



# Patchwork justice for Syria?

## Achievements and blind spots in the struggle for accountability

### **POLICY PAPER**

### **INTRODUCTION**

All avenues for accountability for international crimes committed in Syria—no matter which actors are involved—will have to lead through third states. As long as the Assad regime remains in power, no genuine investigations into these crimes will take place. On the international level, a Russian and Chinese veto in the UN Security Council blocked—and in the future, will certainly continue to block—all efforts to refer the situation to the International Criminal Court (ICC). This has led to accountability efforts focusing primarily on third states, which have, often under the principle of universal jurisdiction, achieved some remarkable results thus far in the quest for accountability for crimes in Syria. The fact that, despite these adverse circumstances, the system of international justice could be activated through the efforts of different actors, many from civil society, is noteworthy. Today, investigations and trials concerning international crimes committed in Syria since 2011 are underway or have already taken place in such countries as Austria, Belgium, France, Germany, the Netherlands, Norway, Sweden and the United States.

The aim of this report is to provide an overview of accountability efforts regarding Syria from 2011 onward and the main actors involved therein. While it will not cover every single trial and investigation, the report will analyze and assess the main trends and developments in this process, identify existing gaps and provide an outlook into potential future developments, thus contributing to discussions on what future accountability processes should look like.

### **ACCOUNTABILITY EFFORTS FOR SYRIA 2011-2024**

#### Structural investigations and “foreign fighter” trials

From very early on, many national authorities in Europe initiated structural investigations concerning the Syrian civil war on the basis of the principle of universal jurisdiction—in Germany as early as 2011, with Sweden, France and the Netherlands following soon thereafter.

## UNIVERSAL JURISDICTION

Under the principle of universal jurisdiction (UJ), national courts can prosecute individuals for serious crimes against international law—such as crimes against humanity, war crimes and genocide—even in situations where the perpetrator is not a national of the state that is prosecuting the crime, or when the crime was not committed in that state’s territory or against its nationals. UJ thus expands the traditional bases of criminal jurisdiction by invoking the principle that international crimes harm the international community and order itself. A national court can exercise UJ when the state in question has incorporated this principle into its laws. The definition and the exercise of UJ therefore varies considerably throughout the world.

As broad preliminary investigations, structural investigations are not directed against specific individuals but, rather, attempt to catalogue crimes that have occurred in a particular country. By detecting patterns, mapping chains of command, securing evidence and identifying victims and witnesses in the respective jurisdiction, they provide the foundations to build potential future criminal cases.

These structural investigations were the starting point for the first investigations into specific perpetrators—in this case, those who had primarily fought for the so-called Islamic State (Da’esh, IS), Jabhat al Nusra or other armed groups in Syria and who, at the time, were present on European soil. The very first trial on crimes committed in Syria was held in Stockholm in February 2015. A Syrian national and former fighter in the Free Syrian Army, who had arrived in Sweden as a refugee, had posted a video on his Facebook account of himself assaulting a man allegedly affiliated with the Syrian armed forces. He was found guilty of torture as a war crime.

Another, similar trial was held in Sweden, as well as in Germany, where in July 2016, the country concluded its second trial on the basis of the 2002 Code of Crimes against International Law (CCAIL). The Higher Regional Court of Frankfurt sentenced a former jihadist fighter to two years’ imprisonment for the war crime of treating a person in a gravely humiliating or degrading manner, in violation of international humanitarian law. He had posed in three pictures in front of two severed heads, mounted on metal spears, of murdered members of Assad’s forces. The fact that this “first wave” of prosecutions primarily targeted members of armed groups fighting against Assad was not the outcome of a strategic decision but, rather, was the result of the “no safe haven” approach adopted by the prosecutors.

Sweden and Germany have received by far the highest numbers of people who fled the violence in Syria, and among them were a handful of individuals who had perpetrated international crimes. Some of the early trials involved European nationals that had joined armed groups in Syria as “foreign fighters” and had later returned to their home countries, where they then were prosecuted, often under “anti-terrorism” laws and not for the international crimes they had allegedly committed. This was due to the fact that trials for anti-terrorism offenses are much faster and easier to push forward, as the prosecution only has to prove that the suspect was a member, supporter or leader of such a listed group. Human rights organizations often criticize such prosecutorial tactics because the concept of terrorism has a strong political component to it (it is used in many states to prosecute undesired opposition groups). Such trials also do not expose the full gravity of the crimes committed. Several of these trials, however, also involved international crimes committed against the Yazidi community by the IS.

## NO SAFE HAVEN APPROACH

According to the “no safe haven” approach, states should not be a refuge for individuals involved in core international crimes. In recent years, the no safe haven approach has made important legislative inroads toward the prosecution of international crimes. However, civil society organizations favor the more active “global enforcer” approach, based on a strong anti-impunity rationale, according to which states have a duty to prevent and punish core international crimes, including by issuing arrest warrants when perpetrators are not within their direct reach.

### Criminal complaints and demands for arrest warrants

Despite the fact that European prosecution authorities in particular were willing and able to overcome the accountability deadlock on the international stage with regard to the crimes committed in Syria, civil society organizations (CSOs) were frustrated by the limitations of these efforts. The main perpetrator group that was responsible for the vast majority of the atrocity crimes committed in Syria, the Assad regime, had not yet been directly targeted by these—rather opportunistic—investigations.

These crimes were well documented by international bodies, by Syrian organizations such as the Syrian Center for Media and Freedom of Expression (SCM), the Syrian Archive, the Syrian Network for Human Rights (SNHR), the Syrian Center for Legal Studies and Researches, and by international CSOs like Amnesty International, Human

Rights Watch and the Commission for Justice and Accountability (CIJA). These organizations often rely on evidence from Syrian activists who document these kinds of crimes at great personal risk. One prominent example of such documentation, the so-called Caesar photos, lies at the center of some of the structural investigations on systematic torture crimes committed by the Syrian regime.

