian conflict is the perfect example of the way in which international crimes are erased and invisibilized. So what's the difference between these two phenomena and why is this so relevant in the Syrian context?

**Brigitte** I think to understand erasure and invisibilisation in the Syrian context, which I will elaborate in a second, we need to understand the paradox that we see between the very high level of documentation and then the scant, I would say almost non-existent formal avenues for justice. So the evidence of atrocity crimes is staggering. Just to focus on one example of solid evidence, we have the [Caesar Files](#), which is an archive of a military defector that proved that over 6000 detainees died in torture. Yeah, it's amazing. These files really provide the evidence for investigations such as a current universal jurisdiction trial in Germany that specifically focuses on state torture, the [al-Khatib trial](#).

**Sangeetha:** Just to give some background here for those who might not be that familiar: the al-Khatib trial, called after a detention facility in Damascus, against two former Syrian security service officials started in Koblenz in April 2020.

**Brigitte:** Indeed, and it has led to the conviction of [Eyad A](#) for crimes against humanity. He was sentenced to 4,5 years in prison. The trial against [Anwar R](#), accused of the torture of at least 4000 people between 2011 and 2012 in al-Khatib, is ongoing. This trial is a milestone as it is a shift away from the hitherto almost exclusive focus on jihadi perpetrators in universal jurisdiction cases. We recognize this in our article. Yet, the debates around the trial, set us thinking about the danger of erasure and invisibilization. We define erasure as a process in which acts and choices of actors result in a narrowing of justice narratives by excluding certain very important voices or certain topics. In the case of invisibilization, there is no specific actor such as in the case of erasure. But it's a gradual process of marginalization. To start with the latter, for example, in the Syrian context, we see that sexual and gender based violence for a long time was absent from the dominant justice narrative. So a clear case of invisibilization. When we look into torture, it might be a bit strange to state this, but torture has been highlighted very much. And of course, a result of the fact that it's a relatively easy crime to investigate and prosecute because of the vast amount of evidence by transnational groups of justice actors: victim groups, NGOs, but also formal institutions such as the [IIIM](#). But conversely, if we look, for example, at the use of chemical weapons or the bombardments of civilian infrastructure such as hospitals, these crimes were initially not addressed at all in universal jurisdiction cases because of the lack of willingness and also the lack of legal tools to prosecute these crimes. So it's very important to address these crimes because they risk disappearing from the justice debate.

**Sangeetha:** And to link this to a concrete case, you wanted to zoom in on forcible disappearances and kidnappings. And you spoke about this topic to Yasmin Fedda, the director of the documentary *Ayouni* a few days ago. And as Yasmin highlights in this fragment, these practices have a far reaching impact.

**Yasmin:** I think it's like as an act of war, like a war crime, I think it's a very, let's say, efficient way to silence critics because it both silences the person that's been targeted. But it can also have a numbing effect on their family members or loved ones or networks that they were part of because I think particularly in the case of Syria, there's just so many different layers of fear and complexity around how you deal with different kinds of situations like this. The first layer of difficulty is, you know, can you negotiate or find anything, anything about them? And families are sometimes scared to speak up about what's happened to them in case it affects what happens to their loved one during their disappearance. So it kind of numbs people.

**Brigitte:** What is so terrible here, is that people revolted against the regime and hoped that the walls of fear would crumble. As Maryam al-Hallak confirms, breaking down the fear of the regime continues to remain one of the most important challenges. A couple of days ago, I spoke to her over the phone in Arabic. You will hear her Maryam in Arabic, as it is important to have her voice in the episode. I asked Maisaa Tanjour to do the voice-over in English.

**Sangeetha:** But maybe it is nice to add that for the Arabic speakers, we will make sure that the conversation between Maryam and Brigitte is available on our website. Let's listen now to Maryam who talks about the importance of breaking down the fear.

**Maryam:** There is fear. Fear to tell your story. Even as we live in Europe there are many families who are afraid to tell their stories because so far some of their members are in Syria, and we know that the regime can arrest anyone arbitrarily without any justification. The first thing we need to get rid of is this fear. We need to erase this fear from the hearts of people, especially those outside Syria. Everyone must tell their stories. All the people should tell their stories, all the victims, and all the survivors must tell their stories to the whole world so that they can make a kind of narrative, a Syrian narrative to the whole world, so that the world works to reach the decisionmakers, which is a kind of pressure on them, in addition to, of course, the work of civil society organizations whose role is to take the stories and also work on them.

