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## Conflict Research Programme

# Documentation of Human Rights Violations and Transitional Justice in Syria: Gaps and Ways to Address Them

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# About the Authors

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# About the Conflict Research Programme

The Conflict Research Programme is a four-year research programme managed by the Conflict and Civil Society Research Unit at the LSE and funded by the UK Department for International Development. Our goal is to understand and analyse the nature of contemporary conflict and to identify international interventions that 'work' in the sense of reducing violence or contributing more broadly to the security of individuals and communities who experience conflict.

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## **Abstract**

The Syrian war is considered the most documented conflict in history but is the documentation paving the way for justice? Drawing on a combination of desk research and key informant interviews, this paper assesses the ongoing effort to document human rights violations committed in Syria and draws out its implications for transitional justice. The paper starts with a discussion of key lessons from other contexts about the relationship between documentation and transitional justice. It then examines the documentation activities of international actors and Syrian civil society, drawing attention to significant gaps in the documentation required both for future accountability processes and for reparative and restorative justice. The paper highlights the potential of documentation to serve as a catalyst for justice and concludes with a set of recommendations for unlocking that potential by addressing the current gaps in the documentation of human rights abuses in Syria.

## Introduction

The Syrian war is considered the most documented conflict in history. A photographer with the Syrian military police known as “Caesar,” who smuggled thousands of photos of alleged detainees killed in Syrian prisons, became a symbol of the remarkable documentation efforts of countless activists and citizen-journalists, NGOs and media inside and outside Syria. The assumption was that documenting and publicising mass atrocities would put pressure on the warring parties and the international community to halt the ongoing violations and prevent future ones.

These expectations have been frustrated. In fact, continuous reporting on mass atrocities in Syria in the past decade may have contributed to ‘normalising’ them. The video footage and first-hand accounts of egregious violations of international law – chemical weapons attacks, bombing of schools and hospitals, using starvation of civilians as a weapon of war – have continued to mount, and so have the violations. As such, Syria has become the most documented breakdown of international norms. The documentation of human rights abuses, however, has another important function: to catalyse and support future transitional justice processes.

The UN defines transitional justice as the full range of processes and mechanisms associated with a society’s attempt to come to terms with a legacy of large-scale past abuses.<sup>1</sup> Transitional justice is inherently limited by political and resource constraints. In the past, it was mainly associated with moments of political flux as countries embarked on transitions from dictatorship to democracy or war to peace, for example the ‘third wave’ transitions in Latin America, Eastern Europe and South Africa, and was driven primarily by state actors and purposes. Today, many countries end up in

a ‘grey zone’ between conflict and peace, repressive and democratic rule, where the overall direction of change is often unpredictable. Transitional justice processes are increasingly pursued before and after transitional moments – when the violence and repression are still ongoing, or many years later – and in addition to States, civil society and international actors often play prominent roles.<sup>2</sup>

Transitional justice involves both judicial and non-judicial instruments that may include criminal prosecutions, truth-seeking initiatives, reparations and restitution processes, institutional and legislative reform, and memorialisation efforts. These are not alternative but complementary approaches that often feed off each other. For example, criminal prosecutions and truth commissions may open up pathways to different types of reparations for victims – individual or collective, material or symbolic – or create a foundation for memorialisation by giving access to a body of judicially established facts and archived testimony of survivors.

It may be useful to think about transitional justice as a spectrum of retributive and reparative/restorative approaches. Retributive approaches are focused on holding perpetrators to account and removing them from power structures through criminal prosecutions at domestic, international and hybrid courts, or vetting in the security and justice sectors. Reparative and restorative approaches are aimed at providing redress to victims and restoring trust in society and institutions, which may involve reparations programmes and restitution of land and property or efforts to provide acknowledgment and recognition with truth-telling and memorialisation initiatives.

Documentation that provides core information and evidence about the

<sup>1</sup> UN Guidance Note on Transitional Justice available at [https://www.un.org/ruleoflaw/files/TJ\\_Guidance\\_Note\\_March\\_2010FINAL.pdf](https://www.un.org/ruleoflaw/files/TJ_Guidance_Note_March_2010FINAL.pdf)

<sup>2</sup> For an overview of these developments, see I. Rangelov and R. Teitel, “Transitional Justice,” in M. Kaldor and I. Rangelov (eds.), *Handbook of Global Security Studies*, Wiley 2014.

abuses – what happened to whom, when and where etc. – is important across the transitional justice spectrum. Beyond that, however, there is significant variation in the documentation requirements of different justice instruments. Criminal prosecutions require “linkage” evidence that connects alleged perpetrators and crimes based on modes of liability such as direct commission, command responsibility or aiding and abetting. Reparations require documentation of the harms suffered that may include medical records, death certificates, police or military records etc., whereas restitution claims require documentation of land and property ownership, transfer and use. Different justice mechanisms also employ different standards of proof.