### CAESAR PHOTOS

The Caesar photos consist of thousands of high-definition photos of corpses taken in Syrian government detention facilities between May 2011 and August 2013. They serve as key evidence in the ongoing investigations into human rights abuses under Syrian President Bashar al Assad. Their evidentiary value is decisive, as they document systematic torture in Syrian detention sites. The information they contain—probed for its authenticity by forensic experts—provides information on the locations and institutions involved. The pictures exhibit the torture methods that were used, as well as the causes of death. A former military photographer, who uses the pseudonym “Caesar,” had taken the photos and, with the help of supporters, smuggled them out of the country, eventually handing them over to European prosecutorial authorities, among others. “Caesar” and the surrounding group also fled Syria and are now in hiding in Europe.

Building on the evidence that was collected by CSOs and international bodies, Syrian and international CSOs, in cooperation with survivor groups, thus intensified their efforts to investigate, collect evidence and build criminal complaints that they then filed with prosecutorial authorities.

Since 2016, with more than 50 Syrian torture survivors, relatives, activists and lawyers, ECCHR has filed a series of criminal complaints in Germany, Austria, Sweden and Norway, based on survivor testimony and other available evidence, such as the Caesar photos. Together with nine Syrian women and men and the lawyers and activists Anwar al-Bunni (SCLSR) and Mazen Darwish (SCM), ECCHR filed a criminal complaint in November 2017 with the German Federal Prosecutor concerning crimes against humanity and war crimes in Syria. The complaint was directed against 10 high-ranking officials of the National Security Office and Air Force Intelligence, among them Jamil Hassan. The crimes addressed in the submission—killing, persecution, torture and sexual violence—were committed between September 2011 and June 2014 in five Air Force Intelligence branches in Damascus, Aleppo and Hama. In

June 2018, the German Federal Court issued an arrest warrant against Jamil Hassan, who until July 2019 was head of the Syrian Air Force Intelligence Service.

In France, similar criminal complaints have led to arrest warrants, such as in the Dabbagh case, in which two French-Syrian citizens were arrested by Syrian Air Force Intelligence members and forcibly disappeared. The case was initiated by the International Federation for Human Rights (FIDH) and SCM. In October 2018, French investigative judges issued three arrest warrants against Ali Mamlouk, Jamil Hassan and Abdel Salam Mahmoud on charges of complicity in crimes against humanity and war crimes. A total of 23 Syrian witnesses agreed to testify in this case—some because they were survivors of the crimes committed in the detention center around which the case revolves, and others because they had personally encountered one of the Syrian officials targeted by these proceedings—which culminated in an *in absentia* trial that will be held in Paris in May 2024 (more details in the next section). Similar criminal complaints have also been filed in Sweden, Austria and Norway, all countries in which a considerable number of Syrians have sought refuge and where the national laws allow for the investigations of such crimes based on the principle of UJ.

In an additional case in France, CSOs also filed complaints against members of armed groups, such as Majdi Nema, former spokesperson for the Syrian armed group Jaysh al Islam, between 2013 and 2016. He was indicted in January 2020 for his complicity in enforced disappearances and war crimes, such as torture. After the French Court of Cassation resolved procedural issues, the case was set for trial, which will take place in April 2025.

### Regime trials and the first verdicts for crimes against humanity

Over time, accountability efforts by all actors involved—national prosecution authorities, international fact-finding bodies, CSOs focused on documentation and/or filing complaints—also led to trials against the main actor responsible for the vast majority of international crimes committed, including torture, enforced disappearance and sexual violence: the Syrian regime.

On 25 September 2017, Sweden became the first country to convict a member of the Syrian army for crimes in Syria. The accused, identified through a photo in which he posed with his foot on the chest of a dead victim, was found guilty of violating the dignity of a dead body. The case exhibits features similar to many “foreign fighter cases,” in which low-level perpetrators provide evidence via their own cell phones.

The first verdicts against former Syrian government officials for crimes against humanity committed by the regime

against its own people were handed down in Germany in February 2021 and January 2022. The Higher Regional Court of Koblenz sentenced Anwar R., a former official of the Syrian General Intelligence Directorate who had defected and fled to Germany, to life imprisonment for torture, 27 murders, grievous bodily harm and sexual violence, among other crimes committed in the al Khatib prison in Damascus. The court had already sentenced Eyad A. to a prison sentence of four years and six months in February 2021 for aiding and abetting torture in at least 30 cases. These rulings, which confirmed that these crimes were part of a widespread and systematic attack by the Syrian government against the civilian population in Syria, was an important milestone—as was Anwar R.’s conviction for sexual violence as a crime against humanity.

In another case currently underway at the Higher Regional Court of Frankfurt, a Syrian doctor has stood trial since January 2022 on charges of crimes against humanity, including torture and murder in a military hospital, as well as within an underground military intelligence prison in Aleppo in 2011 and 2012.

In the abovementioned Dabbagh case, French judges have ordered the trial of the three senior Syrian officials before the Paris Criminal Court to be held in May 2024. The accused are not present in France; therefore, the trial will be held *in absentia*.

## TRIALS IN ABSENTIA

In France, judicial decisions imposing a sentence may be delivered in the absence (*in absentia*) of the convicted person. However, the defendant has the right to a retrial when s/he surrenders or is arrested. Nevertheless, many commentators maintain a critical stance towards *in absentia* trials, due to the fact that many procedural guarantees for the accused are based on his or her active participation in the trial. According to human rights jurisprudence by the European Court of Human Rights, trials *in absentia* are in accordance with the European Convention on Human Rights if the following safeguards are in place: defendants must have received prior *notification* of the specific charges and the impending trial and must have *unequivocally and explicitly waived* their right to be present at trial. In addition, they must be guaranteed their *right to representation* and must be able to subsequently obtain from the competent court a *fresh determination* of the merits of the charge.

