

**FRAMING JUSTICE IN SYRIA:**  
THE ROAD TOWARD  
COMPREHENSIVE JUSTICE

**REPORT**

APRIL 2022

**THE  
SYRIA  
CAMPAIGN**

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# HUMAN RIGHTS FOUNDATION AND THE SYRIA CAMPAIGN

The Human Rights Foundation (HRF) is a nonpartisan nonprofit organization that promotes and protects human rights globally, with a focus on closed societies. HRF unites people in the common cause of defending human rights and promoting liberal democracy. Its mission is to ensure that freedom is both preserved and promoted around the world.

HRF focuses its work on the founding ideals of the human rights movement, those most purely represented in the 1948 Universal Declaration of Human Rights and the 1976 International Covenant on Civil and Political Rights.

HRF is one of the few international organizations that focus exclusively on countries ruled by authoritarian regimes, which include the regime that currently rules Syria. HRF believes that its resources can make the greatest impact in countries where independent media, human rights advocates, think tanks, opposition parties, and NGOs are under constant threat and are systematically prevented from expressing themselves regarding domestic policy.

The Syria Campaign (TSC) is a human rights organization that supports Syria's heroes in their struggle for freedom, justice, and democracy. TSC was launched on the third anniversary of the Syrian uprising in March 2014 at a time when Syria was slipping off the media and political agendas of countries around the world. As human rights campaigners, the organization does what it can to refocus global attention and action on Syria.

Only by listening to the demands of Syrians and standing with those who want a peaceful and democratic future for the country will stability come to Syria. Through its campaigns elevating the heroic and inspiring work of civilians on the ground, TSC mobilizes support for the only people who can build the future they deserve: Syrians themselves.

*Framing Justice in Syria: The Road Toward Comprehensive Justice is the result of a collaboration between HRF and TSC. HRF and TSC would like to express a special thank you to the following individuals who offered their valuable time and expertise to contribute to this report:*

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**Patrick Kroker**, Senior Legal Advisor at the European Center for Constitutional and Human Rights

**Roger Lu Phillips**, Legal Director at the Syria Justice and Accountability Centre

**Rowaida Youssef Kanaan**, Syrian journalist, researcher with Sowt podcast, and political and human rights advocate

**Wafa Mustafa**, journalist and human rights advocate

**Yousef Wehbe**, Head of International Law Support Unit at the Syrian Legal Development Programme

HRF and TSC would like to also express a special thank you to Anam Salem and Chloe Dyer for their research and writing support.

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# Executive Summary

The spring of 2022 marks the 11th anniversary of the Syrian revolution. In March 2011, inspired by the Arab Spring protests throughout the Middle East and North Africa, Syrian school children in southern Daraa painted anti-regime graffiti on a local school's wall. They were arrested, held for days, and subjected to torture, sparking local protests calling for their release. Peaceful demonstrations quickly expanded throughout Syria, calling for freedom, dignity and then for the fall of the Assad regime. As demonstrations developed rapidly, the Syrian regime steadily increased its military crackdown on demonstrators.

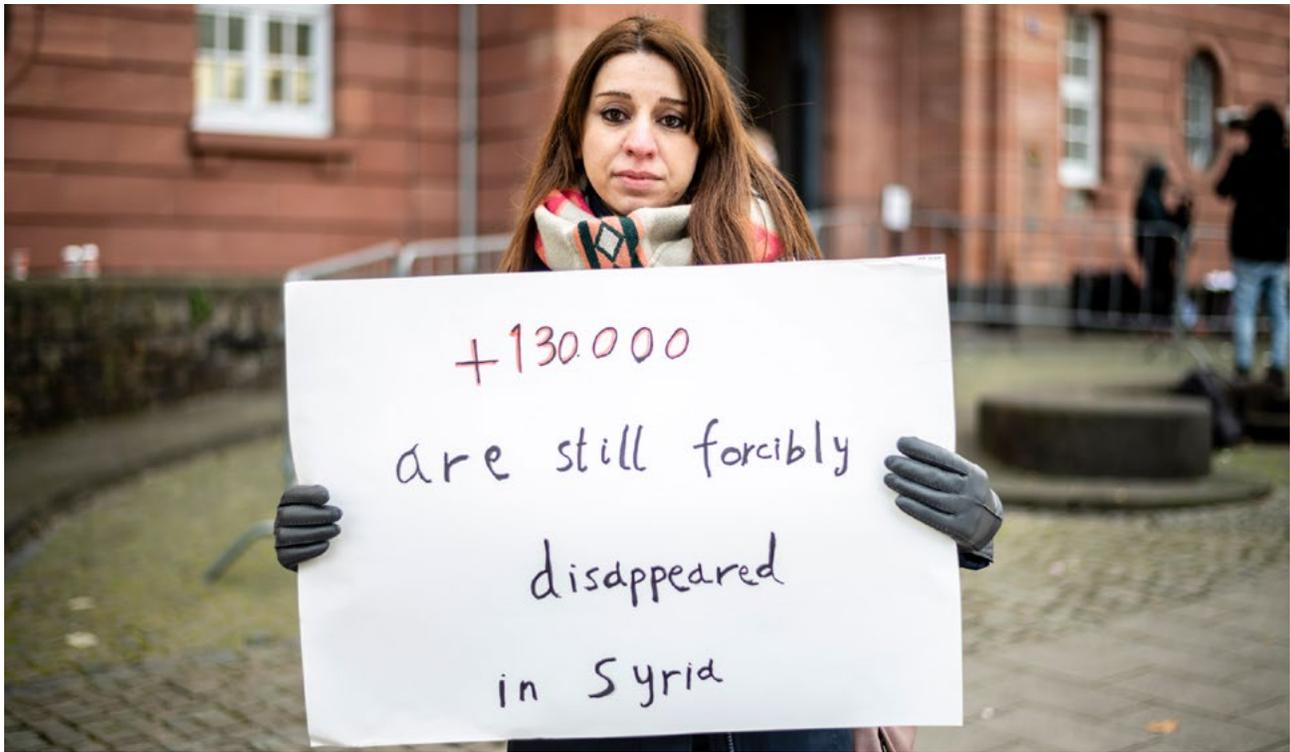
As the conflict escalated in the following months and subsequent years, the intervention of foreign actors in Syria unraveled the situation turning it into a proxy war, with a staggeringly high number of casualties and widespread destruction committed by different parties, including armed opponents of the regime, like ISIS. Despite the multitude of actors, the Syrian regime, infamously known for its long record of abuse prior to the conflict, has perpetrated most of the violence unleashing both conventional and chemical weapons, aerial bombardment, siege, starvation, and expulsion, mainly against civilians.

Grave human rights abuses and crimes against humanity have been prevalent and visible since 2011. Willing to stop at nothing to preserve its standing, behind closed doors, the Assad regime has also utilized mass enforced disappearances, detention, and torture, including sexual and gender-based violence, on a large scale. The experiences of Syrian detainees are not homogeneous; with factors such as gender, gender identity, and sexual orientation impacting how individuals are treated as well as the intergenerational trauma that follows.

As international crimes do not only affect individuals and states, but the international community as a whole, there is a role for international legal practitioners and policymakers to play in the midst of this unfolding situation. Despite the fact that international law proscribes crimes against humanity, such as torture, most international legal mechanisms, including the International Criminal Court, have shown to be incapable of being activated to achieve accountability in the Syrian context leaving Syrians and other victims of similar crimes with little to no hope for legal recourse.

And yet, within this context plagued by opposing state and regional interests, the principle of universal jurisdiction has recently given a glimmer of hope to the Syrian context. Universal jurisdiction allows states to prosecute international crimes no matter who committed them, where they were committed or against whom they were committed and provides state prosecutors a tool with which they can initiate investigations and collect evidence. Under this principle, national courts ultimately may judge these global crimes offering the opportunity to hold perpetrators accountable and prevent impunity.

The first public criminal trial under the principle of universal jurisdiction on state torture in Syria was initiated in April 2020 in Koblenz, Germany. The "al-Khatib trial" refers to the intelligence branch that two former



*Lamis Alkhateeb standing in front of the Koblenz Higher Regional Court on the day of Anwar R.'s verdict.  
Photo credits: The Syria Campaign/Paul Wagner, January 17, 2022*

members of the Syrian intelligence, Anwar R. and Eyad A., had previously served in while working for the Syrian regime. Notably, while the "al-Khatib trial" was not the first step to be taken by European states as there are legal complaints taking place simultaneously in France, Sweden, Austria, and Norway, this report will examine it as a case study assessing to what extent it can contribute to justice for Syria.

Notwithstanding that universal jurisdiction is an important component of justice for Syria, it is pertinent to underscore that it does not solve the internal criminal justice issues raised by the armed conflict because it does not ensure accountability for those who have committed grave crimes particularly as the conflict continues. Similarly, universal jurisdiction has failed to redress the suffering inflicted on millions of Syrian victims or provide answers on the whereabouts of the disappeared. Other components that need to be addressed, in an effort to work toward comprehensive justice in Syria, include gender-based analyses and mental health support. While the movement for building comprehensive justice for Syria comes with limits and challenges, it is important to emphasize that it is taking place while the conflict in Syria remains ongoing. The benefit this presents is that there is a wealth of evidence readily available for accountability purposes, the most prominent of which are the survivors and witnesses still alive and willing to share their stories and testify against perpetrators.

In the specific case of the current conflict in Syria, HRF and TSC support the targeted use of universal jurisdiction as a means to hold those accused of crimes against humanity in Syria accountable yet strongly believe that the impunity gap can only be addressed through a comprehensive approach to transitional justice that is conditioned with international political will.

# Introduction

In order to provide a comprehensive understanding of the impact of universal jurisdiction trials for crimes against humanity in Syria, this report is divided into eight sections. It is worth underscoring here that together and for the purpose of informing this report, HRF and TSC conducted interviews with more than a dozen international legal scholars and practitioners, tech experts, and Syrian victims, survivors, and family members of disappeared Syrians, all of whom provided a unique perspective on the extent of the systematic abuse perpetrated by the Syrian regime and the effects this has on building a case for Syrian justice.

**Section II** provides a foundational overview of the context of the situation in Syria, including how Bashar al-Assad came to power after the dictatorial reign of his father, Hafez al-Assad. This section also provides a background on the events of the Arab Spring and the subsequent Syrian conflict, as well as on the different state and nonstate actors in the conflict.

**Section III** highlights the use of detention, torture, and enforced disappearances by the Assad regime, explaining the role of the intelligence services, or *mukhabarat*, and focusing on the large scale of human rights abuses, as evidenced by the Caesar photos. This section also emphasizes the disparate impact that these methods of repression have on individuals, particularly women and members of the LGBTQ+ community, and reinforces the concept that the experience of Syrian survivors is not homogeneous.

**Section IV** focuses on international law and legal frameworks for prosecuting crimes against humanity, with a particular focus on the avenues available to pursue justice, including the principle of universal jurisdiction.

**Section V** assesses both the strengths and shortcomings of the trials of two Syrian regime officials in Koblenz, Germany, that took place under the principle of universal jurisdiction. This section explores their impact, implications, and significance for Syrian victims, survivors, and families as well as for international law at large.

**Section VI** examines other components of justice for Syria more broadly and explores how criminal accountability for perpetrators of gross human rights abuses fits into a larger view of transitional justice.

**Section VII** assesses the advantages and limitations of universal jurisdiction from one lens while also considering the other elements that bring forth comprehensive justice for Syria.

**Section VIII**, the final section of this report, provides recommendations for the international community, civil society, policymakers, legal practitioners, and tech experts who work to support initiatives that will realize comprehensive justice for Syria.



# Overview: Political Regime and Syrian Armed Conflict<sup>1</sup>

<sup>1</sup> Note on language: Throughout this report, we refer to the armed conflict in Syria as “the conflict” instead of civil war. While the conflict is often referred to as a civil war, many argue that it is a misnomer. The concept of a civil war refers to an internal, intrastate conflict in which the opposing sides are citizens of the same country, vying for control. This is not the case in Syria, where foreign state intervention has prolonged and reshaped the conflict transforming it into a proxy war. Critics of the term “civil war” argue that it obscures the role of international and regional actors in the conflict, and gives the Assad regime a semblance of legitimacy while lending the international community an excuse to not intervene. International actors involved in Syria include Iran, Israel, Qatar, Russia, Saudi Arabia, Turkey, and the U.S.-led coalition all of which operate in close proximity to one another. See Louise Arimatsu & Mohbuba Choudhury, *The Legal Classification of the Armed Conflicts in Syria, Libya, and Yemen*, Chatham House (Mar. 2014), [https://www.chathamhouse.org/sites/default/files/home/chatham/public\\_html/sites/default/files/20140300ClassificationConflictsArimatsuChoudhury1.pdf](https://www.chathamhouse.org/sites/default/files/home/chatham/public_html/sites/default/files/20140300ClassificationConflictsArimatsuChoudhury1.pdf). Human rights organizations like Amnesty International, as well as think tanks and organizations, like the U.S. Congressional Research Service, refer to the situation as an armed conflict. See *Armed Conflict in Syria: Overview and U.S. Response*, Cong. Research Serv., RL33487 (July 27, 2020), <https://sgp.fas.org/crs/mideast/RL33487.pdf>.

# Background

Since gaining independence from France in 1946, Syria has been characterized by both internal and interstate upheaval and armed conflict. During the period between 1949 and throughout the 1960s, the country witnessed a series of coups,<sup>2</sup> culminating in the Ba'ath party seizing power in 1963, setting the stage for the rise of General Hafez al-Assad finally seizing power in 1970. Assad was a member of the Ba'ath Party, which championed a pan-Arab socialist ideology and had controlled the regime since 1963, when Ba'athist military officers overthrew the previous government.<sup>3</sup>

Assad went on to rule Syria for 30 years until he died in 2000. Under his rule, the country went from being a fractured, unstable nation to a key player in the politics of the Arab world. However, Assad was also a brutal dictator, transforming Syria not only into a regional power, but into a security state with pervasive spy networks and no tolerance for dissent.<sup>4</sup> His regime was viewed as "coup-proof" given that the upper echelons of the military were highly loyal to the Assad family, and the creation of multiple intelligence agencies with overlapping jurisdictions made any attempt at subversion effectively impossible.<sup>5</sup> Critics of the regime were detained, tortured, and killed. The notorious Tadmur prison housed thousands of political prisoners during Assad's rule; in 1980, up to 1,000 detainees were slaughtered within minutes when guards opened fire into the prison cells.<sup>6</sup>



A house in Hama after the 1982 Hama Massacre.  
Photo credits: Wikimedia Commons.

One of the bloodiest and most prominent examples of the regime's repression was its crackdown on political insurgents, culminating in the notorious 1982 Hama massacre. The Muslim Brotherhood, an Islamist political party opposed to Ba'athist rule, was responsible for the orchestration of assassinations and bombings of regime officers in the late 1970s and early 1980s.<sup>7</sup> In response to their instigation of an uprising in the city of Hama, Assad deployed 12,000 troops, led by his brother Rifa'at, to besiege the city. After close to a month of shelling the city, armed soldiers went door-to-door, indiscriminately killing Muslim Brotherhood sympathizers and civilians alike.<sup>8</sup>

2 Halla Diyab, *On Syria's turbulent history of coups*, Al Arabiya (May 20, 2020, 10:45 AM GST), <https://english.alarabiya.net/views/news/middle-east/2014/11/26/On-Syria-s-turbulent-history-of-coups>.

3 *Ba'ath Party*, Encyclopedia Britannica, <https://www.britannica.com/topic/Baath-Party> (last visited Feb. 25, 2022).

4 Freedom House, *Freedom in the World 1998–1999*, at 441 (1999), available at [https://freedomhouse.org/sites/default/files/2020-02/Freedom\\_in\\_the\\_World\\_1998-1999\\_complete\\_book.pdf](https://freedomhouse.org/sites/default/files/2020-02/Freedom_in_the_World_1998-1999_complete_book.pdf).

5 Tabassum Zakaria, *No clear successor to Assad's "coup-proof" rule in Syria*, Reuters (Feb. 27, 2012, 7:15 AM), <https://www.reuters.com/article/us-usa-syria-assad/no-clear-successor-to-assads-coup-proof-rule-in-syria-idUSTRE81Q11320120227>.

6 *Inside Tadmur: The Worst Prison in the World?*, BBC (June 20, 2015), <https://www.bbc.com/news/magazine-33197612>; Interview with Mariam al Hallak (Nov. 13, 2020).

7 *The Muslim Brotherhood in Syria*, Malcolm H. Kerr Carnegie Middle East Ctr. (Feb. 1, 2012), <https://carnegie-mec.org/publications/?fa=48370>.

8 Deborah Amos, *30 Years Later, Photos Emerge From Killings In Syria*, Nat'l Pub. Radio (Feb. 2, 2012, 12:41 PM ET), <https://www.npr.org/2012/02/01/146235292/30-years-later-photos-emerge-from-killings-in-syria>.

An estimated 20,000 to 40,000 were killed in the massacre, many of them civilians, purposefully and effectively sending a message that dissent would not be tolerated.<sup>9</sup>

In recent years, the Hama Massacre seems to have been a prelude to the events that unfolded in 2011 and the brutal crackdown of Hafez al-Assad's successor, his son, Bashar al-Assad.

## Rise of Bashar al-Assad



Syrian President Bashar al-Assad.  
Photo Credits: Shutterstock/Harold Escalona

After Hafez al-Assad died in 2000, his son, Bashar al-Assad, took power after the constitution was amended to lower the 40-year minimum age required for assuming the presidency to 34. Bashar al-Assad had never initially been in line for the presidency. It was widely assumed that his older brother, Bassel, would take over from Hafez. However, after Bassel al-Assad died in a car accident in 1994, Bashar, who was studying ophthalmology in London at the time, became heir apparent.

During the first year of his presidency, many hoped that Bashar al-Assad would be a liberalizer, rather than follow in his father's dictatorial footsteps. During the early months of his rule, he stressed the concept of transparency. Sensing an opportunity, many political and human rights advocates started to raise their voices in Syria, demanding more freedoms and political reform. A number of informal groups arose through organizing meetings in private houses to debate human rights and reform initiatives.

The officials let these forums take place, resulting in a time of relative openness known as the "Damascus Spring."<sup>10</sup> However, the regime's brief period of tolerance had come to an end in early 2001 with a counter-attack against supporters of the reform, labeling them "agents of the West whose only aim is the undermining of Syrian domestic stability, in the service of the enemies of the State."<sup>11</sup>

The new Assad regime had cracked down on those who called for progress, effectively crushing the pro-democracy and human rights movements. Within a month, Syrian officials had detained 10 political figures, including two members of parliament, and repressed civil society groups. Since then, Bashar al-Assad has followed in his father's footsteps by limiting freedoms and regularly detaining political and human rights advocates.

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<sup>9</sup> *Massacre of Hama (February 1982) Genocide and A crime against Humanity*, Syrian Human Rights Comm., <https://web.archive.org/web/20130522172157/http://www.shrc.org/data.aspx/d5/2535.aspx> (last updated Feb. 14, 2006, 6:09 GMT).

<sup>10</sup> *The Damascus Spring*, Malcolm H. Kerr Carnegie Middle East Ctr. (Apr. 1, 2012), <https://carnegie-mec.org/diwan/48516?lang=en>.

<sup>11</sup> Eyal Zisser, *A false spring in Damascus*. Tel Aviv Univ. 44, 39–61 (2003), available at [https://www.researchgate.net/publication/297949378\\_A\\_false\\_spring\\_in\\_Damascus](https://www.researchgate.net/publication/297949378_A_false_spring_in_Damascus).

For the next decade, under Assad's rule, Syria continued to be an authoritarian state. The country remained one of the worst-ranking in the world in Freedom House's annual Freedom in the World report, with no political freedoms and severely repressed civil liberties.<sup>12</sup> Extending the state of emergency put in place when the Ba'ath party seized power in 1963, Bashar al-Assad's regime curtailed the rights to speech, assembly, and association, rendering them virtually nonexistent. The regime strictly censored any published materials, restricted access to the Internet, and prohibited most gatherings. The Emergency Law effectively waived many constitutional protections and gave security forces broad latitude to arrest and detain individuals without being required to ever formally charge or try them. Detainees were often held incommunicado and subject to torture.<sup>13</sup> Control of the government was nearly completely in the hands of Assad himself,<sup>14</sup> with the judiciary and legislative branch possessing little power. While the constitution mandated that the president would be nominated by the ruling Ba'ath party and approved by popular referendum, in reality the referendums were solely to rubber-stamp Assad's continued rule; the people had no meaningful choice or electoral power, and the process was deeply corrupt.

Bashar al-Assad has followed in his father's footsteps by limiting freedoms and regularly detaining political and human rights advocates.

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<sup>12</sup> Freedom House, *Worst of the Worst 2010*, at 20 (May 2010), [https://freedomhouse.org/sites/default/files/inline\\_images/Worst%20of%20the%20Worst%202010.pdf](https://freedomhouse.org/sites/default/files/inline_images/Worst%20of%20the%20Worst%202010.pdf).

<sup>13</sup> Human Rights Watch, *No Room to Breathe: State Repression of Human Rights Activism in Syria*, at IV (Oct. 16, 2007), <https://www.hrw.org/report/2007/10/16/no-room-breathe/state-repression-human-rights-activism-syria>.