This paper evaluates the ongoing effort to document human rights violations in Syria from a transitional justice perspective. It highlights current gaps in the documentation efforts of international actors and Syrian civil society and suggests how to address them in order to build a solid foundation for future transitional justice processes across the retributive/restorative justice spectrum.

The paper contributes to the broader analysis of justice conducted by the Conflict Research Programme. That analysis highlights the importance of promoting justice mechanisms as a necessary condition for a shift away from the logics of the political marketplace and extremist violence prevalent in contemporary conflicts, which are premised on a systematic disregard for the rule of law, and doing so while the conflict is still ongoing. The paper demonstrates the potential of documentation to serve as a catalyst for justice and to open up, or foreclose, opportunities for pursuing different types of justice processes and mechanisms.

The paper draws on a combination of desk research and semi-structured interviews

with fifteen leading Syrian civil society organisations involved in the documentation of human rights abuses committed in Syria. The sample was selected based on the size, geographic focus, capacity and influence of the organisations. Most of the interviewed civil society groups cooperate with various UN human rights bodies; about 40 per cent are involved in ongoing investigations and criminal prosecutions in Europe based on universal jurisdiction; and some serve as major sources for Arab and Western media covering human rights violations in Syria. The interviews were conducted either face-to-face or online with founders, senior managers and documentation staff of the organisations. The data was anonymised to protect the confidentiality and safety of respondents.

## **Documentation and Transitional Justice: Lessons from Other Contexts**

The proliferation of transitional justice processes and mechanisms in the past three decades has generated insights from a variety of contexts about the relationship between documentation efforts and transitional justice.<sup>3</sup> Some of the lessons relevant to the ongoing conflict in Syria are summarised below.

### ***Justice Outcomes***

Transitional justice outcomes are shaped by many complex factors such as the nature of political settlements, institutional capacity and legitimacy, political will, resources, social mobilisation etc. The availability and quality of documentation can play an important role in influencing both the likelihood and character of transitional justice: whether justice is pursued or not, what form it takes, how effective and legitimate it is.

### ***Timing***

Documentation efforts are most effectively pursued immediately after the abuses have

<sup>3</sup> See, e.g., the report of the Documentation Affinity Group (DAG) on lessons from documentation efforts in the Balkans, Cambodia, Guatemala, Iraq, and Myanmar (available at <https://www.ictj.org/publication/documenting-truth>) and contributions to the special issue on “Documentation, Human Rights and Transitional Justice,” *Journal of Human Rights Practice*, 8, 2016.



taken place. The passage of time affects negatively the availability and quality of victim and witness testimony and makes the destruction or loss of evidence more likely. Post-conflict states often privilege combatants/veterans over civilian victims in extending a variety of benefits, which may create incentives for some civilians to change their accounts over time.

### **Gender**

Entrenched forms of discrimination and marginalisation of women and sexual minorities are often replicated in documentation efforts and transitional justice responses. Tackling these issues head-on requires developing a gender-sensitive approach to documentation and prioritising the full spectrum of sexual and gender-based violence to ensure that transitional justice processes can provide meaningful forms of recognition and redress.

### **Civil Society**

The documentation efforts of civil society groups tend to be more participatory and responsive to the needs of victims and affected communities; however, they can also be co-opted by States or international actors and instrumentalised for their purposes. Civil society documentation has catalysed and supported a range of formal transitional justice measures in different contexts and has fostered experimentation with “bottom-up” justice initiatives.

### **Regional and Transnational Conflicts**

The regional and transnational dimensions of conflict – proliferation of external actors and proxy wars, refugees and transnational crime – complicate efforts both for documenting human rights violations and for pursuing transitional justice. When victims, perpetrators, witnesses and evidence are scattered across multiple geographies and jurisdictions, regional and transnational cooperation and information sharing are critical.

## **Documentation Efforts of International Actors**

Since the start of the Syrian war, international actors involved in documenting human rights violations have made a deliberate effort to do so in ways that could support future transitional justice processes. UN bodies and NGOs have been particularly active but other international actors have also been involved in justice-focused documentation and investigation activities. These efforts have become increasingly aligned and coordinated in recent years and have coalesced around one transitional justice response in particular: accountability through criminal prosecutions. The most significant documentation efforts of international actors include:

- **The Independent International Commission of Inquiry on the Syrian Arab Republic (COI)** was created by the U.N. Human Rights Council in August 2011 with a mandate to document all violations of international human rights law in Syria since May 2011, to establish their facts and circumstances and, where possible, to identify those responsible for atrocity crimes and ensure they are held to account. The COI reports on the basis of extensive interviews and analysis of satellite imagery, photographs, videos, medical and other records. It employs a “reasonable grounds to believe” standard of proof rather than criminal law standards and does not collect evidence specifically for use in criminal proceedings. However, it identifies the warring party responsible for the reported violations, compiles a confidential list of senior perpetrators, and cooperates with international bodies and national judicial authorities involved in investigation or prosecution of atrocity crimes committed in Syria.