In Austria, prosecutors were notified in early 2016 of the presence of Khalid al Halabi, former chief of the General Intelligence Directorate Branch in Raqqa and likely the highest-ranking suspect present in Europe, in their country,

as well as his involvement in torture and several human rights abuses against detainees in Raqqa province before he later defected and fled to France. It remains unclear how Halabi subsequently reached Austria. He was granted asylum in Austria, despite his known involvement in international crimes and the fact that his asylum request in France had been rejected for this reason in the years prior. The trial against Halabi is scheduled to be held in Vienna in autumn 2024.

In Sweden, a former Brigadier General from the Syrian army’s 11<sup>th</sup> division was indicted for aiding and abetting war crimes in the form of indiscriminate violence resulting in harm to civilians and civilian objects during the brutal and intense fighting in Homs between government troops and the Free Syrian Army in 2012. The trial began in the Stockholm District Court on 15 April 2024 and was still ongoing when this report was finalized.

In France, Abdulhamid C., a former member of the Syrian security forces, was indicted in February 2019 for crimes against humanity. After procedural challenges brought forward by the accused against France’s exercise of its jurisdiction were resolved by the Court of Cassation, the *judicial investigation into C. still continues*.

Efforts outside of Europe are also ongoing, including in the United States, where the Assad regime has repeatedly been held liable for extrajudicial killings in civil lawsuits (see i.e. the cases of *Marie Colvin v. Syria*, *U.S. v. Umm Sayyaf*, and of *Mzaik v. Syria*). Furthermore, the US American Justice Department in tandem with the FBI have been investigating the torture and murder of an American aid worker named Layla Shweikani. The investigation is led by an U.S. attorney in Chicago. A federal indictment accusing the perpetrators of committing war crimes would be the first time that the United States has criminally charged top Syrian officials.

Further complaints have been filed in Sweden, France and Germany concerning chemical weapon attacks. In Sweden, for example, the Open Society Justice Initiative (OSJI) joined survivors of chemical weapons attacks in Syria, SCM, Syrian Archive, and Civil Rights Defenders (CRD) in filing a criminal complaint with the Swedish War Crimes Commission in April 2021. The complaint includes information regarding detailed investigations into the chemical attacks on al Ghouta on 21 August 2013 and Khan Shaykhoun on 4 April 2017, and alleges that these chemical weapons attacks constitute war crimes and crimes against humanity. On 14 November 2023, a French Magistrate Judge issued an *arrest warrant for Syria’s President, Bashar al Assad, his brother Maher al Assad, and two other senior officials* on the basis of their alleged roles in the use of chemical weapons in attacks



**COURT DRAWING  
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in Eastern Ghouta in 2013. The investigative judges found sufficient evidence to initiate proceedings against Assad for complicity in war crimes and crimes against humanity, specifically the use of chemical weapons. In December 2023, the head of France's National Terrorism Prosecution Office appealed the arrest warrant on the grounds that it violates head of state immunity (*immunity *ratione personae**). The appeal will be heard by the Paris Court of Appeal, the question will likely be ultimately decided by the French Court of Cassation.

## IMMUNITY

Head of state immunity is a principle of international law, according to which a head of state in criminal matters shall enjoy immunity from jurisdiction before the courts of a foreign state for any crime he or she may have committed (*immunity *ratione personae**). It covers the freedom from judicial proceedings for both private and public acts during the time in office. Immunity *ratione personae* is often referred to as being "absolute," meaning that there are no exceptions. Immunity of state officials from prosecution can be and has been an impediment to criminal accountability. Thus, especially in situations of grave international crimes, this protection has frequently been challenged.

### Cases against regime-related militias

Lately, there has been another wave of cases in several European countries initiated against members of armed groups who were affiliated with the Syrian regime in the armed conflict in Syria and who are now present in the respective jurisdictions.

In February 2023, the Higher Regional Court of Berlin found that a former militia member from Syria killed four civilians by firing a grenade into a crowd of civilians gathered to collect food in March 2014, and sentenced him to life imprisonment. The attack took place during a months-long siege of the Palestinian camp of Yarmouk in Damascus by the Assad regime that left the population starving. It was the first trial to examine the regime's brutal practice of besieging and starving parts of the population to punish them for their opposition.

In August 2023, the German Federal Police arrested a Syrian man and local leader of a so-called Shabiha militia of Tadamon, Damascus, who is strongly suspected of having committed crimes against humanity and war crimes in the form of torture and enslavement. The German Federal Prosecutor has filed an indictment with the Higher Regional Court of Hamburg. The trial, for which no concrete date has yet been set, will start in the course of the year 2024.

In December 2023, the German Federal Prosecutor's Office had an alleged member of Hizbollah arrested in southern Germany, who was suspected of war crimes (i.a. looting) and crimes against humanity (i.a. torture). As a member of Hizbollah, he allegedly took part in the conflict on the side of the Syrian regime. The trial will likely be held at the Higher Regional Court of Stuttgart and will also begin in the course of the year 2024.

On 22 January 2024, the Hague District Court sentenced a Dutch resident to 12 years in prison for his involvement in the arrest, detention and torture of a civilian. The man had committed these crimes as a member of Liwa al Quds, a militia affiliated with the Assad regime which was used by the regime to violently suppress demonstrations and arrest insurgents. In December 2023, a Syrian man was arrested in the Dutch province of Gelderland on suspicion of being the head of the interrogation department of the National Defence Force (NDF) in Salamiyah, Syria, in 2013 and 2014. The NDF is a paramilitary group consisting of many local pro-regime militias, fighting on the side of the Syrian regime. The man is suspected of committing i.a. sexual violence as a crime against humanity. It is the first time that someone in the Netherlands has been accused of this crime.

