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# Writing Atrocities: Syrian Civil Society and Transitional Justice

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**WRITING ATROCITIES: SYRIAN CIVIL SOCIETY  
AND TRANSITIONAL JUSTICE**

NOHA ABOUELDAHAB

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Noha Aboueldahab  
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## EXECUTIVE SUMMARY

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**T**hrough documentation, Syrian civil society actors are transforming the role of transitional justice in ongoing conflict by reclaiming the centrality of victims in justice processes. Syrian documentation of violations has strengthened the centrality of local actors, even if the way in which transitional justice is pursued remains largely internationalized.

This paper argues that in raging conflicts such as in Syria, the documentation of violations should be considered as a stand-alone mechanism of transitional justice and as a means to lay the foundation for a variety of future post-conflict justice goals. This is for two principal reasons. First, documentation is a powerful form of non-violent resistance to ongoing, violent conflict. It constitutes a crucial pursuit of justice without having to wait for a political transition to take place or for conflict to subside. Documentation resists the hijacking of narratives and the destruction of evidence, history, and memory. It maintains and protects a database containing material crucial for eventual prosecutions and truth commissions. In doing so, documentation keeps the issue of justice in Syria alive, even if it is sidelined or altogether dismissed in official peace talks. This makes documentation, in and of itself, a form of resistance.

Furthermore, not only does documentation lay an essential foundation for future transitional justice mechanisms to take place, but it also helps to ensure a victim-led transitional justice process. Ironically, transitional justice often overlooks ways to meaningfully address the expectations of victims. Instead, its processes are predominantly shaped by elites, whose priorities are not always aligned with those of victims. Those directly affected by past and ongoing atrocities thus find themselves struggling to stake their claim to a transitional justice that adequately addresses their needs and expectations. Citizen journalism and open source information, however, have significantly strengthened the comprehensive nature of documentation, as well as its accessibility. This has enhanced prospects for a more legitimate, organic, victim-led, and civil society-led transitional justice.

While documentation is often viewed as a stepping-stone toward the implementation of transitional justice mechanisms, it is a function of the pursuit

of transitional justice in its own right. One of the features of Syrian documentation is its agency: the involvement of countless activists, lawyers, ordinary citizens, victims, and eyewitnesses in ensuring that the truth about violations is recorded and exposed. Writing atrocities is, in and of itself, a healing process, as it ensures that victimization is acknowledged, recorded, and remembered. Given the resource constraints that Syrian civil society continuously faces, donors should direct more funds toward documentation efforts, not least as they provide an effective means for victim-led transitional justice.

Concerns regarding international actors' weak efforts to meaningfully involve Syrian civil society in shaping decisions regarding transitional justice must be taken seriously. By encouraging the contribution of Syrian civil society actors to policymaking, accountability initiatives in Syria will be more achievable and conducive to the justice desires of Syrian society. They must be engaged as leading partners, and not mere recipients of transitional justice policies. International organizations should, therefore, make a meaningful effort to bring local activists to the table, not just to voice their concerns and exchange information, but to shape policy as well.

# WRITING ATROCITIES

## SYRIAN CIVIL SOCIETY DOCUMENTATION'S RECKONING WITH THE PAST AND PRESENT

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Through documentation, Syrian civil society actors are transforming the role of transitional justice in ongoing conflict. Syrian documentation is reclaiming the centrality of victims in transitional justice processes through a renewed focus on the importance of the role of victims and of addressing stories of victimhood. This, however, is not an uncomplicated process. For example, in an ongoing conflict situation, peace negotiations are high on the agenda. Such peace talks often necessarily include officials involved in, or responsible for, crimes committed during the conflict.

Syrians affected by the regime's atrocities have also placed universal jurisdiction—or prosecutions in third-country courts—as a prominent transitional justice mechanism in an ongoing conflict. This is largely because local institutions needed to pursue criminal accountability are often very weak and politicized in ongoing conflict situations.<sup>1</sup>

Moreover, Syrian documentation of violations has strengthened the centrality of local actors, even if the way in which transitional justice is pursued remains largely internationalized.

The documentation of violations, including those amounting to large-scale atrocities, has long served as a crucial component of the process of transitional justice. While there is no single agreed upon definition of transitional justice, it is generally understood as a set of judicial and non-judicial processes and mechanisms that a society adopts to address a legacy of large-scale abuses and atrocities.<sup>2</sup> Documentation is a process that has been particularly vital to the preparation of criminal cases for local and international courts, for the preservation of memory, the preservation of history, and for truth-seeking initiatives geared toward reconciliation. However, most of the literature on documentation efforts has been developed within the post-conflict context.<sup>3</sup> This tendency to focus on the role of documentation in post-conflict settings is inextricably linked to the predominant understanding of transitional justice as a mechanism whose application is limited to such settings. The role of documentation within the context of an ongoing war thus remains largely unaddressed.

This paper argues that in raging conflicts, as in Syria, the documentation of violations should be considered as both a stand-alone mechanism of transitional justice and as a means to lay the foundation for a variety of future post-conflict justice goals. This is for two principal reasons. First, documentation, in and of itself, is a powerful form of non-violent resistance to ongoing, violent conflict. It constitutes a crucial pursuit of justice without having to wait for a political transition to take place, or for conflict to subside. Given documentation's multiple uses—for accountability, reconciliation, and the preservation of memory and of history—donors should prioritize support for documentation efforts in the same way they would in establishing a tribunal. However, they should not limit this support to documentation that strictly aims to build a body of evidence that would be admissible in court. While this legal documentation is certainly important, documentation in its broader sense—the collection of accounts, stories, and testimonies gathered not only from witnesses, but also from other communities impacted by the conflict—must also be supported. This includes Syrians who have been internally displaced, as well as those who fled the country. With more than 470,000 dead as a result of the war in Syria, the appeal of non-violent resistance is high among civil society actors.<sup>4</sup> Documentation is one powerful example of such non-violent resistance. It resists the hijacking of narratives, the destruction of evidence, history and memory, and it also maintains and protects a database containing material crucial for eventual prosecutions and truth commissions. In doing so, documentation keeps the issue of justice in Syria alive, even if it is sidelined or altogether dismissed in official peace talks. This is, in and of itself, a form of resistance.

Second, not only does documentation lay an essential foundation for future transitional justice mechanisms to take place, but it also helps to ensure a victim-led transitional justice process. Ironically, transitional justice often overlooks meaningful ways to address the expectations of victims. Instead, elites typically co-opt transitional justice processes, whose priorities are not always aligned with those of victims. Those directly affected by past and ongoing atrocities thus find themselves struggling to stake their claim in a transitional justice that adequately addresses their needs. Citizen journalism and open source information, however, have significantly strengthened the comprehensive nature of documentation, as well as its accessibility. This has enhanced prospects for a more legitimate, organic, victim-led, and civil society-led transitional justice process.

This paper does not aim to present a comprehensive mapping of Syrian and international civil society actors who document violations, of which there are many. Rather, it addresses two principal questions. First, what motivations drive civil society documentation of atrocities in Syria? Second, how do such

documentation goals shape Syrian civil society's vision for transitional justice in Syria? The conclusions drawn rely primarily on an analysis of the literature on civil society documentation and on the author's interviews in 2017 with some of the most prominent Syrian civil society actors, including lawyers and activists. Many of these actors are also survivors. The interviews were semi-structured to allow for additional questions generated by the responses received. The themes that emerged from the interview responses form the backbone of this paper. The interviews were conducted in Arabic and English. Given the security risks to both the interviewees and the author in conducting interviews inside Syria on such a sensitive topic, all interviewees were based outside of Syria.

The paper begins with a discussion of the role of civil society documentation in other parts of the world where, like Syria, atrocities were committed and a shaken society attempted to come to grips with its past. The discussion highlights the different ways in which local and international civil society actors work together toward accountability. This relationship, marked by collaboration and opposition, has been a central feature of efforts to pursue transitional justice, particularly prosecutions. This underlines the importance of understanding the role of civil society and of documentation in such processes. The paper then analyzes the objectives, challenges, and prospects of Syrian civil society documentation efforts. It emphasizes the emergence of an organically-driven documentation movement as a stand-alone mechanism of transitional justice that has served as a powerful non-violent tool of resistance to ongoing, violent conflict. The primary purpose of this tool has been to ensure that as many different accounts and stories of atrocities are told and preserved for the pursuit of justice in its myriad forms.

