

Episode 7, season 3 (March 2022)

Breaking the Syrian Justice Impasse

Welcome to a new season of the Justice Visions 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 [Justice Visions](#).

Brigitte: Welcome to the Justice Visions podcast. I'm Brigitte Herremans, researcher at Justice Visions and your host for the coming episodes. In the previous episodes of this season, we broached some of our recent and ongoing research under the banner of 'How Do We Talk About?' And as we are all in for change, we decided to test a new formula. In this new mini-series we will take a deep dive into justice efforts for Syrians, my research project. And I'm really happy to announce that we are producing this series in cooperation with Habib Nassar, director of policy and research at [Impunity Watch](#). Great to have you on board. Habib, this is a first for you, no?

Habib: Yes, indeed, Brigitte. I've actually never been on this side of podcast casting so far. It has always been on the side of the interviewees, so I'm really very happy to be behind the scenes. I think for Impunity Watch, this is a great opportunity to be a part of a project that would give some additional space to our partners involved in justice efforts for Syrians to reflect on their work, share their perspectives and lessons learnt.

Brigitte: Which aspects of these justice efforts merit more attention in your view?

Habib: As you know, the road to justice in Syria was initially blocked. However, what has been particularly remarkable for us has been the relentless and creative efforts through which Syrians have unlocked the road to justice. And this is probably the story that all of us, together with our partners, will be telling through the podcast.

Brigitte: Yes indeed there are the stories that remains all too often untold. When you use the word justice in this context, I assume that you also refer to the [Truth and Justice Charter](#), which was launched in February 2021 by five victim and survivors organisations. How do they define justice?

Habib: So they do distinguish between justice as long term justice, which is the case, for example, for accountability and then justice that would address immediate needs and demands of victims like the release of detainees or revealing the fate of the disappeared. So this series, I'm hoping, will look at both long-term justice efforts, but also short-term justice. There are ongoing efforts by the victims and the family associations today to establish a process to search

for over 100000 missing and disappeared in Syria, which is an effort that led the UN General Assembly to adopt a resolution back in December, requesting the secretary general to conduct a study on the issue of the missing.

Brigitte: Wow. That was a lot to unpack. Great to hear that you're so enthusiastic to share all of this with us now today. But of course, we will address several of the issues that you've just touched on. But I think it's really important that you did mention the fact that one of the reasons why we're doing this Joint Impunity Watch-Justice Visions podcast, of course, is exactly this justice activism by victim groups, by so many humanitarian and mostly human rights organisations. I'm really happy that one of the important also human rights activists is here with us today or for the next podcast season will be with us. Welcome, Mohamed Abdullah, also known as Artino. Welcome. It's nice to have you with us today.

Artino: Hi, thank you. Thank you so much. Thank you, Habib.

Brigitte: So maybe it would be nice to tell us a bit more about your background and your interest in the podcast. Artino you are a Syrian photographer and human rights activist, currently are also working as a communication officer for the NGO Women Now for Development. Can you give us some more background about your interest in justice efforts?

Artino: To be honest, it's really important for me as an not also as a Syrian, but as an activist who was on the ground on a time when the uprising started in Syria. Taking pictures and collecting these violations, or even crimes have been committed by many, many parties. But also seeing now with these recent years, that's this effort that's going on more and more into courts, and these efforts are being more collectively brought to the surface, as we say. I'm really happy to participate in this project as the victims groups efforts really deserve more attention, and the podcast is really very timely in a view of the discussion about the mechanism of the missing and the disappeared. But before we start exploring this Brigitte, you might want to tell us what drives you to set up this project.

Brigitte: Yes, I would be happy to share a bit what I'm doing. So for the last two years, I've been examining justice efforts for Syrians in the framework of my PhD research project. This project is quite ambitious in the sense that it looks into how artistic expressions can potentially open what I call the justice imagination for Syrians. Because when we look at justice for Syria, a lot of people think or estimate that justice is impossible because of the lack - as Habib just explained - of avenues, for example, such as the International Criminal Court. But then when I started out the research, I got really absorbed also by the civil society justice efforts, because these, I think, have been really strong and unmatched to a certain degree. And the way in which Syrian and international justice actors adopted the transitional justice toolkit is very innovative. So I think that's the whole justice debate is meriting more attention,

but especially the activism like what activists have managed to do despite the complete international indifference or justice fatigue, et cetera, and also understand that the possibilities to advance justice in the absence of a transition and multiplication of perpetrators, is really quite ground breaking, and of course, when we look into the situation in Ukraine, for example, today we see that it brings back a lot of these debates on justice, on prosecution of international crimes, which are happening in the Syrian context, but in a completely different way. So I think it's important to show also that there is ongoing resistance.