In January 2024, the leader of a pro-Assad militia in Salamiyah, Hama province, was arrested in Brussels and charged with crimes against humanity and war crimes, including torture and willful killings, committed in Syria between 2011 and 2016.

### International efforts and mechanisms

Already early on, there were efforts by diplomats and activists at the international level to document the crimes that were being committed in Syria since March 2011. The Independent International Commission of Inquiry on the Syrian Arab Republic (COI), established by the UN Human Rights Council (HRC) in 2011, with the mandate to investigate human rights violations in Syria and their underlying circumstances and to report them publicly, serves as a primary example. Its establishment was not an unusual step. The HRC has, since its creation in 2006, mandated various investigative bodies in numerous forms, including fact-finding missions and commissions of inquiry, for example, for Sudan, Iran, Ukraine, OPT/Israel, Sri Lanka, Venezuela and Yemen. More unusual was the creation of the Commission for International Justice and Accountability (CIJA) in 2011/2012, an NGO-like organization founded by war crimes investigators with support from Western diplomats to secure evidence in Syria for future prosecution of international crimes.

The frustration among international policy-makers, diplomats and activists regarding the deadlock in the **UN Security Council in May 2014** and the resulting unavailability of traditional international accountability measures for the Syria case led not only to a revival of the principle of universal jurisdiction, but also to the creation of further innovative international mechanisms, mainly under the auspices of the UN. In December 2016, the UN General Assembly (UNGA) created, on the initiative of some of its members, an 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 the Syrian Arab Republic since March 2011 (IIIM). The creation of this new accountability model was initiated to address the growing evidence of human rights violations being committed since the start of the conflict. Since its creation in 2011, the COI had issued several reports highlighting “gross violations of human rights,” as well as concern about the commission of “crimes against humanity,” and recommended that the Security Council take action to refer the conflict to international justice bodies.

It was against this background that the United Nations’s General Assembly (UNGA) **created this unique body**, the IIIM, not to prosecute cases (this would exceed the UNGA’s competence) but to prepare for prosecutions, and to support—international and national—prosecutors, law enforcement agencies, courts and tribunals seeking to prosecute serious international crimes. The mission of the IIIM is to **collect, consolidate, preserve and analyze** evidence of violations of international humanitarian law and human rights violations and abuses and to prepare files, in order to facilitate and expedite fair and independent criminal proceedings in national, regional or international courts or tribunals that have, or may in the future, have jurisdiction over these crimes. In this context, the IIIM has been characterized as a **temporary band-aid or a bridge to a future moment** when the conditions and political will exist to provide accountability for crimes in Syria.

The IIIM today serves as successful model for similar mechanisms in other conflicts, **such as in Myanmar**. There are even **calls to have a standing mechanism**, instead of merely *ad hoc* mandates. Concerning international crimes committed against the Yazidi community by the IS, the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da’esh/ISIL (UNITAD) has been fairly successful in supporting the Government of Iraq in working towards accountability for Da’esh/IS crimes by collecting, preserving and storing evidence of acts that might amount to war crimes, crimes against humanity and genocide committed in Iraq.

The creation of the Independent Institution on Missing Persons in the Syrian Arab Republic (IIMP) by the UNGA in June 2023 marks another new development. Its mandate is to secure the cooperation of governments and other actors in locating missing persons in wake of conflict, human rights abuses, disasters, organized crime, irregular migration and other causes, and to assist them in doing so. During the 13 years of the Syrian conflict, more than 130,000 people have gone missing. Men, women and children have been abducted, killed and forcibly disappeared, or have gone missing along migratory routes while fleeing from the fighting. Since the Syrian regime has declined to acknowledge or stop disappearances perpetrated by its own forces and has taken no visible action in order to address the issue of the missing, the creation of the IIMP furnishes yet another example of the relentless efforts of Syrian civil society and families of the missing.

Moreover, significant practical experience has been gained with regard to cooperation among national war crimes investigators and prosecutors, thus validating and strengthening the role of the **EU genocide network**, which can be built upon in future cases (and is already being built upon by war crimes units in Europe in their investigations of crimes in Ukraine).

In addition to those efforts related to individual criminal responsibility, Canada and the Netherlands submitted a **joint application** against Syria to the International Court of Justice (ICJ) in June 2023 concerning a dispute under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT). In November 2023, the ICJ **ordered provisional measures and urged Syria** to take action “to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment,” to ensure that its officials do not commit any such acts and to “prevent the destruction and ensure the preservation of any evidence related to allegations of acts within the scope of the UNCAT, including medical and forensic reports or other records of injuries and deaths.”

Furthermore, despite the deadlock in the UN Security Council, attempts have been made to bring the case of Syria to the ICC. From 2019 onwards, **groups of lawyers submitted** Article 15 Communications to the ICC. The submissions urge the ICC’s Office of the Prosecutor to open a preliminary investigation into alleged mass deportations by the Syrian regime. Since Syria is not among the State Parties to the Rome Statute, the submissions rely on the forcible transfer of Syrian civilians across the border into Jordan, with parallel reference to a case involving the expulsion of members of the Rohingya group from Myanmar into Bangladesh that could be used to give the ICC jurisdiction over at least certain aspects of the Syrian conflict. However, there have been no further updates on the communications as of yet.