# INTERNATIONAL AND DOMESTIC CIVIL SOCIETY: COLLABORATION AND OPPOSITION

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A society reeling from a violent past often, though not always, garners the attention and involvement of international actors. Domestic civil society organizations have long worked with international actors on ways to ensure accountability for past crimes. This relationship, however, has not been entirely consistent. It is marked by strong collaboration, opposition, and a combination of both. Margaret Keck and Kathryn Sikkink describe a transnational advocacy network as one that includes “those actors working internationally on an issue, who are bound together by shared values, a common discourse, and dense exchanges of information and services... At the core of the relationship is information exchange.”<sup>5</sup> These networks are often in the form of collaboration between domestic actors such as civil society and international non-governmental organizations (NGOs), whose reports on human rights violations are disseminated internationally to strengthen campaigns to change repressive government behavior. This was especially true for several Latin American countries, where the Inter-American Court for Human Rights (IACtHR) played an influential role in providing legal and political support to domestic actors to ensure accountability for human rights violations. In Peru, the rich synergy between domestic and international actors in efforts to prosecute former president Fujimori is a testament to the importance of cooperation between the domestic and the international.<sup>6</sup>

Sikkink argues that institutions offer “international opportunity structures” which interact with domestic political opportunity structures.<sup>7</sup> This means that activists navigate these two structures depending on the context within which they are working—if working from within a repressive, closed society, they are likely to reach out to international venues as a means of gaining access to institutions necessary to support their cause. Alternatively, activists may close themselves off to international opportunity structures such as international institutions or third-country courts because they regard them as invasive—this is what Sikkink labels as “defensive transnationalism.”<sup>8</sup>

Given the ongoing war in Syria and the extremely difficult domestic working conditions for civil society, “international opportunity structures” could—and indeed already have—provided an effective outlet to seek accountability. The

International, Independent, and Impartial Mechanism (IIIM), prosecutions of Syrians in German and Swedish courts, and other international avenues have used the extensive documentation produced by Syrian civil society in order to pursue and prepare for judicial accountability via universal jurisdiction. Even in instances where such efforts to prosecute were not successful, the involvement of Syrian civil society actors who have been leading documentation efforts has kept the issues of justice and accountability for Syrian victims alive.<sup>9</sup> This is important because, unlike post-conflict cases, such as in Latin America, the ongoing war in Syria has meant that prosecutions in Syrian courts are impossible.

However, in her discussion on the impact of “transnational networks,” Cath Collins warns that we should be skeptical about the extent to which these transnational networks actually impact accountability at the national level.<sup>10</sup> Collins defines “transnational networks” as constituting lawyers, victims, activists, and international human rights organizations with the aim of overriding domestic judicial processes by pushing for legal action in third-country courts. She uses the case of El Salvador as an example to show that “third-country litigation” against Salvadorean perpetrators was not followed by visible domestic change in El Salvador. This also happened with Chile, after the Pinochet case was triggered in Spain.<sup>11</sup> In the Syrian case, however, the aim of the use of third-country courts, or universal jurisdiction, was not to yield domestic change. Rather, it was to ensure some form of accountability in a context that provides severely limited options for justice, primarily because of the ongoing war.

Tensions between local and international justice actors are, of course, typical in any context. Empirical evidence from Chile and El Salvador reveals that there was often a clash between outside activists and domestic justice efforts. Such a clash existed, for example, between Spanish and Chilean lawyers over the Pinochet case: they “disagreed violently...over the legal strategies which ought to be adopted.”<sup>12</sup> The Syrian case demonstrates that despite similar clashes, Syrian civil society is persistent in pushing for its vision of transitional justice without entirely abandoning the use of international venues for collaboration. Subsequent sections of this paper will explore this strategy in greater detail, particularly with reference to an ongoing conflict situation.

Civil society plays an important role in driving both criminal accountability and other non-prosecutorial forms of transitional justice. Naomi Roht-Arriaza notes, for instance, that all truth commissions have relied heavily on NGOs for the background documentation needed not only to choose targets of investigation and to recruit victims, but also to provide historical context.<sup>13</sup> Jo-Marie Burt contends that together with international demands for accountability, pressure

from domestic civil society groups in favor of accountability succeeded in bringing to justice those responsible for past atrocities in Peru.<sup>14</sup> In their account of the impact of the so-called “justice cascade” and foreign human rights trials in Latin America, Ellen Lutz and Kathryn Sikkink identify the “intensity of the determination of domestic human rights advocates and victims, amply supported by their international counterparts, to pressure their government to realize justice for past wrongs,” as one of the factors that led to decisions to pursue justice through prosecutions.<sup>15</sup>

While these contentions are made with regard to post-conflict settings, it is striking that Syrian civil society has succeeded in yielding similar results—namely, prosecutions in foreign countries—while the war rages on. In Chile, the Vicaría de la Solidaridad is an organization formed during the dictatorship and under the protection of the Catholic Church. The Vicaría is an example of a civil society organization that both tirelessly documented the regime’s violations and pursued legal action through domestic courts, all while the dictatorship was still in place. Daniela Accatino and Cath Collins note the impact of the Vicaría’s work during both the dictatorship years and decades after the transition:

The Vicaría’s archive, preserved after it closed in 1992, has become an obligatory point of reference for present day judges investigating a dictatorship-era case. A wealth of other potential evidence, including artefacts, survivor accounts, documentary proof and defiant unofficial press reporting, was amassed in a semi-clandestine fashion by regime opponents and exiles. Some is gradually being collected, through donation, by the national Museum for Memory and Human Rights, inaugurated in 2010. Many judges now include this institution among the official and unofficial bodies to which they circulate requests for data on taking up a new case.<sup>16</sup>

Still, it must be noted that the very few Syrian prosecutions that have taken place have not seen the conviction of any high-level Syrian government officials. The extent of criminal accountability for Syria’s perpetrators from multiple sides of the conflict remains quite limited. In Latin America, some prosecutions continue to take place, almost 40 years since the transitions. This is a testament to the necessarily long process of accountability, particularly criminal accountability, as countries come to grips with their past, present, and future. As the example of the Vicaría in Chile illustrates, however, the value of documentation extends far beyond prosecutions and opens up possibilities for the preservation of memory, as well as truth-seeking initiatives.

## MULTIPLE PERPETRATORS, MULTIPLE TRUTHS

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The role of documentation, however, is not simply one that facilitates the pursuit of transitional justice. Rather, it complicates the establishment of narratives, as it exposes the multiple and conflicting accounts of the past. While this may be unsettling for a society wishing to move on from a violent legacy, the process of exposing multiple truths is crucial for the very same reason—to enable a transitional society to come to terms with its past in order to understand its present and to be better prepared for its future.

Trials involving human rights charges are often a powerful statement of “judicial truths,” which compete with other types of truth generated through truth commissions or other methods of narrative production. Accatino and Collins underscore the tendency of court rulings to make “special claims to truth” because of the “statements of proven fact contained in judicial rulings.”<sup>17</sup> As a result, tensions emerge between versions of the truth produced by truth commissions, judicial rulings, archives, and other transitional justice mechanisms.<sup>18</sup> This is why “transitional truths...tend to be plural and complex. Truth-seeking mechanisms...can encompass different kinds of truth claims.”<sup>19</sup>

The Ahmed Timol case in South Africa is a powerful example of the problem with accepting judicial truths as rigid facts. Ahmed Timol was an anti-apartheid activist who died in 1971. At the time, an investigation into his death determined that he committed suicide. However, following pressure from Timol’s family and civil society, a South African court reopened the case 45 years later. The judge presiding over the case subsequently ruled that the police had tortured and killed him.<sup>20</sup> This landmark case illustrates the significant impact of both documentation and advocacy in challenging so-called established truths, even more than four decades later. The role of a politicized judiciary certainly figured prominently not only in Timol’s case, but in many others in South Africa and beyond.

