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Bridging Syrian and international justice efforts

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Brigitte: Welcome to this last episode of our joint Justice Visions-Impunity Watch mini-series on justice efforts for Syrians. For those listeners who are just tuning in for the first time, I am Brigitte Herremans, Syria researcher at Justice Visions based at Ghent University. And with me is Artino Abdullah, a Syrian photographer and human rights defender.

Artino: Hello Brigitte. How nice to be back after a summer break to wrap up our Syria series. Although wrapping up is not the right word, there are still so many subjects to explore.

Brigitte: That's right. Are there particular topics that you have in mind?

Artino: Well, in the previous episode we looked into victim/survivor groups and initiatives such as the [Truth and Justice Charter](#) and their work on the mechanism to determine the fate of the forcibly missing and the disappeared. We could spend hours highlighting victims' activism and the way in which survivors and their families advance their justice needs.

Brigitte: It's true, we could talk about all the activities and the way how survivors and families advance their justice needs. And I think somehow we took justice activism by victim groups as the basis of the episodes. It was a central issue that kept resurfacing throughout the series. And it will also come back in this episode.

Artino: We wanted to shed a light on the concrete achievements to advance justice and accountability for Syrians and how these could also inspire justice actors in other situations of ongoing conflict such as Myanmar, Ukraine or Yemen.

Brigitte: This last element is key because the Syrian case has so many ramifications. It firstly uncovered the weakness of the international justice system. But then it also underscored the resilience of formal and informal justice groups. This is what we wanted to discuss with Mohammad Al Abdallah, the director of the Syrian Justice and Accountability Center ([SJAC](#)) and Catherine Marchi-Uhel, the head of the [IIIM](#), a UN body dedicated to the investigation and prosecution of crimes that happened in Syria.

Artino: And to really wrap up, we also called in Habib Nassar of Impunity Watch to reflect on these interviews and make some concluding reflections. Let's start first listening to your interview with Mohammad Al Abdallah.

Brigitte: You are both an activist and the [head of SJAC](#) and you have been involved in justice and accountability efforts for Syrians since the early days. How would you assess the efforts for justice for Syrians what has been achieved so far 11 years after the start of the revolution?

Mohammad: There was good efforts and momentum started early in 2011 in terms of documentation, collecting evidence, trying to work in different level of groups. Some groups converted Syria nationally. Some groups covered certain cities and towns. There were a lot of initiatives, a lot of cooperation between groups and this type of documentation, while the conflict is active, was basically a precedent in the modern history of conflicts. Of course, cellphones helped a lot. Everybody had a camera, everybody had a cell phone. A lot a videos made it to the Internet and all were geared to be advocacy materials. People wanted to film and show what's happening and what the government forces are doing. It ended up being good evidence to be shared in courts later. In our database, we have 1.4 million videos from YouTube alone, we downloaded videos from YouTube to preserve them, just before YouTube started tightening their policy and removing videos that violates the term of users. And a lot of these videos show a lot of corroborating evidence and different people who never met together, uploaded different videos from different locations. So the efforts by the public were really high. Not only the civil society. Everybody kind of person who took a risk to pull out their phone and film, while actually pulling your phone and take a picture or a video could put you at a serious risk in a place like Syria.

Brigitte: Could you elaborate here on the efforts by civil society organisations?

Mohammad: The efforts of the civil society were also very well organized, I would say. A lot of the groups did a good job in preserving information, categorizing it, analyzing, trying to extract patterns of violence, trying to work in the advocacy front and showing what's happening in the country, but also later in the accountability when Syrian refugees arrived to Europe in big numbers and there came a potential for filing cases against Syrian government officials and other human rights perpetrators, Free Syrian Army, ISIS, opposition fighters. So I think the efforts are really good, but unfortunately the outcome is quite modest.

Brigitte: And why do you think that the outcome is so modest or put differently: what are the complicating factors here?

Mohammad: That's clearly because we know Syria is not a state party to the International Criminal Court and there is no international tribunal for Syria, and Russia is an active player in Syria, they have incentives to cover what's happening in Syria. So expecting an international tribunal for Syria is kind of a dream now with the Russian involvement and the best thing that the UN could come up with was the international, independent, impartial mechanism, IIIM. Meanwhile, lots of commended efforts by authorities like Germany and Netherlands, France, Sweden, but that's very, very, very narrow. The prospect of these trials is going to be very narrow. The impact of them in Syria to make changes in the policies in Syria in terms of disappearances or torture or stopping level of violence is going to be minimal, if any. In fact, it could be sometimes backfiring because the government in Syria wants to show its sovereignty. So they don't care if one of their officials or former officials is in a trial. Arrests will continue, torture will continue, disappearances will continue. So this is one of the things stuck in my head for years: how much justice efforts are making impact on the day to day life of Syrians in terms of deterring violations, scaring officials, changing policies in violation of state practices in Syria. And honestly, the honest answer is zero. It's not changing anything.