## ANALYSIS

What were the main drivers behind the accountability process, and what are its main features? What has been achieved, and how should these achievements be assessed? Where are the accountability gaps and how can they be addressed? While many investigations and trials are still ongoing, in this second part of the report, we would like to provide an interim analysis of the struggle for accountability and try to answer some of these questions.

### The role of civil society

One of the main features of the accountability process is the role that civil society actors have played within it. While non-state actors have always played a vital part in documenting war crimes, the Syria case is unique, not only due to the scale and volume of documentation efforts, but also because of the political impact of Syrian CSOs. To understand this process to its full extent, one must return to the very origins of the violence in Syria: just as in Tunisia and Egypt, the claims made by demonstrators who peacefully took to the streets in March 2011 were calls for equality, social justice, and emancipation from a dictatorial regime. The government's accountability for its actions is an integral feature of these claims, especially for grave human rights abuses, such as those that the Syrian regime has committed for decades, which were also used to quash the peaceful uprising. Almost helpless in the face of the overpowering brutality of the state apparatus, activists turned to documenting the crimes and began to demand accountability for their government's actions internationally, as this was not possible in Syria. This, combined with the fact that this was the first occasion of mass criminality to take place in the "smart phone era," meant that there was a vast amount of digital and other evidence available to be collected and analyzed by organizations, such as the [Syrian Archive](#), and later shared with other CSOs and mechanisms tasked with documenting human rights abuses. As was illustrated in the first part of this report, the hopes invested in the international justice system were at first disappointed for several years. This was mainly due to the deadlock in the Security Council and the ensuing obstruction of the ICC. Furthermore, the first investigations opened in Europe in 2012 and in subsequent years did not capture the full extent or gravity of the everyday mass criminality underway in Syria. Proceedings were directed against low-level perpetrators (mainly from Islamist opposition groups involved in what had developed into a civil war), who came (back) to Europe and had essentially furnished the evidence necessary for their convictions with their own smartphones. They brought with them pictures of themselves posing with beheaded

enemies, thus documenting the commission of outrageous violations of personal dignity that amount to the war crime of humiliating and degrading treatment.

It was then that Syrian and international civil society actors outspokenly demanded prosecutorial authorities to implement a more strategic approach towards accountability for the crimes committed in Syria. Thus, they began filing criminal complaints in several European jurisdictions that led to arrest warrants against high-level perpetrators still residing in Syria—ultimately, all the way up to Assad himself. For these complaints, as well as for the investigations into the more emblematic crimes happening in Syria that were brought to European courts from 2018 onwards, prosecutorial authorities could make use of the results of the documentation work accomplished by Syrian activists and introduce it as evidence into criminal proceedings.

This work, at the same time, presented an opportunity for Syrian civil society to continue its work of self-empowerment, and pursue universal values of justice and accountability to the extent that was possible, despite having been forced into exile. When the political battles in Syria for emancipation from the dictatorial government had been lost, and when there was no more room for political opposition in the country, engaging in activism for accountability abroad presented an opportunity for new a field of action. Since trials and investigations took place in Europe, it was difficult for Syrian civil society to actively participate in them, however. This was partly due to language barriers, but often also insufficient communication on the part of authorities in Europe with Syrian activists, lawyers and organizations—a deficit, which the strong cooperation between Syrian and [European civil society organizations](#) tried to make up for through joint efforts.

It was also civil society that attempted to mitigate one of the major shortcomings of the accountability process thus far: the lack of accountability for specific actors and crimes.

### Lack of corporate accountability and other gaps in accountability efforts

Many criminal actors responsible for the commission of grave crimes are completely absent within the investigations and trials that have been conducted so far. To a large degree, this concerns (Western) corporations, but also powerful states, such as Russia, Iran and Turkey.

Some Western corporations have profited from the ongoing violence in Syria and are under suspicion of having contributed to the commission of international crimes during the course of their operations in Syria. This is true not only for Western arms suppliers and surveillance technology providers but also for manufacturers of building



materials. From 2012 to 2015, Lafarge—now “Holcim,” a world leader in manufacturing construction materials—made the decision to continue operations within its massive cement factory in Northeastern Syria in spite of the war, the embargoes on Syria issued by the EU, and the blacklisting by the UN Security Council of several armed groups that were locally active. In early 2017, Lafarge acknowledged that its subsidiary Lafarge Cement Syria had entered into a series of “arrangements” with non-state armed groups, in order to maintain its factory operations. The ongoing judicial inquiry later established that these “arrangements” amounted to the transfer of at least 15 million US dollars to intermediaries and armed groups, including the organization “Islamic State.” The proceedings against Lafarge and its subsidiary are the result of a [criminal complaint filed in November 2016](#) by 11 Syrian former employees of the corporation, together with ECCHR and Sherpa in France. After investigations started in 2017, an indictment was filed in 2018. After years of appeals proceedings, in mid-January 2024, the French Supreme Court confirmed its ruling of September 2021 on [charges of complicity in crimes against humanity against Lafarge](#). However, the court dropped the charge of endangering the lives of its former Syrian employees. This was a [clear setback regarding access to justice for the former Syrian employees](#). In the United States, Lafarge and its Syrian subsidiary admitted to [conspiring to provide material support to ISIS](#) and agreed to pay \$ 778 Million in fines and forfeiture. Apart from this case, attempts to hold other corporate actors to account, such as cases in Germany and France brought against a consortium of surveillance companies that had had business with the Syrian government until early 2012, have been unsuccessful.

