

 **ORF SPECIAL REPORT**

AUGUST 2018



The Case Against Assad

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At a protest against Bashar al-Assad, Erbeen, 12 October 2012. | Photo: Shaam News Network/Reuters via Freedom House — Flickr

INTRODUCTION

The Syrian war began as a quest of the people to gain more political and economic rights. Seven years later—as President Bashar Hafez al-Assad scores significant victories in the civil war—governments in the West, independent international bodies and NGOs are building a case against some high-ranking officials of the Assad government for alleged war crimes.

Independent estimates say at least 400,000 people have died in the conflict and roughly half of the country's population have been rendered

homeless. Many of the dead are buried under the debris after shelling by local and Russian forces, or else murdered by the jihadi elements of opposition groups. Thousands have also been allegedly killed while detained in state prisons, upon the orders of the Syrian government.

This report examines these alleged extrajudicial killings in Syria. The piece is based on investigations by international NGOs, including Amnesty International, stories in the mass media, and this author's personal reportage. The aim is to analyse these open-source materials and provide insights that may prove useful for Indian policymakers involved in framing the country's policy on Syria. While the author acknowledges that opposition groups may be equally culpable in some of the crimes, this report focuses on allegations of state-sanctioned torture and murder of Syrian citizens.

Indeed, the US and European governments would like to hold to account the leaders of the current regime in Syria; but how will they do so? This report describes the case against Assad, and the evidence that activists, lawyers and journalists hold against him. It examines the credibility of some of the evidence that has been verified with money from Qatar, a known foe of the Syrian regime and supporter of certain rebel groups. The report discusses the grounds on which the German prosecutor issued an arrest warrant against Syria's air force intelligence chief. It also examines the actions of international systems such as the United Nations, and against this backdrop, the report ponders the role that India can play to ferret out the truth.

THE GRAFFITI THAT CHANGED SYRIA

On 16 February 2011, a group of boys scrawled on the walls of Deraa in South West Syria the words, "*Ejak el door ya Doctor (Your turn Doctor).*" The graffiti was referring to Assad—who trained as an ophthalmologist in his early years—and implied that after the ouster of Zine El Abidine Ben Ali from Tunisia and Hosni Mubarak from Egypt in the Arab uprising, it was Assad's turn to go.

The rebellious act was met with draconian response by the Syrian security officials, who saw in it the hand of jihadi and anti-regime organisations. They feared that such expression of protest might ignite a rebellion and did not bother over the question of whether the graffiti was scribbled by restive Syrians who wanted political gains, or by members of the anti-regime Muslim Brotherhood. They quickly rounded up the teenagers and allegedly tortured them upon the orders of President Assad's cousin, Atef Najib, who was chief of security forces in Deraa.¹

Only a few months later, on 29 April, 13-year-old Hamza al-Khateeb was arrested for participating in protests in Saida, 10 km east of Deraa. After a month in police custody, Hamza was dead, and his body was released to his family. Al-Jazeera, a channel funded by the royal al-Thani family of Qatar, reported on the boy's death, showing photographs of his mutilated body. Before the mainstream media reported on the death, however, a video

showing Hamza's body bearing torture marks and bullet wounds had been anonymously uploaded on YouTube.²

These incidents were widely seen as part of the regime's design to discourage agitation. The state has denied the charges, calling them propaganda being spread by sectarian elements backed by the trio of Saudi Arabia, Qatar and Turkey. Sources in the Indian intelligence agency, Research and Analysis Wing (RAW), and Syrian citizens living in Deraa and other parts of Syria have confirmed to this author the barbarity that accompanied the crackdowns.

In Deraa, excessive force was reportedly used by state forces to quell the opposition. It had the opposite effect, however, catapulting a largely Sunni town into a massive resistance force. In early 2011, thousands marched on the streets, calling for change. The final outcome, though, was not what was envisioned by the protestors, as those who were forced to flee were the ordinary Syrian civilians.

Many members of the Sunni sect who left Deraa and sought refuge in neighbouring countries are afraid of going back. Some fear incarceration because they supported the rebels, but most are afraid that for merely opposing the regime, they will be treated as traitors and consequently punished.³

Years after the first case of brutality in the war by President Assad's government came to light from Deraa, the city is back in the regime's control. In its trail is a host of evidence of illegal incarcerations and executions reportedly committed by state forces.

