

كسر القوالب Breaking the mold

#Breaking_The_Mold

Arab Civil Society Actors and their Quest to Influence Policy-Making

Country: Syria

Syria Justice and Accountability Centre's Campaign

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The work under the Martial Law and the State of Emergency Law persisted in Syria for 48 years. Its consequences include the absence of the Constitution and the weakening of the ordinary judiciary, and its independence in favor of exceptional laws and courts. In 2011, the State of Emergency Law was stopped, but the authority's practices towards protesters and opponents established the general rule for the policies of the Syrian authority in this case, which is semi-systematic policies even if they are not written, whether in their executive sphere such as the Terrorism Court (formerly the State Security Court) or interpretive sphere such as the policy of impunity.

Within 90 months, almost 360,000 people lost their lives due to the conflict (Syrian Observatory for Human Rights, 2018)¹. "Neither the Syrian authorities nor any of the conflicting parties took any steps to ensure real local or international accountability, which contributed to the occurrence of more atrocities (Human Rights Watch, 2017, p. 7). Furthermore, the limits of implementing the International Law are narrow in the Syrian case, for the Syrian Republic is not a state party to the International Criminal Court. As well, Russia and China prevent any legal referral from being submitted to the Hague Court². In late 2016, the United Nations General Assembly established a mechanism to analyze and collect evidence concerning serious crimes committed in Syria to be used

in future judicial proceedings³. Nevertheless, the mechanism is not responsible for any accountability investigation.

In light of the disruption of other justice paths, the Syrian civil society organizations, in cooperation with public prosecutors in several European countries, began to seek the prosecution of officials who committed war crimes in Syria. These efforts have given partial justice to victims who have no other way to rely on. These legal actions constitute a part of a broader and more complicated work context for organizations to document, collect, protect and classify evidence to be used in any prospective policies to achieve justice.

TIMELINE

Until two years ago, most of the prosecutions in Europe had convicted some low-ranking Syrian perpetrators who had sought refuge in their countries⁴ or people who had joined a rebel group⁵ classified on terrorist lists. In contrast, many cases brought against Syrian officials were not considered or even accepted.⁶

¹ The report covers as of September 2018, 13 see: <https://bit.ly/2DbfCvk>. Numbers vary, but Human Rights Watch and the World Bank agree with these estimates as well. Check: <https://bit.ly/2BF45oF>

² In August 2013, a military defector codenamed «Caesar» smuggled 53,275 photos out of Syria, many of which show the bodies of detainees killed in detention centers. France presented a draft resolution to the Security Council that would have given the International Criminal Court jurisdiction over crimes committed in Syria since 2011. But in May 2014, Russia and China vetoed the resolution, preventing the court from intervening.

³ The United Nations Human Rights Council established the Commission of Inquiry in August 2011 and authorized it to investigate violations of international human rights law in Syria. After a historic vote of the United Nations General Assembly in December 2016, an independent and impartial international mechanism was established with the aim of collecting, analyzing and preserving evidence that might be used in future trials. It is an unprecedented mechanism in the United Nations.

⁴ In 2015, a court in Stockholm convicted a member of the Syrian army with torture as a war crime, and sentenced him to 5 years in prison, then the penalty increased to 8 years in prison after a retrial.

⁵ Before 2017, seven cases reached courts in Germany and Sweden, six of them, affecting low-ranking ISIS members, Hayat Tahrir al-Sham, and others.

⁶ For example, in February 2017, a Spanish woman of Syrian origin filed a criminal complaint in Spain against nine Syrian officials whom she accused of killing her brother after torturing him, and the court rejected the complaint after accepting it.

The Syrian Center for Legal Studies and Research began preparing notes of complaints in cooperation with the Syrian Center for Media and Freedom of Expression. The cooperation developed to include the Caesars Families Association, which represents hundreds of victims, with a documentary group of legal evidence, and the Violations Documentation Center in Syria, which runs a network of activists in the country. By the end of 2018, the cooperation extended to include the “Syrian Association for Human Rights and Accountability” and the “Syrian Legal Network.”