Brigitte: Clearly, there is very limited space for justice work inside Syria and of course there is no prospect for regime change anytime soon. In such a context, can justice for

Syrians be truly achieved outside of the country? And how do you see the future of justice and accountability for Syrians?

Mohammad: I think the ICC remains the best option for international crimes. But we are talking about a country with massive human rights violations. A lot of people are involved in violations. And that opens up the question for domestic justice processes, how the domestic justice processes would look like, who will be involved. And that's why you need more than criminal accountability to fix Syria or put Syria back together. You cannot put 200,000 person on a trial, for example. You cannot imprison a huge number of people. It's going to be a security issue, resource issue. Their families will turn out to be enemies of the state, a big contributor to instability in the future. This is, of course, if there is any transition in Syria to start with. That's why a comprehensive transitional justice programme should be looked into: truth telling mechanisms, vetting and lustration, getting some people out of the system, based on evidence, but also having the families and the victims contribute to the truth telling process is equally important. Not everybody will be satisfied from any process in the future, given the magnitude of the violations and different group of victims in Syria. And the worst thing is to create a hierarchy of victimisation or victimhood, where there is the five stars victims who have access to international lawyers and languages and there's the ones below them and below them, till the average person who just happened to be in the wrong place in the wrong time and get arrested, died under torture, where their families doesn't have access to any of these resources. So it's going to be very complicated. And without domestic processes in Syria, I don't believe Syria will be put back together. And domestic processes will not be credible if somebody like Bashar al-Assad started such domestic justice processes, whether it's a truth telling, missing persons programming, where there's a discussion now on a missing persons mechanism. Even if the Syrian government cooperated and opened their prisons, there would be lots of doubts and questions and credibility and authenticity of the process, let alone the fear factor where a lot of people will not participate in such a process if that existing Syrian government is leading it, because clearly they're scared, and rightly so. They witnessed all this horror, the machinery of disappearing and torture - if that's not changed in a way that's irreversible, I do not think anybody will take such making such justice processes seriously.

Brigitte: Based on your work and experience, what lessons could you draw from the justice efforts in Syria that are relevant to national and international actors in other ongoing conflicts such as Ethiopia, Myanmar, Ukraine and Yemen?

Mohammad: Two things here. One, documentation. Clearly, it's a key thing. Lebanon had an amnesty, and one of the arguments of the amnesty after the civil war was like, we don't have evidence, nobody documented anything. Iraq had a tribunal, but it had a bad justice because also it lacked documentation. Good, credible, authentic documentation could help the justice processes in the future to start on the right footing, to be fair, to be comprehensive and to be inclusive of everybody, and also to set the truth and the record correct for everyone. Of course, groups will not be happy with the truth about their own violations. But this is how it's going to be. So documentation, documentation, documentation. The second thing is to take any interim steps that could be possibly available and use it to the extent possible. Syrians got into the debate whether IIIM is an insufficient thing: it's not a tribunal, it's not putting people behind bars. This is what we have today. Let's take it, let's build cases with IIIM. They're doing amazing work. Let's put it all together. In five years, we don't know: Russia will change, regime change with Russia will happen, and then nobody is sheltering Syria or the Syrian government at the Security Council, and we might have

a tribunal. But I think giving up is not an option given the level of violations here. And I would encourage the mechanisms and the people in these countries also to work together because it's going to take time. And this is the sad reality, justice will take a long time.

Artino: It's interesting to revisit the issue of documentation, that lies at the heart of the justice efforts and to hear from Mohammed that criminal accountability will not be enough. I want to jump in and ask our colleague Habib Nassar: what are your thoughts on this?

Habib: I agree with Mohammad that domestic justice efforts are essential and this for at least two reasons. Firstly, if such efforts happen in the future, this would indicate regime change and a democratic transition. And because a genuine democratic transition is the ultimate form of justice, as it would remove perpetrators from power. And this was actually the goal of Syrians who revolted back in 2011. But then the second reason why I agree with Mohammad on why domestic justice efforts are essential is because such processes, if conducted by reformed or new Syrian institutions, are the only way to ensure that the justice process is fully legitimate. It is embedded in the Syrian state, it is embedded in the Syrian society and can properly deal with the root causes of abuses.