- **The International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011 (IIIM)** was established by the U.N. General Assembly (UNGA) in 2016. The creation of the mechanism was a response to earlier attempts to set up a special tribunal for Syria and to secure a U.N. Security Council (UNSC) referral of Syria to the International Criminal Court (ICC), all of which had failed.
- The IIIM is mandated to collect and analyse evidence of international crimes and to prepare case files in order to expedite criminal prosecutions at national, regional or international courts that have or may in the future have jurisdiction over these crimes. It serves as a central repository of information and evidence collected by other actors, fills evidentiary gaps as needed, and provides assistance to national war crimes units involved in investigations and prosecutions based on universal jurisdiction. The IIIM's own investigative work includes conducting a "structural investigation" that maps patterns of crimes and power structures, and building case files for future criminal prosecutions at any competent jurisdiction.
- So far the IIIM has opened only two case files. However, it has become a catalyst and clearinghouse for the efforts of diverse actors involved in documentation, investigation and prosecution of atrocity crimes committed in Syria. By March 2020 the IIIM had established 42 cooperation frameworks with States, international organisations and civil society actors, with another 22 in progress; received 46 requests for assistance from national judicial authorities and supported the work of 10 jurisdictions investigating international crimes committed in Syria; and managed to obtain more than 2 million records from more than 180 sources, including the holdings of the COI and other actors discussed below.<sup>4</sup>
- **The Organisation for the Prohibition of Chemical Weapons (OPCW) set up a Fact Finding Mission (FFM)** in 2014 to establish facts surrounding the use of toxic chemicals for hostile purposes in Syria, subsequently endorsed by the UNSC. The findings of the FFM provided the basis for the work of the OPCW-UN Joint Investigative Mechanism (JIM), which was created by the UNSC in August 2015 and was allowed to expire two years later. The purpose of the JIM was to identify the perpetrators of chemical weapons attacks confirmed by the FFM. The Syrian IIIM has actively sought to obtain the information and evidence collected by the JIM.
- In 2019 the OPCW created another investigative instrument for Syria, the **Investigation and Identification Team (IIT)**. The purpose of the IIT is to identify the perpetrators of the use of chemical weapons for incidents that have been confirmed by the FFM but have not been investigated by the now extant JIM. In its first report, the IIT interpreted its mandate for identifying "perpetrators" to include individuals, entities, groups and governments, and suggested that its findings and records would be compiled in a manner suitable for further use by the IIIM and other investigative bodies.<sup>5</sup>
- **The Commission for International Justice and Accountability (CIJA)** is an international group that gathers and analyses evidence of atrocity crimes and prepares dossiers on perpetrators, established in 2012 and funded by the UK, the EU and several Member States.

<sup>4</sup> Fifth report of the IIIM to the UNGA, A/47/699, 13 February 2020.

<sup>5</sup> First report by the OPCW Investigation and Identification Team, S/1867/2020, 8 April 2020.

Initially it investigated only abuses by the regime in Syria but subsequently expanded its activities to include Iraq and crimes committed by the Islamic State of Iraq and Syria (ISIS). It uses local researchers in Iraq and Syria to collect evidence that could stand in court, which is analysed and linked to alleged perpetrators to build case briefs ready for prosecution. Like other accountability groups, CIJA cooperates closely with the IIM and with domestic war crimes units involved in universal jurisdiction cases. It focuses on accountability for the most senior offenders and according to its staff, by 2017 it had prepared “trial-ready” cases against 50 of the most senior officials in Syria, including Bashar al-Assad, and 40 senior members of ISIS.<sup>6</sup>

A body of documentation relevant for transitional justice in Syria is also created by **criminal proceedings based on universal jurisdiction**, which often but not always require the presence of perpetrators and/or victims in the prosecuting state. A growing number of national jurisdictions, primarily in Europe, are engaged in the investigation and prosecution of war crimes, crimes against humanity, and terrorism-related offences committed in Syria. International NGOs, such as the European Center for Constitutional and Human Rights (ECCHR) and the Syria Justice and Accountability Centre (SJAC), are often heavily involved by filing criminal complaints, representing victims in the proceedings, or providing access to witnesses and evidence. As more cases are completed in the coming years, court records and findings will in turn become a source of judicially established facts about past human rights abuses in Syria.

## Gaps in the Documentation Efforts of International Actors

International actors have responded to the reality that avenues for addressing mass atrocities in Syria have been effectively blocked – both in the country itself and at the international level – by adopting a justice-centred approach to documentation. The result has been an innovative, concerted effort to collect information and evidence in a forward-looking manner specifically intended to catalyse and support justice responses.

