

# **PATHWAYS TO JUSTICE IN THE TRANSITIONAL JUSTICE PROCESS**

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Accountability in the Syrian Context

June 2025

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## LIST OF ACRONYMS

Commission of Inquiry on the Syrian Arab Republic	COI
Extraordinary Chambers in the Courts of Cambodia	ECCC
Impartial and Independent Mechanism	IIM
International Humanitarian Law	IHL
International Human Rights Law	IHRL
International Criminal Court	ICC
International Covenant on Civil and Political Rights	ICCPR
International Criminal Tribunal for the former Yugoslavia	ICTY
International Criminal Tribunal for Rwanda	ICTR
International Committee of the Red Cross	ICRC
Non-State Armed Groups	NSAGs

## INTRODUCTION

Following the fall of the Assad government in December 2024, Syria stands at a pivotal crossroads. At this critical junction, transitional justice constitutes an especially pertinent and effective framework for guiding Syria towards comprehensive national recovery, re-establishing the rule of law, ensuring respect for human rights, and fostering inclusive national reconciliation as a foundation for lasting stability.

Since 2011, Syria has witnessed widespread and systematic violations of international law, many of which amount to war crimes and crimes against humanity. Numerous reports by UN bodies, particularly the Commission of Inquiry on the Syrian Arab Republic (COI), have extensively documented atrocities committed by all parties to the armed conflict, including the Assad government and various armed opposition factions.<sup>1</sup> The COI's findings highlight a disturbing pattern of grave violations, including arbitrary detention, torture, enforced disappearances, indiscriminate and other unlawful attacks on civilians, and other serious abuses.

The pursuit of accountability for serious violations of international law has constituted a core demand for Syrian civil society, underpinning broader efforts to uphold victims' rights, ensure justice, and lay the groundwork for sustainable peace. While transitional justice in Syria is often framed as a future-oriented process, Syrians have long been at the forefront of documenting violations, advocating for victims, and engaging with international and national justice mechanisms. These efforts have been essential in keeping accountability for the country's most serious crimes as a priority on the global agenda.

Until recently, the pursuit of justice for serious violations of international humanitarian law (IHL) and international human rights law (IHRL) in Syria has relied heavily on non-domestic legal pathways. These include prosecutions under the principle of universal jurisdiction in national courts in Europe, as well as cooperation with international investigative mechanisms such as the International, Impartial and Independent Mechanism (IIIM), established by the UN General Assembly in 2016.

However, the transitional justice landscape in Syria began to shift significantly after December 2024, with growing political and legal discourse – both within and outside Syria – toward the potential role of domestic institutions in accountability processes. In March 2025, Syria's interim president approved a constitutional declaration that is set to govern the country's transitional phase over the ensuing five years.<sup>2</sup> The declaration, criticized for entrenching executive authority,<sup>3</sup> nonetheless laid the groundwork for the establishment of a Transitional Justice Commission, mandated to identify and propose accountability mechanisms for victims and survivors.<sup>4</sup> About two months later, Syria's Interim President issued a decree establishing the Transitional Justice Commission.<sup>5</sup> The establishment of the commission marks a notable shift in Syria's trajectory toward accountability – marking, for the first time, an institutional acknowledgment of the need for accountability, truth-seeking, and the provision of remedies to victims. However, its mandate is limited in scope, focusing exclusively on victims of

1 See: COI on the Syrian Arab Republic, [Documentation](#).

2 See, The Syrian Observer, "Syrian President Ahmad al-Sharaa signs Constitutional Declaration, Setting Roadmap for Five-Year Transitional Period", 4 March 2025.

3 Human Rights Watch, "Syria: Constitutional Declaration Risks Endangering Rights", 25 March 2025.

4 Syria, [Constitutional Declaration](#), Article 49, 13 March 2025.

5 X, Presidency of the Syrian Arab Republic 'Presidential Decree No. (20) establishing the National Transitional Justice Commission', 17 May 2025.

crimes committed by the Assad government, while implicitly excluding victims of crimes committed by other actors. In doing so, the commission risks institutionalizing a selective approach to truth, justice, and reparations, thereby undermining both its perceived legitimacy and its compliance with international standards of impartiality and non-discrimination. Such an approach jeopardizes the broader objectives of transitional justice: to recognize all victims irrespective of their identity or that of the perpetrators, restore trust in public institutions, and prevent the recurrence of future violations.