Since March 2017, the European Center for Constitutional and Human Rights has prepared criminal complaints in Germany against high-ranking Syrian officials in cooperation with these civil groups. The campaign moved to Austria⁷, Sweden⁸ and France⁹, and separate suits were filed to the judicial authorities in Norway, Switzerland, Finland and the Netherlands. In sum, 13 cases were accepted, and the first arrest warrants were issued in June 2018¹⁰. It was part of a campaign to collect 100 judicial files for the European courts, taking advantage of what is known as the principle of universal jurisdiction¹¹.

At the end of 2017, the campaign began with meetings, and advocacy campaigns with Amnesty International, The Heinrich Böll Foundation, the International Federation for Human Rights and the United Nations, and a true and transparent accountability process was launched, enabling victims or their legal representatives to achieve justice and seek to hold the perpetrators accountable¹².

INFLUENTIAL FACTORS

As the impunity policy continues to be perpetuated and entrenched, the human rights movement faces pressing questions about its role and how to maintain victims’ confidence in its mechanisms of action and the slogans it raises (Al-Faqih, 2018). The organizations find it difficult to get victims to file complaints, either for they fear for their loved ones in Syria. They feel that the international community has abandoned them or lack awareness of the laws in force.

The second challenge relates to what is known as “judicial facts,” where the representation of victims and perpetrators is limited to evidence accepted in a court and “evidence standards”¹³ to hold certain persons criminally responsible for specific crimes (Abu Al-Dahab, 2018, p. 8). The information gathered by the Syrian organizations was useful during the investigation stage, “but they did not meet the national requirements for acceptable evidence in

7 Austria’s judiciary accepted criminal lawsuits filed by 16 Syrians to the Public Prosecution’s Office in Vienna in May 2018, which included 24 government officials.

8 3 cases were filed between 2015 and 2017 against Syrian citizens accused of committing crimes against humanity in Syria, and 13 investigations were conducted in Swedish courts.

9 6 cases were filed in France based on the universal jurisdiction system during 2017-2012

10 On June 2018, 8, the Federal Prosecutor of Germany issued an international arrest warrant against Jamil Hassan, the head of Syrian Air Force Intelligence Directorate. On October 2018, 8, Hassan was again targeted under an arrest warrant from France alongside Ali Mamlouk, head of the National Security Agency, and Abdel Salam Mahmoud, head of the Investigation Branch of the Air Force Intelligence at the Mezzeh Military Airport. The charges against them included accusations of complicity in torture, enforced disappearances and crimes against humanity.

11 Universal jurisdiction grants prosecutors the right to charge individuals in their own countries for crimes that violate International Human Rights Law committed in other countries. Few countries, such as Germany, Sweden and Norway, have «pure» universal jurisdiction, meaning that they can prosecute those responsible for war crimes and crimes against humanity even if they committed them elsewhere, and even if the accused or victims are not citizens of the country.

12 Check at the joint statement by human rights organizations. <https://bit.ly/2qMkobB>

13 Evidence standards are legally agreed principles that give evidence a sufficient degree of evidentiary value to know the extent of its value, authenticity, and the impossibility of denying it. For example, a video tape of a Syrian defendant mutilating a corpse was not sufficient evidence to accuse him of murder because the public prosecutor could not, through standard evidence, prove who did the killing.



criminal deliberations” (Human Rights Watch, 2017). Added to this, consideration of confidentiality related to criminal investigations, the risk of facing excessive information, and making reasonable promises about the expected results and when they will be achieved (Latimer, 2015, p. 26).