This effort reflects a broader development that one analyst calls “hardwiring” accountability for mass atrocities, involving three interconnected trends. First, UN bodies increasingly create fact-finding and investigative instruments explicitly mandated to collect evidence that could be used in criminal prosecutions. Second, a growing number of States are setting up specialised national units to exercise universal jurisdiction over atrocity crimes. Third, NGOs are increasingly collecting evidence for use in criminal prosecutions, filing cases themselves or compelling national authorities to investigate and prosecute on the basis of universal jurisdiction.<sup>7</sup>

The war in Syria has been a major driver of these trends in accountability. However, the pursuit of accountability through criminal prosecutions is only one approach and dimension of transitional justice – retributive justice – alongside other approaches and dimensions that are critically important: reparative and restorative justice. Moreover, in situations where large-scale violence and human rights violations have occurred, accountability is inherently limited in focus and scope. Prosecuting every single perpetrator is not feasible and may not be desirable. That raises the question of what crimes and perpetrators are prioritised for

6 M. Rankin, “The Future of International Criminal Evidence in New Wars? The Evolution of the Commission for International Justice and Accountability,” *Journal of Genocide Research* 20(3): 392-431, 2018.

7 D. Mandel-Anthony, “Hardwiring Accountability for Mass Atrocities,” *Drexel Law Review* 11: 903-968, 2019.



documentation and investigation, and what are the implications for future accountability processes.

Assessing the efforts of international actors to document human rights violations in Syria from a transitional justice perspective reveals significant gaps and limitations both in relation to accountability and with respect to reparative and restorative justice.

### **Accountability**

Two potentially critical gaps can be detected in international efforts to collect information and evidence of mass atrocities specifically for accountability purposes. One has to do with a subset of Syria-based actors and the other with external actors.

With respect to Syria-based parties to the conflict, there is a risk that international documentation efforts may be overwhelmingly focusing on two types of offenders – those associated with the Syrian regime and with ISIS and other extremist groups – while potentially neglecting other major offenders. In particular, abuses committed by members of anti-Government forces that are not considered terrorist groups may be less thoroughly investigated and documented compared to abuses attributed to the regime and ISIS. This may create a documentation gap that limits the ability to prosecute and punish a significant subset of offenders.

A number of factors can help explain the gap. Some have to do with the gravity of the crimes attributed to different parties to the conflict. International bodies and NGOs involved in investigation and documentation of mass atrocities are part of a system of international justice concerned with those “most responsible” for the “most serious” crimes. For many inside and outside that system, in the Syrian context that largely means senior political and military figures in the regime. Other factors have to do with the strategic interests of States. Counter-terrorism objectives and concerns about

how to deal with captured members of extremist groups are particularly important. They are already shaping the way States exercise universal jurisdiction in Syria-related cases, the majority of which involve members of extremist groups.<sup>8</sup>

Another gap in international documentation efforts aimed at accountability concerns the role of external actors in the commission of mass atrocities in Syria. A large number of States have intervened in the Syrian conflict either through direct action on the ground or through the provision of logistical, material and financial support to armed groups. Political and military leaders of such countries may be criminally liable for two categories of offenses under international law: crimes committed by forces under their control that they either ordered or failed to prevent or punish, and crimes they aided and abetted by providing the principal perpetrators with support that they knew may assist in the commission of crimes.

Some international actors who document atrocity crimes in Syria may choose not to investigate external actors for a variety of reasons (e.g., CIJA), whereas others may not do so because of their substantive mandate (e.g., OPCW). The Syrian COI documents and reports on violations in the first category, for example when the U.S.-led international coalition or the Russian Air Force are believed to be directly responsible for war crimes. There is little evidence, however, that violations in the second category are being seriously investigated by international actors. Given the extensive involvement of external actors in the Syrian war and the range of offenses that may trigger “aiding and abetting” liability of such actors, the gap in documentation may considerably limit the space for accountability.

### **Reparative and Restorative Justice**

From a transitional justice perspective, the most significant gaps in the documentation efforts of international actors so far involve

<sup>8</sup> SJAC, “The State of Justice in Syria 2020”, Annex I, available at [https://syriaaccountability.org/wp-content/uploads/02.28\\_SJS-ENG\\_pdf\\_compressed-1.pdf](https://syriaaccountability.org/wp-content/uploads/02.28_SJS-ENG_pdf_compressed-1.pdf)

collecting and analysing information and evidence of human rights violations for reparative and restorative justice purposes and processes.

International actors have directed most of their attention and resources to documenting atrocities for accountability purposes, specifically criminal prosecutions at any competent jurisdictions that may be available now or in the future, effectively prioritizing retributive justice over reparative and restorative justice in their documentation efforts. The resulting gaps in documentation may create significant obstacles for adopting a balanced and comprehensive approach to transitional justice in Syria, which requires addressing the needs of victims and survivors, affected communities and society at large for recognition, reparation and restitution, in addition to accountability.