To address these concerns, a comprehensive transitional justice law should be enacted by the legislative authority once formed. The law must clearly define the commission's mandate and powers, establish transparent appointment procedures, and guarantee its independence and professionalism. The development of the transitional justice law should be based on inclusive consultations with victims, civil society, and human rights experts to ensure legitimacy and effectiveness.

This paper focuses exclusively on punitive accountability mechanisms – namely, those intended to hold perpetrators criminally accountable for serious international crimes. While acknowledging the broader spectrum of transitional justice tools such as truth-seeking, reparations, and institutional reform, the current emphasis on criminal accountability reflects both the political moment and the pressing risk of selective justice. As transitional justice processes begin to take shape in policy and in practice, it is vital to ensure they serve the long-term goals of truth, justice, and non-recurrence – rather than reinforce impunity or one-sided narratives. Importantly, this focus on criminal accountability does not diminish the need to also pursue non-punitive mechanisms as essential components of a comprehensive transitional justice approach.

Employing a Q&A format, this paper outlines key legal pathways for accountability in Syria, providing stakeholders with essential knowledge to guide the process forward towards inclusive and non-discriminatory justice. It begins by defining transitional justice and focusing on its element of criminal accountability. The analysis then explores suitable pathways to pursue accountability for Syria's most serious crimes, clarifying the legal basis, practical feasibility, and political implications of each route within Syria's dynamic transitional justice context. Specifically, the paper examines the accountability measures that can be pursued within Syria's legal system,<sup>6</sup> the potential role of the International Criminal Court (ICC) and the application of universal jurisdiction in third-country courts – a crucial approach that has already facilitated some measures of justice. Finally, the paper considers the feasibility and role of a special or hybrid court for Syria.

<sup>6</sup> It is important to highlight that any analysis of accountability measures within Syria's legal system should be reviewed and further developed by qualified national legal experts to ensure accuracy and contextual relevance.

## Q1 ✓

## WHAT IS TRANSITIONAL JUSTICE, AND HOW DOES ACCOUNTABILITY SERVE AS ONE OF ITS KEY PILLARS?

Transitional justice refers to a comprehensive set of judicial and non-judicial measures that societies implement to confront a legacy of widespread human rights abuses and violations of IHL. These mechanisms are typically employed during periods of political transition – such as post armed conflict – with the goal of fostering sustainable peace, justice, and reconciliation.

The UN defines transitional justice as:

“The full range of processes and mechanisms associated with a society’s attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice, and achieve reconciliation.”<sup>7</sup>

Transitional justice encompasses several interrelated components, including criminal prosecutions of those responsible for serious crimes; truth-seeking initiatives to uncover and document past abuses; reparations programs for victims; and institutional reforms to rebuild trust in public institutions and prevent future violations.

Unlike conventional justice systems that function within stable legal frameworks, transitional justice operates in environments where institutions may have collapsed, been complicit in abuses, or lack legitimacy. Its aim is to strike a balance between two complementary approaches: retributive justice, which focuses on legal accountability and the punishment of those responsible for serious crimes, and restorative justice, which seeks to repair harm by acknowledging victims’ suffering, promoting healing, and fostering reconciliation within affected communities.<sup>8</sup>

Ensuring accountability for violations of IHL and IHRL – regardless of the perpetrator – is a fundamental requirement for upholding justice and re-establishing the rule of law in post-conflict Syria. Accountability must apply equally to all actors, including State forces, non-State armed groups (NSAGs), and foreign military forces. This principle of impartial justice is essential not only to address the legacy of widespread and systematic abuse but also to lay the legal and moral foundations for a credible, inclusive, and sustainable political transition.<sup>9</sup>

In this context, armed opposition groups that have been implicated in serious violations – including but not limited to torture and ill treatment, extrajudicial killings, enforced disappearance, as well as sexual and gender-based violence<sup>10</sup> – must also be subject to independent investigations and held accountable through appropriate legal mechanisms.

<sup>7</sup> OHCHR: [Transitional justice and human rights](#)

<sup>8</sup> See: International Journal of Peace Studies, Volume 24, Number 1, Summer 2019, [Eroding the Barrier between Peace and Justice: Transitional Justice Mechanisms and Sustainable Peace](#), Jeffery D. Pugh

<sup>9</sup> It is noteworthy that Article 6(5) of Additional Protocol II to the Geneva Conventions establishes an obligation for the authorities in power, at the end of hostilities in a non-international armed conflict, to endeavour to grant the broadest possible amnesty to persons who have participated in the conflict, or who are deprived of their liberty for reasons related to the armed conflict. This obligation explicitly excludes individuals suspected of, accused of, or convicted of war crimes. This rule is established as a norm of customary international law (CIHL, Rule 159).