The complexity of the Syrian conflict makes the need for the preservation of narratives all the more crucial. Unlike transitions elsewhere, the Syrian conflict is marked by the presence of multiple perpetrators, non-state actors including militias, proxy wars such as Saudi-Iranian-Russian score settling, and sectarian

tensions. As Husam Alkatlaby of the Violations Documentation Center (VDC) explained, “We are not talking about one Syria. We are talking about multiple Syria’s. Damascus is different from Homs, from Idlib, from Deir el-Zour, and so on.”<sup>21</sup> Civil society organizations found that their documentation goals expanded rapidly from a focus on atrocities committed by the regime to those committed by multiple opposition groups. Consequently, documentation is central to the preservation of multiple narratives and various claims to truth in Syria. The coexistence of these accounts as part of a scarred history will help contribute to tolerance in a deeply polarized Syria. Mutasem Syoufi of the The Day After (TDA) emphasized that it is important “to tell people what happened in a comprehensive way.”<sup>22</sup> Judicial truths, such as court convictions, are important but insufficient on their own, as they do not comprehensively capture the scale and extent of the atrocities. Representations of victims and of the perpetrators thus become limited to the evidence deemed admissible by a court.

It is worth emphasizing, then, the limitations of the judicial truth. As Accatino and Collins note, “the judicial process requires the reconstruction only of certain portions of a violent past: those relevant to its principal function of attributing criminal responsibility to named individuals for specified criminal acts. Root causes, or alleged historical predispositions, are effectively invisible to judicial investigations.”<sup>23</sup> This is why the diverse goals and the far-reaching extent of documentation in Syria are laying the foundation for not only the establishment of “judicial truths,” but also the establishment and preservation of multiple narratives, history, memory, and stories of victimhood. The next section delves deeper into these goals.

## WHY DOCUMENT?

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The Syrian conflict is the deadliest conflict of the twenty-first century, as well as the most documented war in history.<sup>24</sup> Tens of thousands of images, videos, and documents have been uploaded, photocopied, scanned, smuggled, disseminated, and stored in safe havens. This civil society movement for documentation consists of networks of Syrian lawyers, activists, witnesses, and survivors operating both inside and outside Syria since the anti-government uprising erupted in March 2011. The overarching goal is a simple, but powerful one: to ensure that there is a record of the tragic crimes committed in Syria. This record could, and already has, served multiple purposes, many of which are related to the pursuit of some form of justice in Syria.

While one of the principal objectives driving the documentation of violations in Syria is to help prepare evidence for future criminal prosecutions, some activists and lawyers have also worked to build cases against Syrian regime officials and military officers now.<sup>25</sup> This is done through the use of universal jurisdiction laws, which allow third countries such as Germany, to prosecute Syrians for crimes such as torture. Mazen Darwish is a Syrian lawyer and activist who was tortured in prison for several years in Syria and traveled to Germany following his release in 2015.<sup>26</sup> He, along with several other former Syrian detainees, have been at the forefront of pushing for criminal cases in Germany. One such case accuses six high-ranking military intelligence officials close to Syrian President Bashar Assad of war crimes and crimes against humanity.<sup>27</sup>

Other Syrian activists point to the importance of Syrian civil society documentation as a “resource for international bodies,” especially the Commission of Inquiry (COI) and the IIIM.<sup>28</sup> The United Nations (U.N.) Human Rights Council established the COI in August 2011 with a mandate to investigate alleged violations of international human rights law in Syria since March 2011 and, where possible, to identify the perpetrators so that they are held criminally-accountable. Its periodic reports are made available to the public. Following a landmark U.N. General Assembly vote in December 2016, the IIIM was established with the aim of collecting, analyzing, and preserving evidence that could be used in future prosecutions to hold perpetrators accountable for violations of international law in Syria.

In the short term, documentation is a powerful advocacy tool through which perpetrators are named and shamed, and victims' names are documented. This is important for media and awareness-raising campaigns, as well as for applying pressure on governments and international bodies to act. Documentation's more long-term goals primarily deal with laying the foundation for multiple transitional justice mechanisms, most of which cannot take place in Syria's ongoing conflict. Institutional reform, for instance, is extremely difficult to pursue without a political transition.

The documentation of violations, however, provides historical context that Syrian civil society figures regard as crucial for such reform in the future. As Mohammed Al Abdallah of the Syria Justice and Accountability Center (SJAC) argued, "To do effective institutional reform, you need good quality documentation."<sup>29</sup> Habib Nassar of Impunity Watch added, "All transitional justice mechanisms require documentation. It is the standard of proof that differs."<sup>30</sup> The legal criteria for evidence presented in a trial are, of course, different from the type of material needed for national reconciliation initiatives, including truth commissions. There is, then, strong recognition among Syrian civil society activists that documentation is fundamental in and of itself and as a foundation for multiple transitional justice mechanisms. Overall, as Fadel Abdul Ghany, chairman and founder of the Syrian Network for Human Rights, notes, "Preservation of history is a type of accountability."<sup>31</sup>

Since the start of the Syrian conflict in 2011, the ongoing collection of documents in its myriad forms has helped build a more comprehensive body of accounts that would have otherwise been lost or destroyed in the course of the war. Indeed, this also constitutes one of Syrian civil society's goals: to safeguard the documents. In doing so, this protects documentation from a regime bent on its destruction. Alkatlaby stressed the importance of this feat "to protect the documentation of violations as they grow."<sup>32</sup>

The well-known Syrian military defector, who goes by the pseudonym "Caesar," made a significant contribution to the volume of such documentation by smuggling 55,000 images of men, women, and children who had been tortured and murdered by the Syrian regime. Caesar was a military photographer between 2011 and 2013 in Syria. The regime's obsession with documenting its atrocities has provided ample material for criminal investigations. The Caesar photos, which have been verified by forensic investigations, are central to the collection of evidence linking Syrian regime officials to systematic mass murder.

The protection of documents extends to land and property ownership records. As Syoufi explained: "[W]e are trying to scan the copies of land registration

and property registration of documents that exist in the hands of local councils, lawyer groups and other activists.”<sup>33</sup> While the widespread nature of crimes such as torture and killings is such that Syrian civil society has prioritized the documentation of physical violations, it is striking that land property registration documents also figure in documentation efforts. This, as several interviewees explained, is a preemptive measure aiming to facilitate the return of displaced Syrians to their homes in the future. Referring to the eight million Syrians who have had to flee their homes since 2011, Al Abdallah explained that the return of these Syrians without strong documentation of property deeds “will be the spark of a civil war in Syria. [But] when people go back to their houses and find others in there, they will have documentation to show that they own this house.”<sup>34</sup> Wael Sawah, editor-in-chief of the Syrian Observer, echoed the importance of such documentation: “The motivation is to preserve the property for its owners and to stop forced demographic change if we can. The regime is trying to enforce demographic change.”<sup>35</sup>

The significance of the preservation and accessibility of records generated through processes such as truth commissions and trials is often underestimated.<sup>36</sup> Brandon Hamber and Grainne Kelly argue that there needs to be greater attention to the use of these narratives and records for “wider social change processes in the post-conflict context.”<sup>37</sup> The wide-ranging documentation goals of Syrian civil society are therefore an important component of such wider social change processes, not least because documentation efforts are led by a diverse group of actors. This in part explains the caution taken by certain international organizations that focus on prosecution when collecting evidence gathered by so-called “non-professionals.” This point will be explored shortly; first, a brief overview of the documentation process follows.

## THE DOCUMENTATION PROCESS

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While documentation is central to the work of Syrian civil society, each organization approaches documentation work differently. The VDC was established in 2011 as a program of the Syrian Center for Media and Freedom of Expression. The magnitude of the violations and the rapid pace with which they were being perpetrated necessitated a separate entity that focuses solely on the documentation of atrocities in Syria, which is conducted by a team of data collectors inside Syria.<sup>38</sup> The VDC documents violations of international humanitarian law, as well as international human rights law. Through its teams of human rights activists, lawyers, and reporters inside Syria, Jordan, and Turkey, it collects data in the form of videos, images, and documents immediately following an incident. This data is then presented to data inspectors, each of whom are specialized in a Syrian province, so as to help ensure data accuracy and thoroughness before entering the data into the VDC database. A process of verification is then implemented and a team of database executives regularly inspects the data to minimize errors. This process, as the VDC's director Alkatlaby states, allows for linkages to be made, so that any criminal investigation into incidents is facilitated by such data.<sup>39</sup>

Similarly, SJAC collects and manages the data by tagging it using criteria based on international humanitarian law. Using thousands upon thousands of images as well as one million videos worth approximately three million minutes of footage, SJAC tags the metadata using labels. Al Abdallah explains: "Labels: it's our bread and butter... We document for transitional justice. We make links in our database and we suggest linkages between actors and bulletins to create incidents."<sup>40</sup> An actor is an "injured party" or an "alleged perpetrator." A bulletin is any piece of information that is not a person, such as a video or a medical report. Incidents are clusters of actors and bulletins, such as the chemical weapons attack in Khan Shaykhun in April 2017. Several civil society organizations follow a similar process of documentation that begins with data collection by teams on the ground and in neighboring countries, especially Jordan and Turkey. The data is then recorded, uploaded, scanned, photocopied, or smuggled to the organizations. There, it is inspected, tagged, labeled, and verified. This intricate network of documentation is not without its challenges, as discussed below.