Furthermore, almost all state actors involved in the Syrian conflict have been accused of—systematically or in specific incidents—committing international crimes, especially Russia, Iran and Turkey. Thus far, these acts have been completely unaccounted for. Yet recently, attempts have been made to change that. In March 2021, [FIDH and SCM filed a complaint with Russian authorities in Moscow](#), requesting an investigation into the murder of a Syrian man and the commission of possible war crimes by a Russian suspect, an alleged member of the Wagner Group. In January 2024, [ECCHR and Syrians for Truth and Justice \(STJ\) filed a criminal complaint in Germany](#), addressing the human rights violations committed by Turkish-backed armed groups in the northwestern Syrian region of Afrin. These include the displacement of the Kurdish population, the violation of property rights of the local population, the violent repression of the civilian population, in particular through detention and torture, targeted killings and the

destruction of cultural heritage sites since the beginning of the Turkish military operation “Olive Branch” that was launched in January 2018.

It was also largely thanks to the efforts of civil society actors that conflict-related sexual violence committed by the Syrian regime, especially in connection with torture and enforced disappearance, has been addressed more adequately in investigations and trials. In Syria, as with almost all conflicts, sexual violence is systematically directed against a specific group of persons and used strategically to torment the civilian population. Indictments need to recognize gender-specific harm and the international dimension of the crimes committed. The distinct harm done to female survivors [must be reflected in the prosecutions and trials](#). Nevertheless, in many instances, [prosecutorial authorities all over Europe](#) still shy away from [properly addressing sexual violence and gender-based crimes](#). Other emblematic crimes such as indiscriminate bombings (also by the anti-IS coalition), persecution, forced displacement and starvation remain largely unaddressed.

#### Selectivity on the side of perpetrators and victims

The results of these justice processes were also highly selective. Except for proceedings *in absentia*—which are rare and, as discussed above, not undisputed accountability avenues—only perpetrators who left Syria at their own will—many times walking away from their criminal behavior—have been forced to stand trial. There is no doubt that perpetrators present on European territory must stand trial. Indeed, prosecutors have a legal obligation to investigate such cases. Yet, these perpetrators do not reflect the reality of gross human rights violations in Syria. For example, no senior-level government official has thus far been convicted. This will likely change with the proceedings in France against leading figures of the security apparatus, but even with a verdict against them, they remain in Syria, in powerful positions, or are enjoying their retirement. This is the case, for example, with the 72-year-old Jamil Hassan, the former head of the notorious Air Force Intelligence Service who has international arrest warrants issued against him by Germany and France. Although German prosecutors had issued an arrest warrant against him in June 2018, he still reportedly [traveled to Lebanon in 2019 to receive medical treatment](#). Ali Mamluk, head of Syria’s National Security Bureau since 2012 and former head of the General Intelligence Directorate even [traveled to Italy in early 2018 to meet Italian ministers](#), despite the fact that the European Union had issued travel and financial restrictions against him.



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BY NASSER HUSSEIN**

Nevertheless, in cases where prosecutors have deviated from a mere “no safe haven” approach and have managed to obtain arrest warrants against high-level perpetrators, thus embracing a more comprehensive approach to accountability, a first big step towards future trials was made. The subjects of these arrest warrants can now be arrested and transferred to the jurisdiction that issued the warrant, whenever they are found in a country that will extradite them to that jurisdiction—either on the basis of a mutual legal assistance framework or an ad-hoc decision to extradite. Thus, the chances that these people will have to answer for their crimes in a court of law have increased significantly. Moreover, the possibility of these people being arrested on the basis of an arrest warrant (possibly under seal), and then surrendered to a country where they might have to stand trial, already significantly limits their freedom of international movement. For a class of people that is used to a lifestyle involving trips abroad, such as high-level Syrian government officials, such measures already possess a sanctioning character.

Furthermore, it must be kept in mind that cases involving international crimes will—due to their very nature—reflect the overall context of mass criminality, even if only single acts, committed by lower-level perpetrators, are indicted. War crimes, crimes against humanity, and genocide all carry a “macro” element with them—an armed conflict, a widespread or systematic attack against a civilian population, or an intent to destroy a group in whole or in part—that also needs to be proven and, therefore, will always be a significant part of any trial and verdict. This is one of the main characteristics of international criminal trials, and one reason why they are preferable to trials concerning mere terrorism allegations that do not have such a prerequisite and, therefore, do not normally reflect the extent and dimensions of the criminality. Despite the abovementioned selectivity, international criminal trials often convey the larger context surrounding the crimes committed, which can contribute to an official historical record of past events and, ideally, even have a healing effect on affected communities.

However, not only with regard to the perpetrators, but also on side of the victims, justice has been, and likely will remain, selective. Survivors must fall under the scope of an ongoing investigation or a trial in order to be able to participate in the judicial process. And even when they did, it was almost exclusively victims residing in Europe—or, as in the case of France, only those of French nationality—who could bring their claims to the attention of investigative authorities. Around one million Syrian refugees live in Europe, while more than 5 million refugees live in

countries neighboring Syria and 24 million Syrians still remain in the country (of which 7.2 million are internally displaced), which means that only a small percentage of those who suffered from mass atrocities have any prospect of access to justice. It will be a task for future accountability efforts to find ways to include these survivors and victims in the process.

#### A functioning system of international criminal justice—with flaws

It must be seen as a major achievement for justice efforts for Syria that, despite the fact that the world’s criminal court, the ICC, was blocked, the system of international justice could be activated and could deliver impressive initial results, thanks to the relentless efforts of Syrian activists, lawyers, organizations, diplomats, CSOs, artists and politicians.

Impunity for crimes committed in Syria is no longer absolute. The wall of impunity that has surrounded government officials when committing torture and other horrendous offenses is starting to crack, even though they still commit these crimes today. This fact alone is a miracle for Syrians who, for decades, have grown used to the fact that the power of the state (and its representatives) is absolute and answers to no other authority other than the Assad clan. An opening move—often the most difficult part in accountability processes—has been made in a relatively timely manner (in criminal legal justice terms). The convictions and court records possess a historical and legal authority that will not easily vanish in the future, which can facilitate further legal proceedings.