<sup>14</sup> Key positions in the government and administration, military, and security services were widely used as conduits for patronage. This was especially the case with the economy. Family ties played the most prominent role in the Assad family's rise to the top economically in the country, as the family began its economic activities with Muhammad Makhlof, the brother-in-law of Hafez al-Assad, after which his sons and grandsons took over the task of gradually monopolizing the economic sectors in Syria. During the Assad family's grip on power for more than five decades, the Makhlof family played a key role in defining Syria's economic landscape. With the economy in hands of his family and associates, Assad continued to establish monopolies for Syria's economy.

# The Beginning of the Conflict

The date of March 15, 2011 is often cited as the start of the Syrian revolution. The armed conflict started to shape by early 2012 and was a culmination of complex geopolitical and sociopolitical factors, both in the region and within Syria itself.

In Tunisia, in January 2011, a Tunisian street vendor named Mohamed Bouazizi took his own life after being harassed for years by police. His death by self-immolation sparked nationwide anti-regime protests, first in Tunisia and later spreading to other countries in the Middle East and North Africa region. This phenomenon of mass demonstrations became known as the Arab Spring.<sup>15</sup> The scale of the protests, and the scope of protesters' demands, varied between countries, as did the ultimate outcomes of the movements. Some governments acquiesced to policy changes while others remained largely unchanged. In Tunisia, for example, Zine El Abidine Ben Ali was deposed in 2011, and since then, the country has held two elections and experienced its first-ever, historic presidential debates in 2019.<sup>16</sup> Egypt saw the overthrow of



Ahmad Helmi speaking in a European Union side event in Brussels in March 2019. Photo credits: International Network for Victims and Survivors of Serious Human Rights Abuses (INOVAS).

two governments – that of Hosni Mubarak in 2011, followed by protests and a military coup d'etat<sup>17</sup> to replace then President Mohamed Morsi in 2013, after which General Abdel Fattah el-Sisi took power in 2014 and has ruled the country's brutally repressive regime since then. Libya and Yemen descended into full-scale conflicts.

In Syria, years of political repression and economic hardship, as well as exacerbated inequality between members of Syria's upper class that had connections with the regime and ordinary citizens, had strained society. Syrian human rights advocate Ahmad Helmi cited the extreme oppression in Syria as a barrier to organizing protests; freedom of assembly was so strictly curtailed that prior to 2011, even a group of teenagers having a night out would lead to fear of being arrested. He attended his first protest on February 9, 2011, recalling the excitement of being gathered with more than five people for something other than prayer or a football game – “an unprecedented experience.”<sup>18</sup>

He attended his first protest on February 9, 2011, recalling the excitement of being gathered with more than five people for something other than prayer or a football game – “an unprecedented experience.”

<sup>15</sup> Erin Blakemore, *What was the Arab Spring and how did it spread?*, Nat'l Geographic (Mar. 29, 2019), <https://www.nationalgeographic.com/culture/topics/reference/arab-spring-cause/>.

<sup>16</sup> *Tunisia airs first 'great debate' ahead of presidential poll*, France24 (Sept. 8, 2019, 10:58 AM), <https://www.france24.com/en/20190908-tunisia-airs-first-great-debate-ahead-presidential-poll>.

<sup>17</sup> A coup d'etat is understood as an instance in which the chief executive is abruptly or suddenly removed from their post by violence or coercion, in clear violation of the constitutional procedure to remove the chief executive. See Javier El-Hage, *Under what circumstances may the OAS apply the democracy clause against a member state?*, Human Rights Foundation, at 4 (Mar. 31, 2010), available at <https://ssrn.com/abstract=2480086>.

<sup>18</sup> Interview with Ahmad Helmi (Nov. 23, 2020).

Syrian human rights advocate and mother of a disappeared detainee, Mariam al Hallak, noted how strange it felt to witness people speaking out, as the protests progressed, when for so long such speech was forbidden.<sup>19</sup>

By early spring of 2011, a seismic shift occurred in the scale of protests in Syria. In Daraa – a city in the southern region of Syria – a group of young school children were arrested on February 22 for painting anti-regime slogans on their school's walls, including the Arab Spring's well-known slogan "the people want to bring down the regime" and "it's your turn, doctor," pointing to Bashar al-Assad. The students were detained and tortured by the regime in the Political Security Branch, headed by Atef Najib, the maternal cousin of Bashar al-Assad.<sup>20</sup> On March 15 a protest took place in the middle of the old Damascus Souk (Arabic for Market) demanding political reforms and ending the corruption triggered by the arrest of the students. Three days later a sit-in was organized in Daraa demanding the freedom of the school children. Security forces responded by shooting protesters with gunfire, killing three and injuring a fourth, who died the next day. As a result, the scale of the demonstrations grew, and the story of Daraa's school children became an inflection point, galvanizing the protest movement in Daraa and cities across

As a result, the scale of the demonstrations grew, and the story of Daraa's school children became an inflection point, galvanizing the protest movement in Daraa and cities across Syria.



PHOTO: Anti-regime demonstration, protesters holding roses in Baniyas, May 6, 2011. Photo: Syrian Freedom (CC BY 2.0).

Syria.<sup>21</sup> Omar Alshogre, then 15 years old, recalls the simultaneous excitement of joining the protests and the lack of understanding the full picture of the injustices taking place as it was uncommon for Syrians to address these topics before.<sup>22</sup> Eventually, "the desperate need to be part of something so important" led to a consecutive series of traumatic events, including his own arrest seven times.<sup>23</sup>

<sup>19</sup> Interview with Mariam al Hallak, *supra* note 6.

<sup>20</sup> Avi Asher-Shapiro, *The Young Men Who Started Syria's Revolution Speak About Daraa, Where It All Began*, VICE News (Mar. 15, 2016, 9:30 AM), <https://www.vice.com/en/article/qv5eqb/the-young-men-who-started-syrias-revolution-speak-about-daraa-where-it-all-began>.

<sup>21</sup> Hugh Macleod, *Syria: How It All Began*, World (Apr. 23, 2011, 2:09 AM EDT), <https://www.pri.org/stories/2011-04-23/syria-how-it-all-began>; Joe Sterling, *Daraa: The spark that lit the Syrian flame*, CNN (Mar. 1, 2012, 9:32 AM EST), <https://www.cnn.com/2012/03/01/world/meast/syria-crisis-beginnings/index.html>.

<sup>22</sup> Interview with Omar Alshogre (Jan. 31, 2022).

<sup>23</sup> Omar Alshogre, *'We survived Assad's prisons and we will rebuild Syria'*, Al Jazeera (Mar. 15, 2021), <https://www.aljazeera.com/features/2021/3/15/we-survived-assad-prisons-will-rebuild-syria>.

## OVERVIEW: POLITICAL REGIME AND SYRIAN ARMED CONFLICT

By the end of March, the Assad regime's reaction to the demonstrations was initially mixed. The regime made some early attempts to placate the protesters, whose demands included the release of political prisoners, respect for civil rights, an end to government corruption, an end to the 1963 emergency law, and accountability for security officers who had shot and killed protesters.<sup>24</sup> In April, the emergency law was repealed,<sup>25</sup> and in May an amnesty was issued leading to the release of a few political prisoners and radical Salafists, some of whom were later found to be affiliated with extremist groups.<sup>26</sup>



Members of Islamic State marching in Raqqa.  
Photo Credits: Voice of America.

The rise of the extremist, jihadist groups in Syria was in part intentionally caused by the Assad regime. When faced with the 2011 protests, Assad deliberately orchestrated a campaign of radicalization, releasing imprisoned jihadist fighters, and prioritizing the elimination of peaceful, nonviolent movements while allowing terrorist cells to operate largely unchecked.<sup>27</sup> In turn, this created a dynamic in which Assad could present himself as a stable ally in a struggle against extremists rather than against pro-democracy advocates. These jihadist groups operate in opposition to Assad, with many of them sharing the goal of creating an Islamic state, although there have been instances of cooperation between the regime and these groups as well.<sup>28</sup> The most prominent groups include the Islamic State (IS) and the Nusra Front, though others are also active in the country.<sup>29</sup>

At the same time, security forces continued to respond to the protests with deadly violence, and it quickly became clear that the regime intended to crush all dissent rather than yield. Security forces used tear gas and live ammunition in attempts to quell the marches, and soon military troops, tanks, helicopters, and fighter jets were deployed.<sup>30</sup> Thousands died and many more were detained, tortured, and killed.<sup>31</sup>

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24 Officers Fire on Crowd as Syrian Protests Grow, N.Y. Times (Mar. 20, 2011), <https://www.nytimes.com/2011/03/21/world/middleeast/21syria.html>.

25 Syria protests: Assad to lift state of emergency, BBC (Apr. 20, 2011), <https://www.bbc.co.uk/news/world-middle-east-13134322>.

26 Simon Speakman Cordall, *How Syria's Assad Helped Forge ISIS*, Newsweek (June 21, 2014, 12:40 PM EDT), <https://www.newsweek.com/how-syrias-assad-helped-forge-isis-255631>; Syria turmoil: Political inmates 'freed' after protests, BBC (Mar. 26, 2011), <https://www.bbc.com/news/world-middle-east-12870679>.

27 Christopher Phillips, *The World Abetted Assad's Victory in Syria*, Atlantic (Aug. 4, 2018), <https://www.theatlantic.com/international/archive/2018/08/assad-victory-syria/566522/>.

28 Aryn Baker, *Is the Assad Regime in League with al-Qaeda?*, Time (Jan. 27, 2014), <https://world.time.com/2014/01/27/syria-assad-geneva-al-qaeda/>.

29 *Syria's Armed Opposition: A Brief Overview*, Malcolm H. Kerr Carnegie Middle East Ctr., <https://carnegie-mec.org/syriaincrisis/?fa=50896&lang=en> (last visited Mar. 25, 2022).

30 Syria: Raid in Damascus suburb as crackdown defied, BBC (May 5, 2011), <https://www.bbc.co.uk/news/world-middle-east-13291358>.

31 Anthony Shadid, Syria's Protesters, Long Mostly Peaceful, Starting to Resort to Violence, N.Y. Times (Sept. 16, 2011), <https://www.nytimes.com/2011/09/17/world/middleeast/at-least-six-protesters-killed-in-syria.html>.

In Ahmad Helmi's home city Darayya, the protests were completely peaceful for the first six months of demonstrations. Helmi recounted April 22 as the first day that intelligence personnel and police responded to the protesters with live ammunition in Darayya. Despite being shirtless to show that he was unarmed,

Daraa, the "cradle of the revolution," was besieged shortly thereafter, with access to supplies, medication, and communications cut off, and countless civilians, including children, slaughtered by military personnel and snipers.

he was shot in the face by a sniper, thereafter requiring five reconstructive surgeries and four months of rehabilitation.<sup>32</sup> Daraa, the "cradle of the revolution," was besieged shortly thereafter, with access to supplies, medication, and communications cut off, and countless civilians, including children, slaughtered by military personnel and snipers.<sup>33</sup>

As the violent crackdown intensified over the summer of 2011, some members of the opposition began to take up arms, in order to both defend against the regime and protect protests. Members of the security

forces and the army also began to announce their defections, refusing to follow orders to kill their fellow Syrians. Activists arranged field hospitals where civilians could access medical care, as anyone who went to a standard hospital with a bullet wound or injury from a bombing would be immediately arrested.<sup>34</sup> By the end of July, military defectors and civilian fighters began to form armed resistance to the Assad regime.<sup>35</sup>

## Foreign Interference

As the armed conflict in Syria escalated, almost every faction fighting in Syria had come to rely on some form of foreign support, including the deployment of troops, training provisions, the supply of weapons, intelligence gathering, or financial support. As a result, the conflict evolved into a proxy war with different regional and national powers clashing over geopolitical self-interest. Not exclusive to the case of Syria, the increasing interference of foreign powers in civil conflicts has come to "represent the continuation of politics by other means." Accordingly, the internationalization of civil conflicts complicates political settlement, lowers incentives for compromise, weakens mechanisms of accountability, and strengthens accelerants of impunity.<sup>36</sup>

<sup>32</sup> Interview with Ahmad Helmi, *supra* note 18.

<sup>33</sup> Syria protests: Rights group warns of 'Deraa massacre'; BBC (May 5, 2011), <https://www.bbc.co.uk/news/world-middle-east-13299793>; Human Rights Watch, Syria: Lift the siege of Daraa (May 5, 2011, 8:58 PM EDT), <https://www.hrw.org/news/2011/05/05/syria-lift-siege-daraa>.

<sup>34</sup> Interview with Ahmad Helmi, *supra* note 18.

<sup>35</sup> Defected Soldiers Formed Free Syrian Army, Nat'l Pub. Radio (July 20, 2012, 4:00 AM ET), <https://www.npr.org/2012/07/20/157087563/an-update-on-the-syrian-free-army>.

<sup>36</sup> Int'l Rescue Comm., David A. Morse Lecture at the Council on Foreign Relations by President and CEO of the International Rescue Committee David Miliband (Dec. 15, 2021), <https://www.rescue.org/press-release/david-morse-lecture-council-foreign-relations-president-and-ceo-international-rescue>.

## **Allies of the Assad Regime**

Russia and Iran have been the key allies of the Assad regime. While Russia formally entered the conflict on behalf of the Assad regime in 2015,<sup>37</sup> it had supplied mercenaries and weaponry since the start of the fighting. A U.N. report published in January 2020 by The Independent International Commission of Inquiry on the Syrian Arab Republic found Russian forces responsible for war crimes.<sup>38</sup> Moreover, Iran has backed Assad and pro-regime militias, provided training and technical support,<sup>39</sup> and aided in the recruitment as well as deployment of militias.<sup>40</sup> Iran has also supported Hezbollah, the Lebanon-based Shi'a Islamist political party and militant group, in the conflict.<sup>41</sup> Hezbollah has been a party to the conflict since its early days, providing crucial support to Assad.<sup>42</sup> However, this support has taken the form of creating pro-regime militias and establishing parallel institutions, rather than providing direct support to Assad's own forces.<sup>43</sup> Without this foreign support, the Assad regime would almost certainly have lost to the opposition early on.

Without this foreign support, the Assad regime would almost certainly have lost to the opposition early on.

37 Mariya Petkova, *What has Russia gained from five years of fighting in Syria?*, Al Jazeera (Oct. 1, 2020), <https://www.aljazeera.com/features/2020/10/1/what-has-russia-gained-from-five-years-of-fighting-in-syria>.

38 Rep. of the Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, Human Rights Council, 43d Sess., Feb. 24–Mar. 20, 2020, U.N. Doc A/HRC/43/57 (Jan. 28, 2020), available at <https://undocs.org/A/HRC/43/57>; Julian Borger, *Russia committed war crimes in Syria, finds UN report*, Guardian (Mar. 2, 2020, 6:30 PM EST), <https://www.theguardian.com/world/2020/mar/02/russia-committed-war-crimes-in-syria-finds-un-report>.

39 Geneive Abdo, *How Iran Keeps Assad in Power in Syria*, Foreign Affairs (Aug. 25, 2001), <https://www.foreignaffairs.com/articles/iran/2011-08-25/how-iran-keeps-assad-power-syria>; Ruth Sherlock, *Iran boosts support to Syria*, Telegraph (Feb. 21, 2014, 3:44 PM), <https://www.telegraph.co.uk/news/worldnews/middleeast/iran/10654144/Iran-boosts-support-to-Syria.html>.

40 Navvar Saban, *Factbox: Iranian Influence and presence in Syria*, Atlantic Council (Nov. 5, 2020), <https://www.atlanticcouncil.org/blogs/mena-source/factbox-iranian-influence-and-presence-in-syria/>.

41 *Id.*

42 *Id.*

43 Mohanad Hage Ali, *Power Points Defining the Syria-Hezbollah Relationship*, Malcolm H. Kerr Carnegie Middle East Ctr. (Mar. 29, 2019), <https://carnegie-mec.org/2019/03/29/power-points-defining-syria-hezbollah-relationship-pub-78730>.

## **Support for the Opposition**

An international coalition has supported factions within the opposition, largely as part of efforts to combat terrorism. The U.S. has primarily led the response, deploying troops to Syria in 2015, and previously having provided other forms of support, including supplying weapons and airstrikes.<sup>44</sup> This response is backed by the United Kingdom<sup>45</sup> and France.<sup>46</sup> Turkey has been involved in the conflict along the Turkish-Syrian border, and in March 2020 it openly declared war against Assad<sup>47</sup> in response to a Russian-backed Syrian attack on Turkish forces.

Member states of the Arab League also support the Syrian opposition, although they lack significant influence.<sup>48</sup> The League suspended Syria's membership at the beginning of the conflict, although the opposition was never allowed to fully participate in the League either. In 2018, some of Assad's allies unsuccessfully called for Syria's readmittance.<sup>49</sup>

Throughout the conflict, one thing has remained clear: The opposition's international allies are not as consistent or as reliant as the regime's allies and are at best described as "a fractured mess" allowing Assad's regime to maintain its monopoly on power and control of the state and its institutions.<sup>50</sup>

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44 A timeline of the US involvement in Syria's conflict, Associated Press (Jan. 11, 2019), <https://apnews.com/article/96701a254c5a448cb-253f14ab697419b>.

45 Elizabeth Piper & Kylie MacLellan, *Parliament votes to bomb Islamic State in Syria*, Reuters (Dec. 2, 2015, 7:15 PM), <https://www.reuters.com/article/uk-mideast-crisis-syria-britain/parliament-votes-to-bomb-islamic-state-in-syria-idUKKBN0TK4QO20151203>.

46 Ben Brumfield & Margot Haddad, *France launches its first airstrikes against ISIS in Syria*, CNN (Sept. 27, 2015, 7:09 PM EDT), <https://www.cnn.com/2015/09/27/middleeast/syria-france-isis-bombing/index.html>.

47 Carlotta Gall, *Turkey Declares Major Offensive Against Syrian Government*, N.Y. Times (Mar. 1, 2020), <https://www.nytimes.com/2020/03/01/world/middleeast/turkey-syria-assault.html>.

48 Joe Macaron, *The Muted Arab Attempt to Restore Influence in Syria*, Arab Ctr. Washington D.C. (Mar. 18, 2020), [http://arabcenterdc.org/policy\\_analyses/the-muted-arab-attempt-to-restore-influence-in-syria/](http://arabcenterdc.org/policy_analyses/the-muted-arab-attempt-to-restore-influence-in-syria/).

49 Jonathan Masters & Mohammad Aly Sergie, *The Arab League*, Council on Foreign Relations (Feb. 19, 2020, 7:00 AM EST), <https://www.cfr.org/backgrounder/arab-league>.

50 Kheder Khaddour, *The Assad Regime's Hold On the Syrian State*, Malcolm H. Kerr Carnegie Middle East Ctr. (July 8, 2015), <https://carnegie-mec.org/2015/07/08/assad-regime-s-hold-on-syrian-state-pub-60608>.

# State of Conflict in 2022

In May 2021, the Assad regime further consolidated its power in a presidential election that was neither free nor fair. Assad was elected for a fourth term with 95.1% of the votes,<sup>51</sup> with the lead up to the election being characterized by the Assad regime systematically and strategically preventing any opposition to its rule.

Eleven years after the Arab Spring emerged in Syria, the conflict remains protracted and ongoing, having created a global humanitarian crisis. The death toll as of March 1, 2022 is estimated to be more than 606,000 casualties, including 228,647 civilians, of whom 29,741 are children under the age of 18.<sup>52</sup> More than 6.6 million Syrians have become refugees and a further 6.7 million internally displaced, making Syria the largest refugee crisis in the world.<sup>53</sup>



Atma refugee camp in Syria. Photo credits: Shutterstock.

The Assad regime, which employs sovereignty as a shield against scrutiny, has used the displacement crisis as an opportunity to reshape demographics within the country,<sup>54</sup> strategically blocking the return of refugees to key regions in order to ensure that the regime can maintain its grip on power. Historically, the regime has been able to manipulate election results and use them as a means to further its own interests and further consolidate its power.<sup>55</sup> In the most recent elections which took place in 2021, voting only occurred in parts of Syria under government control, which left millions of citizens living in rebel-held provinces, such as Idlib, and the U.S.-backed Syrian Democratic Forces (SDF) in the northeast unrepresented despite the fact that these areas make up around a third of the country.<sup>56</sup>

es, such as Idlib, and the U.S.-backed Syrian Democratic Forces (SDF) in the northeast unrepresented despite the fact that these areas make up around a third of the country.<sup>56</sup>

51 Syrians vote in election that Europeans, US, say is 'neither free nor fair', Radio France internationale (May 26, 2021, 9:00 AM), <https://www.rfi.fr/en/international/20210526-syrian-vote-in-election-that-europeans-us-say-is-neither-free-nor-fair>.

52 Over 606,000 people have been killed across Syria since the beginning of the "Syrian Revolution," including 495,000 documented by the Syrian Observatory for Human Rights. *On International Human Rights Day: Millions of Syrians robbed of "rights" and 593 thousand killed in a decade*, Syrian Observatory for Human Rights (Dec. 9, 2020), <https://www.syriahr.com/en/195385/>. The Syrian Network for Human Rights, which documents only civilian deaths and only what is recorded, documents 228,647 civilians were killed at the hands of parties to the conflict and the controlling forces in Syria from March 2011 to the start of March 2022. *Statistics of 2021: Interactive charts for civilian casualties in Syria*, Syrian Network for Human Rights, <https://snhr.org/> (last visited Mar. 25, 2022); Syrian Network for Human Rights (Mar. 1, 2022).

53 Syrian Network for Human Rights (Mar. 1, 2022).

54 Ibrahim Abu Ahmad, *Assad's Law 10: Reshaping Syria's Demographics*, Washington Inst. for Near East Policy (Sept. 14, 2018), <https://www.washingtoninstitute.org/policy-analysis/assads-law-10-reshaping-syrias-demographics>.