In contrast to a weak and dispersed victim community, these organizations should be concentrated among a series of powerful players. First, its work cannot be framed concerning weak and politicized government structures, especially that “the Syrian judiciary is subordinate to the authority and is fundamentally impartial, and it does not meet the minimum requirements for competence, experience or eligibility to prosecute serious crimes, in addition to the absence of any will for accountability” (Human Rights Watch, 2016, p. 3).

The Syrian authorities’ response to the idea of expanding the scope of universal jurisdiction was that “it aims to undermine the sovereignty of states and the role and position of their national legal and judicial institutions”¹⁴. These accusations undermine the credibility of the pursuit of accountability and can be used in the Syrian conflict to a large degree as a result of the societal divide. Indeed, many civil and societal forces have turned away from atrocities committed by one of the parties, only because the organization that announced it is accused of having a relationship “with the outside” or affiliated with one of the conflicting parties.

These organizations see that their work is framed within channels controlled by international organizations, whether through complicated mechanisms or semi-compulsory financing channels. The subsequent attempts to control the agenda and influence the decision-making procedures. Human rights organizations have always worked with international actors, but this relationship includes periods of intense cooperation or conflict and sometimes a combination of both (Abu al-Dahab, 2018, p. 5). In the previous years, local human rights organizations’ work was the primary

14 Statement of Permanent Mission of the Syrian Arab Republic to the United Nations during the discussion of «the scope and application of the principle of universal jurisdiction.» <https://bit.ly/2FCm0NK>

source of information for international bodies working on accountability issues¹⁵, and the tensions between them could easily be noticed. On more than one occasion, the organizations called on the United Nations to work with the Syrian Civil Society as a “partner in achieving justice” instead of viewing it as a “mere source of information.”¹⁶

Another tension arose when the Syrian activists felt that the international preoccupation with how to activate peace talks and reconstruction issues would lead to the marginalization of justice or turning it into a negotiated issue. For example, the United Nations failed to secure funding for the “international, impartial and independent mechanism”, prompting local and international human rights organizations to launch a crowdfunding campaign to provide the starting budget for these investigations¹⁷.

It is possible to refer to the impact of work structures outside the Syrian geography, i.e., “Syrian human rights organizations working in Europe and America”, on the local structures under-resourced and “unprofessional”. While external organizations have greatly developed their work and adopted global standards in documentation, small organizations in the country are still working under the burden of many difficulties, not least of which is the weakness of funding and administrative organization, all the way to the conditions of daily violence and fighting that affect volunteers and continuity. Although local organizations are considered a major source of information, they are the weakest link in this chain. Activists believe that the perception of the organizations’ level of professionalism and the language barrier forms a basis for reducing their chances of receiving funding and training.

ROLES, TOOLS, AND FORMS OF WORK

At the start of the conflict, the Syrian organizations had little experience. Their work was limited to publishing data on human rights violations and carrying out some online campaigns. It developed into communicating with the survivors and providing psychological and medical support to the victims, and later they became an essential reference in presenting the Syrian context. Today, they work on documenting violations shortly after their occurrence, collecting legal evidence and deoxyribonucleic acid (DNA) samples, conducting forensic examinations according to the international standards, archiving documents for use in potential trials and truth commissions, analyzing data using legal expertise, providing legal notes and research assistance to the courts and mapping patterns of violations. The attached figure shows the main fields of their work according to a survey prepared by the researcher on 43 organizations working in the field of human rights:

For example, Syria Justice and Accountability Centre collects all types of data apart from the victims’ affiliation or the perpetrators. The classification methodology is based on international standards. The Syrian Network for Human Rights says that it owns a database exceeding 10 terabytes, while the Violations Documentation Center relies on a network of activists trained on collecting evidence and data in accordance with the standards of the International Humanitarian Law, International Human Rights Law, and the four Geneva Conventions. The Syrian Institute for