## CHALLENGES TO DOCUMENTATION IN SYRIA'S ONGOING CONFLICT

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The continuing violence in Syria has meant that data collectors, activists, and other civil society actors have been subjected to killings, abductions, harassment, and detentions. Moreover, as several interviewees explained, the development of Syrian civil society organizations that focus on human rights and documentation has rapidly taken off since the 2011 uprising: “We only have a few years experience. We are still learning.”<sup>41</sup> In 2010, approximately 1,200 NGOs were registered with the Ministry of Social Affairs and Labor in Syria.<sup>42</sup> The services provided by these NGOs, however, mostly focused on charity work, education, medical support, and social support. Given the almost total absence of civil society organizations specifically working on justice and accountability from before the 2011 uprising, Syrian civil society has embarked on a steep learning curve within a context of ongoing violence that has seen the incessant perpetration of widespread and systematic atrocities.<sup>43</sup> As Sawah noted:

A decade ago we didn't know what transitional justice was. In the past six or seven years, we trained ourselves and educated ourselves on this issue. But we are still in one way or another pupils in this school.<sup>44</sup>

Working within a fluid situation has also posed a significant challenge for the work of Syrian civil society. Multiple perpetrators include non-state actors, such as militias operating without established legal codes. Such militias also change constantly, creating a situation where the conflict changes almost on a daily basis. This is what led interviewees such as Darwish to conclude that the biggest challenge facing Syrian civil society working toward documentation and transitional justice is ongoing conflict.<sup>45</sup>

Despite working on behalf of victims, Syrian civil society has faced an important challenge with regard to meeting victims' expectations regarding justice. Diab Serrih, program director at The Day After (TDA), noted that the tendency of some prominent international NGOs to use examples of transitional justice in countries where the violence had ended, and where there was an emphasis on the importance of forgiveness, set a difficult path for transitional justice in Syria:

[B]oth local and international NGOs [raised awareness about] the meaning of transitional justice, but in my opinion this was not helpful because they were using examples of transitional justice where there was no longer violence. Like South Africa, where amnesty and forgiveness figured into the pursuit of transitional justice. So Syrians were under the impression that transitional justice is about forgiveness and that's it. This was detrimental because more and more people were being killed and meanwhile the international organizations were saying there is this thing called reparations, forgiveness, amnesty. So transitional justice got off on the wrong start and people had a negative impression of it.<sup>46</sup>

Moreover, the threshold for admissible evidence in a court has made the pursuit of prosecutions difficult, further contributing to the dismay of victims who expect a more rapid justice. Al Abdallah explained that the challenge lies in recognizing victimhood while adhering to legal criteria and standards:

We don't use the word "martyr," ever. Even if you tell me the soldier shot my dad in front of my eyes, I'm going to [label him] as an "alleged perpetrator." This is very hard for victims. They are hurt by this.<sup>47</sup>

This is a clear illustration of the dilemma concerning the pursuit of justice in the form of criminal trials, which can be a lengthy process, while addressing victims' expectations of swift justice. Moreover, the inherently limited story produced by "judicial truths" can leave victims dissatisfied:

The limitations set by the special rules of evidence, more stringent standards of proof, and due process guarantees pertaining to the judicial process can result in previously socially or officially recognized truths being considered not proven in the judicial realm...The suspension of previous beliefs, and presumption of innocence, that are part and parcel of judicial procedures can generate disquiet among relatives, victims and others who have good reason to know, or believe they know, the essential truth of what is now being newly judged. The need to reiterate previous testimony, and to set aside or heavily discount previous civil society or truth commission findings and versions, can cause frustration or even offence.<sup>48</sup>

The physical proximity of perpetrators and victims in refugee communities compounds this sense of injustice.

Many alleged perpetrators pose as refugees and end up in the same refugee camp as the victims they attacked. The standard of criteria for evidence in a court of law has meant that many cases against such alleged perpetrators fall through, and victims continue to see the same person in the same camp. This, as Al Abdallah

explained, has led victims to view certain governments, in Europe in particular, as protecting perpetrators as opposed to prosecuting them: “We had to travel to Sweden and other parts of Europe to explain that without a smoking gun, the government cannot deport [the alleged perpetrators] back to a war zone or prosecute them.”<sup>49</sup>

Moreover, out of the seven cases that have gone to trial in German and Swedish courts, only one of them addressed crimes committed by a member of the Syrian army.<sup>50</sup> The other six cases implicate low-level members of the Islamic State (ISIS) group, Hay’at Tahrir al-Sham (formerly Jabhat al-Nusra), and other non-state armed groups opposed to the government. While the charges in these seven cases involve war crimes, most of the other Syria-related cases involve terrorism-related charges.<sup>51</sup> Terrorism charges are relatively easy to prosecute; however, they fall short in reflecting the extent of the atrocities committed in Syria. It is no surprise, then, that Syrian victims are frustrated that Syrian government officials have not been prosecuted. There are, of course, other major obstacles to making such prosecutions happen. The requirement that such suspects be physically present in court significantly worsens the prospects for trials of Syrian government officials within the current climate of the Syrian conflict.<sup>52</sup>

Apart from the slow pace and limited extent of the prosecutions, there is a general loss of hope among Syrian victims and their families as the conflict rages and atrocities continue to be perpetrated. This has led victims to become less willing to cooperate in providing evidence.<sup>53</sup> Maha Ghrer, project officer at TDA, observed that “A year passes and people wonder what our impact is.”<sup>54</sup> The focus on ISIS and similar groups in the prosecutions that have taken place thus far reflects the national security priorities for Germany and Sweden.<sup>55</sup> As a result, the justice priorities of these European countries are not aligned with those of the Syrian communities that now inhabit them.

As discussed earlier, Syrian civil society organizations that document violations have served as a crucial source of information for international mechanisms. However, there are concerns that Syrian civil society is regarded by international bodies as just that: a source of information. Several interviewees were critical of international bodies that do not adequately engage Syrian civil society in shaping policy decisions made at the international level. In its memorandum to the U.N. secretary-general regarding the IIIM, SJAC made this concern explicit and called on the U.N. to work with Syrian civil society as “partners in achieving justice,” as opposed to mere sources of information.<sup>56</sup> Nassar made a similar observation:

The [IIIM]...is certainly a very welcome opportunity, but it's very unfortunate that it was established with close to no consultation with Syrian civil society actors...This is a problem we are seeing consistently: Syrian civil society are not being included in policy discussions.<sup>57</sup>

Ghrer added that international organizations have not had meaningful engagement with Syrian women either, which is an area that Syrian civil society has taken very seriously since the 2011 uprising.<sup>58</sup> Through a number of programs, civil society organizations such as TDA have developed initiatives aiming to connect female victims of pre-2011 and post-2011 violations in Syria. TDA has also conducted in-depth surveys on the perception of equality between men and women in Syrian society, as well as on the role of women in leadership, such as heading local councils. Unfortunately, international bodies largely ignore the findings generated from such research.<sup>59</sup> A pre-occupation with how to revive stalled peace talks has effectively pushed aside issues regarding women and justice in Syria. Inadequate engagement between international and Syrian civil society organizations has not helped either.