55 Elizabeth Tsurkov, *Yes, Assad won reelection last week. But Syria's elections serve another purpose*, Washington Post (June 1, 2021, 7:00 AM EDT), <https://www.washingtonpost.com/politics/2021/06/01/yes-assad-won-reelection-last-week-syrias-elections-serve-another-purpose/>.

56 Ruth Sherlock, *Syrian Election Shows the Extent of Assad's Power*, Nat'l Pub. Radio (May 27, 2021, 5:49 PM ET), <https://www.npr.org/2021/05/26/1000503282/syria-presidential-election-2021-assad-fourth-term>.



Bashar al-Assad and his wife casting their ballots in the 2021 presidential election. Photo credits: Reuters.

Moreover, thousands of Syrian refugees and expatriates were unable to vote if they did not have an exit stamp on their passport. Within this context, the electoral environment did not allow for any meaningful competition, hence making the election unfree and unfair by democratic standards.<sup>57</sup>

Ahead of the presidential election, the Assad regime released more than 400 civil servants, journalists, judges, and lawyers who were detained for criticizing the regime on social media. The release of those held under the stringent cyber crime laws and other political prisoners was speculated to be

a move by the Assad regime to make the election more credible. However, this excluded tens of thousands of opposition figures imprisoned without trial for many years suspected to be dead.<sup>58</sup> Eleven years into the conflict and the regime was still able to employ old manipulative tactics to sway the election into its favor, reflecting its ability to maintain power over the country regardless.

With Russian and Iranian support and without a committed military intervention on behalf of the opposition, the Assad regime appears unlikely to fall. Pro-regime forces now control a majority of Syrian territory, while opposition forces have lost ground. However, outright victory for the regime is still out of reach, and if foreseeable would be won at too great a cost to have been worthwhile.<sup>59</sup> While no longer in control of swathes of territory, jihadist groups such as IS still pose a threat and perpetuate violence. Fighting remains ongoing.<sup>60</sup>

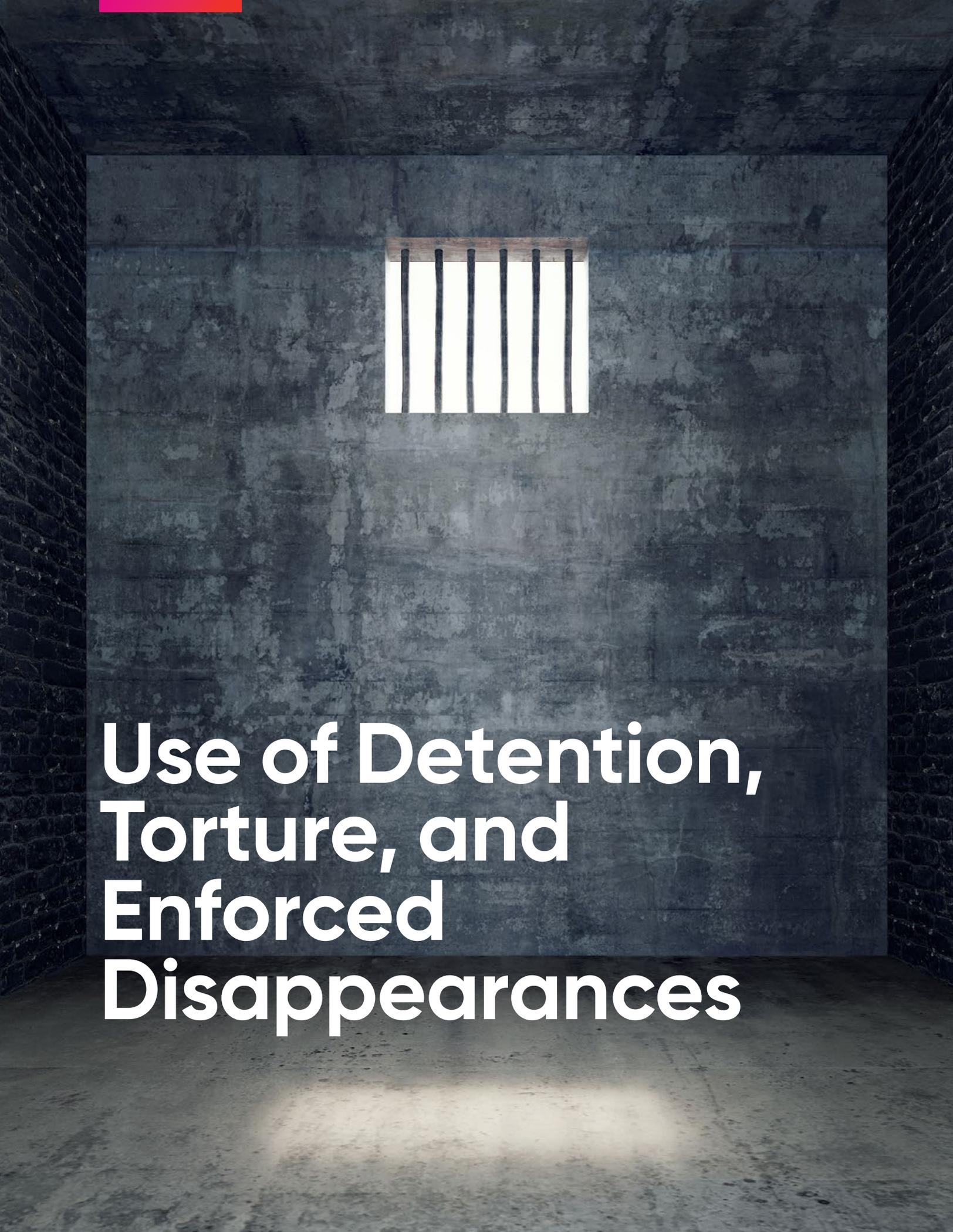
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57 Radio France internationale, *supra* note 51.

58 Suleiman Al-Khalidi, *Syria releases hundreds of social media critics ahead of election*, Reuters (May 11, 2021, 12:30 PM EDT), <https://www.reuters.com/world/middle-east/syria-releases-hundreds-social-media-critics-ahead-election-2021-05-11>.

59 Steven A. Cook, *Top Conflicts to Watch in 2021: What's Next for Syria*, Council on Foreign Relations (Jan. 21, 2021, 12:30 PM EST), <https://www.cfr.org/blog/top-conflicts-watch-2021-whats-next-syria>.

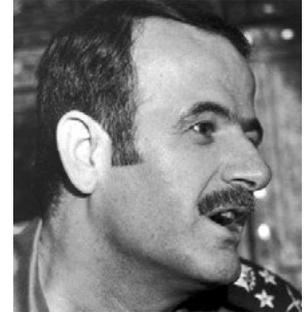
60 *Support for Peace in Syria*, Carter Ctr., [https://www.cartercenter.org/peace/conflict\\_resolution/syria-conflict-resolution.html#reports](https://www.cartercenter.org/peace/conflict_resolution/syria-conflict-resolution.html#reports) (last visited Mar. 25, 2022).

A dark, textured wall with a small window with vertical bars, set against a brick wall background. The window is illuminated from within, creating a bright glow. The overall atmosphere is somber and confined.

# Use of Detention, Torture, and Enforced Disappearances

# Detention and Torture Under the Assad Regime

The use of detention, torture, and arbitrary disappearance to repress Syrian citizens predates the Arab Spring and armed conflict. Hafez al-Assad was the original architect of the state detention system, holding an estimated 17,000 individuals in prison across two decades of rule as his regime cracked down on any critic, advocate, or perceived dissident, and torture was used to extract confessions.<sup>61</sup> Bashar al-Assad inherited and maintained the same practice.<sup>62</sup> The imprisonment and torture of school children in Daraa provided the impetus for the 2011 demonstrations, but was far from a unique case at the time.



Hafez al-Assad. Photo credits: Wikimedia Commons.



Picture of Bashar al-Assad. Photo credits: Wikimedia Commons.

Four intelligence services, or mukhabarat, are responsible for overseeing the systemic, state-run torture apparatus: the Air Force Intelligence Service, the Military Intelligence Service,<sup>63</sup> the Political Intelligence Service, and the General Intelligence Service. The exact role of each directorate is not well understood, as they have overlapping jurisdictions and operate in secrecy, and handle both military and civilian surveillance and intelligence. Each service operates its own branches, forming a notorious network of detention facilities.<sup>64</sup>

## The Scale and Systematic Nature of Detention and Torture From 2011 Onward

Upon arrest, detainees are subjected to a never-ending round of beatings, strip searches, and inhumane interrogation tactics that are initiated on the road when they are in transit to detention or prison centers, as part of a “welcome party” of abuse when entering a facility.<sup>65</sup> Conditions within detention facilities are often inhumane, with overcrowded, rat-infested cells, little food or water provided, and medical care withheld.<sup>66</sup>

<sup>61</sup> Anne Barnard, *Inside Syria's Secret Torture Prisons: How Bashar al-Assad Crushed Dissent*, N.Y. Times (May 11, 2019), <https://www.nytimes.com/2019/05/11/world/middleeast/syria-torture-prisons.html>.

<sup>62</sup> *Id.*

<sup>63</sup> Human Rights Watch, *Syria: Torture Centers Revealed* (July 3, 2012, 4:32 PM EDT), <https://www.hrw.org/news/2012/07/03/syria-torture-centers-revealed#>.

<sup>64</sup> *Id.*

<sup>65</sup> Amnesty Int'l, *Detention in Syria*, <https://saydnaya.amnesty.org/en/detention-in-syria.html> (last visited Mar. 25, 2022); Mohamad Beiruty & Ameenah A. Sawwan, *I Was There*, Women Now For Development, YouTube, at 1:45-2:35 (Sept. 8, 2021), <https://www.youtube.com/watch?v=tb-6GW-Cpupc>. The “welcome party” is described by former detainees as the period from the moment of arrest until the conclusion of a strip search by prison guards and officers.

<sup>66</sup> U.N., Office of the High Comm'r for Human Rights, *Open Wounds: Torture and Ill-treatment in the Syrian Arab Republic* (Apr. 14, 2014), <https://www.ohchr.org/Documents/Countries/SY/PaperOnTorture.pdf>.

A variety of torture techniques are employed against detainees, including – but far from limited to – beating detainees, often with pipes, cables, or hosing, electroshocks, sleep deprivation, stress positions, as well as sexual and gender based violence (SGBV).<sup>67</sup> According to the European Center for Constitutional and Human Rights (ECCHR) which along with Urnammu and Syria’s Women’s Network submitted a criminal complaint on behalf of seven Syrian survivors to the German Federal Public Prosecutor in 2020, “the Assad government targets persons because of their perceived sex or sexual orientation: females, males,

**Under the command of prison officers and guards, detainees are often forced to torture each other. Former detainee Hamoudi Alshoaib recalls the brutality noting that, “watching others get tortured or being forced to participate in their misery is more of a punishment than having it inflicted on you.”**

LGBTQI persons.”<sup>68</sup> The political aim, according to the filed complaint, is to suppress and punish individuals perceived as belonging to the political opposition by creating a ceaseless environment of fear and to weaken the political opposition and those directly affected, but also their families and Syrian society as a whole.<sup>69</sup> Many detainees ultimately die from injuries related to torture or are taken to the military field court where they might face extrajudicial executions, leaving their families in the dark about their fate until the regime updates their civil registry status.<sup>70</sup>

Survivors of detention facilities have recounted brutal ordeals of torture and humiliation. Many recount the horror of being forced to witness the torture of others, sometimes even their deaths as countless victims succumb to injury, starvation, psychological breakdowns, or untreated medical issues.<sup>71</sup> Under the command of prison officers and guards, detainees are often forced to torture each other. Former detainee Hamoudi Alshoaib recalls the brutality noting that, “watching others get tortured or being forced to participate in their misery is more of a punishment than having it inflicted on you.”<sup>72</sup> As another means of psychological torture, bodies of deceased detainees are at times placed in front of their fellow prisoners for days.<sup>73</sup> Estimates of the number of individuals who have been detained and tortured throughout the conflict range from hundreds of thousands to one million.<sup>74</sup>

<sup>67</sup> Conference room paper “I lost my dignity”, Sexual and gender-based violence in the Syrian Arab Republic, Indep. Int’l Comm’n of Inquiry on the Syrian Arab Republic, Human Rights Council, 37th Sess., Feb. 26–Mar. 2018, U.N. Doc. A/HRC/37/CRP.3 (Mar. 8, 2018), available at <https://ohchr.org/Documents/HRBodies/HRCouncil/ColSyria/A-HRC-37-CRP-3.pdf>.

<sup>68</sup> *Survivors: Sexual Violence by Syrian Intelligence Services are Crimes Against Humanity*, European Ctr. for Constitutional and Human Rights, <https://www.ecchr.eu/en/case/survivors-sexual-violence-by-syrian-intelligence-services-are-crimes-against-humanity/> (last visited Mar. 25, 2022).

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> Amnesty Int’l, *Human Slaughterhouse: Mass Hangings and Extermination at Saydnaya Prison, Syria*, AI Index MDE 24/5415/2017 (2016), available at [https://www.amnestyusa.org/files/human\\_slaughterhouse.pdf](https://www.amnestyusa.org/files/human_slaughterhouse.pdf); Barnard, *supra* note 61.

<sup>72</sup> Interview with Hamoudi Alshoaib (Feb. 11, 2022).

<sup>73</sup> Interview with Omar Alshogre, *supra* note 22. During his interview, Omar recounted the experience of having the body of a deceased fellow prisoner placed in his cell for days before guards came to remove it as a form of psychological torture and fear mongering on the part of the regime.

<sup>74</sup> Barnard, *supra* note 61.

Military hospitals are also used as detention and torture sites by security forces. Detainees are transferred from prisons to hospitals wherein survivors and witnesses have described the horrific abuse endured at the direction of guards and military doctors. Hospital morgues also serve to process the bodies of the deceased.<sup>75</sup>

While the tactics of detention and torture were used prior to 2011, the events of the Arab Spring intensified their use. By the end of 2011, tens of thousands of people had been detained and subjected to torture, including men, women, children, and the elderly.<sup>76</sup> Detainees included members of the opposition, political prisoners, human rights activists, critics of the regime, and anyone suspected of insufficient loyalty to Assad.

In 2018, the Assad regime began for the first time to publicly confirm that hundreds, if not thousands, of detainees had died in custody.<sup>77</sup> Previously, human rights organizations and journalists documented the slaughter of political prisoners, particularly in the notorious Saydnaya Military Prison, where mass executions by hanging were conducted in secrecy.<sup>78</sup> Reports emerged that, beginning in 2013, the regime constructed a crematorium at the prison in order to burn the bodies of executed detainees and conceal the sheer number of killings taking place.<sup>79</sup> By 2018, the pace of executions increased exponentially, with aerial images showing the expansion of mass graves and bodies transferred from the prison. Prison survivors also reported the increase in death sentences handed out by military judges.<sup>80</sup>

Though almost all prisoners are subject to brutal rounds of interrogation, deprivation, and various forms of torture, there are disparate and disproportionate impacts on individuals based on their gender or how they identify.

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<sup>75</sup> Louisa Loveluck & Zakaria Zakaria, *The hospitals were slaughterhouses: A journey into Syria's secret torture wards*, Washington Post (Apr. 2, 2017), [https://www.washingtonpost.com/world/middle\\_east/the-hospitals-were-slaughterhouses-a-journey-into-syrias-secret-torture-wards/2017/04/02/90ccaa6e-0d61-11e7-b2bb-417e331877d9\\_story.html](https://www.washingtonpost.com/world/middle_east/the-hospitals-were-slaughterhouses-a-journey-into-syrias-secret-torture-wards/2017/04/02/90ccaa6e-0d61-11e7-b2bb-417e331877d9_story.html).

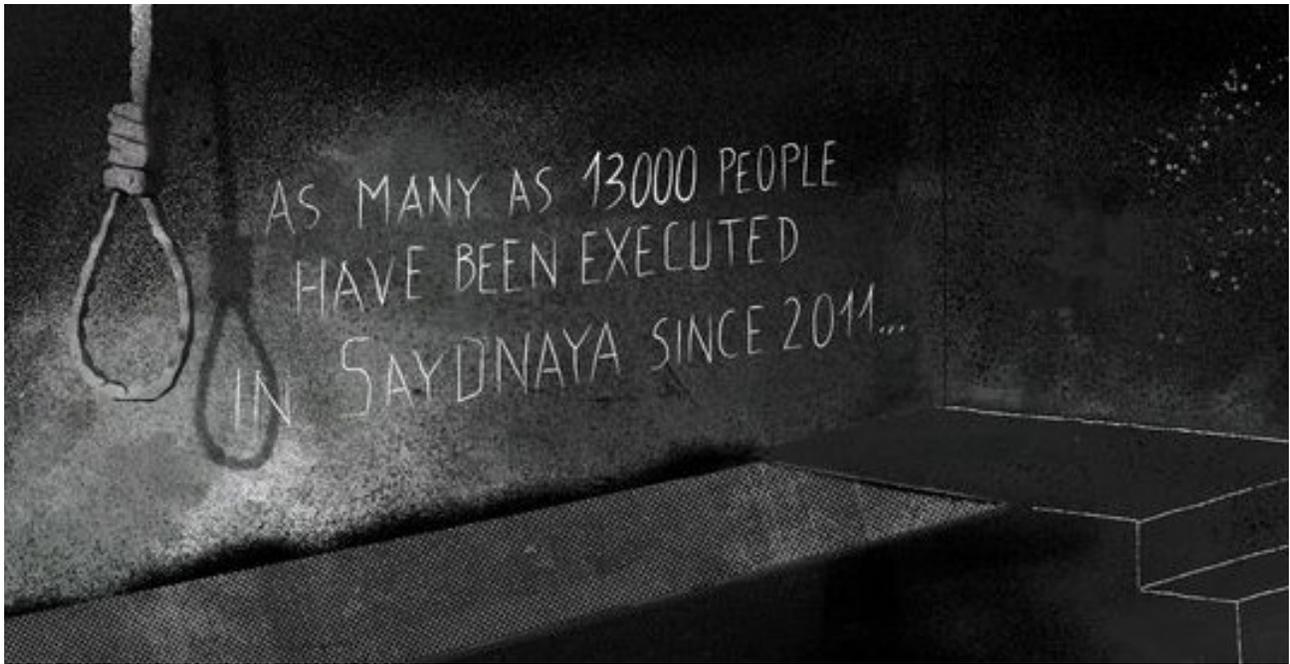
<sup>76</sup> Human Rights Watch, *Torture Archipelago: Arbitrary Arrests, Torture, and Enforced Disappearances in Syria's Underground Prison* (July 3, 2012), <https://www.hrw.org/report/2012/07/03/torture-archipelago/arbitrary-arrests-torture-and-enforced-disappearances-syrias>.

<sup>77</sup> Ben Hubbard & Karam Shoumali, *Hundreds Died in Syrian Custody, Government Acknowledges*, N.Y. Times (July 26, 2018), <https://www.nytimes.com/2018/07/26/world/middleeast/syria-detainees-dead.html>.

<sup>78</sup> Amnesty Int'l, *supra* note 71.

<sup>79</sup> Colin Dwyer, *Syria Has Been Burning Bodies To Hide Prison Executions For Years, U.S. Says*, Nat'l Pub. Radio (May 15, 2017, 4:55 PM ET), <https://www.npr.org/sections/thetwo-way/2017/05/15/528485624/syria-has-been-burning-bodies-to-hide-prison-executions-for-years-u-s-says>.

<sup>80</sup> Louisa Loveluck & Zakaria Zakaria, *Syria's once-teeming prisoncells being emptied by mass murder*, Washington Post (Dec. 23, 2018), <https://www.washingtonpost.com/graphics/2018/world/syria-bodies/>.



Saydnaya Military Prison. Photo credits: Amnesty International/Forensic Architecture.

Estimates of the number of individuals who have been detained and tortured throughout the conflict range from hundreds of thousands to one million.



A satellite image of Saydnaya prison, based on an Amnesty reconstruction: Digital Globe, 2016. Photo credits: Amnesty International/Forensic Architecture.

## **Sexual and Gender-Based Violence and Disparate Impact on Women, Men, and the LGBTQ+ Community**

Explaining sexual and gender based violence (SGBV) is complicated by the multiple forms it can take on as well as the varying contexts. Incidents of SGBV have occurred during regime home raids and at checkpoints in Syria but most of the incidents have taken place in unofficial and official regime detention facilities.<sup>81</sup> SGBV in detention centers is likely politically-motivated and aimed at repressing and punishing individuals deemed to be in opposition to the regime by instilling a status of fear and terror. A wide range of SGBV is employed in regime detention centers and includes both physical and nonphysical assaults, including rape or threats of rape, sexual harassment, personal searches, and genital mutilation. Forced abortions and forced nudity are other examples of SGBV.<sup>82</sup> Such tactics have been used against both adults and children.<sup>83</sup> The regime's security forces and allied militias are the main perpetrators of SGBV crimes as well as jihadist groups such as IS.<sup>84</sup>

A wide range of SGBV is employed in regime detention centers and includes both physical and nonphysical assaults, including rape or threats of rape, sexual harassment, personal searches, and genital mutilation. Forced abortions and forced nudity are other examples of SGBV. Such tactics have been used against both adults and children.

While the large scale and systemic nature of torture in Syria is now well-documented, it is important to highlight that detainees' experiences are not homogeneous. The treatment and torture of detainees can differ based on, for example, an individual's religion, political affiliation, family ties, and location. The disparate impact is especially pronounced when based on an individual's gender, gender identity, or sexual orientation. Social stigma against members of the LGBTQ+ community is also harsh with many families and communities unaccepting non-heterosexual identities.<sup>85</sup> Since the start of the conflict, the issue of gender discrimination has worsened.