Some of the documentation gathered for accountability purposes may be useful in future reparative and restorative justice processes and some international actors hope to make their data relevant to such processes. The HIIM aims to make its holdings useful in the search for missing persons, for example, and the “structural investigation” it conducts could provide valuable data on patterns of violations that may feed into future truth-telling and reform initiatives or may help inform the design of reparation programmes and restitution mechanisms. Nevertheless, when documentation is collected, organised and analysed specifically for accountability purposes, its utility for reparative and restorative justice purposes is inherently limited by the overall objective of holding perpetrators to account, the focus on “linkage” evidence and the use of criminal law standards of proof.

These gaps in documentation are already affecting the prospects for transitional justice in Syria in tangible ways. Conflict-related displacement has created more than 11 million refugees and internally displaced persons (IDPs). For many of them, the most pressing transitional justice concern may be accessing effective remedy and redress for housing, land and property (HLP) violations. Research on the justice needs of Syrian refugees in Jordan and Lebanon suggests that while the vast majority wish to return to Syria, they expect securing housing to be the main challenge and identify the return of property as their top priority.<sup>9</sup> The same study estimates that the process of refugee return will generate more than 2.3 million housing disputes.

The scale of HLP violations in Syria related to displacement, destruction of civilian homes and infrastructure, appropriation of land and property and a host of other issues, requires sustained documentation efforts specifically aimed at informing and supporting future restitution processes. Some of these may involve collecting documentation for restitution and compensation claims, paying particular attention to the barriers for women in exercising their rights to property ownership, transfer and use. Other useful effort may involve documenting patterns of violations for which the burden of proof should be reversed in future compensation and restitution processes, including violations resulting from legislation adopted during the conflict (e.g., legislation that provides for confiscation of property upon conviction of terrorism-related offenses) and agreements concluded by the warring parties (e.g., forced displacement pursuant to so-called “evacuation agreements”). These and other types of documentation activities related to the reparative and restorative aspects of transitional justice represent the most significant gaps in the documentation efforts of international actors.

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9 HiiL, “Justice Needs of Syrian Refugees: Legal Problems in Daily Life, 2018”, available at <https://www.hiil.org/wp-content/uploads/2018/09/Justice-Needs-of-Syrian-refugees.pdf>

## Is Syrian Civil Society Filling the Gaps?

The data we collected by interviewing Syrian civil society groups that document human rights violations clearly demonstrates that for most of them, transitional justice is a priority. While individual organisations tend to have multiple objectives in conducting documentation activities, for the vast majority supporting one or more aspects of transitional justice is a core objective. Some organisations are recalibrating their documentation activities so they can support both long-standing lines of work, such as reporting and advocacy or assisting victims, and forward-looking transitional justice goals. Others are cooperating with international actors who collect documentation for transitional justice purposes, such as the IILM, or are considering such cooperation.

Figure 1 provides further details on the objectives of Syrian civil society groups in documenting human rights violations.

Syrian civil society actors tend to document abuses for a broader array of transitional justice processes compared to international actors. Many of the groups that conduct documentation activities intended to support transitional justice focus on more than one

mechanism. Collectively, they span the full spectrum of retributive, reparative and restorative justice processes. However, our research suggests that there are clear priorities and large discrepancies. The most sustained documentation efforts of Syrian civil society are directed towards accountability – both in terms of the number and capacity of organisations – whereas reparations and restitution attract the least amount of attention and resources from civil society.

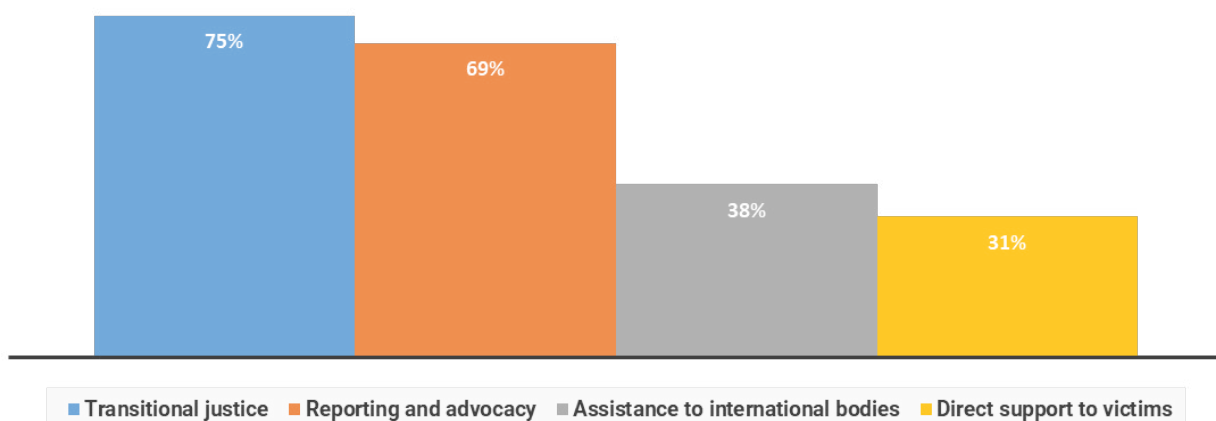
Figure 2 presents the data on civil society documentation for different types of transitional justice processes for which it is primarily collected.