**Brigitte:** Maryam clearly explains that victims are not only exposed to the chilling effect of war crimes, but the lack of criminal accountability comes on top of that. And then it's also impossible in a lot of cases to find the truth about what happened to their loved ones. And even when they get to confirmation that that person died, often through false and forged death certificates by the regime, in many cases they are left without the body. And this causes tremendous pain. And Maryam talks about the search for her son Ayham and how she lived it. And for some listeners, it might be quite distressing to hear these details.

**Maryam:** Waiting began with the arrest of Ayham. Of course, he had been detained for three months previously. The second arrest was on 5<sup>th</sup> November 2012. He was arrested at Damascus University. His friends told us that he was arrested at the university. We waited for three months. I wasn't always waiting at home, I was always looking for him. We kept looking for him for three months until a young prisoner was released. He was the one who documented everything that had happened, the torture, how he died in his company. So he told me that he died. We organised a mourning gathering according to traditions. At this stage, the waiting had stopped because the end was now revealed. But ten days later, different news reached us, by one of those who had been arrested. He was a distant relative who got out and told us that Ayham was still alive and that he spoke to him. So I entered a phase where I only wanted to know the truth and whether Ayham was alive or dead.

For seventeen months, i.e. a year and five months, I kept looking for him every day. I searched for him. Is he alive or dead? I didn't care if he was arrested or not. My concern was to find the truth, however possible. I tried with the highest authorities but to no avail. The daily waiting continued for seventeen months, until they gave me his death certificate. A death certificate which states he died five days after his arrest. All this search was in vain, all this waiting was in vain. I took the certificate but there was no

certainty, I didn't receive his body, I didn't know how he died. I didn't know anything about him. After about six months, I tried to see where his belongings were buried. I was able to obtain a paper from the military judiciary saying that he died in one of the security branches and that his body number was three hundred and twenty. This was on the same date that was mentioned five days after the arrest. Also, like I said, the security officers followed us and we left the house where we had sought refuge, so we fled to Lebanon. In Lebanon the waiting continued, there was still hope because I had not seen him, I had not buried him, I had not seen his body, so I remained hopeful until then, even if the hope was just a chance of five in one million. Until the Caesar's photos appeared. His picture was clear, he died five days after arrest. It's clear. This means our waiting ended. Yet, this waiting lasted two years from the day he was arrested, during which I searched and waited on a daily basis. Of course, we've been subjected to extortion. People take advantage of your desire to know the truth. This was very difficult because they would come to tell you that they know something in exchange for money. The situation was very difficult. I don't know what to say. I hope that waiting will stop for all the families and the detainees will be set free, *insha'allah*, and they will all return to their families alive.

**Sangeetha:** So the issue of waiting and just not knowing, it must be excruciating.

**Brigitte:** Yes, indeed, and that's why people take matters into their own hands, because very little is done at the international level. And Maryam explains how she founded the Caesar Families Association because she wanted to join forces with other families and do advocacy work, amongst others. But often policy makers were incapable of doing more than listening. There were affected by the stories of the survivors and the families. But there were unable to help out. Together with four other victim groups, they launched a Charter for Truth and Justice in 2021, so last February, because they wanted to weigh on the political agenda. And one of their concrete demands is the establishment of a mechanism for the forcibly disappeared and the missing.

**Maryam:** We formed a coalition under the name Truth and Justice Charter to retain the independence of each association that works on its own. The Charter was established on 10 February 2021. Afterwards, we raised the issue of working on a mechanism. We, the Caesar Families Association, are interested in the mechanism, which would allow international entities approved by the Security Council, the European Union or the General Assembly to enter Syria because the Syrian regime prevents any organization from entering Syria. They need to focus only on revealing the fate of the missing. We don't want to determine who the perpetrators are. We don't want to hold anyone accountable, but we just want to know the fate of those who have been missing for ten years, what happened to them, who is alive and who is dead. The idea of revealing, and the mechanism itself would be humanitarian. Of course, we won't forget that we want to hold the perpetrators accountable and we won't forget that we're asking for compensation, whether moral or material, for the families, for all Syrian families who lost their possessions and children.

**Sangeetha:** So this is really interesting how victim groups set their priorities in the absence of formal or criminal accountability avenues. They indicate that the search for the truth prevails. Now they seem to refuse passivity, just like Yasmin explains to you that you need to find a way to hold on to the truth also to make future efforts happen.