Other challenges include the difficult self-administration conditions under which Syrian civil society works, limited budgets, and concerns that the space for civil society to conduct its work is shrinking.<sup>60</sup> Reliance on volunteers, who, as a result of their work within a volatile security environment often change, means that there is constant training required in documentation processes. Concerns regarding the shrinking of space within which civil society is able to work stem from overall resource constraints, but also from the possibility that future resources will be re-directed away from Syrian civil society and toward international mechanisms such as the IIIM.<sup>61</sup>

A large part of the problem about the direction of funding is the perceived level of “professionalism” of local civil society organizations. In other words, international organizations perceive those civil society organizations that operate according to international donor priorities as “professional,” thus increasing their chances of receiving more funding than those that address the actual priorities of the communities they serve.<sup>62</sup> As a result, more work is required to make the relationship between local and international civil society an effective and meaningful one:

[International organizations] still tend to dominate the agenda, transfer risks to local partners, fail to provide the kind of long-term and predictable support which they know is needed, and they continue to fund large, Western-style organizations rather than small and medium-sized ones that might be more in tune with community needs.<sup>63</sup>

Moreover, there is a serious lack of adequate funding for civil society organizations working within a conflict-ridden context. The World Bank estimates that project overhead costs for civil society organizations in fragile or conflict situations are three times higher than elsewhere.<sup>64</sup>

More generally, there is confusion regarding what constitutes civil society and the relationship between civil society and the state. Syoufi attributes part of this confusion to the perception that civil society's role should be to help alleviate the humanitarian impact of war, whether through medical relief, protecting schools, or building shelters. However, civil society organizations that work on human rights are viewed with suspicion, especially in the absence of what Syoufi refers to as a "modern state": "I personally don't understand how you can separate civil society from the political discourse and from democracy and human rights...Civil society cannot only exist in a modern state."<sup>65</sup>

Nassar elaborated on the role of Syrian civil society organizations within the particular Syrian context:

Syrian NGOs are of course somehow part of the revolutionary movement. While certain organizations are objective in their documentation, they also have other motivations that are different, say, from international organizations such as Human Rights Watch. And this is absolutely normal and it should be...The locals are part of the context and they have also in mind ideas such as pushing for a transition, getting rid of bloody authoritarian dictators and so on. This is what it means to be a Syrian organization doing documentation as opposed to an international one...It doesn't at all affect the credibility of their work.<sup>66</sup>

The use of both lawyers and non-lawyers, of activists and survivors in documentation efforts in Syria is a powerful example of the organic nature of this movement to record violations. Where there are no domestic functioning courts to access, no established initiatives toward reconciliation and reparations, and no cooperation between state institutions and civil society, documentation remains an accessible avenue to preserve information vital to the eventual establishment of such mechanisms. In the absence of any realistic guarantees that high-level government officials—such as Syrian President Bashar Assad—would be arrested and physically transferred to a court for trial, documentation offers an accessible approach to justice that at the same time does not rule out the possibility of future prosecutions. Indeed, documentation is civil society's most powerful tool in the face of ongoing violence and resurgent authoritarianism.

International organizations' perception of the level of professionalism among local civil society organizations has mainly to do with adherence to rules of procedure and evidence in the course of data collection. There are concerns that, in the absence of an existing criminal court or tribunal, Syrian civil society actors document without guidance from such rules, thereby limiting the chances that their documentation will be admissible in a court of law.<sup>67</sup> This approach, however, places value on judicial truths, which as discussed previously, are inherently limited. Additionally, this emphasis on documentation according to rules of procedure and evidence does not take into account the role of citizen journalism that has been central to the process of documenting the Syrian conflict. Certainly, adherence to rules of procedure and evidence is crucial in order for the material to be admissible in court. Nevertheless, documentation that may have not been collected in accordance to those rules should not be dismissed as entirely unusable.

Context and background information also provide crucial material, whether it is for building a criminal case or for understanding the past. Another concern has to do with exposing witnesses and survivors to harm, when non-expert documenters collect evidence. However, what if those very witnesses and survivors are the documenters? There is a tendency at the international organization level to view documentation as a process that is conducted by professionals, usually lawyers and investigators, for the service of “the people we are ultimately trying to help.”<sup>68</sup> This overlooks the active participation of those very people—the victims—in documenting atrocities perpetrated against them.

Finally, the lack of political will from the Syrian regime and its institutions, as well as international actors, has meant that criminal responsibility and reconciliation remain difficult prospects. It has also widened the discrepancy between justice as seen by Syrian civil society and justice as seen by international actors. Darwish argues, “As Syrian civil society organizations, we see that accountability and transitional justice are fundamental conditions of peace. For creating a new Syrian society. The great powers including the United Nations view accountability as something that will destroy the peace process!...There is no lack of evidence in Syria. There is a lack of will.”<sup>69</sup> In the face of these challenges, the diverse documentation movement in Syria has succeeded in ensuring that the issue of justice is kept alive at the international level. The establishment of the IIIM was the strongest affirmation of the presence of a certain level of international concern for criminal accountability in Syria. The next section discusses this and other achievements, despite the ongoing war in Syria.

## SUCCESSES AGAINST ALL ODDS

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Although fraught with challenges, Syrian civil society documentation has made significant accomplishments within an ongoing war. First and foremost, questions of justice and accountability have been kept alive as a result of civil society's persistent efforts.<sup>70</sup> Darwish pointed to the current cases before courts in Europe as an indicator of Syrian civil society's success in "not allowing the accountability and justice file to be taken away or dismissed, despite major lack of political will even at the international and U.N. level."<sup>71</sup> Moreover, international inquiries such as the COI and IIIM rely heavily on the work of Syrian civil society organizations that document for the drafting of their reports.<sup>72</sup> Alkatlaby made this clear and pointed to the importance of Syrian civil society's role in ensuring Syria's various contextual factors receive adequate attention at the international level:

[International bodies] cannot build cases without Syrian civil society organizations. The Syrian war is the most documented war in history. Syrian civil society organizations are at the forefront of this effort and nobody else... Syrian civil society organizations play a crucial role in aiding any international body to properly understand Syria. Syria was very closed before 2011. Without Syrian civil society organizations' work, there would be a major lack of understanding of what goes on.<sup>73</sup>

Indeed, international bodies face great difficulty in gaining on the ground access due to security constraints. This makes the work of Syrian civil society activists who are on the ground all the more vital to ensuring a constant stream of documentation.

Such local access also facilitates the capture of paper trails that are typically ubiquitous in dictatorships. Thanks to the efforts of Syrian lawyers, activists, and defectors such as Caesar, who put themselves under great risk to smuggle documents, entities such as the Commission for International Justice and Accountability (CIJA) possess documentation consisting of signed orders at the highest level in the Syrian government. These orders link "the systematic torture and murder of tens of thousands of Syrians to a written policy approved by President Assad, coordinated among his security-intelligence agencies, and

implemented by regime operatives, who reported the successes of their campaign to their superiors in Damascus.”<sup>74</sup> Similar to the Syrian regime, the Chilean dictatorship left a paper trail of its violations thanks to its fixation on legal process and bureaucracy.<sup>75</sup>

The Transitional Justice Coordination Group, whose membership includes between 15 and 17 Syrian civil society organizations, is an example of collaboration between several NGOs working out of several different locations. Through regular communication and meetings, the group serves as a platform for ongoing discussions regarding the pursuit of transitional justice in a fluid conflict. Serrih, the current head of the group, praised the ability of Syrian civil society organizations to form such coalitions within a difficult context whereby many of the members are operating from outside Syria.<sup>76</sup> Accordingly, the teams working on the ground in Syria have also been part of a network exhibiting “excellent coordination regarding documentation and evidence collecting,” which is crucial for future transitional justice mechanisms.<sup>77</sup>

Some alleged perpetrators posing as asylum seekers may, as Al Abdallah pointed out, escape prosecution due to a lack of sufficient evidence implicating them in the perpetration of crimes. However, in such cases, the immigration authorities are notified of the individual’s case, after which their application for asylum seeker status is put on hold. This “doubt is more than enough to dismiss their application as asylum seekers and so they end up in pending status. The [government] cannot deport them back to Syria because of international law.”<sup>78</sup> In other words, in the absence of a prosecution, alleged perpetrators remain suspect, which, as Al Abdallah explained, is (an albeit limited) form of success.

The significant amount of work that goes into ensuring that every violation in the Syrian conflict is documented in great detail cannot be underestimated. The process of collecting, tagging, labeling, forming linkages, and verifying is not only time-consuming; it takes a heavy psychological toll on the documenters and the documented. The successes outlined above are significant given the incredibly difficult and daunting task of documentation during ongoing conflict. While meeting victims’ expectations regarding timely justice through timely prosecutions remains a major challenge, there are small but noteworthy snippets of success even within the painstaking process of pursuing criminal cases. This underscores the importance of documentation as a stand-alone mechanism of transitional justice in ongoing conflicts.