In Syria, social influences are perceived to normalize honor values by propounding stereotypical and discriminatory attitudes toward women. Moreover, outright discriminatory legal and religious regulations constrain the behavior of Syrian women and curtail their basic human rights, including their right to marry the person of their choosing, to divorce their male partner, to obtain custody over their children, and to

81 Interview with Mona Zeineddine (Feb. 4, 2021).

82 Joumana Seif & Wejdan Nassif, *Words Against Silence*, European Ctr. for Constitutional and Human Rights, [https://www.ecchr.eu/fileadmin/Publikationen/WORDS\\_AGAINST\\_SILENCE-ENG.pdf](https://www.ecchr.eu/fileadmin/Publikationen/WORDS_AGAINST_SILENCE-ENG.pdf) (last visited Mar. 14, 2022).

83 *Id.*

84 Interview with Mona Zeineddine, *supra* note 81.

85 Ammar Cheikh Omar & Yuliya Talmazan, *LGBTQ Syrian refugees forced to choose between their families and identity*, NBC News (Oct. 6, 2019, 4:34 AM EDT), <https://www.nbcnews.com/news/world/lgbtq-syrian-refugees-forced-chose-between-their-families-identity-n1062446>.

freely travel without their male partner's permission.<sup>86</sup> In such a patriarchal and abusive society, being a victim of sexual assault or rape is seen to compromise a family's "morals and honor," making survivors of sexual abuse reluctant to speak about their experiences because they fear rejection or punishment by their families and the community.

Given the complexity of the community's possible reaction if the Syrian regime were to assault women, the regime seemed to hold back in the first few months of the Syrian uprising from treating women in the same manner as they treated men in detention.<sup>87</sup> With time, however, the regime reversed course and included women in the systematic levels of abuse and torture to build pressure not only to the victims themselves, but also onto their communities.

Rowaida Kanaan, an advocate for Syrian women's rights who was formerly detained by the regime on three occasions, said in an interview for this report **"had I been myself raped or sexually abused (which I was not), I do not see myself ever admitting to it not because I am not strong, but because society is simply unforgiving."**

In the first few weeks of the demonstrations, female protesters noted that they were treated differently from their male peers. Syrian human rights advocate Wafa Mustafa recounted how often at a demonstration only the men might be the ones arrested or attacked, and the women would be quickly released upon arrest. Security forces were aware of the immense social impact their detention would have. Once, Wafa Mustafa was arrested and held for a few hours in a car, before being told that security forces "did not detain women" and released her. Subsequent times when she was arrested, she was beaten, rather than tortured in the ways her male peers

were. The interrogator cut her hair as a form of emotional abuse, and focused his interrogation on insults about her reputation, rather than on her political views or activism.<sup>88</sup> Given the fear of potential rejection by their families and community, women who survived sexual assault would not speak about their experiences. Rowaida Kanaan, an advocate for Syrian women's rights who was formerly detained by the regime on three occasions, said in an interview for this report "had I been myself raped or sexually abused (which I was not), I do not see myself ever admitting to it not because I am not strong, but because society is simply unforgiving."<sup>89</sup>

While SGBV for women is connected to shame and stigma, for men it is more intertwined with their self esteem and masculinity. Regardless of their gender identity, however, very few survivors will share their experience even with their own families or close circles. As such, the true impact of the SGBV crimes inside and outside of Syrian detention centers is not yet fully reported.

86 Freedom House, *Freedom in the World 2010*, at 642 (2010), [https://freedomhouse.org/sites/default/files/2020-03/FIW\\_2010\\_Complete\\_Book\\_Scan.pdf](https://freedomhouse.org/sites/default/files/2020-03/FIW_2010_Complete_Book_Scan.pdf).

87 Interview with Wafa Mustafa (July 21, 2021).

88 *Id.*

89 Interview with Rowaida Kanaan (Feb. 11, 2022).

As the conflict progressed, SGBV became one of the primary tools of the Assad regime, strategically utilized to terrorize and repress civilians and weaken the opposition. In many instances of SGBV in detention centers, formerly detained women were assumed to have been sexually assaulted, triggering the same consequences from family regardless of whether any assault had actually taken place. Women released from detention would face social exclusion in the form of rejection by immediate families and divorce by their partners. This created an economic hardship on women, compounded by the physical and psychological effects of the abuse suffered in detention. Rowaida Kanaan recalls the stories of countless women and girls who faced more abuse at the hands of their families after their release than they had

Wafa Mustafa recounted interrogators taunting her during her detention with assertions that no one would marry her because everyone would assume she had been sexually assaulted.

while detained.<sup>90</sup> Wafa Mustafa recounted interrogators taunting her during her detention with assertions that no one would marry her because everyone would assume she had been sexually assaulted. Even though her family was supportive of her, she found herself repeating, “no one touched me” after her release and not admitting that she had been beaten, as she did not want to tell anyone that a male had even come close to her.<sup>91</sup> By employing such tactics, the regime has not only targeted fe-

male activists, but also used women to exert pressure on family members. Mustafa, her mother, and her sister fled Syria to ensure their safety, when her father, himself a pro-democracy advocate,<sup>92</sup> was arrested in July 2013, as they had concerns they would be used as leverage against him.<sup>93</sup>

While the majority of rape and sexual violence in Syrian detention facilities is perpetuated against women and girls, men and boys are also targeted. Broadly, rape and sexual violence are used as means of torture, punishment, and humiliation. However, there are key distinctions in how sexual violence is utilized against men compared to women. These differences are once again rooted in the patriarchal structure of Syrian society. When utilized against men, sexual violence is aimed at demasculinization or emasculation, instead of stigmatization and ostracization. Men are more likely to experience beatings and electric shocks of their genitals, or to be raped with objects, in front of other detainees, particularly in front of other men from the victim’s community or family.<sup>94</sup> They may also be forced to sexually assault other detainees, including male family members. Due to the patriarchal structure of Syrian society, sexual assault does not carry as severe social consequences for male victims as it does for their female counterparts given that male victims are generally never ostracized by their families. Subsequently, sexual assault against men is viewed with more sympathy as it is generally looked upon as a torture method implemented by the regime with the intent to humiliate and attack a male’s ability to reproduce.<sup>95</sup> Men who identify or are perceived

90 *Id.*

91 Interview with Wafa Mustafa, *supra* note 87.

92 Wafa Mustafa, *Why refugees can’t return to Syria*, Syria Campaign (June 23, 2020), <https://diary.thesyriacampaign.org/refugees-cannot-return-syria-detention/>.

93 Interview with Alexandra Lily Kather (Jan. 18, 2021); Interview with Wafa Mustafa, *supra* note 87; Indep. Int’l Comm’n of Inquiry on the Syrian Arab Republic, *supra* note 67.

94 Indep. Int’l Comm’n of Inquiry on the Syrian Arab Republic, *supra* note 67; European Ctr. for Constitutional and Human Rights, *supra* note 68; Interview with Alexandra Lily Kather, *supra* note 93.

95 Interview with Alexandra Lily Kather, *supra* note 93.

Hamoudi Alshoaib, a former political prisoner and advocate for Syrian rights, recalls how **the first thing pointed out during his arrest and interrogation by the regime was his sexual orientation.** He said that it is **“the first thing they use to torture prisoners,”** reflecting a homophobic approach to torture.

to identify as gay or bisexual, transgender women, and nonbinary individuals are targeted by security forces and exposed to increased violence and sexual violence compared to their peers.<sup>96</sup> Hamoudi Alshoaib, a former political prisoner and advocate for Syrian rights, recalls how the first thing pointed out during his arrest and interrogation by the regime was his sexual orientation. He said that it is “the first thing they use to torture prisoners,” reflecting a homophobic approach to torture.<sup>97</sup>

For both men and women, sexual violence also has a component of controlling the ability to reproduce. Mustafa recalls being kicked repeatedly in the stomach, with her interrogators telling her she wouldn't be unable to carry a child. For men, torture inflicted on their genitals is aimed at rendering them infertile.<sup>98</sup>

Sexual violence in particular has an intergenerational impact on survivors, with consequences beyond the suffering of the individual. SGBV crimes have an impact on the most intimate relationships an individual has with their partner or children. The violation of sexual integrity alters the social structures of families, communities, and movements as a whole. The utilization of torture and sexual violence serves to oppress and weaken the opposition, having long-lasting effects on Syrian society.<sup>99</sup>

<sup>96</sup> Human Rights Watch, *They Treated Us in Monstrous Ways: Sexual Violence Against Men, Boys, and Transgender Women in the Syrian Conflict* (July 29, 2020), <https://www.hrw.org/report/2020/07/29/they-treated-us-monstrous-ways/sexual-violence-against-men-boys-and-transgender>.

<sup>97</sup> Interview with Hamoudi Alshoaib, *supra* note 72.

<sup>98</sup> Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, *supra* note 67; Interview with Alexandra Lily Kather, *supra* note 93; Interview with Wafa Mustafa, *supra* note 87.

<sup>99</sup> Interview with Alexandra Lily Kather, *supra* note 93; Interview with Mona Zeineddine, *supra* note 81.

# Enforced Disappearances

Beyond the use of torture within the context of Syria's detention centers, the use of enforced disappearances is another facet of the Assad regime's repression extended from the decades past and primarily used to terrorize the Syrian people, effectively deterring generations from ever challenging its rule. According to the International Convention for the Protection of All Persons from Enforced Disappearance, "enforced disappearance is considered to be the arrest, detention, abduction or any other form of deprivation of liberty followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which places such a person outside the protection of the law."<sup>100</sup>



A group of families of Syrian detainees in a stunt in Berlin organized on the International Day of the Disappeared in 2021. Photo credits: The Syria Campaign/Paul Wagner.

Unlike a traditional arrest when family and community members know what has happened to their loved one and where the person is being held, an enforced disappearance means that an individual's fate is unknown. The lack of information about where a detainee is or whether they are alive or not has devastating psychological, social, and financial impacts on families. According to the Syrian Network for Human Rights (SNHR), it is estimated that at least 151,462 individuals are still detained or forcibly disappeared by the parties to the conflict in Syria since March 2011.<sup>101</sup>

100 International Convention for the Protection of All Persons from Enforced Disappearance, Dec. 20, 2006, 2716 U.N.T.S., available at [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-16&chapter=4](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-16&chapter=4).

101 Press Release, Security Council, World Turning 'a Blind Eye' to Syria's Thousands of Detained Innocent Women, Children, Human Rights Activist Tells Security Council, U.N. Press Release SC/14215 (June 16, 2020), available at <https://www.un.org/press/en/2020/sc14215.doc.htm>; Meetings Coverage, Security Council, Security Council Failing Thousands of People Detained, Abducted in Syria, Civil Society Speakers Say, Demanding Information about Missing Persons' Whereabouts, U.N. Meetings Coverage SC/13913 (Aug. 7, 2019), available at <https://www.un.org/press/en/2019/sc13913.doc.htm>.

The psychological impact on the family members of the disappeared is immense. While the release of the Caesar Photos in 2014 (which will be addressed under “C. The Caesar Photos”) provided some family members with confirmation of the deaths of their loved ones, many do not know what may have happened.



Mariam al Hallak, holding a photo of her son who was arbitrarily detained and killed under torture in Syria, in front of the Brandenburg Gate in Berlin on the International Day of the Disappeared in 2018. Photo credits: The Syria Campaign/Mohammed Abdullah Artino.

Without that information, family members are denied closure and may struggle to move forward with the grieving process. Many remain hopeful and continue to await the return of their loved ones, even after years.

Mariam al Hallak, Chairwoman of Caesar Families Association – a family-led group including the families who discovered the tragic fate of their loved ones through the leaked Caesar Photos – suffered the experience of identifying the corpse of her son in the photos.

Similar to the fate of thousands of others, Mariam al Hallak’s son, Ayham, a young dentist, who had led what his mother describes as a “pretty normal life prior to 2011” was arrested and tortured by the regime for his activism and participation in protests.

In an interview for this report, Mariam al Hallak spoke of her son’s unwavering resilience and steadfast belief that “young people should fight and do something to change the situation.” Furthermore, the mother of three sons recounted the weight of sorrow and confusion she felt when she was informed of Ayham’s death, and was then later told he was still alive. It took one year and five months for her to confirm his death at the hands of the regime. Mariam al Hallak and other families who have been through similar experiences with the unveiling of the Caesar Photos continue to demand the

truth, proper closure for their stories, and graves for their loved ones.



Wafa Mustafa, holding a photo of her missing father in front of the Russian Embassy in Berlin on the International Day of the Disappeared in 2019. Photo credits: The Syria Campaign/ Mohammed Abdullah Artino.

On a practical level, disappearances also have an economic impact on the families left behind. Many families sell everything they have, including their homes, to come up with money for bribes in exchange for information about their loved ones. Additionally, as the disappeared are not confirmed dead, their family members are unable to claim their inheritance.<sup>102</sup>

Tens of thousands of Syrians have been forcibly disappeared over the past 10 years with thousands more prior to the start of the conflict in 2011.

<sup>102</sup> Interview with Mariam al Hallak, *supra* note 6.

## **Impact on Women**

While men, women, and children have all been forcibly disappeared in Syria, the majority of victims are men. Women are often forced to become heads of household or primary breadwinners for their family, facing strong societal discrimination and economic burdens as they take on roles normally only open to men.

Women who are forced to flee Syria face additional obstacles compared to their male peers as well. Wafa Mustafa recounted how she, her mother, and her sister had to flee Syria illegally after her father's arrest, because they were not legally permitted to leave the country without the permission of the underage children's guardian, typically the father or the grandfather.<sup>103</sup> Once they had made it out of Syria, members of the Syrian community where they lived in Turkey disapproved of them being in the company of any men, tried to exploit them financially, and would comment regularly on how they were "only three women" on their own. Wafa Mustafa said she had not felt the burden of "being a woman" until after her father's arrest, when she was forced to navigate an overbearing, unaccepting society without him.

While former detainees, as well as military defectors, have recounted what they witnessed in Syrian prisons, the first hard evidence about the systemic scale of torture perpetuated by the regime came to light in 2014.



*Families of the disappeared in Syria standing in front of the Koblenz Higher Regional Court on the day of Anwar R.'s verdict, on January 13, 2022. Photo credits: The Syria Campaign/Paul Wagner.*

103 Freedom House, *Women's Rights in the Middle East and North Africa 2010 - Syria*, Refworld (Mar. 3, 2010), available at <https://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=printdoc&docid=4b99011dc>.

# The Caesar Photos

In 2014, the Caesar Photos were leaked by a forensic photographer – given the code name Caesar – who worked for the Syrian military police before defecting in 2013. Caesar took pictures of the bodies of detainees who were killed under torture or in field executions. He archived more than 55,000 photographs smuggled out of Syria, showing the tortured bodies of more than 11,000 victims.<sup>104</sup>

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Before 2011, Caesar’s job involved taking pictures of crime scenes, and the bodies of victims of accidental drownings, fires, or car accidents. However, after the demonstrations began, he was tasked with photographing the bodies of peaceful protesters killed by security personnel and the bodies of detainees who had been tortured to death in prison. Each body was identified with a number written in marker by the security branch holding the person in custody, sometimes on a card beside the body,

but often on the body itself. Caesar would often be sent with other photographers to the military hospitals used by security forces, where the bodies of victims piled up faster than they could document them.



Omar Alshogre at the Caesar Exhibit, a traveling exhibit showcasing the Caesar photos. Photo credits: Senate Foreign Relations Committee.

The Syrian regime required meticulous record-keeping of every death, often forcing detainees themselves to take part in the process. During his longest serving detention period of three years in the notorious Branch 215 in Damascus, former prisoner Omar Alshogre, was forced to number the victims who Caesar photographed. In an interview with HRF and TSC, he recounted the brutality of not only forcefully witnessing such murders, but also the role he was assigned by his torturers to place numbers on the bodies of deceased prisoners, later revealed to the world.<sup>105</sup> The photographers and pathologists created a report for each body, with photographs, relevant details, and a number indicating the identity of the deceased and the intelligence branch in which they died. The reports never mentioned instances of torture, even as photographs provided

<sup>104</sup> Human Rights Watch, *If the Dead Could Speak: Mass Deaths and Torture in Syria's Detention Facilities* (Dec. 16, 2015), <https://www.hrw.org/report/2015/12/16/if-dead-could-speak/mass-deaths-and-torture-syrias-detention-facilities>.

<sup>105</sup> Interview with Omar Alshogre, *supra* note 22.

ample evidence of it. Instead, the cause of death was invariably listed as heart failure, respiratory diseases, or natural causes.

At one point, a friend of Caesar's convinced him to continue his work, but use his position to gather evidence of the scale of the torture and atrocities he was witnessing. While performing his duties, Caesar began copying the photographs onto USB drives, which were smuggled out of Syria. He continued for two years, and in August 2013, when it became unsafe for him to remain in Syria any longer, he left the country with his friend and claimed asylum in Europe.<sup>106</sup> His photographs were widely shared with human rights organizations, and with the FBI's Digital Evidence Laboratory, which validated their authenticity. Many of the photographs have also been leaked online. For the first time, these photographs offered horrific evidence of the Syrian regime's systemic torture and killings of detainees to the international community. In addition, the photographs have provided families information about their loved ones; for many, finding a photograph of a family member was the only answer they had about the loved one's fate.

The Caesar photos have played an important role and are used as evidence in many judicial files that various legal and human rights groups are working on. These include the first trial on state torture, known as the "al-Khatib trial," which took place in Koblenz, Germany, under the principle of universal jurisdiction. The court in Koblenz paid special attention to Branch 251 and provided detailed insights into severe torture and neglect, as well as the devastating sanitary and overall detention conditions in Syria's detention facilities.

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<sup>106</sup> Ben Hubbard & David D. Kirkpatrick, *Photo Archive Is Said to Show Widespread Torture in Syria*, N.Y. Times (Jan. 21, 2014), <https://www.nytimes.com/2014/01/22/world/middleeast/photo-archive-is-said-to-show-widespread-torture-in-syria.html>; Adam Ciralsky, *Documenting Evil: Inside Assad's Hospitals of Horror*, Vanity Fair (June 11, 2015), <https://www.vanityfair.com/news/2015/06/assad-war-crimes-syria-torture-caesar-hospital>; Garance le Caisne, *'They were torturing to kill': inside Syria's death machine*, Guardian (Oct. 1, 2015, 1:00 EDT), <https://www.theguardian.com/world/2015/oct/01/they-were-torturing-to-kill-inside-syrias-death-machine-caesar>.



# International Law and Universal Jurisdiction

Broadly speaking, international law regulates relations between states. There are three main sources of international law: (1) treaties and conventions, (2) customary international law, and (3) general principles of law.<sup>107</sup> International conventions and treaties are agreements between states that establish mutual rights and obligations once ratified. A norm is considered customary international law when there is general and consistent practice of states and states follow the norm from a sense of legal obligation. Only persistent and timely objection may free a state from following a norm of customary international law. Lastly, general principles of law are basic principles that are widely accepted in legal systems and are used particularly when an issue is not explicitly addressed by an existing treaty or by customary international law.

International human rights law is an international body of law that lays down the obligations of states vis-à-vis their citizen whereas international humanitarian law – also known as the law of armed conflict – is a part of international law that regulates the means and methods of warfare and protects individuals who are not or are no longer taking part in the hostilities.<sup>108</sup>

Gross human rights violations and serious violations of international humanitarian law have been committed throughout the Syrian conflict.

## International Human Rights Law and International Humanitarian Law

The 1948 Universal Declaration of Human Rights (UDHR) is widely regarded as the foundation of international human rights law. Subsequent treaties, covenants, bills, and declarations built on the principles of the UDHR have created a body of international human rights law, including the International Covenant on Civil and Political Rights (ICCPR)<sup>109</sup> and the International Covenant on Economic, Cultural, and Social Rights (ICESCR),<sup>110</sup> both of which entered into force in 1976. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)<sup>111</sup> entered into force in 1987. Syria is a State Party to all three of these treaties.<sup>112</sup>

<sup>107</sup> Christopher Greenwood, *Sources of International Law: An Introduction* (2008), [https://legal.un.org/avl/pdf/ls/Greenwood\\_outline.pdf](https://legal.un.org/avl/pdf/ls/Greenwood_outline.pdf).

<sup>108</sup> Int'l Comm. of Red Cross, Advisory Service on Int'l Humanitarian Law, *What is International Humanitarian Law?* (July 2004), [https://www.icrc.org/en/doc/assets/files/other/what\\_is\\_ihl.pdf](https://www.icrc.org/en/doc/assets/files/other/what_is_ihl.pdf).

<sup>109</sup> International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Exec. Doc. E, 95-2 (1978), 999 U.N.T.S. 171, available at [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=en).

<sup>110</sup> International Covenant on Economic, Cultural, and Social Rights, Dec. 16, 1966, S. Exec. Doc. D, 95-2 (1978), 993 U.N.T.S. 3, available at [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-3&chapter=4](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3&chapter=4).

<sup>111</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20 (1988), 1465 U.N.T.S. 85, available at [https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-9&chapter=4&clang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-9&chapter=4&clang=en).

<sup>112</sup> Office of the High Comm'r for Human Rights, *Status of Ratification, Syrian Arab Republic*, <https://indicators.ohchr.org/> (last visited Mar. 25, 2022).