Artino: Well, indeed, to be honest, there's a lot of things to discover and unpack in there, and that's what we are going to cover and go through this course of this season.

Brigitte: Well, we are quite ambitious in this podcast as well. What we actually want to do today is to give an overview of some of the main justice efforts, to set the scene of bottom-up activism. In the coming episodes we will address the limits of criminal accountability, victim's groups realisations, truth-seeking and the role of artistic practices.

Artino: In this episode, I just wanted to add that also we are going to analyse the efforts to overcome the accountability gap and the justice impasse, as you call it. But, besides hosting these episodes, I may ask you from time to time to share some of your reflections as a researcher, so as a start, I wanted to ask you about what do you mean by the justice impasse?

Brigitte: Well, I think it's a word that is really apt in the Syrian context, where we see that the whole justice system, the criminal justice system internationally is failing. There is a blockage of the International Criminal Court because of the Russian and the Chinese veto. But there is also no effective multilateral initiative to stop the crimes. There is an ongoing impunity that has more or less been accepted.

Artino: Habib, you have been involved in these endeavours by NGOs. We don't have the scope to look into the history of this justice mobilisation in the Syrian context. But I would like to hear from you your perspective on this major development that shaped the transitional justice process.

Habib: You know, from really very early on and together with major documentation work by Syrian civil society actors, Syrians were really trying to reflect on how justice would look like for their country. However, initial justice work was assuming that the political transition will happen very quickly and that transitional justice institutions such as a truth commission or a course on a reparations programme would be established in Syria. And sadly, you know, at this early moment, international institutions really, instead of encouraging Syrians to reflect on what would be the most adapted to their context, because at this stage, no one knew how and what the transition would look like, so it is

difficult really to envisage a specific plan for transitional justice when we don't know if and when the transition will happen and if it was to happen, what would be the dynamics of this transition?

Brigitte: Maybe just to come back to the transformative aspect, because it's really interesting to consider how this holistic approach was forcibly abandoned and a new approach which was maybe more pragmatic, was adopted. Let's zoom in on the relevance of transitional justice because of course, there is much more criticism also coming from actors on the ground, civil society actors. How relevant is transitional justice still today for justice efforts in the Syrian context?

Habib: I think that first of all, the whole field is evolving and probably developments in Syria are contributing to this. In the absence of any prospect of immediate regime change and transitions. What the Syrians and those working with them and supporting their efforts really do, is to deconstruct a little bit this so-called toolkit and use it more as a framework, a rights based framework, I would say, rather than a sort of a blueprint for justice. And this is how Syrians and their partners have started to invest, for example, in universal jurisdiction because they saw there an opportunity to advance the right to justice and accountability.

Brigitte: You use the word -which is very familiar, I think, to a lot of us - universal jurisdiction. But could you maybe briefly elaborate what universal jurisdiction is and why it is relevant in the Syrian context?

Habib: This is a special form of jurisdiction that exists in a number of countries in the world, especially in a number of European countries like Germany, like France. For some specific crimes like torture, that allows these countries to retain that restriction when they are confronted with very serious crimes and more specifically with war crimes and crimes against humanity. Of course, the condition of universal jurisdiction in each context is different, and there is no one single regime. What happened is there the number of Syrian activists, human rights lawyers, together with the European Centre for Constitutional and Human Rights, have initiated a case that has become to be known as the al-Khatib case.

Artino: Thank you so much. But we will explore criminal accountability and its limitation in the second episode. Yet, I would like to ask you briefly about the main takeaways as the al-Khatib trial presents a milestone that we need to touch upon.

Habib: The al-Khatib case was a case brought to German courts, and as you know, in Germany, we do have universal jurisdiction for war crimes and crimes against humanity, which allowed the prosecutor to take this case to Syrian officers from the Syrian security services who were present in Germany were arrested and tried, and the verdict was delivered against the two first verdict last year. That sentence one of this two individuals to five years in prison and

then a landmark judgement back in January 2022. Convicting Mr. Anwar Raslan of crimes against humanity and sentencing him to life imprisonment.

