

Episode 8, season 3 (April 2022)

Criminal Accountability for Syrians and Beyond

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: Here we are again, Artino for a new episode of our joint Justice Visions-Impunity Watch podcast on justice efforts for Syrians.

Artino: And this time we are looking into criminal accountability, the domain in which so much happened recently with the first prosecutions of crimes committed by the Assad regime.

Brigitte: Indeed, the [al-Khatib trial](#) raised a lot of hopes and also triggered debates amongst victim groups and civil society. But many people also indicated that trials are not necessarily the strongest form of justice. It was quite striking in the previous episode that Maria insisted so much on the need to go beyond criminal proceedings and also to think more about ways to involve victims and advance their needs.

Artino: Totally agree. And this is also one of the main questions in our current episode where we talked with our three guests, all three of them lawyers Veronica Bellintani, Anwar al-Bunni and Patrick Kroker. Patrick is a lawyer at the European Center for Constitutional and Human Rights. He was one of the lawyers of the victims at the Al-Khatib trial in Koblenz. Let's listen to that conversation.

Artino: Firstly, I would like to ask you to zoom in on the meaning of criminal accountability in this case in the form of universal jurisdiction.

Patrick: Maybe starting with a bit of an overview, just very roughly of what happened since the uprising started in Syria. On the one hand, of course, we have seen really outrageous crimes of all kinds, having been committed in Syria by many different perpetrators. The main perpetrator, of course, being the Syrian regime. And what we have also seen pretty early on is that some jurisdictions, national jurisdictions have started investigating these crimes with something called structural investigations, starting as early as 2011, for example, the German federal prosecutor also the French prosecutor starting pretty soon thereafter. And then we have seen a number of low level perpetrators being prosecuted in some of these countries. There was a regime soldier in Sweden. There were some quote unquote foreign fighters or people from the armed groups that were tried in Germany. And what we with the European Centre for Constitutional and Human Rights have done in the beginning was that we have tried to strengthen the role of survivors in these proceedings, and we have started engaging with survivors and survivor communities, especially the ones that came to Europe in 2012.

Artino: And how did you do that concretely?

Patrick: What we did back then was we helped them to give their testimony in these structural investigations. But with the time we were not satisfied and I think from civil society, really, no one was with what happened in these first years, namely the trials that I mentioned low-level perpetrators, mainly armed groups, in no way really giving an image of the overall picture of crimes that are happening in Syria, none of the torture crimes being addressed, which is obviously very, very huge part of the crimes, but also generally of the whole system, of how the government is running the country and how it's suppressing this democratic uprising. And then it was in 2015-2016 that we kind of changed our strategy and we thought this needs something else.

Artino: When you talk about change, I assume you were referring to the more comprehensive justice approach that you apply. Were there specific changes that triggered it?

Patrick: We had seen where structured investigations are going, namely not to a place that we liked. It was clear back then with the UN Security Council veto by Russia and China that there would be no ICC referral. There were much more people in the countries that could testify to it that demanded justice. And on top, we had all these amazing lawyers and activists that also had to flee the country. Anwar al-Bunni being one of them, Mazen Darwish, Jumana Saif and many others. And for all these reasons, we thought, OK, this is something that, that demands a new approach. And that's when we started filing these huge criminal complaints, together with torture survivors addressing torture crimes in Syrian detention centres. And we started doing this in 2017, and since then we there was a number of criminal complaints that we filed in several countries under universal jurisdiction.

Brigitte: To what extent was it important that you had this cooperation, let's say, between European human rights organisations and Syrian activists?

Patrick: Well, it changed everything because these were basically the activists or some of the activists that had been leading the revolution and they knew exactly what they were fighting for and all they needed to switch their instruments because they couldn't take to the streets anymore. They couldn't document anymore, they were outside of the country. But together, we could team up and struggle for justice. And the role, I guess, was that we were, you know, bringing in the expertise, the international lawyers, we knew the justice systems and they were bringing in everything else, basically. And I think that's why it became a very fruitful cooperation where they could really also tell us what is going to be meaningful, what has to be addressed and how can this be meaningfully also communicated to the community?

Artino: I wanted to ask you when we are saying like this shifted and this way of changed the way that they were trying to document, but also thinking about the main actors or activists on the ground who were documenting, how this could be a limitation for this work.

Patrick: Well, I think as important as the documentation is for so many different purposes, including the political activism, the history making and partially also for criminal justice, the main investigations for prosecutions that are happening in national jurisdictions is always going to be done by the authorities. In these countries, and so I don't think that it was particularly harmful to the investigations,

the advantages that we had with these people being here, being able also to document here, I mean, they documented here by getting in touch with the witnesses that were here by building the bridge, so to say to this investigation authorities that need to do investigations here in our countries, I think that was by far outweighing the disadvantages.