<sup>10</sup> See, UN General Assembly, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic (12 August 2024) UN Doc A/HRC/57/86.

This includes ensuring that victims of these crimes are provided with the right to truth, justice, and reparations. The selective application of justice or impunity for certain actors undermines the legitimacy of transitional justice efforts and risks perpetuating cycles of violence and mistrust. A comprehensive and victim-centered approach to accountability is therefore indispensable to rebuilding public trust in institutions and fostering long-term national reconciliation.

## Q2 ✓

### WHAT ACCOUNTABILITY MEASURES CAN BE PURSUED WITHIN SYRIA'S LEGAL SYSTEM?

The primary responsibility of States to investigate and prosecute IHL violations is codified in several treaties, including the Geneva Conventions<sup>11</sup>, and recognized as binding obligation under customary law.<sup>12</sup> The Rome Statute underscores the principle of complementarity, affirming that the ICC can only intervene when national authorities are unwilling or unable to genuinely investigate or prosecute these cases, thereby reinforcing the primacy of domestic legal systems in upholding international justice.<sup>13</sup>

Accountability measures within Syria's legal system for international crimes committed during the conflict have been limited due to systemic challenges. Nevertheless, recent political developments and ongoing efforts offer potential – albeit limited – avenues for pursuing justice at the national level.

As noted earlier, Syria's Constitutional Declaration sets out key legal and institutional frameworks, including provisions aimed at safeguarding judicial independence, as stipulated in Article 43. It further affirms the State's commitment to obligations under IHRL. Article 12(2) of the Declaration provides that "[a]ll rights and freedoms stipulated in international human rights treaties, charters and agreements ratified by the Syrian Arab Republic are considered an integral part of this Constitutional Declaration." As a State Party to the International Covenant on Civil and Political Rights (ICCPR), Syria is bound to uphold the principles of non-discrimination and equality before the law, as well as to provide effective remedies for rights violations.<sup>14</sup> However, Decree No. 20, which establishes the Transitional Justice Commission, confines the right to truth, justice, and reparations exclusively to victims of crimes committed by the former government, while disregarding those who have suffered violations at the hands of other parties to the conflict. For comparison, such a selective scope is absent from the mandate of the National Commission for Missing Persons, established by Presidential Decree No. 19.<sup>15</sup>

In practice, this would create an approach that is fundamentally impractical and unjust. While authorities may seek to determine the fate of all victims of enforced disappearance, restricting the rights to justice and reparations solely to those disappeared by the former government creates a

11 See GCs, Common Article 49/50/129/146.

12 See: ICRC Study on Customary International Humanitarian Law (Hereinafter: ICRC Study on CIHL), Rule 158.

13 See Rome Statute of the International Criminal Court (Rome Statute), 17 July 1998, Preamble para. 10, Arts. 1 and 17.

14 ICCPR, art 2 (1) and (3) and art 26.

15 X, Presidency of the Syrian Arab Republic 'Presidential Decree to Form the National Commission for Missing Persons' 17 May 2025 (Reference available in Arabic).

glaring inconsistency. Such a selective framework not only undermines the principles of equality and non-discrimination but also risks alienating large segments of affected communities, thereby impeding genuine reconciliation and accountability. In the absence of a comprehensive transitional justice law, it is therefore imperative that Syrian authorities amend the mandate of the Transitional Justice Commission to ensure the right to truth, justice, and reparations to all victims of crimes, irrespective of the identity of the perpetrators. To ensure accountability that meets international standards, however, Syria's legislative power must undertake comprehensive revisions of its national legislation.

Syria's domestic legal system has historically faced significant obstacles in addressing serious violations of international law. Most notably, Syrian legislation does not contain comprehensive definitions or criminal provisions for core international crimes such as war crimes, crimes against humanity, or genocide. This legislative gap undermines the ability of domestic courts to prosecute perpetrators of such crimes effectively. Furthermore, under the former government, the Syrian judiciary lacked independence and operated under strong executive control, particularly influenced by the security and intelligence apparatus. This situation severely undermined judicial impartiality and credibility, fostering a culture of impunity—especially among State officials and security forces involved in serious human rights violations. As a result, domestic accountability mechanisms have remained largely ineffective in addressing the widespread and systematic crimes committed throughout the conflict. It is imperative that effective measures be implemented to safeguard the independence of the country's judiciary, in accordance with Syria's Constitutional Declaration and the country's obligations under IHRL.