Artino: Where would you disagree then with Mohammed?

Habib: His perception of what the ICC could have done. When he says that the ICC remains the best option for international crimes, I would like to be a little cautious. We celebrated back in July of this year, the 20th anniversary of the ICC, its track record and what it has achieved in this past 20 years, I must say is pretty disappointing, compared to the resources invested in it. It only issued, so far, a handful of convictions and its processes are slow. Enforcement is complicated. The impact of trials held in The Hague in the Netherlands remain limited. So I wonder if the ICC would have been able to do better than, say, the Koblenz trials which ended with the conviction of two senior regime officials and took place in a country actually hosting hundreds of thousands of Syrian refugees, including victims of abuses who got -because of the proximity of the court - to easily participate in the procedure that they were directly involved in this process. I would also wonder if the combination of the IIIM and the possibility to hold trials in a number of countries based on universal jurisdiction and other forms of extraterritorial jurisdiction is not a better option, albeit a temporary one of course, that could contribute as little steps towards accountability, while preserving evidence for future, more comprehensive and potentially national domestic processes.

Brigitte: And I guess that you would probably also insist very strongly on the centrality of the efforts of Syrian civil society actors in achieving both what happened at Koblenz and also in rendering the work of the IIIM possible. And of course these efforts are documentation, as Mohamad reminded us, advocacy, litigation and also using the arts to advance justice and to fight against disinformation. All these efforts, of course, are justice in the making.

Artino: Justice in the making, that brings us to the conversation with Catherine Marchi-Uhel, the head of IIIM she also demonstrates the importance of cooperation between formal and informal actors.

Brigitte: To start the interview, I wanted to ask you about the creation of the IIIM. The IIIM was created in December 2016 after the failed attempt, of course, to refer the situation in Syria to the ICC. Almost six years after the creation of the IIIM, how do you assess the contributions to advance justice for Syrians?

Ms. Marchi-Uhel: When I look back at what has been achieved by the IIIM teams since it became operational in May of 2018, I must say that there have been real achievements. Well, maybe it's important to recall that the IIIM has really been conceived as a justice facilitator to assist in the investigation and prosecution of persons responsible for the most serious crimes under international law committed in Syria since March 2011. So it's not a court or tribunal. It's about supporting justice opportunities that currently exist, but also those which may arise in the future and this irrespective of the affiliation of perpetrators. To date, we have been able to have put in place 75 cooperation frameworks, including with states, UN entities, including the Commission of Inquiry on Syria, other international organisations, and a large number of civil society organisations. Most of these framework are allowing the IIIM to collect materials which have been gathered by these entities. And when I'm talking about materials, it means videos, pictures, satellite imageries, internal documentation and of course, statements from victims and witnesses that have been given to these entities. Our first concrete achievement really is our central repository. It gathers and preserves over 2.3 million records of information and evidence that we have collected from a variety of sources. And we've invested considerable efforts to increase the searchability of this repository. We've used the repository to provide support to competent jurisdiction in response to their request for assistance. To date, we've received 198 requests for assistance from 14 competent jurisdiction. And these request requests relate to 160 discrete investigations. That gives an idea of the scale of investigations that have been ongoing and that some of them have led to trials. We've been able to support 113 of them. And as I said, some have led to trials, including the Koblenz trials in Germany.

Brigitte: In this realm of supporting justice initiatives, are there other activities that the IIIM is conducting and that we might not be aware of?

Ms. Marchi-Uhel: We conduct open source searches in languages that jurisdiction sometimes lack capacity in. When this is appropriate, we can even engage in targeted collections or conduct our own investigations. We also collect statements from other witnesses, expert evidence to help placing the crimes in their context. A Swedish prosecutor was describing us recently as a central hub she turns to find support for her investigation. I think that's really this notion of justice facilitator, that is meant by our mandate. It directly responds to a second aspect of the mandate, which goes to analyzing the evidence that we collect, including for the purpose of case building.

Brigitte: That was quite an extensive overview of the first set of activities that really render you into a justice facilitator, which is a beautiful notion. Now, could you elaborate on the second part of your achievements, the structural investigations?