The data suggests that while Syrian civil society groups document human rights violations for a broad range of transitional justice purposes, they are not filling the gaps in the documentation efforts of international actors identified above.

Several factors play a role. Civil society documentation activities are often aligned with the priorities of international actors or shaped by them in a variety of ways. The emphasis on accountability, in particular, reflects the reality that international actors have created opportunities for civil society groups to connect their work

**Figure 1**

### Why is Syrian civil society documenting human rights abuses?



to a well-organised and well-resourced documentation effort, or simply to be brought on board. For example, many of the groups we interviewed referred to existing or planned cooperation with the IIM, which increasingly performs coordination functions in the documentation space and serves as a repository for civil society documentation.

A number of civil society groups use local researchers in Syria but few have the access and resources required for documenting violations in a consistent and comprehensive manner. Many of the groups we interviewed emphasised loss of access to particular areas when control over these areas shifts from one warring party to another, limiting their ability to collect information and evidence. A number of respondents highlighted specific areas where documenting human rights abuses has become very difficult or impossible, including some areas retaken by the Syrian government and areas under the control of Turkish and affiliated forces.

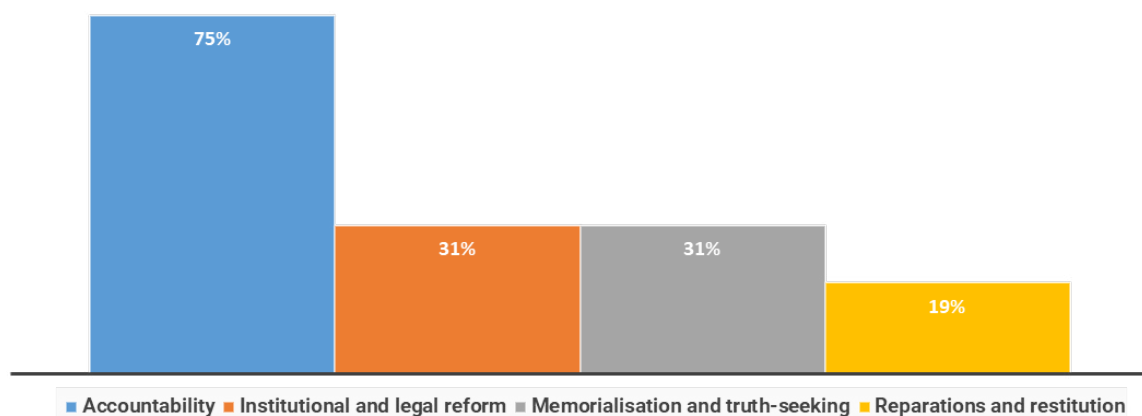
With respect to accountability for external actors, some Syrian civil society groups are involved in documenting violations attributed to such actors when they are the principal perpetrators. However, they don't have the means to gather the complex "linkage" evidence required for establishing "aiding and abetting" liability of external actors. With respect to reparative and restorative justice,

around one-third of the organisations in our sample conduct some documentation activities for institutional and legal reform and the same for memorialisation purposes. The most neglected aspects of transitional justice in the documentation efforts of Syrian civil society are reparations and, even more so, HLP-related compensation and restitution processes.

At the same time, engaging with Syrian organisations in the course of conducting our research produced significant impact in terms of raising awareness about the need and opportunities to investigate and document human rights abuses for reparative/restorative justice purposes. Our discussions revealed that many organisations currently lack knowledge and understanding of the range of justice instruments beyond criminal prosecutions, and do not appreciate the importance of documentation in catalysing and supporting them. Once we highlighted the reparative/restorative dimensions of transitional justice and drew attention to their documentation requirements, however, many of our respondents expressed interest in learning more and even developing new projects specifically focused on documenting abuses for future reparative and restorative justice processes and mechanisms.

**Figure 2**

### What transitional justice processes is Syrian civil society documentation intended to support?



## Challenges and Opportunities for Civil Society

After almost a decade of brutal war, Syrian civil society is torn between commitment and perseverance, on the one hand, and disappointment and frustration, on the other. Many activists believe that a political transition is a prerequisite for pursuing transitional justice in Syria. As the prospects for such transition continue to fade, however, civil society groups are trying to harness any openings for justice that may be available outside Syria.