As indicated earlier, a foundational step would be to amend existing legislation to incorporate clear definitions of international crimes, including war crimes, crimes against humanity, and genocide, in accordance with international legal standards such as those outlined in the Rome Statute of the ICC. This would establish a clear legal basis for domestic prosecution of such crimes. In this regard, it is important to acknowledge the principle of non-retroactivity, upheld in both international and Syrian law. Under Article 15 of the ICCPR and Article 22 of the Rome Statute, no one may be held criminally responsible for acts that were not criminal at the time of their commission, unless they were recognized as such under general principles of international law. Similarly, Syrian law affirms the principle of legality, prohibiting retroactive application of criminal laws.<sup>16</sup> However, core international crimes – including genocide, crimes against humanity, and war crimes – have long been recognized as crimes under customary international law, imposing obligations on both individuals and States irrespective of whether these norms have been formally incorporated into domestic legislation.<sup>17</sup> Accordingly, individuals may be held accountable for the commission of these crimes even in the absence of specific national laws criminalizing such conduct at the time of its commission. However, the selective retroactivity allowed under Article 49(2) of the Syrian Constitutional Declaration adopted in March 2025 – limited to crimes by the former government – raises concerns about equality before the law and undermine the impartiality and credibility of justice efforts.

In parallel, the establishment of specialized chambers or courts within the national judiciary – composed of adequately trained and independent judges – could enhance both the capacity and impartiality of domestic courts in handling complex cases involving international crimes.

<sup>16</sup> Article 1 of the Penal Code (issued by Legislative Decree No. 148/1949), Syrian Arab Republic.

<sup>17</sup> ICRC Study on CIHL, Rule 156.



The authorities in Syria may also establish independent commissions to investigate specific incidents.<sup>18</sup> These commissions can serve as crucial mechanisms to establish facts, identify perpetrators, and lay the groundwork for justice and reconciliation. To be effective, such commissions must operate free from political influence, ensuring their findings are credible and trusted by affected communities.

In addition, Syrian authorities should seek to establish effective partnerships with existing mechanisms, such as the IIM, whose core mandate is to collect, consolidate, preserve, and analyze evidence of international crimes committed by all parties to the armed conflict in Syria since March 2011.<sup>19</sup> Other mechanisms include the COI, which was established in 2011 to collect, preserve, and analyze evidence that can support accountability efforts.<sup>20</sup>

Such cooperation would include granting these mechanisms sustained and unrestricted access to protected crime scenes and facilitating their ability to access key documentation, including witness testimony. On this note, it is necessary to recognize ongoing efforts to facilitate the work of these bodies. For instance, in late 2024, the COI was able to access Syrian territory for the first time. Members of the COI visited detention centers run by the former government, such as Saydnaya Military Prison and Military Intelligence Branch 235 (Palestine Branch)—sites long associated with widespread torture and mass death. For the first time, COI investigators could interview survivors in-country, inspect facilities, and examine physical evidence firsthand.<sup>21</sup> This shift marked a turning point, allowing the COI not only to document abuses more effectively but also contribute directly to Syria's transitional justice process through engagement with national actors and institutions.

Potential cooperation between Syrian national courts and the UN bodies like the IIM and the COI could significantly enhance domestic justice efforts by facilitating access to evidence, expertise, and investigative support necessary for the effective prosecution of international crimes.

18 A pertinent example is the [National Independent Committee for Investigating and Uncovering the Facts Surrounding the Events on the Syrian Coast that occurred on 6 March 2025](#). While the initiative reflects a step toward addressing serious violations of international law, upholding the principles of accountability, and demonstrating a commitment to truth and justice, its effectiveness depends on key contextual factors—including a secure environment that allows safe access to affected areas, the availability of reliable evidence, and, critically, the political will to safeguard the commission's independence and act on its findings.

19 UN General Assembly 'Resolution adopted by the General Assembly on 21 December 2016' (11 January 2017) UN Doc A/RES/71/248.

20 UN Human Rights Council 'Resolution adopted by the Human Rights Council at its seventeenth special session' (22 August 2011) UN Doc A/HRC/S-17/2.

21 HRC, [Report of the Independent International Commission of Inquiry on the Syrian Arab Republic](#), A/HRC/58/66, 14 March 2025.

## Q3✓

## WHAT IS THE POTENTIAL ROLE OF THE ICC IN ADDRESSING ACCOUNTABILITY FOR INTERNATIONAL CRIMES COMMITTED IN SYRIA?

The ICC can play a critical role in advancing accountability for international crimes committed in Syria, particularly in the absence of effective national proceedings.