# NAVIGATING VISIONS OF A SYRIAN TRANSITION AND TRANSITIONAL JUSTICE

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Given the extreme conditions under which documentation is conducted and the limitations concerning transitional justice prospects, Syrian civil society is constantly developing and reviewing its vision for what justice in Syria should entail. In contrast to other civil society organizations that focus on documentation, TDA is more forward-looking. Following the publication of its milestone report in 2012, which details a plan for Syria's future post-transition, TDA has since revised its approach, given the continued violence.<sup>79</sup> Initially, TDA outlined a vision for a transition that would unfold following the replacement of the Assad regime with a democratic one. In this scenario, an emphasis was placed on the importance of citizenship and equality, social justice, and human rights. While these goals still exist, TDA has had to adjust to the actual context that has since unfolded. As Syoufi explained:

2012 was very different from the reality now. When [the TDA] report was produced, we assumed that it would not take so long for the regime to step down. We are now trying to update this vision and to reproduce our vision on the political transition in Syria based on the realities of today. Our ultimate goal is to help Syria transition into a democratic country, to engage with the community, with local councils, with local civil society, with activists and so on to come up with policy recommendations and to influence policies right now.<sup>80</sup>

The Transitional Justice Coordination Group, which is housed at TDA under the coordinating leadership of Serrih, was thus formed to provide a “platform for Syrian civil society to support transitional justice now and in the future.”<sup>81</sup> This is because in the earlier stages of the Syrian conflict, “there was no plan for transitional justice for a situation in which there is ongoing violence.”<sup>82</sup>

Despite this constant revision of the best approach to transitional justice in Syria, criminal accountability through prosecutions remains a central feature of civil society's vision for justice. Most interviewees fully recognize the obstacles to criminal justice in Syria. This, however, does not diminish its

importance for what they view as an integral part of addressing transitional justice in Syria. SJAC makes explicit the need for criminal accountability but cautions against a hasty retributive justice that will disappoint victims:

Despite the urgency of pursuing accountability immediately, postponing justice is preferable to an inherently flawed process, even if it means waiting several years for Syrians to see redress for the atrocities they have suffered. A justice process that fails to meet the needs of victims and creates disillusionment with formal judicial processes will very likely damage long-term prospects for transitional justice in Syria.<sup>83</sup>

Indeed, in other parts of the world, prosecutions took place decades after the conflict had ended. Almost 40 years since the Argentinian military dictatorship was ousted, prosecutions are still ongoing. It took 26 years to bring Hissène Habré, former president of Chad, to justice at the Extraordinary African Chambers in the Senegalese court system.<sup>84</sup> In 1985, the Sao Paulo diocese published a report titled “Brazil: Nunca Mais,” which contains a collection of allegations of torture and other atrocities by the Brazilian military dictatorship. This report was used for the Brazilian truth commission in 2014, almost 30 years after its publication.<sup>85</sup> These examples demonstrate the length of time needed for a conflict-ridden society to come to grips with its past, whether it is through prosecutions, truth commissions, or other mechanisms. Syria is no different, particularly as no political transition has taken place. Moreover, justice expectations may evolve over time; the current focus on prosecutions may eventually give way to other forms of justice in Syria, such as truth commissions, reparations, or other national reconciliation initiatives.

The interviewees recognized this issue of time and the challenge of pursuing prosecutions in such a complex conflict. Some noted that public apologies are just as important if Syrians are to move on from the past. Moreover, Sawah argued that while it is financially unrealistic to compensate all victims, symbolic accountability and symbolic reparations are important.<sup>86</sup> Abdul Ghany referred to the current universal jurisdiction cases before several courts in Europe as “fundamental in an ongoing conflict situation.”<sup>87</sup> Several interviewees, however, pointed out that such cases are limited in providing transitional justice, as they only address part of the injustices and grievances that Syrians of all backgrounds have endured. Serrih makes clear the importance of additional measures to develop a transitional justice that is acceptable to a wider Syrian society:

The universal jurisdiction cases are great and we appreciate them, but they are not transitional justice... There must be an official acknowledgement by the state of these violations. Whether it is the Assad government or

the new government—the state must acknowledge responsibility and implement compensation. This apology is extremely important. Maybe even more important than court cases. It is so important because people are suffering from so many things. Whether it's a doctor who lost his job, destruction in Syria in general, the imprisoned, the divorced because their spouses were in prison, etc. —the state must take responsibility—at least in a symbolic way. Such a state apology can help turn the page so we can start to think about the future.<sup>88</sup>

Others, such as Darwish, recognize that in certain ways, the transitional justice movement in Syria is still in its infancy. While the current cases before the courts in Europe, as Darwish emphasized, have been successful in keeping the issue of accountability and justice alive in the face of weak political will, they are only a part of the building blocks toward a more comprehensive transitional justice process.<sup>89</sup>

## RETHINKING CIVIL SOCIETY'S ROLE IN SHAPING TRANSITIONAL JUSTICE

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Save for the court cases in Europe, immediate prospects for redress in Syria are scant. Additional prosecutions, especially those targeting high-level officials of the Syrian regime, would be welcomed by Syrians, given the importance they attach to criminal accountability. As Accatino and Collins argue, however, judicial rulings contain “statements of proven fact...that make special claims to truth.”<sup>90</sup> The complexity of the Syrian conflict, stemming mostly from perpetrators and victims from multiple sides, proxy wars, the proliferation of non-state actors such as militias, and the ongoing violence itself have all produced massive amounts of material. This material, in the form of written documentation, images, videos, signed executive orders, and eyewitness accounts contains a treasure trove of narratives and various claims to truth. Prosecutions, while important for Syrian society’s desire for justice, form only a part of this web of stories. It is important not to reduce legitimate claims to truth to those produced in the courtroom:

The limitations set by the special rules of evidence, more stringent standards of proof, and due process guarantees pertaining to the judicial process can result in previously socially or officially recognized truths being considered not proven in the judicial realm.<sup>91</sup>

As the interviewees demonstrated, there is a very lucid understanding among Syrians that prosecutions are important, but also limited in their reach concerning a transitional justice that represents the scale and complexity of past atrocities.

Syrian civil society, which has seen victims, survivors, witnesses, lawyers, and activists have a direct hand in documenting violations and foregrounding their stories and voices, has thus far ensured that the documentation movement is an organic one. This represents an important opportunity to localize internationalized transitional justice. In other words, the active participation of this diverse group of Syrian actors in documenting and in serving as an indispensable resource for international bodies helps foreground local perceptions and local desires regarding accountability, which are often overlooked by an overly internationalized transitional justice process. Moreover, Syrian civil society’s recognition of the importance of preserving

documentation as a form of accountability, including the documentation of physical violations and land and property deeds, points to the dynamic perceptions of what constitutes transitional justice in Syria.

Syrian civil society has not, however, only transformed how transitional justice is pursued during ongoing conflict. It has necessitated a re-thinking of how *civil society* is understood—what it constitutes and what its role is in pushing for various forms of justice. Paul Gready and Simon Robins explain that the “old” civil society privileges advocacy, support, and capacity building using state and state institutions as the point of reference. In contrast, they describe a “new” civil society that “champions autonomy, independent action and the modeling of alternatives, often choosing not to see the state as a principal reference.”<sup>92</sup>

In the face of an entrenched authoritarian regime and ongoing violence, Syrian civil society organizations, specifically those focused on human rights violations, can be described as this “new” civil society that conducts its transitional interactions “as a set of discourses and form of politics,” rather than through institutional mechanisms. This, Gready and Robins continue, means that “new” civil society has necessitated a rethinking of the relationship between transitional justice and civil society as well as the notions of justice and transition. They describe these interactions as “justice in transition.”<sup>93</sup> The diverse composition of Syrian civil society actors in which the distinction between professional activists and ordinary citizens is eliminated demonstrates the important impact this has on generating multiple legitimate claims to truth and multiple narratives and accounts that can be used for various transitional mechanisms in the future. The power of this material lies in the organic nature of the documentation movement that generated it, which enhances the legitimacy of the transitional justice mechanism that will eventually make use of it.