Artino: Why, at this time, this trial of Anwar and the al-Khatib trial, why is this so important at this time?

Habib: Probably because really, for the first time, a senior official from the regime is convicted for crimes against humanity through a fair trial taking place, not so far from, I would say, Syrians because it took place in Germany, and I think it did allow for the involvement of many victims of serious crimes in Syria in a trial. And I think it is probably laying the groundwork for other cases. There is already another trial that has actually started in Frankfurt of the doctor also involved in torture cases that started at the end of last year. So in the absence of an ICC referral in the absence of domestic trials, I think this is certainly even if very limited and even if not addressing all aspects of justice and short justice, I do think that a lot of progress is being made through this case.

Brigitte: It's interesting that you mentioned the short term and the long term just as again, because of course, one of the main issues that we want to discuss is indeed justice efforts led mainly by victim organisations or increasingly by survivors and families. Yet the bulk of the analysis and the interest for justice efforts in Syria has focussed on the work of institutionalised NGOs or even on international institutions. Yet this is remarkable because a lot of the advancements and progress and also the disruption, let's say in the fields of justice efforts has happened on account of the efforts of victims. Can you explain how did this activism come about so suddenly?

Habib: I don't believe really it did happen that suddenly it's probably happened as a result of a long process that was taking place behind the scenes and that we could not see because many of those who were behind this movement in an effort to bring justice to the victims had started. Many of those were still in prison, or many of the families of the detainees or the disappeared were still inside the country. They were already leading efforts domestically to secure the release of the detainees. What probably happened in this past, let's say four to five years, is that the groups of survivors and families, for example, the detainees and the forces appeared. They start to organise and we are seeing a movement emerging for this. And I think that the emergence of this movement is probably should be seen also as an effort to adapt to the very complex Syrian situation that leaves very little space for the traditional and mutual justice approach. So as for the universal jurisdiction case, I think there is a lot of creativity in this movement trying to take advantage of a small window of opportunity really to push for, for example, solution for the crisis of the detainees and the missing in Syria.

Brigitte: So maybe it's also interesting to zoom in on the how the agency of victim groups also created the momentum in the international framework and also concretely in the General Assembly. Could you briefly inform us about what

exactly happened at the General Assembly and how this ties into the mechanism for the missing and disappeared?

Habib: First of all, many of the victims' families realise and obviously were supportive of that. A lot of the efforts were being invested in criminal justice. While there wasn't enough attention being given to the fate of the birds and balls, I mean by their peers in the Syrian civil society, but also by international policymakers. So it is very clear that as a result of this effort, the issue of the detainees and the enforced disappeared in Syria is today part of the international agenda on Syria. And really, what illustrated this very concretely are several statements made by the UN High Commissioner on Human Rights on this issue. The Syria Commission of Enquiry, the UN Secretary General. And this all culminated in a resolution by the UN General Assembly back in December, really insisting on the importance to address this crisis and ask the Secretary-General to prepare a study and propose ways to boost efforts to address this problem.

Artino: I suggest that we leave it here probably feel that you have barely scratched the surface, but let's hear a take of two practitioners on the main developing projects. You spoke to Maria al-Abdeh, director of Woman Now for Development, and Mazen Darwish, director of SCM.

Brigitte: Yes, indeed. So I asked both Maria and Mazen about the ways in which Syrian civil society has attempted to overcome the obstacles to justice or to accountability, and also the main achievements that they believe that justice actresses have accomplished. -And lastly, also their perspectives on future justice efforts.

Artino: Let's start with Maria Al Abdeh. You have asked her about the ways in which Syrian activists have overcome these obstacles to justice.

Maria: Actually, there is a lot of challenges to overcome, but hopefully we have been able to Syrian civil society to do some good job, I hope, based on different expertise, field of work or access. Syrian civil society actors have been playing a role on advocacy on keeping the narrative of victims alive, especially when some countries are speaking about normalisation. They have been working a lot on documentation of a human rights violation and to make this document available to it for trial to support trial. Also, as our organisation like us who are we are not experts on accountability at all. Our work was more to support victims, to ensure that marginalised victims have access to justice, support victim and survival groups, documenting stories not only the violations, but also the stories and the narratives of the victims. Also, I would say understanding what justice means to members of society that are often marginalised from formal justice process like women. Our advocacy became a more broader than only accountability. We try to think about mechanisms that support everyday justice, that support transformative justice, so the horrific crimes don't have any background on the future.