Additionally, human rights fall under the category of peremptory norms, or *jus cogens*. Differing from treaties and conventions and customary international law, states may not decide whether to become bound by peremptory norms or reject them by persistent objection. Peremptory norms are considered ultimate principles that no state may derogate from. While there is no universally-agreed upon definition of what constitutes peremptory norms, there is near-universal recognition that crimes against humanity, genocide, torture, and aggression are included as *jus cogens* principles.<sup>113</sup>

International humanitarian law applies during international armed conflicts and non-international armed conflicts. The main sources of international humanitarian law are treaty law and customary international law. The four Geneva Conventions of 1949 and the two Additional Protocols of 1977 contain the most important rules of international humanitarian law. Serious violations of international humanitarian law and grave breaches of the Geneva Conventions constitute war crimes.

International criminal law is concerned with the most serious crimes. The four core crimes are the crime of aggression and the three “atrocities” crimes: (1) the crime of genocide, (2) war crimes, and (3) crimes against humanity. The crime of aggression refers to a state using armed force against another state, in contravention of the Charter of the United Nations. Genocide involves actions undertaken with the “intent to destroy” an ethnic, national, or religious group. War crimes include “grave breaches” of the Geneva Conventions and other international laws governing behavior within the context of armed conflict, widely understood to be willfully committed actions (such as killing, torture, etc.) against a protected group, which are not militarily justified.<sup>114</sup> Lastly, crimes against humanity refer to crimes committed, “as part of a widespread or systematic attack directed against any civilian population.” There are 10 underlying acts considered crimes against humanity, including murder, imprisonment, torture, enforced disappearance, and sexual violence. Crimes against humanity, unlike the same acts committed as domestic crimes, are part of a large-scale commission of atrocities perpetrated against a population as a whole, rather than against individuals.<sup>115</sup>

Based on the prior chapter of this report, there is sufficient evidence documenting serious crimes under international law, particularly crimes against humanity, in the context of the armed conflict in Syria.

There are 10 underlying acts considered crimes against humanity, including murder, imprisonment, torture, enforced disappearance, and sexual violence. Crimes against humanity, unlike the same acts committed as domestic crimes, are part of a large-scale commission of atrocities perpetrated against a population as a whole.

<sup>113</sup> Rep. of the Int'l Law Comm'n, 71th Sess., Apr. 29–June 7, July 8–Aug. 9, 2019, ¶ 56, U.N. Doc A/74/10; GAOR, 74th Sess., Supp. No. 10 (2019), available at <https://undocs.org/en/A/74/10>.

<sup>114</sup> Int'l Comm. of Red Cross, *How “grave breaches” are defined in the Geneva Conventions and Additional Protocols* (June 4, 2004), <https://www.icrc.org/en/doc/resources/documents/faq/5zm9f9.htm>.

<sup>115</sup> Rome Statute of the International Criminal Court, art. 7, July 17, 1998, 2187 U.N.T.S. 3, available at <https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf>. See also U.N. Office on Genocide Prevention and the Responsibility to Protect: War Crimes, <https://www.un.org/en/genocideprevention/war-crimes.shtml> (last visited Feb. 25, 2022); *Fact Sheet: International Crimes*, Open Society Foundations, [https://www.justiceinitiative.org/uploads/cf498f48-0f30-453a-9e4e-36701512f646/mx-factsheet-icl-20160603\\_0.pdf](https://www.justiceinitiative.org/uploads/cf498f48-0f30-453a-9e4e-36701512f646/mx-factsheet-icl-20160603_0.pdf) (last visited Mar. 25, 2022).

# International Courts

While international tribunals have traditionally been established with the main purpose of settling disputes between states, as is the case of the International Court of Justice (ICJ), after World War II a permanent International Criminal Court (ICC) and many ad hoc courts and tribunals have been established and mandated to prosecute those responsible for core international crimes.

However, as will be explained below, the ability to pursue justice for Syria through any of the aforementioned courts is limited, whether due to jurisdictional restrictions or the nature of the court in question.<sup>116</sup>

## The International Court of Justice

The International Court of Justice (ICJ) is the principal judicial body of the United Nations, established by the 1945 Charter of the United Nations and seated in The Hague. It is not a criminal court, but instead serves to settle disputes between states. Only states can come before the ICJ, and only if the state agrees to the ICJ's jurisdiction, or if the ICJ has jurisdiction via a treaty or convention. Notably, a state may withdraw its consent to jurisdiction or simply not appear for proceedings. ICJ's judgments can be enforced under Article 94(2) of the UN Charter, according to which "[i]f any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment."



*The Peace Palace, housing the Permanent Court of Arbitration and the United Nations International Court of Justice in the Hague, Netherlands. Photo credits: Wikimedia Commons.*

Some treaties and conventions have conferred jurisdiction to the ICJ. Among them is the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), to which Syria is also a party. Therefore, the possibility of the ICJ receiving a complaint against Syria exists. Although there are multiple steps that must be satisfied before any court case could actually commence, the Netherlands announced in September 2020, that it was initiating a proceeding against Syria under the ICJ for violations of the CAT.<sup>117</sup> Interestingly enough, it is critical to note that any case before the ICJ would not, however, be a prosecution of individual members of the Assad regime, but rather holding the state of Syria ac-

<sup>116</sup> Interview with Roger Lu Phillips (Nov. 4, 2020).

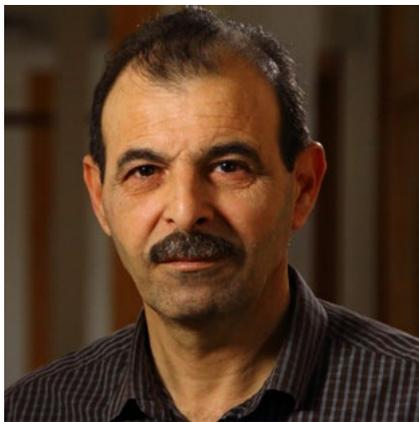
<sup>117</sup> *Netherlands prepares case against Syria for 'gross human rights violations'*, Reuters (Sept. 18, 2020, 8:09 AM), <https://www.reuters.com/article/us-netherlands-syria-worldcourt/netherlands-prepares-case-against-syria-for-gross-human-rights-violations-idUSKBN2691VG>; Alyssa Yamamoto & Balkees Jarrah, *The Netherlands' Action Against Syria: A New Path to Justice*, Just Security (Sept. 22, 2020), <https://www.justsecurity.org/72516/the-netherlands-action-against-syria-a-new-path-to-justice/>.

countable for its failure to uphold its responsibilities under the Convention.<sup>118</sup> Furthermore, while Canada has also announced its intention to hold Syria responsible under international law, Article 30 of the CAT requires that a dispute between state parties concerning the interpretation or application of the Convention be the subject of negotiations, then arbitration. Thus, only if these state parties are unable to agree on arbitration can a party refer a dispute to the ICJ.

## **The International Criminal Court**

The International Criminal Court (ICC) is a treaty-based court established by the Rome Statute in 1998. The ICC is an independent and permanent institution, seated in The Hague, Netherlands, vested with the power to prosecute individuals accused of committing the most serious crimes of concern to the international community as a whole, such as genocide, crimes against humanity, war crimes, and the crime of aggression. As a court of last resort, the ICC tries individuals only when the national courts are unwilling or unable to prosecute them.

**“The Syrian case exposes the powerlessness of the ICC in the absence of political will.”**



**Anwar Al Bunni**

*Human rights lawyer and head of the Syrian Center for Legal Studies and Research*

Under the Rome statute, the jurisdiction of the ICC is limited to state parties of the Statute (either if the accused individual is a national of a state party, or if the alleged crime took place within the territory of a state party).<sup>119</sup> Additionally, a state which is not a party to the Statute can choose to accept the ICC’s jurisdiction on its own or the United Nations Security Council (UNSC) can refer a case to the ICC regardless of whether the state in question is a party to the Statute.<sup>120</sup>

Despite the theoretical referral authority provided to the UNSC by the Rome Statute, the reality is that the veto power of the five permanent member states has curtailed the possibility of triggering the referral of Syria to the ICC through a UNSC resolution. Since 2011, Russia has effectively vetoed 16 resolutions related to Syria, including on 10 occasions in which it exercised its veto jointly with China,<sup>121</sup> subsequently limiting the possibility that the ICC would hear a case regarding Syria through this avenue (unless there are Security Council reforms and/or a change of policy from the Russian government). Needless to say, these vetoes have provided political support for the Assad regime, preserved Russia’s geopolitical and economic interests in Syria, and ensured impunity for a regime that has gone without being tried before an international tribunal despite its responsibility for committing the vast majority of atrocities during the conflict. Anwar Al Bunni, human rights lawyer and head

<sup>118</sup> Interview Anwar Al Bunni (Jan. 13, 2021).

<sup>119</sup> Rome Statute of the International Criminal Court, *supra* note 115, art. 12.

<sup>120</sup> *Id.* art 13.

<sup>121</sup> Reuters, *Russia, China Veto Aid to Syria via Turkey at U.N. Security Council*, NBC News (July 10, 2020, 3:01 PM EDT), <https://www.nbcnews.com/news/world/russia-china-veto-aid-syria-turkey-u-n-security-council-ri233465>.

of the Syrian Center for Legal Studies and Research, argues that “the Syrian case exposes the powerlessness of the ICC in the absence of political will.”<sup>122</sup>

The two other options that could trigger the ICC’s jurisdiction under Article 13 of the Rome Statute consist of State Party referral or a decision by the ICC’s Prosecutor to open up an investigation into a situation without the Security Council or a State Party referral, also known as *proprio motu*. Article 15(1) of the Rome Statute regulates the circumstances under which the Prosecutor can exercise his or her ability to



The International Criminal Court in the Hague, Netherlands.  
Photo credits: Wikimedia Commons.

initiate his or her own investigations and cases. In both cases, it seems unlikely that Syria will self-refer to the ICC or that the ICC prosecutor will start a *proprio motu* investigation.<sup>123</sup>

These trigger mechanisms found in Article 13 of the Rome Statute should also be distinguished from the preconditions that are necessary to exercising jurisdiction under Article 12. Although the ICC Prosecutor has publicly declared that he would prioritize cases referred to the Court by the UNSC (currently Libya and Darfur), the ICC option could be further explored in relation to Syria. For instance, if there are elements of ICC crimes that have been committed outside of Syria in a state party to the ICC, this could serve as a basis to establish the

Court’s jurisdiction (as it happened for Burma, a non-state party to the ICC, for which the Court exercised its jurisdiction on the basis that crimes against humanity such as deportation and persecution committed by Burma against the Rohingya population were committed in part in the territory of Bangladesh, a state party to the ICC) or if crimes are committed by a national of a state party to the ICC. The possibility therefore remains available wherein the ICC Prosecutor can be urged to consider opening a preliminary examination and/or investigation into the situation in Syria or where ICC state parties are pressured to refer the situation in Syria to the ICC.

Furthermore, the ICC only has the capacity to hear a limited number of cases at one time. Prosecution of cases is constrained by the Rome Statute gravity requirements, namely it must consider the scale and severity of crimes as well as the role and the degree of participation of the alleged perpetrator under Article 17(1)(d) of the Rome Statute, which serves to focus the ICC’s attention on the most serious cases.

<sup>122</sup> Interview with Anwar Al Bunni, *supra* note 118.

<sup>123</sup> Recently, in the process of drafting this report, the ICC prosecutor used his *proprio motu* power with regard to the Russian invasion of Ukraine to start an investigation into Ukraine and, at the same time, called State parties to the Rome statute to refer the case themselves to the ICC so that he could expedite the trial. Namely, he highlighted that “[a]n alternative route set out in the Statute that could further expedite matters would be for an ICC State Party to refer the situation to my Office, which would allow us to actively and immediately proceed with the Office’s independent and objective investigations.” After this call from the Prosecutor, 39 state parties referred the situation to the ICC. All this to say, that it is the political will of States that runs the ICC, and short of political will, getting momentum on the case of Syria to the ICC is essentially unlikely. *Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: “I have decided to proceed with opening an investigation.”* I.C.C., Office of the Prosecutor (Feb. 28, 2022), <https://www.icc-cpi.int/Pages/item.aspx?name=20220228-prosecutor-statement-ukraine>.

## Ad Hoc Criminal Tribunals and Special Courts



The United Nations International Residual Mechanism for Criminal Tribunals. Photo credits: Wikimedia Commons.

Apart from the ICJ and the ICC, in the 1990s many ad hoc criminal courts and tribunals were established either through a bilateral agreement between a State and the United Nations or through a UNSC Resolution with the mandate to try individuals responsible for the commission of grave crimes.<sup>124</sup> Among them include the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), and the Special Court for Sierra Leone.<sup>125</sup>

### Ad Hoc Criminal Tribunals and Special Courts in the Syrian Context

There is general support for the idea of some kind of tribunal to address grave crimes in Syria, one that “looks at the entire landscape of violations committed during the conflict.”<sup>126</sup> In the absence of more traditional avenues to justice, various theoretical proposals have been discussed addressing the possibility of creating a hybrid tribunal, which would blend aspects of national and international law, or a pooled jurisdiction tribunal, theoretically dispersing the cost and resources required for prosecution across multiple states. Many argue that an international tribunal would be the most appropriate mechanism to hold the Assad regime accountable. Unlike cases tried at the national level under universal jurisdiction, which creates a patchwork of criminal accountability, prosecutors in an international court would be able to

thoroughly investigate all perpetrators and decide who is most responsible, and bring those individuals to justice.

**Crimes in Syria “are still being committed, and evidence is abundant, thanks to an incredible documentation movement.”**

Quite distinctly in the Syrian context, the conflict in Syria remains ongoing while all previously held tribunals and truth commissions were created after the conclusion of the relevant conflict. Some experts like Anwar Al Bunni highlight the added value of this distinction as unlike other transitional justice processes, crimes in Syria “are still being committed, and evidence is abundant, thanks

to an incredible documentation movement.” Accordingly, “this matters because, historically, transitional justice processes have been delayed, evidence has vanished, been hidden, or destroyed, and victims and witnesses have died or moved away, making fully detailed memory impossible.”<sup>127</sup>

<sup>124</sup> U.N. Reg’l Info. Ctr., Special Tribunals & other mechanisms (Feb. 2020), <https://unric.org/en/wp-content/uploads/sites/15/2020/02/specialtribunals.pdf>; Int’l Comm. of Red Cross, *Ad hoc tribunals* (Oct. 29, 2010), <https://www.icrc.org/en/document/ad-hoc-tribunals>.

<sup>125</sup> *Id.*

<sup>126</sup> *Consideration of a ‘Pooled Jurisdiction’ Tribunal for Syria*, Syria Justice and Accountability Ctr. (Nov 25, 2020), <https://syriaaccountability.org/updates/2020/11/25/consideration-of-a-pooled-jurisdiction-tribunal-for-syria/>.

<sup>127</sup> Anwar Al Bunni, *Breaking new ground: Transitional justice in Syria*, Syrian Ctr. for Legal Studies and Research (Nov. 24, 2020), <https://sl-center.org/language/en/archives/1580?lang=en>.

While a post-conflict hybrid Syrian tribunal would, in an ideal world, perhaps be the most appropriate venue to hold such individuals accountable and fill the gaps in accountability that remain, others, particularly within the Syrian diaspora, object to the concept of an international tribunal. Any attempt at creating a tribunal faces practical barriers, including the risk that such a tribunal would siphon finite resources from other, vitally important mechanisms, including the International, Impartial and Independent Mechanism (IIIM), which will be discussed in the following section of this report. There are also questions about what limitations a tribunal might have regarding jurisdiction or type of crimes as functional and personal immunities, including head of state immunity, would still apply with no practical or physical mechanisms to extradite Syrian officials unless of course this tribunal is accompanied with political change in the country. Furthermore, an international tribunal would require reliance on the international community for support, and it is unclear whether the political will (or financial resources) for such a tribunal exists.

Lack of funding can have a negative impact on investigations and prosecutions, meaning that some cases may not be fully prosecuted, which may create a feeling of injustice for the victims of those crimes. A case in point is the Special Tribunal for Lebanon, where funding has been cut and some proceedings appear to have been abandoned thereby foreclosing the possibility of the victims of those crimes from obtaining justice.<sup>128</sup>

Currently, there is no political will for an ad hoc tribunal for Syria through a UNSC resolution as it is very likely that it would be vetoed by Russia and China for the same reasons that these countries have provided for opposing a UNSC referral of the situation in Syria to the ICC. It also goes without saying that – unless there is a real regime change in Syria – it is highly improbable that the government will request the creation of an ad hoc court. Even if there is a regime change, elements of the old regime may still be influential and oppose genuine efforts toward accountability, with the current situation in Sudan regarding Omar Al Bashir serving as an example.

Another point to consider regarding ad hoc tribunals is that they do not have capacity to prosecute everyone. They can only concentrate on high-level perpetrators, which means that an accountability mechanism for lower level perpetrators remains necessary. Rwanda is an example of this, where the ICTR tried high level perpetrators while Gacaca courts (based on traditional justice in Rwanda) and domestic courts tried lower-level perpetrators. In sum, there is unlikely to be any incentive to create an ad hoc tribunal at present. Even if the situation were to change in future, questions around funding and how to pursue accountability for lower-level perpetrators would need to be addressed. An ad hoc tribunal does not seem to be the best option for victims at present.

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<sup>128</sup> *Severe financial crisis threatens the STL's ability to fulfil its mandate*, Special Tribunal for Leb. (June 2, 2021), <https://www.stl-tsl.org/en/media/press-releases/severe-financial-crisis-threatens-the-stls-ability-to-fulfil-its-mandate>; *Ayyash case (STL-18-10)*, Special Tribunal for Leb., <https://www.stl-tsl.org/en/the-cases/stl-18-10> (last visited Mar. 25, 2022).

## The IIIM and Non-judicial Accountability Mechanisms

Established by the United Nations General Assembly in 2016 to work around Russian vetoes and a paralyzed UNSC, the International, Impartial and Independent Mechanism (IIIM) is mandated “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”<sup>129</sup> for the crimes committed in the Syrian Arab Republic since March 2011. The IIIM is not a court and is not involved in actively prosecuting crimes. Instead, its purpose is to collect and preserve evidence of crimes that can be used by prosecutors in the future.<sup>130</sup> While this may seem like a straightforward mandate, it comes with its own significant set of challenges and shortcomings.

The International, Impartial and Independent Mechanism (IIIM) 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, known as the IIIM, was established by the United Nations General Assembly in 2016 as a workaround to Russian vetoes and paralyzed UNSC.

The Syrian Archive, one of the many groups cooperating with the IIIM, and whose work centers around moderating and preserving digital evidence, claims that “over one million videos from Syria documenting human rights violations have been deleted from social media platforms in Syria in 2017, we have been able to restore around 700,000 items and we still have work to do to restore the rest and moderate any other possible content withdrawal.”<sup>131</sup> The elimination of digital evidence<sup>132</sup> on any scale threatens the foreseeable path toward justice and accountability measures.

As such, a significant shortcoming of the IIIM in pursuing accountability is that it does not have the powers to prosecute perpetrators. It is limited to collecting material to be used in cases of prosecution, e.g. in universal jurisdiction cases. Its mandate is limited to preparing files “in order to facilitate and expedite fair and independent criminal proceedings, in accordance with international law standards, in national, regional or international courts or tribunals that have or may in the future have jurisdiction over [serious crimes under international law], in accordance with international law.”<sup>133</sup> At the time of its creation, Russia

<sup>129</sup> International, Impartial and Independent Mechanism, Mandate, <https://iiim.un.org/mandate/> (last visited Mar. 25, 2022).

<sup>130</sup> *Id.*

<sup>131</sup> Interview with Al Jaloud and Haneen (Feb. 7, 2022).

<sup>132</sup> Malachy Browne, *YouTube Removes Video Showing Atrocities in Syria*, N.Y. Times (Aug. 22, 2017), <https://www.nytimes.com/2017/08/22/world/middleeast/syria-youtube-videos-isis.html>.

<sup>133</sup> International, Impartial and Independent Mechanism, *supra* note 129.

and Syria voiced particularly strong objections to the legality of its creation. Russia has also attempted to block funding for the IIM at the UN Budget Committee, which continues to be a constant challenge.

There is a possibility that additional mechanisms could be created at some point in the future. A coalition of five Syrian organizations commissioned a report on the possibility of a mechanism devoted to the disappeared, including the return of the remains of the deceased to surviving family members and ensuring those who are still detained are released.<sup>134</sup> In November 2021, the Third Committee of the United Nations General Assembly adopted a draft resolution that requests the Secretary General to conduct a study on how to bolster efforts, including through existing measures and mechanisms, to clarify the fate and whereabouts of missing people in the Syrian Arab Republic with the full and meaningful participation of victims, survivors, and their families and in consultation with other relevant actors, and to present the report to the General Assembly by March 1, 2022.<sup>135</sup> However, currently, it is unclear whether sufficient political will exists to create, fund, and support such a mechanism.

## Universal Jurisdiction

Unlike the international courts discussed above, universal jurisdiction is exercised at the national level. While the specific parameters of universal jurisdiction vary between particular countries and their judicial systems, the general principle allows states to try, within their national criminal courts, individuals accused of grave crimes committed abroad.

### Overview

The principle of “universal jurisdiction” establishes a state’s jurisdiction over violations of international law even though the crimes occurred outside of its territory and neither the victim nor the offender is a citizen of that state. The principle enables national courts in other countries to address international crimes committed elsewhere, to prosecute perpetrators criminally, and to avoid impunity.