Established under the Rome Statute of 1998, the ICC has jurisdiction over genocide, crimes against humanity, war crimes, and the crime of aggression. The ICC's mandate is governed by the principle of complementarity (Article 17, Rome Statute), which means it may only exercise jurisdiction when national courts are unwilling or unable to prosecute such crimes. Given the lack of credible judicial avenues within Syria – especially concerning crimes committed by powerful State and non-State actors– the ICC could, in principle, step in to fill the accountability gap.

As Syria is not a State Party to the Rome Statute, the ICC currently lacks territorial jurisdiction unless: (1) the UN Security Council refers the situation under Chapter VII of the UN Charter, pursuant to Article 13(b) of the Rome Statute, or (2) Syria voluntarily accepts the Court's jurisdiction through an Article 12 (3) declaration. To date, neither has occurred. A 2014 Security Council referral attempt was vetoed by Russia and China.<sup>22</sup> As of the time of writing, Syria has not submitted a declaration.

Nevertheless, despite current jurisdictional limitations, the ICC may explore pathways to establish jurisdiction over crimes committed in Syria. A key precedent is found in the Myanmar/Bangladesh decision of the ICC's Pre-Trial Chamber confirming its jurisdiction over crimes when part of the criminal conduct takes place on the territory of a State Party.<sup>23</sup> Applying this reasoning to Syria, the forced displacement of Syrians into Jordan, a State Party to the Rome Statute, could establish jurisdiction over the crime of deportation under Article 7(1) (d) of the Statute.<sup>24</sup> The Court may also exercise jurisdiction based on the nationality of alleged perpetrators, where individuals holding the nationality of a State Party to the Rome Statute may fall within the personal jurisdiction of the Court, regardless of where the crime was committed.<sup>25</sup> While this avenue remains largely underutilized in the Syrian context, it presents a legally viable, if limited, route for accountability.

These legal pathways remain narrow in scope and faces significant practical challenges, particularly in conducting effective, independent, and impartial investigations within Syrian territory. In the absence of State consent, coupled with the lack of cooperation from national authorities and ongoing security risks, the ICC encounters substantial obstacles in gathering admissible evidence and establishing individual criminal responsibility for the broader range of crimes committed during the conflict.

Moreover, in a post-conflict setting, the possibility of ICC engagement may increase. In January

<sup>22</sup> See, UN Security Council (22 May 2014) UN Doc S/2014/348

<sup>23</sup> ICC, Press Release, *Judges authorise opening of an investigation into the situation in Bangladesh/Myanmar*, 14 November 2019.

<sup>24</sup> ICC, 'Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute', ICC-RoC46(3)-01/18-1, 09 April 2018; See also: OPINIO JURIS, 'A Pathway to Accountability for Syria? The Broader Implications of the ICC's Findings on Jurisdiction over Cross-Border Crimes', Kate Vigneswaran and Sam Zarifi, 19 September 2018.

<sup>25</sup> Rome Statute, Article 12(2)(b).

2025, ICC Prosecutor Karim Khan visited Damascus to discuss potential avenues for justice.<sup>26</sup> Syria's authorities could issue an Article 12(3) declaration, granting the ICC jurisdiction retroactively over crimes committed during the conflict. Syria could also consider ratifying the Rome Statute and, under Article 11(2), accept the Court's jurisdiction from the onset of the conflict. This approach – similar to Ukraine's use of 12(3) declarations in 2014 and 2015<sup>27</sup> and Libya's acceptance of the ICC jurisdiction over alleged crimes from 2011 to the end of 2027<sup>28</sup> – could demonstrate a renewed commitment to international justice and bolster the legitimacy of transitional authorities. However, while a post-conflict Syrian government could theoretically issue a declaration under Article 12(3) of the Rome Statute to accept the ICC's jurisdiction over crimes committed during the conflict, this pathway may trigger political resistance. Accepting ICC jurisdiction retroactively could expose individuals, including those linked to the current Syrian authorities, to potential international prosecution for alleged involvement in serious crimes. Furthermore, perceptions of selectivity—especially if foreign actors are seen as beyond the Court's reach—may hinder domestic and regional support, echoing concerns raised in other ICC contexts, such as Afghanistan.<sup>29</sup>

It is also important to emphasize that the ICC's focuses on prosecuting individuals who bear the greatest responsibility for the most serious international crimes – typically senior political or military leaders.<sup>30</sup> This approach aligns with transitional justice goals by emphasizing structural accountability and avoiding disproportionate punishment of low-level offenders. However, it may also be perceived as incomplete justice, as it risks leaving numerous direct perpetrators and mid-level commanders outside formal accountability processes. Thus, the ICC's work should be complemented by other accountability mechanisms – such as national prosecutions and universal jurisdiction trials – to ensure a more inclusive and comprehensive justice process.