Brigitte: In terms of breaking the wall of impunity, you also alluded to that importance, of course, of the milestone that al-Khatib presented. How did the universal jurisdiction cases affect survivors of crimes and victims more generally? How did it change their perspective?

Patrick: It's very difficult to answer to that in general terms because there are so many differing views on that question. The perspective of somebody who was able to actively participate in the al-Khatib trial and to have a more or less good experience in doing so is going to be much different than somebody who's still waiting for any sign of a disappeared loved one and who doesn't have any means of getting redress for that. However, I think in general, it did create a sense of a possibility for justice, even though it's very limited. But before that, basically there was nothing, and I think for many people it was more of a, of a fantasy that this could happen and in the end, to see justice be done, even in the case that might not relate to their specific case, I think did change a lot and created a lot of momentum for international justice that I think now we need to build on.

Brigitte: And maybe a personal question also for you; like what does it mean for a European lawyer who is so invested in prosecuting international crimes that you were also able to play a role in this?

Patrick: Yeah, it was very important to me personally, and I feel very, very privileged that I was able to do so. The clients I represented and the people that I worked with, I mean for me are just amazing examples of courage, of humanity, you know, of the good values of humanity. And I was able to support them in this work and that for me was an amazing experience professionally, but also personally. And despite, of course, all the hardship that comes with it, I really feel grateful that I was able to support them in this.

Artino: Maybe I would want to add here also, what do you think we can expect from the criminal accountability in the future? Like now, we are seeing like there is another court case happening in Frankfurt. Do you see any kind of future of this? Is there anything that should be done in this domain?

Patrick: Yes, I think we will definitely see more trials. I mean, what is already happening right now? There will be others. The prosecution authorities in Europe are quite well equipped to look for the perpetrators who are here. And I think that's important, but it's also going to be very, very short of what we actually need. There is this one big question that we will need to address as soon as possible, and that is the fact that these crimes are ongoing and that the persons that are mainly responsible for them are well and in power in Syria. And this is something that we need to address with further international arrest warrants and also trying to track their movements. You know, I mean, Bashar al-Assad is travelling now, he's going to take people with him that are probably not protected by his functional immunity and then maybe try to get one of these people on trial as well. I think we have had a really good start. But the way ahead of us is still very, very long.

Brigitte: In this respect we also have the problem, of course, of creeping normalization: Bashar al-Assad is travelling. Do you fear that the creeping normalization could have an impact on the motivation to prosecute crimes of the Assad regime, or is that danger overestimated?

Patrick: That's difficult to say, but I am cautiously optimistic because there are a lot of prosecutors and investigators that have very deep knowledge of the situation in Syria that have gathered tons of evidence around that. And they will not be stopped so easily and that they will not be called back so easily. Of course, in the long run, what could hurt them is if resources are reallocated. And if a prosecutor, you know, if things OK, well, I can only afford now to bring one more case in Syria, because now I have to spend my resources elsewhere, like on Ukraine, for example, then this might actually lead to a decrease in the motivation to prosecute. But I think that the genuine motivation that this evidence is there and it should be used is going to stay there because they are way too involved to just pull back now and give in to these sort of realpolitik, political considerations.

Artino For me personally, as a Syrian and activists have been trying also to cooperate with other organizations with your organization to collect this evidence. Seeing Bashar al-Assad now travelling is a bit depressing, it is a bit devastating, to be honest. But do you think like with the whole cooperation that we've been seeing for the past two years with other countries and international courts, do you think there's a good possibility this could be broader than Europe, that maybe in some Arab countries that we can proceed this kind of criminal accountability and have another cooperation with the international courts?

Patrick: Yeah, absolutely. I can imagine how depressing and outrageous this must be because it is basically what we have tried from the very beginning is kind of to demand what was deemed impossible at the time. And it's a very thin line to walk, I think, because we demand the impossible because we need to be very, very upfront in our demands, very straightforward. But at the same time, we mustn't raise unrealistic hopes. And when we started and we said we want to have arrest warrants against people like Jamil Hassan and Ali Mamluk, people told us: you're crazy, you're not going to get those. And then we did get them. And I think it was important to claim that because otherwise you wouldn't have gotten them. Although in the first place we were told, don't do that, it's raising expectations. And I think here it's a bit the same. We might not be able to stop that, but if we don't make these demands, we're definitely not going to be able to stop that. And that's why we need to continue into that direction. But I mean, you're completely right. We need to be prepared that our demands are probably not heard and not fulfilled, and that this is more than justified, that there is also huge dissatisfaction. What I think is important is that we try to channel that dissatisfaction into action, that we just don't stop to make these demands and to continue, continue the struggle. But again, easier said than done, of course.