Ms. Marchi-Uhel: The work we do in that context is not only used to support ongoing investigation, it also serves building analytical blocks for our own case files, but also for future accountability. We develop analytical work focussing on identifying and understanding the entities beyond core crimes committed in Syria as well as the role that individuals plays within these entities. We also try to understand the connection between different entities involved in the crimes. Overarching contextual factors that are relevant for prosecuting core international crimes as well as corruption. Factors

which are necessary to understand patterns in the commission of crimes. We also, of course, try to understand patterns of targeting individuals and communities based on specific and often intersectional characteristics such as ethnicity, religion, age, gender, sexual orientation or any other characteristic. The beauty of the concept is that we are able to detach these analytical blocks that we produce in these lines of enquiry and share it already with national jurisdiction. We have currently three ongoing lines of enquiry. One relates to detention related crimes with a focus on crimes attributed to government and affiliates. We have one focus on unlawful attacks, including attacks making use of chemical weapons, but also conventional attacks against medical facilities. And we have a line of enquiry which is focussing on crimes attributed to ISIL or Daesh.

Brigitte: As you might know, in the previous episodes we focused very strongly on innovative efforts by Syrian civil society groups, victim organisations to advance justice and of course victim rights. And I wanted to ask you about your perspective on the way how the IIIM complements these efforts and also vice versa.

Ms. Marchi-Uhel: The most obvious way of contribution is making the material that they've gathered, and at times the analytical work that they themselves have done, as part of this central repository of evidence is the first and obvious way. From the outset, I determined that the IIIM would engage in a, in a two-way communication with Syrian civil society actors, and that they could mutually, work towards accountability for crimes committed in Syria in many other ways than just using the documentation. They bring perspective. They have understanding of the context of the crimes, of the reality on the ground that we didn't have and probably we still don't have after six years of operation. So just to give you a little bit of a history, even before my appointment there had been in Lausanne a meeting between representatives of the start-up team that the Secretary General had established and several civil society actors. And this was for the purpose of talking, presenting the mandate of the IIIM, but also listening to civil society organisations' expectations about the role that the IIIM could play within this accountability framework. And when I was appointed, I immediately decided to pursue this regular engagement, wanting it to be really a two-way engagement. Fortunately, it's been supported and hosted by the Kingdom of the Netherlands and Switzerland, so we call it the Lausanne platform. But in fact the meetings that take place in a platform are taking place in different locations between the two states. And during one of these early meetings in 2018 already, we signed a protocol of cooperation between the IIIM and the attending CSOs. Because of the level of trust reached, we also hear preoccupations, criticism, constructive criticism about things we're not doing that they would want us to do. Where the limits are. But we are also sometimes able to incorporate their perspective into the work we do.

Brigitte: Maybe briefly to follow up on the victim-centred approach, there are five victim and survivor organisations that launched Truth and Justice Charter last year. And they are also calling, of course, for the creation of an international mechanism to uphold the right to know. Could you maybe briefly touch on the way how the IIIM fits into that equation?

Ms. Marchi-Uhel: Well, maybe I should stress first that I really consider the Truth and Justice Charter in itself as a really powerful expression of victims' and survivors a call for justice. And you're talking about the call for a creation of an international mechanism to help the search for missing persons. I have very early on interpreted our mandate as encompassing support to forms of justice broader than criminal justice. And the search for missing persons is an obvious component of that. We know

from past accountability processes that when you collect evidence for the purpose of criminal accountability, the material you collect also encompass very useful information that can be put to use when searching for the missing. And this is a case with the archives of other tribunals, they still search as we speak by entity searching for the missing. So we do not have the capacity to do dedicated collection for that or dedicated analytical work. But we make use of our review of the material we collect for our criminal accountability work and tag what we know will be relevant for that. And I've taken part in the consultation that followed the adoption of Resolution 76/228, which requires the Secretary General to conduct a study on how to bolster efforts to clarify the fate and whereabouts of missing persons in Syria and provide support to their families. And I really hope that it will meet the expectation of the families. We don't know whether it will lead to creating a mechanism, as they wish, or whether other and additional steps will be taken. But what I want to say that certainly the mechanism [IIIM] has the intent to support such an entity. If it is created, it could be a game changer for the families. And we really are extremely willing to be part of that support.

Brigitte: Thank you. Finally, I wanted to ask you to share some broader reflections on international justice, international criminal justice and beyond. Based on your experiences, but especially, of course, the IIIM's experiences, if you had any recommendations to those seeking justice in other conflicts such as Yemen, Myanmar, Ukraine and Libya?