Under normal circumstances, a state’s ability to prosecute is limited by certain constraints, including (1) territoriality, whereby a state has jurisdiction within its own borders, (2) nationality (or active personality), where a state has jurisdiction over its own citizens regardless of where their crime may take place, (3) passive, in cases where the victim is a citizen of the state, and (4) protective, in which a state has jurisdiction in

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<sup>134</sup> Jeremy Sarkin, *Humans not Numbers: The Case for an International Mechanism to Address the Detainees and Disappeared Crisis in Syria*, ReliefWeb (May 2021), <https://reliefweb.int/sites/reliefweb.int/files/resources/Humans%20not%20Numbers%20-The%20Case%20for%20an%20International%20Mechanism%20to%20Address%20the%20Detainees%20and%20Disappeared%20Crisis%20in%20Syria.pdf>.

<sup>135</sup> Meetings Coverage, Gen. Assembly, Third Comm. Approves 6 Drafts on Human Rights in Iran, Syria, Ukraine amid Separate Calls to Abolish Country-Specific Texts, Uphold Rule of Law, U.N. Meetings Coverage GA/SHC/4339 (Nov. 17, 2021), available at <https://www.un.org/press/en/2021/gashc4339.doc.htm>.

matters in order to protect its own interests. The principle of universal jurisdiction, however, permits a state to try crimes that are so grave as to have a detrimental effect on the international community as a whole, even if the crime, alleged perpetrator, and victim have no connection to the state in question.<sup>136</sup>

The principle of universal jurisdiction applies to crimes such as crimes against humanity, war crimes, genocide, and torture. It is aimed at ending the impunity gap and eliminating safe havens where perpetrators of heinous offenses can be shielded from prosecution.<sup>137</sup> For example, universal jurisdiction may be exercised when a known war criminal has relocated to another country that has no connection to the country where the crimes were committed. Universal jurisdiction is a jurisdiction of last resort, to be used only when the country of commission is unable or unwilling to prosecute.

It is important to note that universal jurisdiction is exercised at the national level and is not an international mechanism. Quite ironically, universal jurisdiction isn't so universal when we're relying on the discretion of state and national law.<sup>138</sup> Its precise definition and function vary based on the domestic framework of the state in question subsequently rendering it more domestic than universal in a sense. For instance, Spain curtailed the scope of its universal jurisdiction laws, after a series of high-profile cases, to be applicable only to cases that involved Spanish nationals or Spanish interests.<sup>139</sup> Other countries, such as Canada and New Zealand, have highly permissible definitions of universal jurisdiction.<sup>140</sup> In the last decade, Germany, which also has permissive universal jurisdiction laws, has been proactive in taking up international cases<sup>141</sup> (see section on "The Use of Universal Jurisdiction in Germany"). In 2019, 16 states were engaged in some stage of the universal jurisdiction investigation or prosecution process,<sup>142</sup> and in 2020, 18 additional cases engaged with universal jurisdiction were brought to trial. Of the 30 total trials employing universal jurisdiction in Germany, 26 of the cases involve Syria.<sup>143</sup> Among those trials is the al-Khatib (also known as the Koblenz Trial), the first trial worldwide on state torture in Syria, which started in Germany in April 2020, prosecuting Anwar R. and Eyad A., two former officials of Syrian President Bashar al-Assad's security apparatus.

<sup>136</sup> *Jurisdiction*, Encyclopedia Britannica, <https://www.britannica.com/topic/international-law/Jurisdiction> (last visited Mar. 25, 2022).

<sup>137</sup> The impunity gap refers to the gap in accountability that exists leading to the perpetuation of "crimes without punishment." See also Int'l Rescue Comm., *supra* note 36.

<sup>138</sup> Interview with Yousef Wehbe (Dec. 6, 2021).

<sup>139</sup> *Spanish Congress Enacts Bill Restricting Spain's Universal Jurisdiction Law*, Ctr. for Justice & Accountability, <https://cja.org/spanish-congress-enacts-bill-restricting-spains-universal-jurisdiction-law/?id=740> (last visited Mar. 25, 2022).

<sup>140</sup> *Universal Jurisdiction*, Int'l Justice Resource Ctr., <https://ijrcenter.org/cases-before-national-courts/domestic-exercise-of-universal-jurisdiction/> (last visited Mar. 25, 2022).

<sup>141</sup> Loveday Morris, *Why Germany is becoming a go-to destination for trials on the world's crimes*, Washington Post (Mar. 6, 2021), [https://www.washingtonpost.com/world/europe/germany-war-crimes-justice/2021/03/05/b45372f4-7b78-11eb-8c5e-32e47b42b51b\\_story.html](https://www.washingtonpost.com/world/europe/germany-war-crimes-justice/2021/03/05/b45372f4-7b78-11eb-8c5e-32e47b42b51b_story.html).

<sup>142</sup> TRIAL Int'l, *Universal Jurisdiction Annual Review 2020* (2020), <https://trialinternational.org/wp-content/uploads/2020/03/TRIAL-International-UJAR-2020-DIGITAL.pdf>.

<sup>143</sup> *Id.*

## **Universal Jurisdiction as a Fertile Avenue for Justice**

Survivors of Assad’s torture chambers and the families of those who are disappeared and detained, as well as experts interviewed by HRF and TSC for this report almost all agree on the necessity and importance of activating universal jurisdiction as it creates a path toward cultivating an environment of accountability, sets legal precedence, and builds momentum towards a culture of ending impunity. Given the limitations of international legal remedies noted above, “for Syrians looking to pursue legal

Lamis Alkhateeb, whose husband’s whereabouts remain unknown after he disappeared at the hands of the regime, argues that **“universal jurisdiction provides a glimmer of hope to the families of victims who do not have the luxury to simply give up.”**



Lamis Alkhateeb and Yasmine Shurbaji, members of Families for Freedom standing in front of the court in Koblenz on the day of Anwar R.’s verdict. Photo credits: The Syria Campaign/Paul Wagner.

remedies against those who violated their rights, what is left are national courts in countries that recognize universal jurisdiction.”<sup>144</sup>

Of critical importance to victims, their families, and survivors, in the long term, such litigation efforts undermine the narrative of the Syrian regime and uplift the narrative of Syria’s victims. As trials are held in states with credible independent judiciaries, victims and survivors obtain an opportunity “to voice the truth of the crimes committed against them, and to obtain means of redress, all of which promotes and protects the victims’ ‘narrative’ in Syria.”<sup>145</sup> These proceedings center the victims’ narrative which for far too long has been hijacked by the regime’s propaganda machine that casts protesters and human rights advocates as violent radicals and terrorists that must be silenced through “counterterrorism” strategies and policies. Lamis Alkhateeb, whose husband’s whereabouts remain unknown after he disappeared at the hands of the regime, argues that “universal jurisdiction provides a glimmer of hope to the families of victims who do not have the luxury to simply give up.”<sup>146</sup>

144 Alia Malek, *How a Syrian War Criminal Was Brought to Justice – in Germany*, N.Y. Times (Jan. 25, 2022), <https://www.nytimes.com/2022/01/25/magazine/germany-trial-syria.html>.

145 Mohammad Al Abdallah, *Syrian Civil Society: “Strategic litigation” with no strategy*, Al-Jumhuriya (Nov. 5, 2020), <https://www.aljumhuriya.net/en/content/syrian-civil-society-“strategic-litigation”-no-strategy>.

146 Interview with Lamis Alkhateeb (Dec. 16, 2021).

## **Criticisms and Drawbacks**

Needless to say and without exaggerating expectations, the principle of universal jurisdiction is not without criticism. Some observers fear that universal jurisdiction could be used to target individuals on politically-motivated grounds, or that there is no measure to prevent rogue prosecutions of perceived state enemies. Moreover, there are concerns related to due process, rights of the suspect, and double jeopardy.<sup>147</sup> The legal experts interviewed for this report tended to agree that when it comes to the application of universal jurisdiction, the expectations of the international community, survivors, victims, and families of victims should be tempered and remain objective. The application of universal jurisdiction can, when not applied justly in favor of victims, act as a double-edged sword. In the words of Ahmad Helmi, advocate and co-founder of Ta'afi Initiative, himself once detained and brutally beaten by the Syrian regime before he fled to Europe, "universal jurisdiction is not a comprehensive approach to justice and accountability" and isn't enough to address the atrocities perpetrated against the Syrian people.

Some concerns about universal jurisdiction are grounded in practical constraints. Namely, under customary international law, heads of state enjoy immunity from jurisdiction before the courts of foreign states. Head of state immunity is a bedrock norm of international law, but can become an obstacle to the pursuit of justice where the state is perpetrating crimes against its own citizens, as is the case in Syria. All in all, as long as Assad remains in power, he cannot be held personally accountable not even through the application of universal jurisdiction.

The application of universal jurisdiction can, when not applied justly in favor of victims, act as a double-edged sword.

Prosecutions based on universal jurisdiction may also be hampered by difficulties in extradition of the suspects. In general, the obligation to extradite a criminal suspect for a trial to another country is based on an international treaty. For example, under the four Geneva Conventions of 1949, ratified by all U.N. member

**"Universal jurisdiction is not a comprehensive approach to justice and accountability and isn't enough to address the atrocities perpetrated against the Syrian people."**

**Ahmad Helmi**

Advocate and co-founder of Ta'afi Initiative



Ahmad Helmi, standing in front of the Koblenz Higher Regional Court on the day of Anwar R.'s verdict. Photo credits: The Syria Campaign/Paul Wagner.

<sup>147</sup> Hilly M. Khen, *Revisiting Universal Jurisdiction: The Application of the Complementarity Principle by National Courts and Implications for Ex-Post Justice in the Syrian Civil War*, 30 *Emory Int'l L. Rev.* 261 (2015), available at <https://scholarlycommons.law.emory.edu/cgi/viewcontent.cgi?article=1158&context=eilr>.

states, states have the obligation to either prosecute or extradite (*aut dedere aut judicare*) those suspected of grave breaches of the Geneva Conventions of 1949 and their first Protocol, or otherwise responsible for war crimes.<sup>148</sup> However, the treaty provisions do not guarantee the efficiency of law enforcement officers and judicial officers to actually arrest and extradite the suspects in their territory.

**“Universal jurisdiction and such legal mechanisms inform the criminals that their crimes are not forgiven or forgotten,” and “shows those criminals who are bold enough to think they can move on with their lives, that they cannot.”**

Universal jurisdiction also does not provide a practical means of extraditing accused individuals, particularly high-ranking members of the government nor does it prevent those who seek visas to travel to such countries from attaining them in the first place.<sup>149</sup> This creates a certain haphazardness and inconsistency about who will be brought to trial in that whoever happens to be in a country with universal jurisdiction will be arrested, rather than solely those who are most responsible for the crimes in question. Perpetrators are held to account in a piecemeal, rather than a comprehensive, manner.<sup>150</sup>

Despite its limits and constraints, universal jurisdiction has provided the victims and survivors of the Syrian regime with an avenue of hope and acts as somewhat of a “first step towards justice.”<sup>151</sup> In the words of Hamoudi Alshoaib, “universal jurisdiction and such legal mechanisms inform the criminals that their crimes are not forgiven or forgotten,” and “shows those criminals who are bold enough to think they can move on with their lives, that they cannot.”<sup>152</sup>

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148 See Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. 146, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287, available at <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=6F96EE4C7D1E72CAC12563CD0051C63A>.

149 Interview with Lamis Alkhateeb, *supra* note 146, wherein she notes the lack of political will on the part of European governments to prevent those who have collaborated or worked for the Syrian regime from gaining entry visas into Europe, including Germany. Note that whether or not universal jurisdiction actually applies *in absentia* is debated, and not permitted in some frameworks.

150 Interview with Roger Lu Phillips, *supra* note 116.

151 Interview with Wafa Mustafa, *supra* note 87.

152 Interview with Hamoudi Alshoaib, *supra* note 72.

# The Syria Case: The Koblenz Trial

LASST SIE FREI الحرية للمعتقلين

Germany has a robust domestic framework for universal jurisdiction, and it has allocated resources to build cases against individuals accused of grave crimes under international law. In 2011, Germany opened a structural investigation (*Strukturermittlungsverfahren*) into possible grave crimes committed in the Syrian conflict.<sup>153</sup> The evidence collected as part of this ongoing investigation, coupled with the high population of Syrian refugees in Germany (many of whom may be first hand witnesses to the commission of atrocities),<sup>154</sup> has given German prosecutors a strong foundation to pursue cases regarding crimes in Syria. While many cases are still in their initial phases, two have gone to trial on state-sponsored torture, including the Koblenz trial and the trial of Syrian doctor, Alaa M.,<sup>155</sup> also accused of having been part of the Syrian torture system, and whose trial started in January 2022 in Frankfurt, Germany.

## Overview of Universal Jurisdiction in Germany

In 2002, Germany incorporated the provisions of the Rome Statute into domestic law, which governs the principle of universality within Germany and outlines which crimes invoke universal jurisdiction. This provides the legal framework for German prosecutors to pursue charges against individuals alleged to have committed grave offenses. As addressed earlier, for crimes against humanity, war crimes, and genocide, there is no restraint on the principle of universal jurisdiction, which means that there does not need to be any connection to Germany or any involvement of a German national, for prosecution to occur. However, there is no provision for a trial *in absentia*, which means that while crimes can be investigated and arrest warrants can be issued without the accused being physically present in Germany, the defendant must be able to appear before the court in person for a trial to be conducted.

Under the principle of universal jurisdiction, German prosecutors have opened more than 100 investigations into crimes committed in various countries, including Syria. In 2018, Germany issued an arrest warrant for Jamil Hassan, the former head of the Syrian Air Force Intelligence Service, despite the fact that he remains in Syria and therefore out of reach of German prosecution. In 2020, the trial of Anwar R. and Eyad A. became historic, as the first trial anywhere in the world regarding

In 2020, the trial of Anwar R. and Eyad A. became historic, as the first trial anywhere in the world regarding state-sponsored torture in Syria. Syrian human rights documentation groups, survivors of detention based in Germany, and international legal organizations, such as the European Center for Constitutional and Human Rights (ECCHR), along with other NGOs, were instrumental in seeing that charges were brought against the two accused.

<sup>153</sup> Loveday, *supra* note 141.

<sup>154</sup> Prior to prosecuting Syrian war criminals, German prosecutors tried two Rwandan rebel leaders for aiding and abetting war crimes in the Democratic Republic of Congo under the principle of universal jurisdiction in 2011. Germany is also host to nearly 60% of the one million displaced Syrians who have sought refuge in European Union countries. Malek, *supra* note 144.

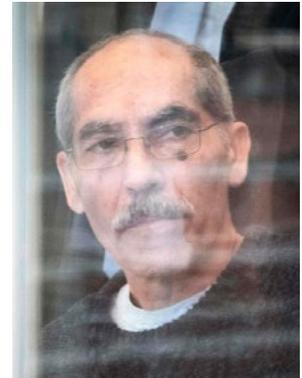
<sup>155</sup> Isabella Kwai, *Syrian Doctor Accused of Atrocities Goes on Trial in Germany*, N.Y. Times (Jan. 19, 2022), <https://www.nytimes.com/2022/01/19/world/europe/germany-syria-war-crimes-mousa.html>.

state-sponsored torture in Syria. Syrian human rights documentation groups, survivors of detention based in Germany, and international legal organizations, such as the European Center for Constitutional and Human Rights (ECCHR), along with other NGOs, were instrumental in seeing that charges were brought against the two accused.

## The Anwar R. and Eyad A. Trial

Anwar R. was the head of an investigation unit in the General Intelligence al-Khatib Branch, or Branch 251, in Damascus, Syria. In this capacity, he implemented and oversaw a system of detention and torture, until he defected and fled Syria in 2012. In Jordan, he joined the Syrian opposition, becoming well-regarded enough that he was a delegation participant to negotiations in Geneva. His status as a member of the opposition gave him a pathway to be granted asylum in Germany, where he settled in 2014 with his family.<sup>156</sup>

Anwar R. came to the attention of German authorities when he went to the police seeking protection since he feared that he may be targeted by the Syrian regime due to his defection. While speaking with police, he gave a detailed account of his role in perpetuating state-sponsored torture, sexual violence, and killings in Branch 251. The information he provided to the police triggered their investigation into his case.



Anwar R. Photo Credits: Anwar RAFP/Thomas Lohnes.



Eyad A. in the courtroom of the Koblenz Higher Regional Court. Photo credits: AFP.

Similar to Anwar R., Eyad A. implicated himself when speaking to authorities, providing a thorough description of his role working under the Assad regime. Eyad A. was one of Anwar R.'s subordinates, arresting and transporting detainees to Branch 251 despite being aware that they would be tortured and potentially killed there. He was not alleged to have participated in torturing or beating detainees himself.

Both men were arrested on February 12, 2019 in Germany, and formally indicted in Koblenz on October 22 of the same year. Anwar R. was charged with crimes against humanity for 4,000 counts of torture, 58 murders, rape, and sexual coercion. Eyad A. was charged with aiding a crime against humanity. Their trial began on April 23, 2020. Initially, the two men were to be tried jointly despite the fact that their connection to Branch 251 was the only clear similarity between their cases. However, the judge ordered that the cases be separated.

<sup>156</sup> Hannah El-Hitami, *They Felt Too Safe: How Two Syrian Agents Ended Up on Trial in Germany*, JusticeInfo.net (May 4, 2020), <https://www.justiceinfo.net/en/44207-they-felt-too-safe-how-two-syrian-agents-ended-up-on-trial-in-germany.html>.

Setting historical precedent, on February 24, 2021, Eyad A. was convicted and sentenced to four-and-a-half years in prison.<sup>157</sup> Almost one year later on January 13, 2022, Anwar R. was sentenced to life in prison for having overseen the deaths of at least 27 people and torture of at least 4,000 at a detention facility in Damascus.<sup>158</sup> Although the trials and verdicts themselves will surely “not bring justice to all Syrians,” they are nevertheless seen as “momentous achievements” even in the eyes of those who suffered directly at the hands of these perpetrators. Accordingly, “the trial in Koblenz (Germany) is a significant milestone in the pursuit of justice for Syrians”<sup>159</sup> because “through the pursuit of such legal mechanisms, the illegality of the regime is reinforced time and again.”<sup>160</sup> For Hussein Ghreer, a survivor and victim of torture in Branch 251, these trials represent a day they thought they “would never see.”<sup>161</sup> Anwar Al Bunni describes them as “a landmark in the history of justice, not just for Syria but in the whole world.”<sup>162</sup>

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157 Claudia Otto, Tamara Qiblawi & Stephanie Halasz, *In world first, Germany convicts Syrian regime officer of crimes against humanity*, CNN (Feb. 24, 2021, 8:26 AM ET), <https://www.cnn.com/2021/02/24/middleeast/syria-germany-officer-convicted-intl/index.html>.

158 Philip Oltermann, *German Court Jails Former Syrian Intelligence Officer for life*, Guardian (Jan. 13, 2022, 6:12 AM EST), <https://www.theguardian.com/world/2022/jan/13/german-court-jails-former-syrian-intelligence-officer-anwar-raslan-for-life>. Note that while Anwar R. was accused by German prosecutors of overseeing the torture of around 4,000 people during the first 500 days of the uprising, leading to the death of at least 58 prisoners, his sentencing in Koblenz was related to his involvement in the death of 27.

159 Roger Lu Phillips, *A Drop in the Ocean: A Preliminary Assessment of the Koblenz Trial on Syrian Torture*, Just Security (Apr. 22, 2021), <https://www.justsecurity.org/75849/a-drop-in-the-ocean-a-preliminary-assessment-of-the-koblenz-trial-on-syrian-torture/>.

160 Interview with Lamis Alkhateeb, *supra* note 146.

161 Hussein Ghreer, *Koblenz trial: One small step towards justice for Syria*, Al Jazeera (Jan. 23, 2022), <https://www.aljazeera.com/opinions/2022/1/23/koblenz-trial-one-small-step-towards-justice-for-syria>.

162 Interview with Anwar Al Bunni, *supra* note 118.

# SGBV as a Crime Against Humanity

One serious issue that emerged within the context of the Koblenz trial was the treatment of sexual and gender-based (SGBV) crimes. Historically, there is precedent for recognizing SGBV crimes as crimes against humanity. In the case of Duško Tadić in the International Criminal Tribunal for the former Yugoslavia, the court held that a single act of rape, proven to be committed as part of a widespread attack against a civilian population, can be considered a crime against humanity.<sup>163</sup> Following from this, a rape occurring in the same context in a Syrian detention facility would be treated the same way. However, in the Koblenz indictment, instances of sexual violence were considered to be isolated acts, rather than part of the widespread and systematic attack against the civilian population.

Unlike the charges of torture, deprivation of liberty, and killing, which are considered crimes against humanity, the initial indictment against Anwar R. included SGBV crimes under the national law (German Criminal Code), rather than international law. Despite this initial lapse, the federal prosecutor supported a request from survivors' legal representatives to modify the charges to treat SGBV crimes as crimes against humanity, an important development in how SGBV is viewed under international law.<sup>164</sup> According to Roger Lu Phillips, Legal Director at the Syria Justice and Accountability Centre (SJAC), the court's granting of the request of plaintiffs to "recharacterize charges as crimes against humanity of sexual violence helps emphasize that sexual and gender-based violence were wielded as weapons and as a matter of policy by the Syrian government."<sup>165</sup>

The court's granting of the request of plaintiffs to **"recharacterize charges as crimes against humanity of sexual violence helps emphasize that sexual and gender-based violence were wielded as weapons and as a matter of policy by the Syrian government."**

It is important to note this development because stripping away the recognition that these acts occurred within the context of crimes against humanity is problematic, in both changing legal accountability for these acts and establishing a precedent of how to treat SGBV crimes. Removing the context of crimes against humanity from SGBV crimes also has profound implications for the survivors' experiences and their

<sup>163</sup> Prosecutor v. Tadic, Case No. IT-94-1-A, Judgment, ¶ 248 (Int'l Crim. Trib. for the Former Yugoslavia July 15, 1999), available at <https://www.icty.org/x/cases/tadic/acjug/en/tad-aj990715e.pdf>.