Brigitte: Maybe to conclude, Patrick we're talking a lot about accountability and narrowing it down to criminal accountability, which is of course, only one aspect of accountability. Could you maybe critically elaborate the limitations of criminal accountability and more specifically, look into other domains that also need to be addressed?

Patrick: Yeah, absolutely. I mean, criminal accountability is very limited from its very nature because it's always focused only on few individuals and so far not

even the highest ranking individuals, as we have discussed here. It's always going to be hugely selective for many other reasons. I think that a broader accountability process without criminal accountability is never complete. But one only with criminal accountability is definitely not complete as well. And I think in the ideal case, they complement each other. And now that we have some advances on criminal accountability aspects, maybe this can also strengthen and drive forward other measures that are so important, like the history making, the writing, the storytelling aspects, artistic interventions, the media that can report about that, etcetera. And this is how I understand criminal accountability: that it can foster and support the other measures, it can never be seen in isolation.

Artino: Thank you so much. It's a lot of useful information. It raised a bit more about being optimistic, but at the same time being realistic. How far can we go with this? And yes, you are 100 percent correct about celebrating these small victories. That's a big achievement for also humanity. For you guys, all respect all the love and support from our side, for you guys, that's you're doing a lot of things. So thank you.

Brigitte: This is transnational activism in reality, working out perfectly. Thank you, Patrick.

Artino: Yes. Thank you so much Artino, these are very kind words as well. I appreciate it and really nice talking to you.

Brigitte: Artino, you also spoke to Anwar al-Bunni, a Syrian human rights lawyer and director of the Syrian Center for Legal Studies and Research. He has been involved in the al-Khatib trial and was once arrested by Anwar Raslan in Syria. Raslan was convicted by the Koblenz court to a life sentence.

Artino: Yes, the al-Khatib trial is very important for Anwar al-Bunni as he is a survivor of detention and crimes by the Syrian regime, as you mentioned. I asked him, firstly about his perspective on the importance of criminal trials and specifically about universal jurisdiction cases in Europe.

Anwar: For me, criminal prosecutions never relate solely to the past, but also to the future, as a lawyer and as a human rights centre working for the future of Syria, these are certainly very important to the victims in order to bring about justice and to show what happened during that period. But the most important thing is to send a message to the perpetrators not to continue their crimes, to send a message that there is no room for impunity in Syria's future. This is the most important, in my opinion. It's more important than prosecuting any particular person. The important thing is to prevent such crimes from happening in the future and not to give the perpetrators a sense of security that allows them to commit crimes, whether in Syria or elsewhere. We are working not only for Syria. We are working for all victims across the globe who may have experienced what the Syrian people have been exposed to. There are many victims in dictatorial countries ruled by these types of criminals. So in my perspective, we should go beyond the rights of Syrian victims and strive to influence the future of Syria in the first place, and then the world more generally.

Brigitte: Anwar has high expectations about the outcome of the al-Khatib trial. And rightly so, he emphasizes that when it started in 2020, it was victims of the regime's crimes could testify. And as he highlights and what it was, really initiated, this trial by Syrian and international civil society.

Anwar: It is a historical event, an important moment in time, because this trial sets a historical precedent in terms of its proceedings. The accused brought to trial and the surrounding circumstances. In fact, more important than the trial of Koblenz and that of the al-Khatib Branch was the issuance of arrest warrants in 2018 against senior figures in the Syrian regime, including Ali Mamluk, Jamil al-Hassan, Abdel Salam Mahmood and others. Certain other warrants have been issued against 27 accused, including Bashar al-Assad. We targeted them in files we submitted to the German public prosecutor, and arrest warrants were issued against a number of them. This is the first issue. The second issue being that this is the first time the trials are induced by victims, meaning that the states did not interfere to refer the case to a court, such as was the case for the Nuremberg trials or the People's Tribunal in Sri Lanka or the International Criminal Tribunal for Rwanda or even the Kosovo Tribunal. The victims initiated the procedures they decide, and they are the driving force behind these trials with the support of civil society organisations. This kind of trial has not taken place previously, except for as a result of decisions by states or an independent judiciary, not just as a result of victims' efforts. This is why it is truly a historical event.