This became possible as a result of two different developments that have the potential to strengthen the system of international justice in a sustainable way: first, the principle of universal jurisdiction was revived (at least in parts of the world). UJ investigations and trials proved not only to be theoretically, but also practically possible, which entails that international justice does not depend on the ICC alone. Secondly, innovative new mechanisms were created that could present models for coming to terms with a violent past in other situations.

#### **1.**

In the first decade of the 21<sup>st</sup> century, the principle of universal jurisdiction encountered a number of setbacks in Europe (primarily as a result of legislative reform) in the wake of the enthusiasm stemming from the Pinochet effect at the turn of the century. There were rather few cases underway at the time when the violence in Syria began in March 2011. A decade later, however, only within a matter of days after

Russia's attack on Ukraine, the compartmentalized system of international justice could be activated to legally address the international crimes committed. This is largely due to the fact that with the Syria cases, the principle has proven to be effective when put into practice. This is proof that, when there is sufficient political will, international justice can be mobilized, even in the most difficult circumstances (i.e. the ICC was blocked from action, while the main perpetrator group was still in power and receiving support from powerful actors like Russia who impeded any action by the Security Council).

## 2.

With the creation of the IIM, it became clear that the UN General Assembly could overcome the deadlock of the Security Council and promote justice and accountability to some degree. There is now a model (which has already been copied in the case of Myanmar) for an institution under UN auspices, which can secure evidence for an unknown and potentially distant future, when investigations and trials might take place. It can preserve evidence that otherwise would often be lost, as well as serve as a repository for the vast amount of evidence that has been collected by civil society organizations. In addition, the creation of the IIMP—though not focused on accountability—is an impressive and innovative result of relentless pressure by civil society and diplomats to overcome, or at least mitigate, the Syrian government's blockade against all efforts to shed light on the fate of the many hundreds of thousands of forcibly disappeared persons in Syria since 2011, as well as keep the issue on the international agenda for the years to come.

Despite these very promising developments, many flaws within the international justice system prove to be persistent. Only a handful of countries, especially those with broad provisions on universal jurisdiction, as well as those which accepted a larger number of refugees from Syria, were prepared to investigate crimes in Syria. In addition to more far-reaching universal jurisdiction laws, the existence of specialized war crimes units, which many countries lack, has proven to be instrumental for successful investigations. These conditions are only met in a handful of countries, which shows that there is a lot of room for improvement within the system of international justice.

Furthermore, since these investigations took place in Europe and partially in the US, many critics question the universal character of a justice process that only takes place in the Global North/the West. This issue is all the more legitimate when looking at the selectivity mentioned above that excludes perpetrators from powerful countries involved in the Syrian conflict. Considering the progress made on

universal justice in national jurisdictions, activists and survivors of crimes being committed in places such as Sudan, Myanmar, Sri Lanka, Libya and Palestine have—since the *Pinochet arrest warrant in 1998*, and then again after the progress made on Syria—put their hopes into these justice processes. So far, none of these cases have moved forward, further increasing the fears that justice is not universal in its application (in Europe) and, rather, that double standards apply.

### The effect on the situation in the country?

#### Limited at best for now.

Despite all these positive outcomes of accountability efforts, their effects are limited. The proceedings have neither led to a recognizable improvement of the human rights situation in Syria, nor threatened the regime's grip on power in the country. They have not even prevented world leaders from normalizing their relationships with the regime in certain cases, a process that had previously been interrupted due to the horrendous allegations against the Assad clan. However, when such allegations are proven in courts of law, it is more difficult for value-based considerations to be cynically outweighed by economic interests or *Realpolitik* considerations. Still today, although the Arab league has allowed Assad back in, many countries, including in Europe, still reject a normalization of relations with Assad's government, which has been marked as criminal.

Yet, what some portray as a decline in the violence ravaging across Syria since early 2011—a dubious claim to make—is in fact because Assad and his troops have won the war, while Turkey and its allies are brutally controlling the northwest and the Kurdish administration the northeast, and not because of accountability efforts. There is also no information that would suggest that the trials, investigations and arrest warrants have led to any improvement in the situation of detainees, let alone to their release. Nevertheless, (judicial) findings in this justice process did have the effect of pressuring the Syrian government to address the situation at least formally, e.g. in media statements, by releasing a few prisoners, changing legislation and issuing death certificates for some forcibly disappeared persons.

Overall, the results of the accountability efforts thus far undertaken are noteworthy, though highly insufficient. Their effects can and should not be measured in years but, rather, in decades. Processes which aim to overcome a violent past are difficult to have without criminal justice, but criminal justice alone will never achieve that desired result. A political transition movement in Syria might someday be able to make good use of the results of the accountability efforts, including verdicts, arrest warrants and case files.

The change itself, however, will have to be achieved in a different forum that is not the courtroom. Accountability efforts are nonetheless potent points of connection for wider social and political practices, involving other actors and disciplines to achieve such change.

## OUTLOOK

In the future, it is critical that the ongoing efforts continue. European authorities are still investigating suspects on their territory. That will likely remain an important task for some years to come, for which states need to secure resources for investigators and prosecutors. The role of civil society in these efforts will be to support investigations (especially Syrian organizations) and, at the same time, make sure that the rights of victims and survivors in the process are upheld.

For the trials to have an impact on Syrian civil society within the European diaspora and beyond, communication efforts around these trials are key. This means that it is particularly important to ensure accessibility to court hearings, court decisions and **judgments** in Arabic. This was one of the major shortcomings of the first trials that happened in Europe. Lessons seem to have been learned, however, as recent practices in the Netherlands and France demonstrate, and such developments are hopefully also perceived as progress by Syrian society.