<sup>164</sup> Alexandra Lily Kather & Alexander Schwarz, *Intersecting Religious and Gender-Based Persecution in Yazidi Genocide Case: A Request for an Extension of Charges*, Just Security (Feb. 24, 2021), <https://www.justsecurity.org/74943/intersecting-religious-and-gender-based-persecution-in-yazidi-genocide-case-a-request-for-an-extension-of-charges/>; Interview with Alexandra Lily Kather, *supra* note 93.

<sup>165</sup> Lu Phillips, *supra* note 159.

access to justice. SGBV perpetuated by the state, within a politicized context, is a very different scenario than SGBV occurring in a domestic violence situation and it is important that this distinction is reflected in legal proceedings. Treating SGBV as a crime against humanity acknowledges it as an international crime of concern to the international community, rather than “only” a national one.<sup>166</sup>

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Part of the discrepancy in the treatment of SGBV crimes compared to other crimes against humanity is due to assumptions regarding evidence and the ability to secure testimony. The Caesar photos, for instance, were key evidence in the Koblenz trial, and while they clearly indicate torture, they are not conducive to showing evidence of SGBV. Nearly all of the photos show men, most of them lying on their back; the anus and signs of sexual assault are not visible. There is only one woman photographed, and she is clothed. It is unknown what happened to other female bodies. However, given that it is clearly established that SGBV occurred within detention facilities, it would have been problematic not to procure evidence to showcase those facts.

Prosecutors may also assume that other crimes against humanity charges can be tried easily, whereas SGBV crimes may be more complicated and harder to prove. There is also an assumption that SGBV survivors will not be willing to testify. However, neither of these assumptions are based in reality. Sexual violence can often be very prosecutable, and survivors are willing to testify, provided that they are given the structural support to do so, in the form of psychological and medical help and a community willing to stand behind them.<sup>167</sup>

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<sup>166</sup> European Ctr. for Constitutional and Human Rights, *Al-Khatib trial in Koblenz: Sexual Violence now indicted as crimes against humanity* (Mar. 17, 2021), <https://www.ecchr.eu/en/press-release/syrien-prozess-in-koblenz/>; Interview with Alexandra Lily Kather, *supra* note 93.

<sup>167</sup> Hannah El-Hitami, *Syrian and Yazidi Trials: Why Victims' Lawyers want Sexual Violence Considered*, JusticeInfo.net (Feb. 5, 2021), <https://www.justiceinfo.net/en/73307-syrian-and-yazidi-trials-sexual-violence.html>; European Ctr. for Constitutional and Human Rights, *Sexual and Gender-Based Violence*, <https://www.ecchr.eu/en/topic/sexual-and-gender-based-violence/> (last visited Feb. 25, 2022); Interview with Alexandra Lily Kather, *supra* note 93.

An example of psychological support that can be provided is the Syrian Road to Justice campaign,<sup>168</sup> a collaboration between organizations Badael, Dawlaty, Women Now for Development, the Syrian Female Journalists Network, and TSC, which together advocate for greater legal access for SGBV survivors. The campaign was launched on June 18, 2020, the day before the filing of the first criminal complaint in Germany pertaining to SGBV in detention facilities.<sup>169</sup> Among the campaign's purposes was to provide a support network for survivors in anticipation of a backlash among the Syrian community about the charges.

In response, a new movement is working on recategorizing SGBV crimes as crimes against humanity under Germany's Code for Crimes Against International Law, in an effort to recognize them as such in subsequent indictments and warrants. There are also efforts to fill the "documentation gap" of SGBV being less documented than other attacks in the conflict, such as airstrikes or torture. Testimony of survivors, defectors, and witnesses, as well as medical reports, show that similar tactics are used across different detention facilities, indicating a systematic strategy and communication about methods. For example, women being given birth control pills show pre-planning and a level of orchestration consistent with SGBV being part of a broader, coordinated attack against detainees, rather than isolated, random acts occurring within detention centers. In short, there is abundant proof that SGBV was deliberately utilized by the regime and was not the result of opportunistic individual actions.<sup>170</sup>

Treating SGBV as a crime against humanity acknowledges it as an international crime of concern to the international community, rather than "only" a national one.

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<sup>168</sup> *The Syrian Road to Justice campaign*, Women Now for Development (Oct. 15, 2020), <https://women-now.org/the-syrian-road-to-justice-campaign/>.

<sup>169</sup> European Ctr. for Constitutional and Human Rights, *supra* note 68.

<sup>170</sup> See Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, *supra* note 67; Marie Forestier, "You want freedom? This is your freedom": Rape as Tactic of the Assad Regime, London School of Economics Ctr. for Women, Peace and Security (Mar. 2017), [http://eprints.lse.ac.uk/69475/8/WP\\_3\\_2017.pdf](http://eprints.lse.ac.uk/69475/8/WP_3_2017.pdf); Interview with Alexandra Lily Kather, *supra* note 93.

# Limitations

While the Koblenz trials are historic and have recently been the most effective avenue of legal accountability available to Syrians, they are not without limitations. In addition to the criticisms of universal jurisdiction as a principle, there are also constraints specific to the handling of the Anwar R. and Eyad A. cases, including practical and conceptual drawbacks.

## Koblenz, Germany as the Trial Site

There were inherent cultural barriers present in trying a Syrian case in Germany. In the Anwar R. and Eyad A. trial, many of these barriers resulted in a level of inaccessibility for the Syrian diaspora community. For instance, the proceedings were conducted in German, with no Arabic translation available for those attending the hearings, besides accredited journalists. As Syrian civil society organizations and individuals lack the license to practice law in Germany (or other European countries), and are naturally unfamiliar with



Map of Germany, pinned at Koblenz. Photo credits: Shutterstock.

a foreign judicial system, they relied on German attorneys and international organizations to aid in filing and trying the cases. While this was necessary, at times it led to a sense of exclusion for Syrian human rights advocates, who found themselves unable to participate fully in the process or were given access to the same information as their German counterparts. There was a strong sense of “othering” in the trial, without sensitivity or understanding to cultural or linguistic differences that have a profound impact on justice, especially given that German attorneys and judges lack familiarity with

the Syrian culture. This inaccessibility was even more pronounced for SGBV survivors. At the beginning of the trial, all of the attorneys for both the prosecution and defense, as well as most of the witnesses, were male. The exclusion of women from these positions contributed to a more challenging, less empathetic courtroom environment or understanding of SGBV crimes.<sup>171</sup>

Other issues pertaining to accessibility stemmed from the trial being held specifically in Koblenz. Given the locations of where Anwar R. and Eyad A. were each arrested, the trial could have been held in either Koblenz (the jurisdiction where Eyad A. was arrested) or Berlin (where Anwar R. was arrested). Unlike Koblenz, the Berlin court already had a substantial backlog of cases to hear, meaning that the trial timeline would have been pushed back. The prosecutors opted instead to hold the case in Koblenz.<sup>172</sup> Koblenz,

<sup>171</sup> Al Abdallah, *supra* note 145.

<sup>172</sup> Lu Phillips, *supra* note 159.

however, does not have a large population of non-German citizens, which came at the cost of having judges with little experience in dealing with issues relating to a non-German population and with a limited understanding of the nuances of the Syrian conflict, or Syrian culture more broadly.<sup>173</sup> Furthermore, Koblenz is not as centrally located and accessible as Berlin, especially taking into consideration travel limitations due to the COVID-19 pandemic. Therefore, it was considerably more challenging for members of the Syrian diaspora and the media to attend trial hearings.

## **Concerns and Ramifications Based on Legal Technicalities**

Some concerns about the Koblenz trial stemmed from legal technicalities. Due to the narrow focus of the cases on the crimes committed by either Anwar R. or Eyad A., survivors who were held in detention at a different branch or by a different intelligence service, or at the facility during a different time period, were barred from participating as witnesses, despite having endured similar treatment. While such a limitation is inherent to any case, it deprived many survivors of the opportunity to speak about their ordeal in court and created an incomprehensive narrative on the record. Moreover, some Syrians who agreed to testify in Koblenz were either directly threatened or threatened through their families, forcing some to pull out of the case altogether.<sup>174</sup>

Additionally, one issue exemplified in the Koblenz trial was whether to prosecute an individual or to treat them as a cooperating witness. Regime insiders can provide a wealth of information about the ways

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in which the regime operates, how orders are given out, and who is ultimately responsible for the commission of atrocities. As cooperating witnesses, such individuals may be invaluable for building a case against their superiors. However, that opportunity is lost if the individual in question is prosecuted instead. Moreover, such prosecutions may send a message to other members of the regime that they will be held accountable even if they defect, potentially providing an incentive for them to stay with the

regime rather than leave. However, at the same time, not prosecuting individuals who bear responsibility for heinous crimes is detrimental to many of those individuals' victims and to the larger pursuit of justice. Importantly, some survivors argue that there is enough evidence from the testimony of former detainees that treating the perpetrators as cooperating witnesses is not necessary.<sup>175</sup>

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<sup>173</sup> *Id.*

<sup>174</sup> *Id.* Interviews carried out by HRF and TSC for this report had reiterated this point time and again, suggesting that NGOs and the German police were unable to provide comprehensive witness protection throughout the trial.

<sup>175</sup> Interview with Roger Lu Phillips, *supra* note 116; Interview with Anwar Al Bunni, *supra* note 118.

## **Constraints of Universal Jurisdiction for Crimes in Syria**

Lastly, some of the concerns about the Koblenz trial were in regards to the degree of impact that the prosecutions may have had. The Koblenz trial, like any universal jurisdiction trial, targeted certain individuals. In this situation, the individuals were one low-level officer and one mid-level officer. Meanwhile, the higher echelons of the regime remain untouchable. Individual trials, particularly against comparatively lower-ranking officials, cannot overhaul the entire system that allowed crimes against humanity to take

**[Lamis Alkhateeb] points to the irony of having trials take place under the principle of universal jurisdiction while the crimes in Syria are ongoing and the system itself remains unaffected.**



Lamis Alkhateeb in front of the Koblenz Higher Regional Court in July 2020. Photo credits: Max Eicke.

place. Trials may hold specific perpetrators accountable, but do not change torture as an institution. There is a limit on the amount of change that a single trial can bring about, particularly in terms of the impact on individuals who are still held in detention in Syria. There have been no studies conducted to show what effect incarcerating a war criminal has on the society in question, or whether it can trigger the transformation necessary for that society to move beyond conflict. While the trial may still have positive and strategic benefits (discussed in more detail in the following section), it is important not to overstate the degree to which it may have impacted the lived experiences of Syrian survivors.<sup>176</sup>

Almost all those interviewed for this report noted gaps in this approach to justice. Lamis Alkhateeb, a Palestinian-Syrian residing in Germany and member of Families for Freedom, a women led movement campaigning to end enforced disappearances and political repression,<sup>177</sup> whose husband, a freelance journalist, disappeared in 2015 in Syria, points to the irony of having trials take place under the principle of universal jurisdiction while the crimes in Syria are ongoing and the system itself remains unaffected.<sup>178</sup> Experts such as the Syria Justice and Accountability Centre's executive director, Mohammad Al Abdallah, imprisoned twice by the Syrian regime for defending human rights and lobbying for political reform, cautions the profound negative consequences and impact these trials can have on Syrians awaiting some form of justice being served. In sum, the deliberate overpromising, exaggerated raising of expectations, and intentional alienation of the Syrian public "can lead to serious long-term impacts on survivors and the families of victims beyond what they already face."<sup>179</sup>

<sup>176</sup> Al Abdallah, *supra* note 145; Interview with Alexandra Lily Kather, *supra* note 93; Interview with Ahmad Helmi, *supra* note 18; Interview with Lamis Alkhateeb, *supra* note 146.

<sup>177</sup> Families for Freedom, <https://syrianfamilies.org/en/> (last visited Mar. 25, 2022).

<sup>178</sup> Interview with Lamis Alkhateeb, *supra* note 146.

<sup>179</sup> Interview with Mohammad Al Abdallah (Nov. 4, 2020).

# Implications of the Trial

Despite the previously discussed drawbacks of universal jurisdiction trials in Germany, the Koblenz trial is a landmark in the history of justice. Eyad A. and Anwar R.'s convictions have far-reaching implications for both survivors of the Assad regime, for global politics, and the international legal system.

## Significance for Survivors and Implications for Regime Officers

To Syrian survivors, especially the survivors of Branch 251, the Koblenz trial demonstrates that perpetrators of human rights violations are not untouchable or all-powerful, but instead can be held accountable for their abuses. Wafa Mustafa noted that, before the Koblenz trial, Syrians only knew justice in theory and had never lived under a just legal system. The trial represents the first time that perpetrators are held accountable.<sup>180</sup> Ahmad Helmi notes that the trial reflects the lack of divinity of the Syrian regime in that “they are not untouchable gods.”<sup>181</sup>

The longstanding lack of decisive action on the part of the international community has allowed the regime to commit atrocities without fear of repercussions. The first steps of what is considered a start on the road of accountability through universal jurisdiction trials sends a message to the members of the Assad regime as well as to the survivors. Those who continue to inflict torture or commit other serious crimes in Syria are now aware that there may be consequences for those actions. Potentially, the possibility of accountability could deter some individuals' behavior and impact their calculus about whether the risk of committing crimes continues to be worth the risk of facing legal consequences. At the least, the potential for arrest may limit the movement of accused individuals and may curb some behavior.<sup>182</sup> This aspect extends beyond the Syrian conflict and applies to grave crimes committed elsewhere as well in that the exercise of universal jurisdiction shows that the commission of atrocities will not continue to be tolerated by the international community.<sup>183</sup>

**Ahmad Helmi notes that the trial reflects the lack of divinity of the Syrian regime in that “they are not untouchable gods.”**

<sup>180</sup> Interview with Wafa Mustafa, *supra* note 87.

<sup>181</sup> Interview with Ahmad Helmi, *supra* note 18.

<sup>182</sup> Many of those interviewed mentioned the value of this. In our interview with Ahmad Helmi, *supra* note 18, for example, he noted that these trials create a “momentum of accountability” and “tell anyone perpetuating torture in Syria that they cannot leave to go enjoy the rest of their lives in Europe.”

<sup>183</sup> Interview with Patrick Kroker (Nov. 4, 2020); Interview with Eric Witte (Oct. 30, 2020); Interview with Ahmad Helmi, *supra* note 18.

## Implications for the Global Community and International Legal Precedents

One of the unique aspects about the Koblenz case is that the trial took place while the conflict in Syria was ongoing. Historically, cases were only brought or tribunals created, after the conclusion of the conflict, and only to try individuals who belonged to the conflict's losing side. Conversely, although they themselves defected earlier on in the conflict, Anwar R. and Eyad A. were members of a regime which currently remains in power. The Koblenz case, as well as other arrest warrants issued and criminal proceedings initiated against additional regime-affiliated suspects, is remarkable in that it is not the losing side that is being held accountable.<sup>184</sup>

The Koblenz trial, and any future universal jurisdiction cases regarding the Syrian regime, also have implications for diplomatic and economic relations with the Assad regime. The legal process moves independently from any political or military processes. Criminal trials are, by nature, authoritative in that evidence, which is debated and ruled upon in a public trial setting, carries weight, and is difficult to dismiss or ignore. As the scope of torture perpetrated by the Syrian regime becomes a matter of legal record through the courtroom testimony of survivors, it becomes difficult for other countries to downplay the allegations of abuse and seek to normalize relations with the Assad regime. The trial serves as a reminder to the international community about the atrocities inflicted under the Assad regime and refocuses attention on human rights advocates' calls for justice.<sup>185</sup>

By highlighting the ongoing abuse occurring in Syria, the trial also drew attention to the fact that Syrian refugees cannot safely return or be repatriated to Syria, and that it is not too late to act to save detainees. In the words of Eric Witte, senior policy officer at the Open Society Justice Initiative, "while no single trial can satisfy all demands for accountability and justice, especially in a context that has seen such widespread atrocity, this trial is hugely significant, especially for those directly affected by the specific crimes at issue. It shows that cases can be built and defendants arrested and brought to trial."<sup>186</sup> Subsequently, the same persistence of victims and national civil society groups that eventually led to justice in the cases of heads of state like Charles Taylor in Liberia and Slobodan Milošević in the former Yugoslavia can be seen in a future case against Bashar al-Assad of Syria.

**"While no single trial can satisfy all demands for accountability and justice, especially in a context that has seen such widespread atrocity, this trial is hugely significant, especially for those directly affected by the specific crimes at issue. It shows that cases can be built and defendants arrested and brought to trial."**

**Eric Witte**

*Senior Policy Officer at the Open Society Justice Initiative*

<sup>184</sup> Interview with Anwar Al Bunni, *supra* note 118; Interview with Patrick Kroker, *supra* note 183.

<sup>185</sup> Interview with Patrick Kroker, *supra* note 183; Interview with Wafa Mustafa, *supra* note 87; Interview with Hussein Ghrer (Dec. 14, 2021); Interview with Eric Witte, *supra* note 183. Eric Witte served as external relations advisor to the president of the International Criminal Court. Prior to that, Witte served as political advisor to the prosecutor of the Special Court for Sierra Leone, where he developed strategies for bringing then-fugitive former Liberian President Charles Taylor into the court's custody. He also worked at the Coalition for International Justice in Washington, D.C., on the political strategy leading to the arrest of former Serbian President Slobodan Milošević and his transfer to the International Criminal Tribunal for the former Yugoslavia. Having published widely on international justice, Witte has authored and co-authored several Justice Initiative publications, including *Options for Justice: A Handbook for Designing Accountability Mechanisms for Grave Crimes and Undeniable Atrocities: Confronting Crimes Against Humanity in Mexico*.

<sup>186</sup> Interview with Eric Witte, *supra* note 183.



# Justice for Syria

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Without exaggerating expectations, the Koblenz trial is a historic step toward justice for Syria.<sup>187</sup> Lamis Alkhateeb, whose husband remains amongst the disappeared, calls the trial “a historic event” as the cases

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**Lamis Alkhateeb**

“build legal precedence.” Moreover, she notes that they “give encouragement to families and organizations to continue to build and engage with cases.” For the victims’ families, it reflects the ability of the Syrian people, despite all the roadblocks faced, to find a way to establish a pathway toward some level of accountability. For instance, Lamis Alkhateeb noted that the avenue available “to press charges is part of our right as victims, survivors, and families of victims.”<sup>188</sup> While it may not provide “true justice,” holding individuals accountable for the commission of crimes against

humanity is a crucial component of justice; for without accountability, justice is impossible to achieve, and society cannot come to terms with the trauma of its past or move forward toward reconciliation.<sup>189</sup> Ideally, and in a hopeful sense, the Koblenz trial will encourage the implementation of other accountability mechanisms and provide the impetus for society at large to address the commission of atrocities.

While accountability might be the first step, it is not itself an exhaustive solution or a silver bullet in and of itself. The concept of justice is multifaceted, multilayered, complex, and subjective. Accountability is not necessarily synonymous with justice, nor is justice synonymous with healing, reconciliation, or peacebuilding. For justice to be achieved, wrongdoing must be remedied in a way that is both witnessed and realized by impacted Syrians. Thus although universal jurisdiction is largely symbolic, it nonetheless “gave hope that there was a path for some sort of justice” because true justice is simply “unattainable” given the extent of the crimes committed, the number of perpetrators, and the lives lost with no way of return.<sup>190</sup> Any solution for Syria must therefore involve other disciplines besides criminal law, such as politics, art, or history. Accountability is the base element of transitional justice, but is only a first step toward building social peace.<sup>191</sup>

**Accountability is not necessarily synonymous with justice, nor is justice synonymous with healing, reconciliation, or peacebuilding.**

For many Syrians, an integral part of any justice process involves systemic change. Perpetrators of human rights abuses in Syria are acting within a specific, authoritarian system, and are following orders of their superiors, who are in turn part of a system of oppression and violence. While Anwar R. and Eyad A. participated in this system, they are two individuals who left Syria years ago. Holding them accountable does not impact the ongoing system of torture and detention on a practical level. Even Assad himself is a part

<sup>187</sup> Interview with Lamis Alkhateeb, *supra* note 146.

<sup>188</sup> *Id.*

<sup>189</sup> Interview with Omar Alshogre, *supra* note 22.

<sup>190</sup> *Id.*

<sup>191</sup> Interview with Mohammad al Abdallah, *supra* note 179; Interview with Anwar Al Bunni, *supra* note 118.

of this system, not the cause of it; removing Assad from power is not the key to social change so much as countering the ideology that created the system in the first place.<sup>192</sup> Those who seek to approach building justice in Syria must confront the real problem of system failure altogether.