Artino: And as he highlighted earlier the al-Khatib trial was an important step in holding the Assad regime to account but this is only the start. I asked him what can be further expected in the domain of criminal proceedings?

Anwar: The work that has been done and continues has not happened before anywhere else in the world. There are upcoming cases in Frankfurt, for instance, there's a trial of a doctor accused of crimes against humanity, expanding accusations to medical personnel. The Syrian regime even relied on medical personnel to commit crimes against the Syrian people, they cannot get away with it. He was accused of crimes against humanity, not war crimes. And this is an important difference that is understood by legal experts who understand the distinction between war crimes, crimes against humanity and legal crimes. In Berlin in August, there will be a trial for which the indictment was issued two days ago. This will be a trial for a member of the pro-Assad Palestinian militia who was arrested in August last year. We're working on cases in the Netherlands, in Belgium, in Austria, in Sweden and even in Spain against perpetrators present in these countries. We're also awaiting the issuance of arrest warrants from Sweden and Norway against officials who are still in Syria. This is the most important and this affects the future of Syria more because arrest warrants against this criminal junta makes it possible to isolate them from any political process. An important goal is to prevent them from playing a role in the future of Syria and even any role in the transitional process.

Brigitte: As so many of the Syrian justice actors argue criminal proceedings are a key aspect of justice efforts here. They allow victims and survivors to obtain a forum to raise these issues that were not discussed before. But of course, we shouldn't prioritize trials over other efforts. It was quite interesting to hear how Anwar insisted on the need to continue isolating the regime. And of course, that links back to what we discussed earlier the danger of normalization.

Anwar: The situation is such that other efforts will be made to push politicians to take any decisions. And to do that, all these efforts are required. Judicial action is independent from pushing for political decisions by international actors, whether in Europe, in the United States or in other countries. Therefore, there's a lot of

great work that can be done. For instance, we talked about pushing the decision makers in countries to adopt the suspension of Syria's membership in the United Nations General Assembly and the suspension of Syria's membership in the Human Rights Council, which was supposed to be implemented already. This prevents these criminals from being a part of the international community. And this is key in addition to prompting decision makers to take more steps towards these perpetrators, to isolate them further, to confine them, not to allow them to be rehabilitated. This is very important when it comes to victims' participation, especially because their voice must be heard at the legal level, as well as the political, cultural and social levels, so that no inaccurate picture can be construed of what happened in Syria.

Artino: This is one of the key takeaways: you need to keep telling the stories of victims, share their experience and prevent perpetrators from erasing their crimes. Victims are the main drivers of justice activism, and yet their needs are not always prioritized. This is what you discussed with our next guest. Let's listen to your conversation.

Brigitte Hello, Veronica, it's nice to have you with us today. You're a lawyer working on transitional justice and justice initiatives for Syrians. Could you give us a background of what you're doing currently and how you were brought to justice efforts for Syrians?

Veronica: So I think that my path to justice efforts in Syria has been forced as an activist on the Syrian revolution. So it's always starting from the point of view of the Syrians, what Syrians want, Syrian demands and so on. So for me, working on law and justice is one way to do that, one way to serve the Syrian community to achieve what they were striving for in 2011. At the Syrian Legal Development Programme I work as legal officer. I work on international law and more specifically, I've been working a lot in the past year on victims' rights. So ensuring that victims are the centre of justice processes, justice initiatives. But that also rights are not limited to justice, but also truth and remedy and building a better future, and most of all, the right to participation. So it's, I think, a very key issue after a decade of impunity and not having the justice that we hoped for 10 years ago for victims and survivors to participate in what is happening right now as a sort of remedy from the impunity and being abandoned for 10 years.

Brigitte: I guess it's really important also to work on participation of victim groups in justice processes and when it comes to criminal accountability efforts, do you also feel the need to insist on higher participation of victim groups?

Veronica: Oh, yes, absolutely. I mean, criminal justice in itself really, really limits the way that victims can participate because the system is really built around the goal of holding all the perpetrators accountable. So traditionally, victims in these contexts are merely an instrument for the prosecutor to achieve these goals. And victims are not really the main actor in these processes; while in my opinion they should be the key actor, the key driving force of justice from the moment they are designed at the first stage, but also in how they are implemented. So when you have a trial, it's not enough to just hold accountable someone. It's also important for victims to see how this process is really done, how much they can be involved, be informed. They can have access to justice. And even if they cannot physically, for many different reasons, even just be informed, being heard, in itself can be a form of justice much more than just seeing someone being sentenced to prison.

Brigitte: And if we were to apply this reasoning to the al-Khatib trial, what would be your main takeaway on better victim's participation?