### Universal Jurisdiction Prosecutions

The turn to universal jurisdiction reflects both frustrations in civil society with the current impasse at the political level, and strategic considerations for achieving a measure of justice through the pursuit of accountability processes abroad.

The growth of universal jurisdiction cases in Europe has injected new energy in the documentation activities of civil society and created new opportunities for building alliances with States and international actors.<sup>10</sup> Syrian activists and victims tend to view such cases as consistent with transitional justice because they support the narratives of victims and affected communities and validate their experiences of injustice.

At the same time, the limitations of this approach from a transitional justice perspective are becoming apparent. Only a small subset of crimes and perpetrators are likely to be prosecuted in this way. Moreover, the selection of cases for investigation and prosecution may be more aligned with the interests of States than with the interests of justice. If the exercise of universal jurisdiction becomes another tool for pursuing counter-terrorism objectives – prioritising prosecution of terrorism-related offenses over human rights abuses – the risk of co-option of civil society actors and documentation looms large.

## Civil Society Interactions with International Actors

Similar tensions and risks can be detected in the interactions of Syrian civil society groups with international actors. Most of our respondents collaborate closely with UN investigative mechanisms and human rights bodies. These collaborations reflect the strategic choices of civil society actors about how to put their documentation to use, however they also generate much frustration.

Some of the frustration is about international actors acknowledging the violations but failing to stop them. There is also frustration with the way Syrian groups are treated by some international actors. As one human rights activists put it: “International mechanisms and special procedures, including requests for urgent assistance, tend to be weak and unreliable and while Syrian organisations are asked to make greater use of them by reporting and filing complaints, little effort is made to protect those who do the reporting.”

Funding is another issue that reveals the uneven power relations in civil society interactions with international actors. Syrian groups that document human rights abuses are often funded by international donors through intermediary organisations, who play an important role in shaping their priorities and can act as ‘gatekeepers’ in the documentation space. Organisations that lack core funding and depend entirely on project funding for their survival are particularly susceptible to donor-driven agendas and pressures.

### Capacity and Objectivity Issues

Another major challenge for civil society is how to attract and retain competent and committed staff inside Syria. Trained field researchers are constantly lost due to changes in the conflict map and dynamics, displacement, arrests and killings.

<sup>10</sup> SJAC has identified 92 universal jurisdiction cases related to the war in Syria by early 2020. See *supra* n. 8.



Many organisations are also grappling with the question how to deal with disinformation and politicisation in the documentation space. Civil society organisations aligned with a particular “side” in the Syrian conflict, like the warring parties themselves, are involved in a struggle over the narrative about the war. Manipulation of facts and figures about mass atrocities is a key strategy in that struggle.

### **New Openings: Victims Associations and Women’s Groups**

There is growing recognition among Syrian civil society groups of the need to align their documentation activities more closely with the needs and priorities of victims and affected communities than they have done in the past. The legitimacy and buy-in of these constituencies are increasingly seen as critical. A number of new initiatives seek to be the voice of victims and their families, created specifically to speak in their name and defend their rights.<sup>11</sup>

Some of the leading organisations in the documentation space are encouraging and embracing that trend, partnering with newly established associations of victims and adapting to their agenda. And some victims groups are recognising the contributions that documentation groups can make to their cause. These synergies present an opportunity for civil society to adopt a more victim-centred approach to documentation, which is more aligned with the reparative and restorative dimensions of transitional justice.

Another opportunity revealed in our research on civil society concerns gender. Feminist organisations, organisations with a gender perspective and organisations led by women tend to be more concerned with the reparative and restorative dimensions of transitional justice and more effective in integrating them in their work. In fact,

they are already doing important work to address some of the gender biases evident in ongoing criminal prosecutions in Europe. For example, they have used their access to victims, witnesses and evidence to ensure that investigations and indictments are expanded to include previously neglected offenses involving sexual and gender-based violence.

The emphasis of such groups on victim-centred and gender-sensitive approaches has the potential to make important contributions to future transitional justice processes aimed at truth-telling, compensation and commemoration of the civilian victims of war, reconciliation and non-recurrence of rights violations. Unlocking that potential depends on strengthening the connectivity and communication between women’s groups and documentation groups, as well as promoting gender mainstreaming in the documentation space.

### **Beyond Accountability: Shifting the Civil Society Approach to Documentation**

Rebalancing the civil society documentation effort to address the largely neglected reparative and restorative aspects of transitional justice requires new thinking and action in civil society but also in the international community, as it shapes the incentives and opportunities for Syrian civil society actors in powerful ways. Civil society organisations have tended to put reparations and restitution processes at the bottom of their agenda because they view them as a responsibility of the Syrian state and, therefore, highly unlikely. Recently, however, there have been calls for the international community to provide funding for compensation and to respond to urgent justice needs on the ground which, for many Syrians, are about resolving HLP issues.