Justice also has a special program for documenting gender-based violations, and it includes experts in forensic medicine and forensic evidence. Syrians for Truth and Justice organization specialized in telling the stories and testimonies of survivors, while the Syrian Center for Statistics and Research provides the results of its surveys using illustrations and Cartesian curves. Al-Kawakibi Organization for Human Rights also monitors the implementation of justice in areas outside the regime’s control, and the Syrian Lawyers’ Association documents real estate records of the displaced and the refugees. The Syrian Legal Development Program trains humanitarian organizations in Syria on international criminal law and standards for the admission of evidence in court. The Lawyers and Doctors for Human Rights organization have a unique program for professional, medical-legal documentation of human rights violations based on the Istanbul Protocol¹⁸. The Caesar Families Association is building mechanisms to communicate with victims and witnesses and build trusting relationships.

Organizing cooperation and exchanging experiences among the Syrian human rights organizations is an essential part of documentation strategies. These organizations have tried to share data and physical and digital evidence that help build criminal case files¹⁹. It built alliances among themselves, such as the Syrian Federation for Human Rights Organizations and Authorities in Syria²⁰ and the Transitional Justice Coordination Group²¹.

Without denying the impact of funding on the priorities and processes of internal organization, it can be seen how these organizations have been stationed in light of a complicated political reality, and different players and have built alliances and networks among themselves and with international non-governmental organizations as well²², forming “cross-border advocacy networks”²³ so that this networking provides “structures of international opportunities” that interact with structures of local political opportunities (Sikkink, 2015, 155). Giving information and data in exchange of providing legal, political and financial support to the Syrian authorities is the heart of this relationship, which is not flawless, and the most important of which is the competition between Syrian human rights organizations to obtain their “consent” and the mutual apprehension about politicizing information.

POLITICAL NETWORKING

The national judiciary is supposed to play a critical role in prosecuting the perpetrators of serious crimes and preventing impunity, but it is evident that most countries that have

18 *The Istanbul Protocol (Guide to the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) is the United Nations standard for training in interviewing and examining people claiming to have been subjected to torture and abuse, for investigating cases of alleged torture, and for reporting these findings to the judicial authority and any other investigative body.*

19 *See: Agreement to Promote Joint Human Rights and Humanitarian Action in Syria. Syrian Center for Media and Freedom of Expression. <https://bit.ly/2TTmjbc>*

20 *50 human rights organizations and bodies working to spread the culture of transitional justice by establishing the principle of responsibility and accountability and ensuring that there is no impunity.*

21 *«Works to coordinate efforts to build a unified project for the documentation database».*

22 *These networks include the International Commission on Missing Persons (ICMP), the Centre for the Enforcement of Human Rights International (CEHRI) in Vienna, the European Center for Constitutional and Human Rights (ECCHR) in Berlin, the International Federation for Human Rights (FIDH), the Euro-Mediterranean Foundation of Support to Human Rights Defenders (EMHRF), The World Organization Against Torture, and the Coalition for the International Criminal Court. Amnesty International, Human Rights Data Analysis Group, and the International Center for Transitional Justice.*

23 *Cross-border advocacy networks are “those actors who work internationally on a specific issue and who share common values, a common discourse, and a close exchange of information and services”. For more, see: Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Ithaca: Cornell University Press, 1998), p89*

15 *In April 28, 2017 Syrian civil society organizations signed a cooperation protocol with the International Mechanism to assist them in its work, including the exchange of data, and the protection of victims and witnesses.*

16 *See the memorandum of Syrian organizations working in the fields of documentation of violations, accountability, and transitional justice to the Secretary-General of the United Nations regarding the new United Nations investigation and prosecution mechanism: <https://bit.ly/2ANBMIT>*

17 *See the campaign of international and Syrian human rights organizations today, the “Fundraising for Justice” campaign in June 2017: <http://www.crowd4justice.org/en/>*

witnessed war crimes and crimes against humanity are not able to perform this task, either because of the lack of political will or the incompetence of the judicial system to carry out fair trials (Human Rights Watch, 2013, p. 16). Consequently, prosecutions in foreign countries are the best option in the absence of the authority's cooperation and the opposition parties' dependence on regional agendas (Latimer and others, 2015, p. 30). The essence of civil organizations' work is manifested in rejecting the policy of impunity as a semi-systematic policy in the conflict that many parties have adopted. It may be overlooked in the international community, especially that the number of perpetrators, the parties involved, militias and proxy wars are very large in Syria, which suggests measures to enable victims to access truth and justice without being part of any political talks.