Brigitte: What's interesting is when we look into the achievements of Syrian civil society, Mazen insisted on the importance of documentation and also the speed that Syrians adopted in investing this domain and acquiring quite an extraordinary expertise. And tying it back to the situation of today, we're already seeing that some actors shared their expertise, for example, with Ukrainian civil society. So this is quite extraordinary.

Mazen: The response of the Syrian civil society was very rapid in this respect. Perhaps it started with documentation, the documentation available. Nations, in fact, we have seen the start of projects and organisations emerging since the beginning of the revolution in Syria. In April 2011, the Violations Documentation Centre was established and shortly after the Syrian network for documenting violations was also established. Later on a wide and large group of organisations was formed. I think these were the first important steps, establishing the foundations for the following steps and any other work that was basically done. Because of the documentation process, it became possible for us to have statistics to have studies at a later stage. We saw the development of the documentation process from its initial form, a fact finding and human rights documentation to a level which complies with international standards for documentation and leading to investigations and cases. I think this was one of the key steps. Subsequently, there was the process of the self-organisation of victims, giving the victims the possibility to communicate, to get together, to establish their own specific initiatives, in addition to leading the advocacy process pertinent to their cases, this was of essence.

Brigitte: Mazen also argues that it is important to document, and he draws the attention to the fact that the massacres in Hama were very much silenced, erased invisible and there was very little documentation. And even the memorialisation of these crimes was violently suppressed. And this left many Syrians, of course, scarred, and they're still haunted by that trauma. And you feel that a lot of people want to avoid that the regime gets away with these policies of erasure and invisibilization.

Mazen: Yet there's a huge difference when we compare, for example, the evidence and documentation we had on the massacres and violations that happened in Syria in 1982, with the nature of the documentation and evidence about the violations and massacres that Syrian civil society gathered today. On the other hand, when we talk about alternative media, the Syrian media has contributed to revealing facts and contributed to foregrounding these violations. Sometimes even broadcasting them live. All these elements together make us confident that today in Syria, we do not have technical problems of access to justice or accountability as much as we have political problems.

Artino: The political problems. That's a topic that deserve a broadcast on its own, to be honest.

Brigitte: Yeah, that's true.

Artino: But it's really important to bear in mind that the international political stalemate had a huge impact on the justice efforts and enable impunity. This forced civil society to come up with innovative solutions like more creative, and claim their place on the international table to weigh in justice efforts in Syria. These are huge achievements, as Maria stressed. She insists on how victims groups show the way forward in this respect.

Maria: Keeping the narrative of victims alive, countering the narrative of the Syrian regime and its allies, and also, I would say, keeping the commitment of human rights alive, because what Syrian civil society have shown also have shown its neutrality. So now we have cases against the Syrian regime, but also against other actors. So for me, what the Syrian civil society have done in terms of justice is a way for a future Syria, that where all crimes are hold accountable. The support of victims group to take the lead on the process. For me, it's also very important.

Brigitte: Rightly so. Maria stresses that Syrian civil society was at the forefront of the struggle for justice and accountability, and also looked into the violations of all the perpetrators. And this is quite important to stress. So we really can't underestimate the importance of this achievement because accountability, of course, was not prioritised internationally, and there is a shared feeling amongst Syrian civil society actors that they need to be vigilant. And Mazen also reflects on this fear.

Mazen: At the political level, I think that Syrians also succeeded in keeping the issue of justice and accountability on the table. I believe that whether the United Nations or the parties to the conflict or even the regional and international allies are not primarily concerned with the issue of justice and accountability or with the rights of victims. On the contrary, despite the recurrent rhetoric and the good intentions, we feel that in reality there is an attempt to reach a political agreement that guarantees the interests of the parties to the conflict and their allies without involving the victims and preserving their rights. I think that Syrians succeeded in ensuring that this file is kept on the table and not allowing a political agreement that does not take these issues into consideration.

Artino: This brings us to the final question of the perspective on the future. Maria stressed that there is a need to think beyond criminal accountability. There have been huge successes in this domain with the recent universal jurisdiction cases. But let's not forget that justice entails so much more, and that progress also need to be made with regard to the files of the missing and the detained.

Brigitte: And both Maria and Mazen alluded to the ongoingness of justice efforts. And unfortunately, we see that the Syrian context is also a laboratory

for justice efforts because of the failing justice architecture. There is a lot of trial and error going on.