**Yasmin:** Something I realized and, you know, as I was working on this, in the case of like researching forcible disappearance on the ground forensically was basically impossible. It was not an option. And it still is not an option for many families. So the only way to kind of tackle it or to look into it was emotionally and through people's stories. And therefore, it's really important there will become a time in the future that forensic kind of research will be possible on the ground, you know, whether it's mass graves or where people have been held. But that work is yet to happen, really. And in the meantime, I think it's really important to still gather those stories as evidence of the lives that have been disappeared.

**Brigitte:** Yeah, for Yasmin it was really important to make sure that these stories are not forgotten and that's why she made her documentary because she personally knew Basil and Paolo. And it was important to have their voices in the current conversation.

**Yasmin:** Although it's not necessarily a word, 'presencing' was definitely an important thing in making this project, it was very much to bring the voices and limited, you know, experience of Basil and Paolo on screen. And I think that's what film particularly can do, because we can hear people in their own voice. You know, we're not just reading about them, but we're sort of spending time with them. And I think that's a form of making them present. And through that, to understand their absence. So, you know, film is really good at 'presenting' people and I think it's important because particularly in the case of Father Paolo and Bassel Safadi, is they sort of became symbols as well. After their kidnappings and disappearances. They became like an image of the revolution in some cases, and although that's a positive thing, at the same time, it sort of takes away their actual voice. You know, they just become a picture. And I think that's where film can come in and sort of bring their presence back because we're actually hearing their voices. We're actually feeling their emotions and living with them for a while. I realized after a while by making them present when they become absent in the present tense of the film, we start to understand what it feels like for the families a little bit. So I think that was also important. So to not just talk about them in the past, but to talk about them in their presence kind of in film time. It wasn't actually a very..., it wasn't a conscious reason for making the film. It was very much like I knew Bassel and Paolo. I knew their voices personally. And I thought it was important that their voices remained in the conversation. And the fact that I had access to film footage that I had filled with Paolo in the past, material that I had gained access to, meant that like I could foreground their actual voices. They're being with us for a while. In the wider context, I think it's just important also to highlight, like some of the stories of those who have been disappeared.

**Sangeetha:** Now, with that in mind, I think I would like to ask you one final question about your future perspectives. So what can we do when formal justice avenues are as absent as they are in Syria? Can these stories play a role in opening up the justice imagination for Syrian?

**Brigitte:** Yes, I do think, actually, that these stories really play a role in opening up the justice imagination and making people think and look differently at what justice could look like concretely. And I do share that optimism of the will, if you want, with a lot of international and Syrian justice actors, because the fact that the justice architecture fails currently, really makes us move away from defining justice and accountability solely in relation to existing judicial mechanisms, because these are very limited. And currently we see this move towards stretching the boundaries of justice debate. And

this is, of course, what happens with the victim groups. And also creative justice efforts are imposing themselves out of necessity. And we saw this in the past also, for example, with memorialization in Lebanon and in other places that creative justice efforts are needed when there's very scant formal justice avenues. And this also happens to counter what Hannah Arendt called the 'holes of oblivion'. And in the Syrian case, this has materialized itself, for example, in a sequenced approach that the victim groups of the Charter for Truth and Justice have advanced because as victims and survivors, they really want to shape the responses towards the justice issues in a way that affects them and their loved ones. And they want to counter the attempts, of course, to silence them.

**Sangeetha:** At the same time, the victim groups seem very clear about the fact that these current efforts are only providing a modicum of justice. That this is what needs to happen now, but more is clearly needed.

**Brigitte:** When we look back at 2011, when the uprising started, transitional justice was embraced as a way to overcome this justice impasse in the 'kingdom of silence', as Syria was called. And people were very optimistic about the possibilities to implement a transitional justice paradigm with the four pillars and had very optimistic ideas about how this could take place on the ground. Of course, currently we see that only some elements, and little elements of the toolkit, are being tested. And of course, there's a strong deception amongst civil society activists what transitional justice could mean in the context of ongoing war crimes and also, of course, in the context of a non-transition that is currently entrenched. Currently we are really in the midst of something new, a new development towards more activism of victims in the pursuit of justice. And this is a shift, I think, because it alters the debate and it shows that victims will always seek ways to forbid forgetting and to pave the way for future efforts.

**Sangeetha:** Thank you so much for sharing that with us, Brigitte. It's shocking that it's been ten years really and enlightening, and a bit hopeful to hear that this is the new direction that we're taking and that victims are making sure that we never forget, basically. So thank you for sharing that with us again. And in our next episode, we're going to talk about temporality in Chile with our colleague Marit. So we look forward to you joining us.