The involvement of diverse civil society actors in shaping and implementing transitional justice is not, however, without its challenges. Following the deaths of one million people as a result of the Rwandan genocide in 1994, the Gacaca courts were established. These courts formed part of a decentralized justice system “administered by non-professionals at the local level” that could “stand as an example for others who claim, in the post conflict environment, that large-scale prosecution is impossible.”<sup>94</sup> The Gacaca courts were set up to compensate for the major overload of cases before the formal justice system and to prevent a culture of impunity from unfolding following the horrors of the genocide. They also served as a mechanism through which Rwandans could achieve reconciliation. This was especially important as the perpetrators involved an estimated one-third of the population.<sup>95</sup>

As Anne-Marie de Brouwer and Etienne Ruwebana note, however, the Gacaca courts suffered from a number of flaws, including the lack of compensation for victims, and dissatisfaction among the survivors regarding the judges, many of whom lacked adequate legal training and took bribes.<sup>96</sup> As a result, survivors' views on the Gacaca courts were mixed. However, the perception of the Gacaca courts over time is generally positive, despite the system's flaws. De Brouwer and Ruwebana attribute this to the organic nature of the Gacaca courts: "Since the genocide impacted all Rwandans, the Gacaca's approach was to also involve all Rwandans in the trials. This meant that everyone was a lawyer, witness and prosecutor at the same time."<sup>97</sup>

In contrast to Syria, however, the Rwandan example of the pursuit of accountability took place post-conflict. Nevertheless, the Gacaca process is similar to the Syrian civil society documentation movement, to the extent that it is an organic process that, rather than restricting itself to those deemed as legal professionals, has instead involved victims, witnesses, activists, and others. As explained, such an organic movement is not without its challenges. Still, it is a powerful way to enhance the legitimacy of the pursuit of transitional justice, particularly in its initial stages and in the context of an ongoing war.

## CONCLUSION

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Syrian civil society documentation has had a transformative impact on the way in which transitional justice is sought. It has strengthened the focus on the important role of victims and on addressing stories of victimhood, which are often overlooked by an overly internationalized and elite-driven transitional justice process. The voices of local actors have been increasingly foregrounded, even if the way in which transitional justice is pursued remains largely international. The active participation of Syrian civil society actors presents an opportunity to localize an often-internationalized transitional justice process. It has also drawn renewed significant attention to universal jurisdiction as a transitional justice mechanism, which is crucial in an ongoing conflict situation where local accountability options are severely limited, if not altogether absent.

Given its role in laying a foundation for accountability, truth-seeking, and the preservation of memory and history, the documentation of atrocities must be foregrounded as a mechanism that is integral to the pursuit of transitional justice in ongoing conflict and authoritarian contexts. Documentation is a powerful means of non-violent resistance to an otherwise very violent conflict. It resists the hijacking of narratives, the destruction of historical memory, and it maintains a database containing evidence for eventual prosecutions and truth commissions. In doing so, documentation keeps the issue of justice in Syria alive, even if it is absent from the peace talks agenda.

In addition, there is a need for greater donor support aimed at strengthening Syrian civil society efforts to build and maintain documentation. Documenting the documents is crucial to protect evidence that may otherwise be physically destroyed. In a protracted conflict, documentation is especially important for the preservation of history, which, as several interviewees argued, is essential to accountability as well as exposing—and juxtaposing—various claims to truth. Donor support, then, should not be limited to documentation that strictly aims to build a body of evidence that would be admissible in court. It should support documentation in its broader sense as well the collection of accounts, stories, and testimonies not just from victims and witnesses, but from other communities also impacted by the conflict, including those internally displaced and those who fled Syria.

While documentation is often viewed as a stepping-stone toward the implementation of transitional justice mechanisms, it is a function of the pursuit of transitional justice in its own right. One of the features of Syrian documentation is its agency—the involvement of countless activists, lawyers, ordinary citizens, victims, and eyewitnesses in ensuring that the truth about violations is recorded and exposed. Writing atrocities is, in and of itself, a healing process as it ensures that victimization is acknowledged, recorded, and remembered. Given the resource constraints that Syrian civil society continuously faces, donors should direct more funds toward documentation efforts, not least as they provide an effective means for victim-led transitional justice.

Concerns regarding international actors' weak efforts to meaningfully involve Syrian civil society in shaping decisions regarding transitional justice must be taken seriously. Policymaking regarding transitional justice in Syria has thus far failed to take into account the contextual insight of Syrian civil society. As Al Abdallah and others have noted, "Experts work on one level and policymakers work on another level."<sup>98</sup> By encouraging the contribution of Syrian civil society to policymaking, accountability initiatives in Syria will be more achievable and conducive to the justice desires of Syrian society. They must be engaged as leading partners and not mere recipients of transitional justice policies. Nassar underscored that Syrian civil society actors are "part of the context."<sup>99</sup> International organizations should, therefore, make a meaningful effort to bring local activists to the table, not only to voice their concerns and exchange information, but to shape policy as well.

## ENDNOTES

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<sup>1</sup> See Noha Aboueldahab, “Transitional Justice Policy in Authoritarian Contexts: The Case of Egypt,” Brookings Doha Center, October 2017; Par Engstrom, “Transitional Justice and Ongoing Conflict” in *Transitional Justice and Peacebuilding on the Ground: Victims and Ex-combatants*, eds. Chandra Lekha Sriram, Jemima Garcia-Godos, Olga Martin-Ortega, and Johanna Herman (London: Routledge, 2012); Chandra L. Sriram, “Beyond Transitional Justice: Peace, Governance, and Rule of Law,” *International Studies Review*, Vol. 19, Issue 1, March 2017.

<sup>2</sup> For example, “Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice,” United Nations, March 2010, [www.un.org/ruleoflaw/files/TJ\\_Guidance\\_Note\\_March\\_2010FINAL.pdf](http://www.un.org/ruleoflaw/files/TJ_Guidance_Note_March_2010FINAL.pdf).

<sup>3</sup> For example, Elisabeth Baumgartner, Brandon Hamber, Briony Jones, Grainne Kelly, and Ingrid Oliveira, “Documentation, Human Rights and Transitional Justice,” *Journal of Human Rights Practice* 8 (2016); Brandon Hamber and Grainne Kelly, “Practice, Power and Inertia: Personal Narrative, Archives and Dealing with the Past in Northern Ireland,” *Journal of Human Rights Practice* 8 (2016); Briony Jones and Ingrid Oliveira, “Truth Commission Archives as ‘New Democratic Spaces,’” *Journal of Human Rights Practice* 8 (2016).

<sup>4</sup> Death toll estimates vary. This estimate is from the Syrian Center for Policy Studies, cited in Human Rights Watch, “World Report 2017,” Human Rights Watch, accessed March 1, 2018, <https://www.hrw.org/world-report/2017/country-chapters/syria>.

<sup>5</sup> Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Ithaca: Cornell University Press, 1998), 89.

<sup>6</sup> Jo-Marie Burt, “Guilty as Charged: The Trial of Former Peruvian President Alberto Fujimori for Human Rights Violations,” *International Journal of Transitional Justice* 3 (2009): 384–405.

<sup>7</sup> Kathryn Sikkink, “Patterns of Dynamic Multilevel Governance and the Insider-Outsider Coalition,” in *Transnational Protest and Global Activism: People, Passions and Power*, eds. Donatella Della Porta and Sidney Tarrow (Lanham: Rowman & Littlefield, 2005), 152.

<sup>8</sup> *Ibid.*, 171.

<sup>9</sup> This point is discussed further in subsequent sections of this paper.

<sup>10</sup> Cath Collins, “Grounding Global Justice: International Networks and Domestic Human Rights Accountability in Chile and El Salvador,” *Journal of Latin American Studies* 38 (2006), 712.

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*, 715.

<sup>13</sup> “Civil Society in Processes of Accountability” in Cherif Bassiouni (ed), *Post-Conflict Justice: International and Comparative Law Criminal Series* (Transnational Publishers 2002).

<sup>14</sup> Jo-Marie Burt, “Guilty as Charged: The Trial of Former Peruvian President Alberto Fujimori for Human Rights Violations,” *International Journal of Transitional Justice* 3 (2009): 384–405.

<sup>15</sup> “Justice cascade” is a term coined by Kathryn Sikkink and Ellen Lutz to describe the flurry of prosecutions that unfolded in Latin America following the overthrow of the various dictatorships. Ellen Lutz and Kathryn Sikkink, “Justice Cascade: The Evolution and Impact of Foreign Human Rights Trials in Latin America,” *Chicago Journal of International Law* 2 (2001): 31.