<sup>11</sup> Examples include the Association of Caesar Families, Association of Detainees and Missing Persons of Sednaya, Association of the Families of Missing Persons with ISIS, Committee for the Affairs of Detainees and Missing Persons, Families for Freedom, Free Me, Gathering of Female Survivors, and Syrian Association for Citizen Dignity.

These developments are an opportunity for civil society to rethink and rebalance its approach to documentation. A key lesson from Syria's experience with universal jurisdiction so far is that documentation can serve as a catalyst for transitional justice processes and mechanisms: when documentation efforts are robust and targeted, and when civil society and international actors are aligned and strategic in their pursuit, they end up bearing fruit.

## Conclusions and Recommendations

From a transitional justice perspective, there are significant gaps in the efforts of international actors to document past and ongoing human rights violations in Syria. These gaps are largely replicated in the documentation activities of Syrian civil society.

Documenting violations for accountability purposes is prioritised both by international bodies and NGOs and by Syrian civil society groups alike. Most of that documentation, however, concerns atrocity crimes committed by the regime and ISIS. The main gaps in documentation for future accountability processes concern crimes committed by other Syria-based actors and by external actors, including those responsible for aiding and abetting atrocity crimes.

Documenting violations for reparative and restorative justice purposes is largely neglected by international actors. Syrian civil society tends to pay more attention to reparative and restorative justice in its documentation efforts, especially to memorialisation and institutional reform, however it also neglects some of the most pressing aspects of transitional justice for many Syrians such as HLP-related compensation and restitution.

The Conflict Research Programme analysis of different conflict settings suggests that it is essential to be consistent in support for the principle and practice of advancing

justice routinely at all levels, from the local to the global. That must include support for a balanced approach to documentation that can catalyse and support both retributive and reparative/restorative justice processes and mechanisms. In the Syrian case, addressing the identified gaps in the documentation efforts of international actors and Syrian civil society should be supported as a matter of priority.

Addressing these gaps requires sustained efforts to rebalance the investigation and documentation of past and ongoing human rights violations in Syria in several ways:

- U.N. bodies should explore ways to address reparative and restorative justice gaps in their ongoing efforts to investigate and document human rights violations in Syria, either by establishing a separate mechanism with coordination and repository functions or adapting the mandates of existing mechanisms.
- International fact-finding and investigative mechanisms and international NGOs should address accountability gaps in their ongoing efforts to investigate and document human rights violations in Syria, including those concerning the role of external actors in aiding and abetting atrocity crimes.
- Syrian civil society should address reparative and restorative justice gaps in its ongoing efforts to investigate and document human rights violations in Syria, including those concerning HLP-related compensation and restitution processes, and strive to harness the contributions of women's groups and emerging synergies with victims groups.
- Syrian women's groups and documentation groups should strengthen their networks and relationships to ensure that women's groups can feed into and inform the work of documentation groups, which in turn

should strive to integrate gender issues and perspectives as much as possible in their activities.

- Multilateral organisations, bilateral donors and independent funders should provide adequate financial and technical support to international actors and Syrian civil society to address current gaps in the investigation and documentation of human rights violations in Syria that relate to accountability and reparative/restorative justice.
- Funders should resource at scale civil society documentation efforts intended to catalyse and support the full spectrum of transitional justice processes and mechanisms, prioritising women's and women-led groups and encouraging activities that promote gender equality and sensitivity in the documentation space.
- Syrian civil society, international actors and like-minded States should assimilate the lessons of their successful efforts to use documentation as a catalyst for universal jurisdiction prosecutions in recent years, striving to replicate these successes in future reparative and restorative justice processes.

## Abbreviations

- CIJA Commission for International Justice and Accountability
- COI Independent International Commission of Inquiry on the Syrian Arab Republic
- ECCHR European Center for Constitutional and Human Rights
- FFM Organisation for the Prohibition of Chemical Weapons Fact-Finding Mission
- HLP Housing, Land and Property
- ICC International Criminal Court
- ISIS Islamic State of Iraq and Syria
- IIM International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011
- IIT Organisation for the Prohibition of Chemical Weapons Investigation and Identification Team
- JIM Organisation for the Prohibition of Chemical Weapons-United Nations Joint Investigative Mechanism
- NGO Non-Governmental Organisation
- OPCW Organisation for the Prohibition of Chemical Weapons
- SJAC Syria Justice and Accountability Centre
- UN United Nations
- UNGA United Nations General Assembly
- UNSC United Nations Security Council



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Photography: EK McConnell, Bullet holes. Wall against which executions apparently took place while the fairground was occupied by Syrian forces up to 2006. Source: Flickr. CC BY-NC-ND 2.0

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