Veronica: I mean, the al-Khatib trial in itself, I think, was very limited because you're talking about the German domestic system, so you cannot really change the old system for a trial on Syria. It's not like an international tribunal being created for Syria and therefore having a whole system on meaningful participation of victims. I think that the court in itself could have improved when it comes to some decisions regarding outreach, translation, recording. But when it comes to victims participation, the court was only able really to have a number of plaintiffs be involved having very strong participation rights. What was missing was the broader action from Syrian civil society in ensuring that the broader Syrian community could be greater involved in the process. I think about all the survivors of the al-Khatib branch that are not living in Germany, they are living in Lebanon and living in Turkey. They are still victims of Anwar Raslan. But how much they were informed, how much they were able to participate even through parallel processes, such as, I don't know being involved in some kind of like workshops or discussing with individuals, they were just completely forgotten. And I think that is not making justice for the broader Syrian community. This was completely missing.

Brigitte: And do you feel that there's a remedy for these mistakes? There has, of course, been a lot of activism also on the translation, for example. I mean, there has been a lot of criticism also by victim organizations, survivor organizations. Do you feel that this is being taken into account and this could maybe lead in future trials or current trials to a remedy to have better victim participation?

Veronica: So as I said, I think that as long as the criminal trials are done in domestic courts in Europe, it's going to be very difficult to change the way the whole German or French or Swedish system works. So it's really the Syrian civil society that needs to do a step more, and also the actors that are involved in this justice work what had been a lot of conversation after like the al-Khatib trial there was a lot of conversation about which other perpetrators should we look for: high level perpetrators, low-level perpetrators? Should we file more complaints? And I think that the conversation should have been more about: OK, how can we make sure that our next justice efforts, our next litigation proceedings are done together with survivors? That we are taking certain kind of actions together with survivors, the processes, how we create what we're doing with survivors? And I think that in the conversation, about the al-Khatib trial is missing and it means that at this point, victims participation and community engagement continues to be seen as a secondary issue, continues to be like: OK, we have a trial, how we can involve victims now? I think it should be from the beginning: we involve victims and everything else follows. That is the difference.

Brigitte: Yeah, it's quite clear. And I think a message that has not been resonating sufficiently. Maybe beyond the trials and beyond criminal proceedings. You are, of course, also somebody who's very invested in other steps beyond criminal accountability. What, in your opinion, should need more focus when we're talking about justice efforts for Syrians beyond criminal proceedings?

Veronica: Well, at SLDP, we have been looking very closely at the issue of victims' rights and really what victims see as the real justice for their own experiences, for their life. When we look at victims' rights, victims' rights to justice

through remedy, guarantees of non-recurrence, none of those are a priority over the others. I think that until now, we've always seen criminal accountability as being the superior form of justice, a superior form of right to victims. And that's not true because different victims may see a different kind of rights to be their most immediate they want to realize right now. Families of disappeared may see that when it comes to knowing the fate of their loved ones, survivors of torture may see as: I want to be able to build the future that the Syrian regime wanted to rob me from, I want to show that I'm not only a torture victim, I can actually be able to have agency and rebuild something. Justice is really the issue. Then in general, victims' rights are something much more than just seeing someone on trial and much more than just legal venues. Sometimes, justice can be having the chance for families that have been dispossessed from everything to build a life for their kids that they feel like their kids are going to be safe. Their kids are going to be able to build a good life that the regime was trying to take away from them. The way we work is trying to go a little bit beyond the law and beyond the criminal accountability and being very victim-focused to not see justice as the perpetrator-focused: I want to punish this specific person, but more as victim centred: what victims want in this specific context.

Brigitte: Thank you so much, Veronika. A lot of people working in the domain of justice can learn a lot from your approach because we often hear victim centred, but you can really make clear what victim centred should be about and how it should take into account victims' needs and demands much more.

Veronica: Thank you so much.

Artino: That was such a rich conversation, and Veronica took us back to the core of this mini-series: the agency of victim groups and their capacity to advance their own participation in justice initiatives. It is striking how much innovation and creativity they manage to come up with. It is just amazing, to be honest.

Brigitte: Yes, indeed. And creativity will also be one of the main themes of the coming episode on truth-seeking. We will look into creative and artistic practices, and how they also enable a different form of truth-seeking.

Artino: Stay tuned for the new episode and thank you for now.

Brigitte: I would also like to thank our guests Veronika Bellintani, Anwar al-Bunni and Patrick Krockner, and also the voice over Juul De Pauw. Thanks!

Artino: Thank you, guys.