<sup>16</sup> Daniela Accatino and Cath Collins, “Truth, Evidence, Truth: The Deployment of Testimony, Archives and Technical Data in Domestic Human Rights Trials,” *Journal of Human Rights Practice* 8 (2016): 90.

<sup>17</sup> *Ibid.*, 83.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*, 83–84.

<sup>20</sup> Peter Granitz, “South African Judge Rules anti-Apartheid Activist Ahmed Timol was Pushed to his Death by Police,” *The Telegraph*, October 12, 2017, [www.telegraph.co.uk/news/2017/10/12/south-african-judge-rules-anti-apartheid-activist-ahmed-timol/](http://www.telegraph.co.uk/news/2017/10/12/south-african-judge-rules-anti-apartheid-activist-ahmed-timol/).

<sup>21</sup> Husam Alkatlaby, (executive director, The Violations Documentation Center in Syria), interview with the author, May, 23 2017.

<sup>22</sup> Mutasem Syoufi, (executive director, The Day After), interview with the author, May 23, 2017.

<sup>23</sup> Accatino and Collins, “Truth, Evidence, Truth,” 86.

<sup>24</sup> Alkatlaby, interview; Cristina Roca, “Long Read: How the Syrian War Changed how War Crimes are Being Documented,” *Syria Deeply*, June 1, 2017, [www.newsdeeply.com/syria/articles/2017/06/01/long-read-how-the-syrian-war-changed-how-war-crimes-are-documented](http://www.newsdeeply.com/syria/articles/2017/06/01/long-read-how-the-syrian-war-changed-how-war-crimes-are-documented).

<sup>25</sup> Alkatlaby, interview; Radwan Ziadeh, (founder of Syrian Center for Political and Strategic Studies), interview with the author, May 10, 2017; Syoufi, interview; Maha Ghreer, (project officer at The Day After), interview with the author, June 7, 2017; Wael Sawah, (editor-in-chief of the Syrian Observer), interview with the author, July 6, 2017; Mazen Darwish, (director of Syrian Center for Media and Freedom of Expression), interview with the author, August 15, 2017.

<sup>26</sup> “Syria Releases Award-Winning Activist Mazen Darwish,” *Al-Jazeera*, August 10, 2015, [www.aljazeera.com/news/2015/08/syria-releases-mazen-darwish-150810170958613.html](http://www.aljazeera.com/news/2015/08/syria-releases-mazen-darwish-150810170958613.html).

<sup>27</sup> Stephanie Ott, “Syria: ‘This Case is About Saving Humanity,’” *Al-Jazeera*, August 20, 2017, <http://www.aljazeera.com/indepth/features/2017/08/syria-case-saving-humanity-170819101918109.html>. More on these cases in Germany and Sweden in the next section.

<sup>28</sup> Fadel Abdul Ghany, (chairman and founder of the Syrian Network for Human Rights), interview with the author, May 14, 2017.

<sup>29</sup> Mohammed Al Abdallah, (executive director of the Syria Justice and Accountability Center), interview with the author, May 10, 2017.

<sup>30</sup> Habib Nassar, (director of Policy and Research at Impunity Watch), interview with the author, 15 May 2017.

<sup>31</sup> Abdul Ghany, interview.

- <sup>32</sup> Alkatlaby, interview.
- <sup>33</sup> Syoufi, interview.
- <sup>34</sup> Al Abdallah, interview.
- <sup>35</sup> Sawah, interview.
- <sup>36</sup> Brandon Hamber and Grainne Kelly, "Practice, Power and Inertia: Personal Narrative Archives and Dealing with the Past in Northern Ireland," *Journal of Human Rights Practice* 8 (2017): 25–44, 28.
- <sup>37</sup> Ibid.
- <sup>38</sup> Alkatlaby, interview.
- <sup>39</sup> Ibid.
- <sup>40</sup> Al Abdallah, interview.
- <sup>41</sup> Syoufi, interview.
- <sup>42</sup> "Mapping Civil Society Activity in Syria," Istishari Investment and Economic Consulting, Report, October 2011, 5.
- <sup>43</sup> Exceptions include the Syrian Center for Media and Freedom of Expression, among others.
- <sup>44</sup> Sawah, interview.
- <sup>45</sup> Darwish, interview.
- <sup>46</sup> Diab Serrih, (program director at The Day After), interview with the author, June 5, 2017.
- <sup>47</sup> Al Abdallah, interview. Instead of "martyr," SJAC uses the label "alleged victim."
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- <sup>49</sup> Al Abdallah, interview.
- <sup>50</sup> Human Rights Watch, "These are the Crimes we are Fleeing: Justice for Syria in Swedish and German Courts," October 2017, [www.hrw.org/report/2017/10/03/these-are-crimes-we-are-fleeing/justice-syria-swedish-and-german-courts](http://www.hrw.org/report/2017/10/03/these-are-crimes-we-are-fleeing/justice-syria-swedish-and-german-courts).
- <sup>51</sup> Ibid., 22.
- <sup>52</sup> Noha Aboueldahab, "The Perils of Impulsive Justice Promises in Syria," *Markaz* (blog), April 24, 2017, [www.brookings.edu/blog/markaz/2017/04/24/the-perils-of-impulsive-promises-for-justice-in-syria/](http://www.brookings.edu/blog/markaz/2017/04/24/the-perils-of-impulsive-promises-for-justice-in-syria/).
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<sup>56</sup> “A Memorandum to the Secretary General of the United Nations Regarding the New United Nations Mechanism for Investigation and Prosecution,” Syria Justice and Accountability Centre, January 19, 2017, <https://syriaaccountability.org/updates/2017/01/19/a-memorandum-to-the-secretary-general-of-the-united-nations-regarding-the-new-united-nations-mechanism-for-investigation-and-prosecution/>.

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<sup>58</sup> Ghreer, interview.

<sup>59</sup> Ibid.

<sup>60</sup> Alkatlaby, interview; Syoufi, interview.

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<sup>67</sup> Andras Vamos-Goldman, “The Importance of Professional Expertise in Gathering Evidence of Mass Atrocities,” *Just Security*, October 27, 2017, [www.justsecurity.org/46355/rules-govern-evidence-gathering-conflict-zones/](http://www.justsecurity.org/46355/rules-govern-evidence-gathering-conflict-zones/).

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<sup>69</sup> Darwish, interview.

<sup>70</sup> Ziadeh, interview; Darwish, interview.

<sup>71</sup> Darwish, interview.

<sup>72</sup> See United Nations General Assembly, “Seventy-first session: Prevention of Armed Conflict,” December 19, 2016, [www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/a\\_res\\_71\\_248.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/a_res_71_248.pdf).

<sup>73</sup> Alkatlaby, interview.

<sup>74</sup> Ben Taub, “Exposing Assad’s War Crimes,” *New Yorker*, April 18, 2016, [www.newyorker.com/magazine/2016/04/18/bashar-al-assads-war-crimes-exposed](http://www.newyorker.com/magazine/2016/04/18/bashar-al-assads-war-crimes-exposed).

<sup>75</sup> Accatino and Collins, “Truth, Evidence, Truth,” 89.

<sup>76</sup> Serrih, interview; Sawah, interview.

<sup>77</sup> Darwish, interview.

<sup>78</sup> Al Abdallah, interview. Al Abdallah here is referring to international law that prohibits the deportation of any individual to a country where they are likely to be persecuted.

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<sup>81</sup> Serrih, interview.

<sup>82</sup> Ibid.

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<sup>85</sup> Eric Wielbelhaus-Brahm, “Transitional justice, civil society, and the development of the rule of law in post-conflict societies,” *International Journal for Not-for-Profit Law* 9 (2006): 62.

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<sup>88</sup> Serrih, interview.

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<sup>92</sup> Paul Gready and Simon Robins, “Rethinking Civil Society and Transitional Justice: Lessons from Social Movements and ‘New’ Civil Society,” *The International Journal of Human Rights* 21:7, 958.

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<sup>94</sup> William Schabas, “Genocide Trials and Gacaca Courts” *Journal of International Criminal Justice* 3 (2005): 879–95, quoted in Patricia Lundy and Mark McGovern, “Whose Justice? Rethinking Transitional Justice from the Bottom Up,” *Journal of Law and Society* 35, No. 2 (2008): 272.

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