<sup>26</sup> France 24, [ICC chief prosecutor Karim Khan meets Syria's new leader](#), 17 January 2025.

<sup>27</sup> ICC, Press Release, ['Ukraine accepts ICC jurisdiction over alleged crimes committed since 20 February 2014'](#), 8 September 2015.

<sup>28</sup> ICC, [Libya accepts ICC jurisdiction over alleged crimes from 2011 to the end of 2027](#), Press Release, 15 May 2025.

<sup>29</sup> JURIST, [Taliban rejects ICC jurisdiction, declares 2003 Rome Statute accession void](#), 22 February 2025.

<sup>30</sup> Rome Statute, Preamble and Article 1.

## Q4✓

## WHAT ARE THE OPPORTUNITIES AND CHALLENGES OF USING UNIVERSAL JURISDICTION AS A TOOL FOR ACCOUNTABILITY IN THE SYRIAN CONTEXT?

Universal jurisdiction is a principle of international law that allows a State to prosecute individuals for certain serious crimes under international law – regardless of where the crime was committed, the nationality of the perpetrator or victim, or any other connection to the prosecuting State.<sup>31</sup> It is rooted in the idea that certain crimes are so harmful that they affect the international community as a whole, and that all States are entitled – and even obliged – an interest to ensure they do not go unpunished.

A key international legal basis for universal jurisdiction is found in the preamble of the Rome Statute of the ICC, which affirms that the most serious crimes of concern to the international community must not go unpunished and that States have a duty to exercise criminal jurisdiction over those responsible for international crimes.<sup>32</sup> Additionally, the 1949 Geneva Conventions require States to prosecute or extradite individuals responsible for grave breaches of international humanitarian law, regardless of their nationality.<sup>33</sup> Universal jurisdiction has also been acknowledged in the jurisprudence of various international criminal tribunals.<sup>34</sup>

State practice further affirms the principle's growing relevance. According to the International Committee of the Red Cross (ICRC), at least 50 States have enacted legislation enabling universal jurisdiction over war crimes committed during non-international armed conflicts.<sup>35</sup> Similarly, a 2012 study by Amnesty International found that 147 States had established universal jurisdiction over at least one of the four core international crimes: war crimes, crimes against humanity, genocide, or torture.<sup>36</sup>

In the Syrian context, prior to the transition in December 2024 – where it was not possible to pursue accountability within the domestic legal system – universal jurisdiction has emerged as one of the few viable pathways to pursue justice for serious violations of international law.

31 In practice, the application of universal jurisdiction in these States is often conditioned by specific procedural requirements. For example, under Belgium's 2003 legislative reform to its universal jurisdiction law, authorities may only open investigations into serious international crimes committed abroad if a link to Belgium exists. This connection may be established if the suspect is a Belgian citizen or holds a residence permit. Alternatively, if the suspect is a foreign national, the case may still be admissible if the victim is a Belgian citizen, a recognized refugee residing in Belgium, or a person who has been lawfully and habitually residing in the country for at least three years. See, *Code of Criminal Procedure cited in Universal Jurisdiction: Law and Practice in Belgium* (TRIAL International, May 2022) p. 15

32 Rome Statute, Preamble para 4 & 6.

33 See GCI, art. 49; GCII, art. 50; GCIII, art. 129; and GCIV, art. 146. See also ICRC Study on CIHL, Rule 157 and 158.

34 See for example: ICTY, *Prosecutor v Tadić*, IT-94-1, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, para. 62; *Prosecutor v Furundžija*, IT-95-17/1-T, Judgement, 10 December 1998, para. 156; ICC, *Prosecutor v Ruto and Sang*, Decision on Defence Applications for Judgments of Acquittal, ICC-01/09-01/11-2027-Red-Corr, 5 April 2016, para. 458; European Court of Human Rights, *Jorgic v Germany*, App. No. 74613/01, Judgment, 12 July 2007, para. 69.

35 See ICRC *Explainer: What does international law say about universal jurisdiction for war crimes committed in non-international armed conflicts?*, 30 August 2022, pp. 2-3.

36 See Amnesty International, *Universal Jurisdiction: A Preliminary Survey of Legislation Around the World: 2012 Update*, 9 October 2012, p. 2.