However, such future efforts to investigate and prosecute suspects in Europe have inherent limitations in two respects. First, it can be expected that the number of trials in third states will naturally decrease because fewer refugees are arriving (are allowed to arrive) in Europe and, therefore, fewer suspects will be found here. Secondly, and more importantly, such trials are unlikely to address the causes of the mass violence committed in Syria, nor will they challenge, let alone change, the structure within which these crimes are committed, such as the Syrian government and its decades-long policy of state torture. It is therefore vital to continue to adopt a more strategic approach, addressing the most emblematic crimes and the persons who are most responsible for them, even if they cannot be arrested at the moment. More than enough evidence, including insider witness statements, has been collected by European authorities and the IIIM since 2011, in order to issue arrest warrants against these suspects. Syrian civil society and their partners should continue their efforts to push for such investigations in third states that potentially target the travel movements of high-level suspects, even though fewer resources and less attention are given to them by authorities. In such efforts, the main gaps that have been identified above should also be addressed.

Resources of authorities in third states are limited and will likely become much more limited in the near future, as a result of fewer suspects in Europe and a shift in public and political attention to more recent atrocities, such as those in Ukraine or in Israel and Palestine. But decisions, such as arrest warrants, can be important milestones, on the basis of which future accountability efforts—internationally, in third states or, one day, even in Syria itself—can potentially be built. They significantly increase the chances of future proceedings against high-level perpetrators and make it more difficult for them to be welcomed back on the diplomatic world stage.

In order for any efforts to continue in the future, it is vital that their main drivers continue to receive support, also financially—especially the IIIM and Syrian civil society organizations. One of the key functions of the IIIM is to serve as a repository for the evidence collected, and it will need to continue in this capacity, in order to support accountability efforts in the future. The evidence collected will not only have to be stored and supplemented over the next years and decades; it also requires an institution that can meaningfully respond to—potentially very specific—requests by prosecution authorities to share this evidence. Any future justice process will be meaningless, or at least lack legitimacy, if it is not closely tied to Syrian civil society that is mostly in exile and that has, in an impressive way, reconstituted itself in exile in numerous organizations. These organizations are already (potentially because of this shift in attention, which also includes donors) struggling today to finance themselves. If future accountability efforts are to have a backbone, they need this continued support even, and especially, in times when there might be less visible movement in these efforts.

Beyond that, a key question remains as to how a more comprehensive justice process can be achieved, beyond the initial milestones that the European justice efforts represent. Should efforts focus on the international level and try to establish a tribunal—as is currently under discussion by states for crimes committed in Ukraine? Such a tribunal could be based on the principle of universal jurisdiction, legitimated by the states who created it. Even with limited resources and jurisdiction, such a tribunal could one day hold at least one, or possibly several, trials of major importance against the most senior perpetrators (like the Extraordinary African Chambers and their *Habré-case*). Or should efforts focus on the political transition process, and try to include at least a streamlined version of accountability efforts in a future Syria?

It seems possible, after a relatively dynamic and visible accountability movement in the past decade, that in the

following years, the process might receive less attention by the media and policy-makers. At the same time, war crimes prosecutors and investigators, as well as CSOs, have well-functioning structures and processes in place to bring it forward. However, for those fighting for justice, patience and stamina will be needed, along with the pursuit of other forums and forms of justice.

One such area could be reparations for victims of international crimes committed in Syria. Although victims of international crimes have a right to remedy under international law, Syrian victims' opportunities for reparations and remedies are extremely limited. This is due to the fact that even in those countries where trials are taking place, the national victims' funds do not provide support to foreign national victims of crimes committed abroad. At the same time, states are conducting separate legal actions related to violations in Syria that have generated, and continue to generate, substantial financial recovery. Efforts to advocate for an **intergovernmental Syria victims fund**, where monetary recovery linked to violations in Syria can be pooled and directed to support victims, are attempting to close this gap. Several already-existing funds could be used as a model that is suitable in the Syrian context, such as the Ukraine Register of Damage, the ICC's Trust Fund for Victims, or the UN Voluntary Fund for Victims of Torture.

The fund for Syrian victims would need to be designed for the benefit of all Syrian victims of atrocities, including those inside Syria. This would also address one of the major shortcomings in terms of the comprehensiveness of the justice process: the fact that, so far, Syrians who do not reside in Europe are almost completely excluded from it.

Working on other forms of justice in a wider sense would also address the insurmountable limitation of any criminal justice process: in light of the scale and magnitude of the crimes committed over the past 13 years, any justice effort will necessarily be incomplete and selective. All actors involved in this process should be aware in their communication that, whatever the accountability process encompasses, it will likely remain a mere approximation of comprehensive justice. They must not overwhelm the justice process with unrealistic expectations. At the same time, it is important to communicate about the results and their permanence: verdicts and arrest warrants do not just go away. Their "authority" is based on evidence tested and contested in accordance with the rule of law, and their historical weight usually entails that they also contain findings on the wider context of criminality that can be used to promote and support social movements more broadly, in order to achieve results that extend beyond the (naturally) limited realm of criminal justice.

But in order for international justice to be perceived by Syrians as a credible tool to deal with violence in Syria, it is important that it is applied equally to all actors in Syria and beyond. The gaps in the accountability process mentioned above that relate particularly to powerful and Western (corporate) actors are grist to the mill for those who want to abolish the rules- (and law-) based international legal order, arguing that it is a neocolonial tool of Western states to pursue their interests. Western states' reactions to the international crimes committed in Israel and Palestine have further boosted this criticism. Therefore, it is vital for international justice in general, and particularly in its application in Syria, that authorities finally start to abolish the double standards in the implementation of international criminal law.

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