Mazen: I also think that we need as victims, as activists, and as civil society, to start moving away from theoretical and ethical issues toward searching for pragmatic solutions. Today, a large part of our work and our struggle in this regard has an ethical dimension. We talk about the necessity of releasing detainees, stopping torture, revealing the fate of the disappeared, accountability, transitional justice, reparations, etc. All these concepts are extremely important, and there is absolutely no doubt they reflect moral values; however, these no longer suffice. We have to engage more in the operational details, and imposing the need for long debates and discussions. The recent trials in Europe have shown that we perceive the concept of justice differently. I think it's normal. We are talking about an internal local conflict. It has a sectarian character, a regional character, a complex ethnic character. There is regional and international interference, and a terrorism and extremism aspect. We have all these complications when we talk about justice, when we talk about accountability, about the truth, about fairness and reparations. When addressing all these topics we need to get out of the theoretical framework, and head more into a practical direction. Instead of talking about transitional justice as a theoretical concept using the basic vocabulary, we need to start drafting a transitional justice law so that we can see who should be held accountable, who should be prevented from holding public positions, etc. When we talk about reparation, what do we mean by reparation: physical or moral? Think of the property situation today where half of the Syrians' homes have been destroyed or requisitioned... I think we need to dive into all these details, practically and operationally.

Brigitte: There is a need for more discussion about these details indeed. As Maria indicates, the al-Khatib trial triggered a lot of discussions, also about the need to look into other justice demands and needs.

Maria: Actually, the justice efforts now at international level are very much focussing on accountability, which is very important and we are all asking for accountability. So I think it has been very good in terms of bringing justice for some victims and support or maybe encourage other victims to go toward accountability and use the available mechanisms. The political message also has been very important from all the accountability effort to hopefully one day all criminal will be held accountable and the Syrian regime will pay for its crime one day. However, I think it's important to think about the limitation of criminal justice processes. We need to widen our thought about how many survivors would be able to participate, what justice means to different people, how we can really make justice something that impacts everyday life of people, especially marginalised communities in Syria. So I would say we need to think about how we can protect the victims to support them in a way that they will suffer less from the crimes or build their life. It's an important part of justice. One example about justice is the right to know. Many families were very happy

with the al-Khatib trial, and however they still don't have any information about their loved one, so the right to know it's an essential right for the people who have someone who is missed, so the right to know where are they? And if they are killed, where the bodies are. That is my perspective on how we need to work more on justice and not only limited to accountability.

Brigitte: Maria underlines how important it is to ensure that victim groups are involved in initiatives that go beyond criminal accountability, and that are grounded in their experience. Habib, do you want to give us a final perspective before we wrap up?

Habib: So we have covered a lot of ground in this episode, and I think it does introduce a number of topics that we are going to discuss in the following episodes. However, one point I would like to emphasise here and that everyone probably often forgets that justice is not only about institutions, about the court or even a truth commission or a mechanism to reveal the fate of the disappeared. But justice is also very much as well about informal initiatives, about non-official efforts of the Syrian civil society and the Syrian victims movement. I think this is already part of for justice process, even if it is not fully institutionalised. More importantly, it's a way also for the Syrians to resist true oppression and repression by the Syrian regime and other actors in the conflict. It's their way to fight back, and this element of resistance is really key. They have recovered that agency in this fight and against the effort of the perpetrators to erase them, to raise their will, to erase that identity. They are fighting back and reinserting this agency, reasserting their power in this effort.

Artino: Yes, indeed. It will be really great to look in detail with the next episodes, of course.

Brigitte: In the next episode we will talk to Patrick Kroker from ECCHR, human rights' lawyer Anwar al-Bunni, and Veronica Bellintani from the NGO SLDP. We will look into the intricacies of criminal accountability, one of the main topics in the current justice debate. Court cases are raising a lot of expectations, but as Maria just stressed they are only a part of the justice efforts and we should address the limitations of criminal accountability. That's food for thought for the next episode, but for now I want to thank you, Habib and Artino to kick off this first episode.

Habib and Artino: Thank you.

Brigitte: Thank you! I also want to thank Maria Al Abdeh and Mazen Darwish for sharing their insights, and Amr Issaid, who kindly assisted us with the English voice-over. And last but not least, thank you to our listeners. Feel free to add a comment, or ask a question via our website justicevisions.org, and also tune in for our next episode in April.