One of the primary advantages of universal jurisdiction in the Syrian context is its capacity to bypass the limitations of international institutions. Syria is not a State Party to the Rome Statute of the ICC, and efforts to refer the situation to the ICC via the UN Security Council have been blocked by vetoes. In this vacuum, some States—particularly in Europe—have stepped in to prosecute suspected perpetrators under their domestic universal jurisdiction laws. Notable examples include Germany, Sweden, and France.

A landmark example is the 2022 conviction of former Syrian intelligence officer Anwar Raslan by the Higher Regional Court in Koblenz, Germany, for crimes against humanity, including torture and murder.<sup>37</sup> This was the first time a court held a former Syrian official accountable for State-sponsored torture, underscoring the practical impact of universal jurisdiction in advancing justice.<sup>38</sup>

Notably, France issued an arrest warrant in 2023 against former President Bashar al-Assad in connection with chemical attacks carried out in 2013.<sup>39</sup> An additional warrant was issued in January 2025 for suspected complicity in war crimes.<sup>40</sup> Civil society organizations have significantly enhanced the capacity of universal jurisdiction prosecutions. Their contributions – ranging from evidence collection and legal analysis to witness support – have enhanced the effectiveness and credibility of universal jurisdiction proceedings.

Nonetheless, significant challenges persist. Political will and legal capacity vary widely among States, and only a limited number—typically those with specialized legal frameworks and prosecutorial expertise—have actively pursued such cases. In addition to procedural requirements,<sup>41</sup> practical obstacles, including the collection, authentication, and admissibility of evidence from a protracted conflict zone, further hinder effective prosecutions. In addition, language barriers, the limited number of attendees in court proceedings, the absence of public records or published judgments, and a perpetrator-centered approach often restrict transparency and victim engagement.<sup>42</sup> Moreover, definitions and elements of international crimes may vary across jurisdictions and do not always fully align with those set out in the Rome Statute. For instance, Germany only recently amended its laws to align the definition of sexual slavery as a crime against humanity and a war crime with the standards of the Rome Statute.<sup>43</sup>

Additionally, and besides issues related to community outreach and witness protection,<sup>44</sup> accountability

37 ECCHR, [Syria trial in Koblenz: Life sentence for Anwar R for crimes against humanity](#), 13 January 2022.

38 Similarly, several European countries have pursued accountability for international crimes committed in Syria through domestic legal systems under universal jurisdiction. See for example: France 24, [France issues arrest warrants for three Syrian security officials over prison torture](#), 5 November 2018. See also: AP, [Swedish court acquits former Syrian army general accused of role in war crimes](#), June 20, 2024.

39 France 24, [“French court upholds warrant for Assad over chemical weapons”](#), 27 June 2024.

40 France 24, [“French investigators issue new arrest warrant for Syria’s Assad”](#), 21 January 2025.

41 Above No 30.

42 Significant steps have been taken to improve victim engagement in these trials. For instance, Germany’s recent reform of the Code of Crimes Against International Law permits courts to allow recordings of proceedings deemed to have ‘outstanding contemporary significance.’ While this significance previously had to be linked to Germany, the reform broadens it to encompass historical relevance for countries affected by these crimes. Furthermore, courts may grant media representatives who do not speak German access to whispered interpretation or the interpretation services ordinarily available to witnesses, plaintiffs, and defendants. See, Hannah El-Hitami [“Trial and error: Germany reforms its law on international crimes”](#) (Justice Info, 8 July 2024).

43 *Opinio Juris*, Isabelle Hassfurther, [“Reform of the International Criminal Law Framework in Germany – Successful Changes and Missed Opportunities: Part I”](#), 13 June 2024.

44 Human Rights Watch, [“Germany: Conviction for State Torture in Syria”](#), 13 January 2022.

under universal jurisdiction has thus far remained selective and limited in scale. Most cases pursued primarily targeted mid- and lower-level perpetrators present in Europe, while high-ranking officials, bearing the greatest responsibility, remain beyond the reach of justice, often benefiting from immunity or residing in jurisdictions unwilling or unable to act.

## Q5 ✓

### TO WHAT EXTENT DOES THE ESTABLISHMENT OF A SPECIAL OR HYBRID TRIBUNAL CONSTITUTE AN EFFECTIVE ACCOUNTABILITY MECHANISM FOR ENSURING ACCOUNTABILITY FOR INTERNATIONAL CRIMES COMMITTED IN SYRIA?

Special and hybrid tribunals are ad hoc judicial bodies established to prosecute individuals responsible for serious violations of international law.