A STACK OF TESTIMONIES AND DOCUMENTS

Almost six million Syrians are today scattered in neighbouring countries and in Europe, crossing oceans and walking treacherous routes to flee the violence in their country of birth. Turkey, for one, is host to three million Syrian refugees, Lebanon some 1-1.5 million; 700,000 are in Jordan, and almost one million are in Germany. As activists spoke to them, many opened up about their time in prisons.⁴ Over the last year and a half that this author has covered the region, many Syrians have alleged that either they or someone they know have been detained. However, fear of the regime runs deep and few are willing to give their names or testify. Only those who feel they are now safe in their new home country have managed to talk at length with activists and journalists covering the conflict.

Over the period 2015-16, the international human rights group, Amnesty International (AI), investigated the patterns and scale of abuse at the Saydnaya prison. Located some 30 km from Damascus, off the main highway linking major Syrian cities, Saydnaya is known as the Syrian government's worst torture chambers. AI released its report, "Human slaughterhouse: Mass hangings and extermination at Saydnaya prison," in 2017. They interviewed 84 individuals who made damning allegations against Syria's state forces. In part, the report says the AI team spoke with "31 men who were detained at Saydnaya, four prison officials or guards who previously worked at Saydnaya,

three former Syrian judges, three doctors who worked at Tishreen Military Hospital, four Syrian lawyers, 17 international and national experts on detention in Syria and 22 family members of people who were or still are detained at Saydnaya.”⁵ The report provides detailed testimonies that reveal the torture of thousands at Saydnaya; many of them have now been executed.

According to AI’s account, the Saydnaya compound has two buildings—a white one and a red—with a holding capacity of 10,000 to 20,000 prisoners at a given time. The victims are tortured physically and mentally for months and then taken to the Military Field Court in the al-Qaboun area in Damascus for their so-called trials, which AI says are nothing more than a sham that hardly lasts for a few minutes. On the day of the execution, the victims are hanged in a basement in the white building. The bodies are then loaded onto trucks and minibuses and transported to Tishreen military hospital for registration, where the cause of death is usually declared as “heart attack” or “respiratory failure.” They are then buried in mass graves on military land near Damascus, in the village Najha in the town of Qatana.⁶

AI estimates that in the period between 2011 and 2015, anywhere between 5,000 to 13,000 Syrians were killed by state forces. Many were executed and tortured while some were released, in either amnesty declared by presidential decrees or prisoner swaps. The Human Rights Watch (HRW), for its part, gives a higher figure of 17,000 executions over the same period.

AI, in their same report describes the “torture architecture” at Saydnaya. Their confessions are secured at detention centres run by the various intelligence branches of the government. That is where they are tortured and forced to sign a confession and then later transported to Saydnaya. The guards beat up the newcomers and call it a “welcome party,” said Amnesty. The prisoners are thrashed for even whispering a single word. The guards regularly deny the prisoners medical aid, proper clothing and food. Most of the detainees who spoke to Amnesty were desperate to end their suffering and wished for death instead.⁷

In addition to AI, valuable evidence has been shared by a Syrian defector, known in media reports as “Caesar.” He/she photographed the corpses of some 11,000 Syrians at the Tishreen military hospital, reportedly taken from detention facilities and prisons.⁸ The Syrian government has dismissed the photographs as “a lie” and suggested they were not taken in Syria at all. They have also hinted at a Qatari conspiracy, since the authentication of Caesar’s photographs had been funded by Qatar. Those forensic experts and prosecutors, however, were internationally acclaimed professionals. They have given a stamp of authenticity to Caesar’s photographs. The Human Rights Watch has also examined the photographs and vouched that they are real. In March 2017, Caesar gave an interview to CNN’s Christiane Amanpour while his face was not shown. He appealed to the US to confront Assad. Caesar said, “You cannot give back the lives to those that have lost it. But we ask you, out of your humanity, to stop the machinery of death.”⁹

An independent body of investigators has also been working since 2011

to collect evidence on Assad's alleged war crimes. The work of this investigating team, called the Commission for International Justice and Accountability (CIJA), is being funded mainly by the European Union (EU). In one of its first efforts to establish the chain of command, CIJA collaborated with a Syrian investigator—a lawyer by profession—who physically transported hundreds of thousands of pages of official documents purportedly linking the president and other officials in the high echelons of the Syrian government, to war crimes. After passing innumerable checkpoints, then through friendly governments, this lawyer delivered the papers to CIJA's office in a secret location in a European country.¹⁰

Formed by Bill Wiley, a Canadian and a former war crimes investigator, CIJA found itself dealing with a lot of evidence, available openly but unauthenticated. At the start, CIJA taught Syrians on what to look out for and how to obtain it. Today, CIJA comprises 140 personnel made up of lawyers, investigators and translators, all looking for and putting together the pieces of evidence.¹¹

CIJA is sitting on material that is expected to play a significant role when, and if, an international tribunal is set up to bring the high-ranking officials of the Syrian government to trial.