Justice for Syria is undeniably a process that will take time to complete and cannot be addressed through one mechanism. A coalition of Syrian survivors and relatives of victims of enforced disappearance put forward a Truth and Justice Charter in February 2021. The Charter provides a “framework to guide work on the issues of arbitrary arrest and enforced disappearance, taking the views of the victims as a starting point, to assist those working on these issues in their advocacy,”<sup>193</sup> and subsequently addresses both the urgent short-term stages of justice as well as the long-term vision. Accordingly, the Charter develops a discourse that centers the demands and aspirations of the victims, survivors, and their families by prioritizing their narrative and elevating their voices within the framework of international legal principles and humanitarian standards.<sup>194</sup> There are many roads that lead toward justice for Syria, without a single component being the sole answer. As Wafa Mustafa notes, “justice is not something you will find, but something you build.”<sup>195</sup>

**“Justice is not something you will find, but something you build.”**

**Wafa Mustafa**

One aspect is clear: Any process of justice, whether legal or civil, must be led by Syrians. Any mechanism that is not truly collaborative and informed by survivors and their experiences will not be legitimate and garner success as a means of justice. Even within the context of a criminal trial, it is imperative that the principles must be centered around Syrian survivors and families. Legal proceedings are inherently technical, but it is crucially important that the processes remain focused on the community of people impacted by these crimes. Advocacy must be survivor-led and survivor-focused. While partnerships with non-Syrian organizations are paramount,<sup>196</sup> such organizations should focus on supporting Syrian survivors, uplifting their voices, and ensuring that non-Syrian advocates are equipped to support and listen to them.

The following sections briefly highlight some aspects of justice that members of Syrian civil society and experts feel are integral to any processes going forward.

One aspect is clear: any process of justice, whether legal or civil, must be led by Syrians.

<sup>192</sup> Interview with Mohammad Al Abdallah, *supra* note 179.

<sup>193</sup> *The Truth and Justice Charter by Syrian Victims and Family Members*, Caesar Families Assoc. (Feb. 10, 2021), <https://www.caesarfamilies.org/the-truth-and-justice-charter-by-syrian-victims-and-family-members/>.

<sup>194</sup> *Truth and Justice Charter: A Common Vision on the Question of Enforced Disappearance and Arbitrary Detention in Syria by Syrian Victims' and Family Members' Organizations*, Impunity Watch (Feb. 2021), [https://www.impunitywatch.org/files/ugd/f3f989\\_ea2bcacb68664b52a2b9dc-090b3c775e.pdf](https://www.impunitywatch.org/files/ugd/f3f989_ea2bcacb68664b52a2b9dc-090b3c775e.pdf).

<sup>195</sup> Interview with Wafa Mustafa, *supra* note 87.

<sup>196</sup> Al Abdallah, *supra* note 145.

# Truth and Information

One key aspect of justice is truth. Truth and fact-finding are fundamental principles of any process of justice. Establishing what has happened to the disappeared, and returning the remains of the dead to their families, is an urgent facet of justice. For many families, it may be hard to see the significance of prosecutions if the fate of their loved ones is still unknown. Determining what happened to the disappeared, along with securing the immediate release of all detainees, is the most urgent priority in the Truth and Justice Charter.<sup>197</sup>

Some advocates have proposed a civil society truth commission, building on the models used in several Latin American countries, or a mechanism with a humanitarian mandate to uncover the fate of the disappeared, without focusing on identifying perpetrators. The report commissioned by a coalition of Syrian activist groups outlines how a mechanism dedicated to discovering the fate of the disappeared might function.<sup>198</sup>

## Preserving the Narrative

As the war continues on the ground in Syria, there is also an abstract struggle over control of the narrative. The Assad regime and Russia participate in large-scale propaganda campaigns that aim to distort events to cast the regime in a more favorable light, and to discredit and demonize any group or individual who may be a threat to the regime. One example is the Russian disinformation campaign against the White Helmets<sup>199</sup> in which state-run organizations and media channels for years have falsely spread claims labeling the humanitarian group of rescuers as “terrorists” who are planning chemical attacks in Syria.<sup>200</sup> As the lead perpetrator of crimes, the Syrian regime and its ally, Russia, have not only worked to discredit the White Helmets, but have also likened anyone who opposes them to “terrorists.”<sup>201</sup> Therefore, another component of justice involves pushing back against that propaganda, and preserving the truth of the narrative, whether through archiving evidence or talking on a daily basis about the need to save detainees.

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<sup>197</sup> Impunity Watch, *supra* note 194.

<sup>198</sup> Sarkin, *supra* note 134.

<sup>199</sup> White Helmets are humanitarian workers from all trade sectors who volunteer to run toward the site of bombings and chemical attacks in an effort to rescue survivors and whose data and eyewitness testimonies, as well as photographic evidence, have been vital sources of information for international investigations into war crimes by international bodies (including the U.N.) and NGOs.

<sup>200</sup> Olivia Solon, *How Syria's White Helmets became victims of an online propaganda machine*, Guardian (Dec. 18, 2017, 3:01 AM EST), <https://www.theguardian.com/world/2017/dec/18/syria-white-helmets-conspiracy-theories>; *Killing the Truth*, Syria Campaign (Dec. 20, 2017), <http://thesyriacampaign.org/wp-content/uploads/2017/12/KillingtheTruth.pdf>.

<sup>201</sup> Editorial, *The Guardian view on the Nobel peace prize: give it to Syria's White Helmets*, Guardian (Oct. 5, 2016, 2:33 PM EDT), <https://www.theguardian.com/commentisfree/2016/oct/05/the-guardian-view-on-the-nobel-peace-prize-give-it-to-syrias-white-helmets>.

One example of an organization engaged in this type of justice-building is the Syria Justice and Accountability Centre (SJAC), which works to comprehensively document human rights violations on the ground.<sup>202</sup> SJAC makes this evidence available through its purpose-built database, *Bayanat*,<sup>203</sup> so that it can be shared with prosecutors or the IIIM. By extensively cataloging the millions of pieces of available information, documentation is more easily accessible. SJAC has also made the database software code available, free of charge, for other groups to use in their own efforts to document crimes in Syria or other conflict areas. This type of documentation and evidence preservation is an important component of both bolstering cases against those accused of crimes against humanity and undercutting the false narratives generated by the regime and its allies.

**...the critical need for the effort "to preserve the dignity and humanity of the Syrian people" through this collection as well as "the need to ensure that such preservation uplifts the narrative and collective memory of the Syrian people and witnesses to the crimes of committed in Syria by all parties in order to seek accountability and complement efforts towards transitional justice."**

component of both bolstering cases against those accused of crimes against humanity and undercutting the false narratives generated by the regime and its allies.

Syrian Archive is another Syrian NGO that works to preserve the digital narrative of human rights violations, including restoring deleted materials from social media platforms. It has played an instrumental role in compiling evidence and testimonies for a complaint filed to a special court for war crimes in France and Germany over the Assad regime's use of chemical weapons – the first case of its kind – focusing on attacks on the Damascus suburbs of Eastern and Western Ghouta in August 2013.<sup>204</sup>

Notably, Syrian Archive has over 3 million records archived on their infrastructure, publishing only those they have verified through their standardized methodology.<sup>205</sup> An interview with Al Jaloud and Haneen from Syrian Archive underscored the critical need for the effort "to preserve the dignity and humanity of the Syrian people" through this collection as well as "the need to ensure that such preservation uplifts the narrative and collective memory of the Syrian people and witnesses to the crimes of committed in Syria by all parties in order to seek accountability and complement efforts towards transitional justice."<sup>206</sup> Moreover, Syrian Archive investigates human rights violations in Syria through the data they archive, interviews they conduct and Freedom of Information Act (FOIA's) they request. These investigations have been featured in international media outlets, and are used in ongoing court cases around the world.<sup>207</sup>

information Act (FOIA's) they request. These investigations have been featured in international media outlets, and are used in ongoing court cases around the world.<sup>207</sup>

202 *Violations Database*, Syria Justice and Accountability Ctr., <https://syriaaccountability.org/database/> (last visited Mar. 25, 2022).

203 *Bayanat*, Syria Justice and Accountability Ctr., <https://bayanat.org/> (last visited Mar. 25, 2022).

204 Interview with Al Jaloud and Haneen, *supra* note 131.

205 For more on their verification process, methods and tools used to preserve digital content, see *Methods and Tools*, Syrian Archive, <https://syrianarchive.org/en/about/methods-tools> (last visited Mar. 25, 2022).

206 Interview with Al Jaloud and Haneen, *supra* note 131.

207 *Investigations*, Syrian Archive, <https://syrianarchive.org/en/investigations> (last visited Mar. 25, 2022).

Through their advocacy work, Syrian Archive and Mnemonic engage with governments, tech companies, and platforms, including Twitter, Facebook, and Youtube to encourage a clear approach that “reduces the impact of harmful content moderation policies” in an effort to ensure the safe preservation of digital content that is abruptly removed or deleted from platforms. The need to ensure that such content remains accessible as evidence is critical for any movement toward attaining justice for Syrian victims, survivors, and their families. Through their work, Syrian Archive notably empowers “advocacy efforts by providing comprehensive reliable data surrounding the takedowns of human rights documentation on social media platforms.”<sup>208</sup>

## Gender Equality and Inclusivity

Any potential justice or accountability processes must be sensitive to the disparate impacts that the conflict has on women, the LGBTQ+ community, and other groups within Syrian society. Gender-sensitive analyses should be applied, not only to instances of SGBV, but to every step of the process. This involves gendered awareness throughout all stages of a criminal proceeding, from the investigation to the trial, and assurance that there are female investigators, lawyers, and judges.

Documenting SGBV should be approached with a high level of sensitivity ensuring the implementation of ethical practices within the process, including confidentiality, confirmed consent, security, the ability to provide psychosocial support, and acknowledge that survivors come first through any steps ensuring to “do no harm.”<sup>209</sup> Setting these measures in place encourages and supports survivors to come forth and narrate their experiences.<sup>210</sup>

More broadly, concepts of justice must address the patriarchal aspect of Syrian society. Even within the Syrian diaspora, civil society organizations are predominantly male-led, with few leadership roles for women or members of the LGBTQ+ community. Many female human rights advocates face exclusion and misogyny. The advocacy of women is not taken as seriously nor is it viewed in the same political lens. It is more comfortable to view women as victims than to see them as advocates for the same political cause as their male counterparts. Therefore, community mobilization is a key component of dismantling social stigma and supporting all members of society.

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<sup>208</sup> Mnemonic, <https://mnemonic.org/> (last visited Mar. 25, 2022).

<sup>209</sup> “Do you know what happens here?” *An analysis of Survivor Accounts of SGBV in Syria*, Syria Justice and Accountability Ctr. (Jan. 2019), <https://syriaaccountability.org/wp-content/uploads/SGBV-report.pdf>.

<sup>210</sup> Interview with Alexandra Lily Kather, *supra* note 93.

# Mental Health

Recognizing the impact of personal and societal trauma, and ensuring access to mental health services is a key component of justice. Unlike other aspects of justice, which will necessarily take time to attain, mental health and psychological support is a form of justice that can be implemented more expediently.

Access to mental health services must take into account practical concerns, such as ensuring availability and accessibility within the communities where they are needed. For instance, Wafa Mustafa recounted having to work for 18 hours a day in order to earn enough money to support her family after leaving Syria. She had no time for therapy.<sup>211</sup> Psychological support providers must be sensitive to similar circumstances and work to accommodate them.

Similarly, it is important to encourage survivors to avail themselves of existing mental health services and work to dismantle stigmas surrounding mental health care. An example of a model of community-based mental health services is the Ta'afi Initiative,<sup>212</sup> a survivor-led group which focuses on providing housing, psychosocial support, and healthcare to survivors, as well as developing a more nuanced understanding of how trauma affects human rights defenders and communities.

Ahmad Helmi, a member of the initiative, noted how, for him, the act of speaking about his experience in detention is itself therapeutic, while Omar Alshogre defines his public speaking engagements with a global audience as his “form of therapy.”<sup>213</sup> Notably, there is still much work to be done in order to improve accessibility to mental health resources amongst others. The reality is that the vast majority of survivors continuously encounter significant challenges and barriers in finding the time to access the resources they need to rebuild their lives as they are consumed with long hours at work that leave little to no time to focus on healing and addressing their mental health. Moreover, access to centers capable of providing culturally appropriate counseling is limited.

The need to ensure that psychological support is not only available to survivors of detention or torture, but also to their family members and the family members of the disappeared is critical. The anguish of not knowing what has happened to a loved one, the potential feelings of survivors’ guilt for having escaped arrest or torture when others have not or the grief of loss can be traumatic in and of themselves and deserves attention and support.

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211 Interview with Wafa Mustafa, *supra* note 87.

212 “Ta’afi” means recovery in Arabic” is a Syrian survivors-led, survivors-centered initiative that aims to support and protect victims of detention, torture, and enforced disappearance upon their release and settlement at a secure location, so that they may continue to peacefully support human rights change in Syria and pursue justice and accountability.”

213 Interview with Omar Alshogre, *supra* note 22.



# Conclusion

The Syrian conflict has entered its eleventh year with a steep human cost. In addition to over half a million casualties, tens of thousands imprisoned and forcibly disappeared, Syria also remains the world's largest refugee crisis with 6.6 million refugees and 6.7 internally displaced. A muted international response has allowed the Assad regime bolstered by its allies – Russia and Iran's authoritarian regimes – to wage a war against its own people while flouting international law and flagrantly carrying out human rights abuses and crimes against humanity with full immunity. Enforced disappearances and torture are conducted on a systemic scale, alongside bombings of medical facilities and civilian areas, chemical weapons attacks, amongst other atrocities. While allies of the opposition have provided limited material and military support, the international community's capacity to meaningfully respond has been restricted by the limitations of the ICJ and ICC as well as Russia's abuse of its veto power in the UNSC.

Within this context, the principle of universal jurisdiction allows national governments to prosecute those accused of crimes against humanity. In Koblenz, Germany, prosecutors have won a historical trial against Eyad A. and Anwar R.. The cases are a landmark in international justice and justice for Syria, representing the first trials on state-sponsored torture under the Assad regime and the first time officials are tried before a conflict's conclusion. Just as importantly, these cases represent a step toward justice for survivors, confirming criminal accountability, not impunity, for human rights abusers. They can be used as legal precedents to establish future cases or feed into comprehensive processes.

However, despite the historic and groundbreaking nature of the Koblenz trial, its impact remains limited. Assad himself, and the vast majority of those commanding abuse, remain out of the reach of international law. In Syria, detention, torture, and killing continue and many families live not knowing what has happened to their forcibly disappeared loved ones. Detention survivors, activists, and members of the Syrian diaspora face challenges, including financial hardship, limited access to mental health resources, lack of political or legal support, and, particularly for SGBV survivors, community rejection. Despite these shortcomings, universal jurisdiction remains one of the most viable options available at present for the pursuit of criminal accountability for crimes against humanity. The efforts to broaden the scope of national-level investigations and prosecutions of core crimes under international law should be supported.

Ultimately, universal jurisdiction, and legal accountability for crimes against humanity, are only one aspect of justice for Syria. Legal proceedings against the perpetrators of human rights abuses are crucial but must complement other initiatives. These include preserving the narrative and pushing back against propaganda, holding space for SGBV survivors, providing access to mental health services, utilizing sanctions to target abusers while taking all possible measures to minimize the impact on civilians, uncovering the fate of the disappeared, and addressing the role of regional and national powers in the conflict. Survivor- and family-led civil society groups have championed these causes, providing valuable advocacy. Other states, particularly democracies, should act to advance justice for Syria and hold perpetrators of crimes against humanity accountable.

A woman with long dark hair and a teal top is holding a white-framed photograph. The photograph shows a young child in a purple shirt holding a yellow SpongeBob SquarePants mask. The background is a gallery or store with other framed photos on display. The text "Recommendations and Calls to Action" is overlaid in white on the lower half of the image.

# Recommendations and Calls to Action

Based on the findings of this report and interviews conducted with experts on the topics addressed, the following are a series of recommendations for the wider public and international community; policymakers, legal practitioners, and other relevant experts; as well as global tech, media, and social media companies.

## **Recommendations for the International Community**

- **Adopt a victim-centered approach and advance the recommendations and demands laid out in the Truth and Justice Charter** seeking “to advance victims’ rights and the cause of justice and truth in Syria.”<sup>214</sup> Such an adoption supports short and longer-term efforts toward building and framing comprehensive justice for the victims of detention and their families.
- **Exercise universal jurisdiction efficiently to prosecute those committing war crimes and crimes against humanity in Syria.** Urge states to provide for universal jurisdiction in their national law and investigate and prosecute war crimes and crimes against humanity when suspects are found in their territory. Universal jurisdiction is a mechanism for states to reject the politicized impasse of the United Nations Security Council (UNSC) and refuse to accept the commission of crimes against humanity.
- **Support the exercise of universal jurisdiction and other mechanisms, including the International, Impartial and Independent Mechanism (IIIM).** Given the limitations around the ability to create a hybrid or ad hoc tribunal or pooled jurisdiction that will bring forth immediate accountability against members of the Assad regime, the international community should support alternative pathways that seek to cultivate a culture of accountability.
- **Support efforts to seek approval of a UNSC resolution on detainees and missing persons in Syria,** calling to free all detainees and put an end to the systematic use of arbitrary detention, forced disappearance, and torture by the Syrian regime and all other actors.
- **Encourage states to provide resources and gender expertise for law enforcement and prosecutors to fully and thoroughly investigate allegations of crimes against humanity in Syria, especially sexual and gender based violence (SGBV).** These measures help to end the impunity gap that exists with the jurisdiction of the International Criminal Court (ICC), and cultivate a global environment of accountability that discourages the commission of human rights abuses.
- **States that are safe havens for Syrian refugees should not simultaneously harbor and welcome the perpetrators of the Syrian regime.** Governments should do a more thorough job in vetting those who enter their borders and to whom they provide sanctuary.

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214 Impunity Watch, *supra* note 194.

## **Recommendations for Legal Practitioners and Policymakers**

- **Ensure that any mechanism of justice or accountability, including universal jurisdiction trials, takes place with full participation and input of Syrian survivors and Syrian civil society organizations, and is accessible to Syrian survivors.** Specific recommendations to accomplish this include ensuring that legal professionals and judges are educated on the Syrian conflict and Syrian culture, translation services are provided, and members of the Syrian diaspora are able to participate in the process and attend hearings.
- **Ensure that survivors of SGBV are supported in legal processes as well as in their community, and that mechanisms of justice are sensitive to the disparate impact of the conflict based on gender and sexual orientation.** In addition to creating a legal precedent for SGBV to be understood as a crime against humanity, criminal processes must be conducted through a gender-sensitive lens, and participants in the process should be educated about how issues impact women and members of the LGBTQ+ community. Women and members of the LGBTQ+ community must be fully represented and included in legal proceedings and civil society initiatives.
- **Support access to medical and mental health services as an integral component to justice for Syria and Syrian survivors.** Mental health services and psychosocial support must be provided and made accessible for members of the Syrian diaspora. Community initiatives should encourage survivors to seek mental health services.
- **Recognize that justice extends beyond any courtroom.** As such, a more comprehensive and well-coordinated network of support for survivors and families should be created to encompass a more comprehensive vision of justice. This network should include social and economic protection resources for survivors, in which official and civil society institutions assume their responsibilities and assist in the rebuilding of Syrian lives.

## **Recommendations for the Wider Public**

- **Support campaigns and initiatives, particularly those spearheaded by family- and survivor-led groups, to draw attention to the forcibly disappeared.** Such campaigns and initiatives would entail devoting resources to support the families of the disappeared, elevating their stories, and supporting fact-finding initiatives to uncover the fate of the disappeared, free them from detention or return the remains of the deceased to their families for proper burial. It is of utmost importance to preserve the humanity and dignity of the disappeared, to promote the narrative that each detained individual is more than a victim of torture, and to be respectful when circulating evidence of crimes against humanity that depict the deceased.

- **Pressure the international community to reject any normalization of relations with the Assad regime, and hold the regime's allies, such as Russia and Iran, accountable for the commission of abuses.** Given the Assad regime's proven sponsorship of crimes against humanity, the international community must not pursue diplomatic or economic normalization with Syria in a "business as usual" fashion as long as Assad remains in power. Russia and Iran should be held accountable within the international community for their support of the regime, and, in the case of Russia, for the use of UNSC veto power to shield Assad.

### **Recommendations for Global Tech, Media, and Social Media Companies**

- **Tech and social media companies have an obligation to advance social justice and human rights,** and as such should **put in place clear and transparent policies to preserve credible digital content and be prepared to present it to court systems around the world** that seek justice and accountability. This includes establishing mechanisms to preserve digital content at risk of being removed through content moderation on social media sites. A clear mechanism, such as that established by Mnemonic,<sup>215</sup> that allows for analyzing, verifying, and preserving digital information that thousands of people risk their lives to capture exposing human rights violations should be in place for global tech companies. Content moderation has direct consequences in curtailing the advancement of preserving memory, documenting violations, and advancing truth and reconciliation efforts. As such, the removal of digital content should not take place on an ad hoc basis or at whim. Instead, a mechanism to preserve such materials should be in place ensuring the availability of such potential evidence useful for legal casebuilding when needed.
- **Commit to concrete steps to combat harmful disinformation** which includes labeling factually incorrect content and suspending accounts involved in coordinated disinformation. In trying to ensure respect for platforms' policies and moderating violent content deemed inappropriate, tech and social media companies have an obligation to assess the source and value of such content from a human rights perspective.
- **Build a network of activists and members of the tech field** to work together to ensure justice for victims of war crimes in Syria and accountability for the perpetrators of those crimes.
- **The media should thoroughly investigate** human rights violations and abuses taking place in Syria and **amplify the voices** of survivors, family members of victims, and civil society organizations seeking justice in Syria.

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<sup>215</sup> Interview with Al Jaloud and Haneen from Mnemonic and Syrian Archive, *supra* note 131. See their website Mnemonic, <https://mnemonic.org/> (last visited Mar. 25, 2022) for more.