POLITICAL RESULTS

At the level of short-term policy dynamics: These efforts represent an affirmation of the legal role of the Syrian civil society in shaping policies, not just providing information, and preserving the centrality of local human rights actors, which is currently one of the last fortresses of peaceful resistance. On the other hand, these campaigns keep accountability alive and make it difficult to ignore or marginalize it in negotiations in favor of reconciliation agreements between war criminals. In the long run, these efforts place truth, accountability, and fairness as foundations for future justice and institutional, human rights and especially judicial reform at the core of political reform. It can be viewed as a preemptive policy measure to prevent existing state institutions or new institutions from dominating transitional justice processes.

LESSONS LEARNED

Skepticism remains about the usefulness of these cases. Although the arrest warrants have great symbolic value, they are unlikely to lead to arrests, and any fundamental change in human rights policies in Syria is not expected to follow. But it carries a fundamental message about the necessity and feasibility of implementing accounting mechanisms and achieving some form of accountability. Certainly, the military conflict in Syria will one day end, regardless of the outcome. Hence, human rights work today keeps these issues alive and heard and may one day play a role in shaping national transitional justice policies.

- The institutional templates of Syrian civil society organizations have given the issue of accountability its organizational strength.
- In a context with very limited options for justice, civil society work can be the only hope for victims.
- Working in civil society organizations, locally and internationally, requires building new mechanisms that give local organizations more power.



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BREAKING THE MOLD PROJECT

In mid-2018, the "Civil Society Actors and Policymaking in the Arab World" program at IFI, with the support of Open Society Foundations, launched the second round of its extended research project "Arab Civil Society Actors and their Quest to Influence Policy-Making". This project mapped and analyzed the attempts of Arab civil society, in all its orientations, structures, and differences, to influence public policy across a variety of domains. This research produced 92 case studies outlining the role of civil society in impacting political, social, economic, gender, educational, health-related, and environmental policies in ten Arab countries: Lebanon, Syria, Palestine, Jordan, Egypt, Morocco, Tunisia, Yemen, and the Arab Gulf.

Over two dozen researchers and research groups from the above countries participated in this project, which was conducted over a year and a half. The results were reviewed by an advisory committee for methodology to ensure alignment with the project's goals, and were presented by the researchers in various themed sessions over the course of the two days.

THE CIVIL SOCIETY ACTORS AND POLICY-MAKING PROGRAM

at the Issam Fares Institute for Public Policy and International Affairs at AUB, examines the role that civil society actors play in shaping and making policy. Specifically, the program focuses on the following aspects: how civil society actors organize themselves into advocacy coalitions; how policy networks are formed to influence policy processes and outcomes; and how policy research institutes contribute their research into policy. The program also explores the media's expanding role, which some claim has catalyzed the Uprisings throughout the region.

THE ISSAM FARES INSTITUTE FOR PUBLIC POLICY AND INTERNATIONAL AFFAIRS AT THE AMERICAN UNIVERSITY OF BEIRUT

The Issam Fares Institute for Public Policy and International Affairs at the American University of Beirut (AUB Policy Institute) is an independent, research-based, policy-oriented institute. Inaugurated in 2006, the Institute aims to harness, develop, and initiate policy relevant research in the Arab region. We are committed to expanding and deepening policy-relevant knowledge production in and about the Arab region; and to creating a space for the interdisciplinary exchange of ideas among researchers, civil society and policy-makers.

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