Special tribunals, such as the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), are typically created by the UN and operate independently of national judicial systems. They apply international law and are often based outside the country where the crimes occurred. In contrast, hybrid tribunals, such as the Special Court for Sierra Leone, the Extraordinary Chambers in the Courts of Cambodia (ECCC), and the Special Tribunal for Lebanon (STL), combine international and domestic legal elements. These courts are usually located within the affected country and include both international and national judges, laws, and procedures, promoting local ownership while leveraging international standards.

These tribunals are often established in response to legal and institutional gaps at the national level. For instance, domestic criminal legislation may fail to incorporate or adequately define core international crimes – such as genocide, war crimes, and crimes against humanity – in accordance with international legal standard, or may impose inadequate penalties that do not reflect the gravity of these offenses. In some cases, even where certain international crimes are codified in domestic law, others may be omitted, resulting in a fragmented or insufficient legal framework that undermines effective prosecution and accountability. Furthermore, the national judicial system may lack the requisite expertise, institutional capacity, or procedural mechanisms to effectively investigate and prosecute such complex and grave crimes. In such circumstances, the establishment of a special and hybrid tribunal may serve as an appropriate and effective mechanism to bridge these legal and institutional gaps, thereby ensuring accountability and preventing impunity.

The establishment of a special or hybrid Tribunals to prosecute international crimes committed in Syria could represent a potential avenue for accountability. Such a mechanism might involve a combination of Syrian and international judges and prosecutors. It could also entail the adoption of a new law granting jurisdiction over international crimes while applying Syrian criminal procedure. The creation of such a tribunal would also necessitate a formal agreement between the Syrian government



and the United Nations, potentially through a treaty adopted by the UN General Assembly, to ensure its legitimacy, international cooperation, and compliance with fair trial standards.

Past experiences with similar tribunals, combined with the complex and multi-faceted nature of the Syrian conflict, underscore a number of structural and legal challenges that could significantly undermine the effectiveness of a special or hybrid tribunal. These include the often selective nature of prosecutions, which may give rise to perceptions of victor's justice; the difficulty of ensuring comprehensive accountability in conflicts involving multiple non-State actors and foreign powers; and the limitations imposed by the tribunal's jurisdiction, resources, and reliance on State cooperation. For instance, the ICTR was criticized for its focus on crimes committed by one side of the conflict. The tribunal was also criticized for its high operational costs, inefficiencies, and limited outreach to the Rwandan population.<sup>45</sup> Similarly, the Extraordinary Chambers in the Courts of Cambodia (ECCC) struggled with internal disagreements and encountered political interference, particularly from the Cambodian government, which raised concerns about the tribunal's independence and commitment to comprehensive justice.<sup>46</sup>

In the Syrian context, the multiplicity and diversity of actors involved in the conflict present significant obstacles to ensuring impartial and comprehensive prosecution. A tribunal adopts a similarly selective approach to that of the National Commission on Transitional Justice—by failing to address crimes committed by all parties— and focuses exclusively on crimes committed by the Assad government – will therefore be perceived as politically selective or biased, thereby undermining its legitimacy. Additionally, Syrian authorities need to demonstrate the political will to cooperate and provide access to evidence essential for prosecuting crimes committed by all parties involved, rather than focusing on one side.

Moreover, the involvement of foreign actors could further complicate the tribunal's jurisdictional reach. Efforts to investigate or prosecute such actors could face substantial political resistance, particularly from permanent members of the UN Security Council with veto power.

## CONCLUSION

Achieving accountability for the grave crimes committed in Syria – regardless of the perpetrator – is both a legal and moral imperative essential for a just and sustainable peace. Selective justice risks undermining the legitimacy of transitional justice efforts and perpetuating cycles of violence and mistrust. This paper has outlined the primary legal avenues through which justice can be pursued, providing stakeholders with an understanding of viable options available within Syria and beyond. These range from amending national legislation and utilizing domestic courts to engaging international mechanisms such as the ICC and the exercise of universal jurisdiction by third States. Each pathway presents distinct legal foundations, practical challenges, and political considerations. Additionally, the prospect of a dedicated special or hybrid tribunal remains a promising yet complex solution, demanding sustained political will and international cooperation.

As Syria's transitional justice landscape evolves, stakeholders must remain committed to inclusive, victim-centered approaches that ensure accountability efforts are neither selective nor politicized.

<sup>45</sup> Human Rights Watch, 'Rwanda: Tribunal Risks Supporting 'Victor's Justice'', 1 June 2009.

<sup>46</sup> Human Rights Watch, 'Cambodia: Government Interferes in Khmer Rouge Tribunal', 5 December 2006.



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