Ms. Marchi-Uhel: Clearly each situation is specific, but based on this first experience, I would say we know that investigating core crimes nowadays requires investing in technology, we are not investigating only as we did traditionally. Those traditional approaches are still important. But you really need to invest in having the benefit of the tools that technology permits. One lesson would be really invest in that, have the way to use technology. The second is very much in line with what I have described. When there you have an activist society in the country: engage with them, even if it's a diaspora, even if you have no access to the country. And our experience today shows that with no access to Syria, there is a lot you can do actually. And we've learnt from past accountability processes and we know very well already in the context of Syria. But if you want to make sure that you support inclusive justice, you're going to have dedicated efforts towards surfacing the experiences of victims which are less visible, clearly comes to mind women, boys and girls, people with disabilities, people with different sexual orientation, identities. I mean, unless you have dedicated efforts, you're not going to be able to properly represent the harm that they suffered from and also understand how some of the structural factors in the society are triggering violence toward those groups. That's something that we at the IIIM decided to devote a victim-survivor-centred approach. And it's not just a buzzword, it's not just consulting representatives. It's also dedicated strategies to surface those harms, to make sure that they are part and operationalized in every aspect of the work we do. And it's not about building one case of gender-based crimes or sexual violence. It is in every analytical work we do, looking at those aspects, if you're not looking for it, you're not going to find it. If you're not asking the right questions to victims and survivors when you interview them, you won't get the information or you likely won't. So it's less about us as a IIIM, it's more about how can we support justice for victims and survivors.

Brigitte: Thank you so much for providing also these lessons which I think are so important. And also what you said about rendering visible what is often not that visible, or rather who is not visible, the groups that are often marginalized.

Ms. Marchi-Uhel: Thank you, Brigitte.

Artino: Habib, I can imagine that there is a lot that you can relate to in this conversation. What are the key lessons that we can draw from Catherine's testimony?

Habib: I would imagine that the key lesson that we can draw from what we just heard is probably innovation, not many experiences, such as Syria's has shown the power of innovation, the power of going beyond the templates that have been promoted by what has become to be known as the transitional justice industry that was very active in the wake of the Arab revolutions. So Syrians have really shown how to adapt to a particularly complex situation of a country in conflict with very little space for activism and justice inside Syria, with very limited access. They have shown us how to grab opportunities in a creative way, how to delocalize justice efforts, what role refugee communities and victims and survivors can play outside of the country. What to do, for instance, when an ICC referral is blocked, how to slowly but efficiently fill the justice gap. So they kind of turn their despair in the face of international inaction or paralysis, in the face of regime brutality, into activism, into action for justice.

Brigitte: When we talk about activism, we often relate to the issue of resistance, innovation, and also creativity. That's an issue that you often address. And you also did so in the first episode, Habib, when we talk about justice efforts for Syrians, the creativity is really enormous and striking.

Habib: Absolutely. And I think the transitional justice is about creativity. And here I would also like to highlight the creativity of Catherine Marchi-Uhel and her team. We are not used to creativity and innovation when it comes to international justice mechanisms, which are generally characterised by their rigidity and inability to adapt to complex situations. I think that the IIIM very quickly understood that lack of access to Syria could not be an excuse to do nothing. They saw in the lack of access an opportunity to deepen their engagement with civil society, to rely and use the wealth of data, information, evidence gathered by Syrian NGOs and activists. And they fully engage through the Lausanne process, that Catherine described, with the civil society. And the Lausanne process has become a first of its kind model of engagement with civil society and victims. Another example of the IIIM's creativity is the way it has for instance, responded to the crisis of the missing in Syria instead of saying there is nothing that the IIIM's mandate would allow us to do, they interpreted their mandate and decided to adopt a specific methodology to classify relevant data they process, in order to lay the groundwork for the search of the missing by a dedicated entity.

Artino: Thank you, Habib. It's amazing all this kind of work. And this brings us back to where we started: despite the enormous obstacles to advance justice for Syrians, there are so many groundbreaking initiatives.

Habib: Our idea behind the series on justice efforts for Syria was to highlight innovation and justice initiatives from below. I believe that really the wonderful innovation experiences, activism stories we heard exceeded our own expectations.

Brigitte: True, these conversations really underscored again the vitality of the transitional justice community in action, the practitioners and how they also managed to reinvigorate the debate that was actually quite stale. They also changed the terms of the justice efforts while the conflict is ongoing.

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Artino: This is exactly the energy that is also what we wanted to stress in the series. And here I would like to pay a tribute to all of our guests from Syria and international CSOs and institutions. In particular today, I wanted to thank Catherine Marchi-Uhel and Mohammad Al Abdallah.

Habib: Impunity Watch would like to thank the Dutch Postcode Lottery for their support, which contributed to the production of the podcast series.

Brigitte: And thank you to our listeners. And stay tuned for the next seasons. Feel free to share your comments and thoughts on this series on justice efforts for Syrians. Thank you, Habib and Artino.