EVIDENCE COLLECTED: WHAT NEXT?

The forum for trying alleged war crimes such as those committed in Syria is the International Criminal Court or ICC, an international tribunal that sits in The Hague. An internal or domestic investigation is not the first resort, as those who are accused are the very same people supposed to govern the nation, and the institutions are perceived to be subservient to the ruling dispensation. However, the path of the ICC cannot be pursued at this juncture: Russia and China, both supporters of Assad, have wielded their veto power at the United Nations Security Council to ensure that these cases against the Syrian president do not reach the ICC. Blocked at the UNSC, countries supporting the case against Assad and his people passed Resolution 71/248 at the UN General Assembly and established the International, Independent and Impartial Mechanism (IIIM) to hold the Syrian government to account from crimes committed since March 2011, and those (allegedly) still underway.¹² Passed in December 2016, it was supported by 105 countries at the UNGA; 52 countries abstained and 15 voted against it. The mandate of the resolution is to “collect, consolidate, preserve and analyze evidence pertaining to violations and abuses of human rights and humanitarian law.”¹³ It will be headed by Catherine Marchi-Uhel, a former judge from France. Marchi-Uhel has acknowledged the failure of the UNSC to come to an agreement to have the ICC handle the alleged war crimes.¹⁴ At the same time, the IIIM head feels confident, as she regards the mechanism to be unique in its aim to deliver a quasi-prosecutorial function. So far, governments have contributed over US\$7 million to the IIIM.¹⁵ The mechanism is working along with the UN's Commission of Inquiry (CoI) on Syria as well as independent bodies such as

the CIJA.

Moreover, certain governments in Europe, such as Sweden and Germany have begun to exercise the concept of “universal jurisdiction” to prosecute war crimes in Syria. A German court has already received complaints against 26 high-ranking Syrian officials for alleged war crimes. The force behind the case is Syrian activist-lawyer, Anwar al-Bunni, who was imprisoned for years before the uprising began for seeking political reforms; al-Bunni now lives in Berlin. He is representing four Syrians currently in Germany and is working to file similar cases in Norway and Sweden. In Germany, Bunni is being supported by Berlin-based European Commission for Constitution and Human Rights (ECCHR).

In a recent turning-point, a German federal prosecutor has issued a warrant of arrest against Syria’s Air Force Intelligence Chief, Jamil Hassan, for ordering his prison soldiers to torture detainees. This development has been welcomed by anti-Assad activists, who hope that when Jamil Hassan travels to Europe or a friendly country, he will be arrested and tried. At the same time, there are sceptics who think the probability of this occurrence is extremely low, suggesting that the warrant of arrest is merely symbolic. Patrick Kroker, a lawyer with the ECCHR told this author that the idea of the warrant is to “eventually” arrest and try General Hassan. “No one expects it to happen tomorrow,” he said. “But one day it might. We need to be ready.”

TESTING THE CREDIBILITY OF THE EVIDENCE

Caesar’s Photographs

“Caesar” himself did not see any executions as they happened. He was the military photographer and took pictures when assigned. Presumably, it was a bureaucratic practise to bring the bodies of those who die under state custody to Tishreen military hospital. There, they were catalogued. Caesar was simply doing his job until he suspected foul play. He saw similar torture marks on a number of bodies and got suspicious. He began to keep a record: every corpse had a number and upon the doctor’s checking of the body, another number was assigned. Investigators say that these numbers will be crucial in establishing the chain of command and proving that the executions did take place in prisons and detention facilities in Syria and not somewhere else as suggested by the Syrian government.

Are the photographs digitally manipulated? Stephen Cole, a digital imaging expert, confirmed to American news network CNN that they were not. David Crane, the first chief prosecutor of the Special Court for Sierra Leone, says Caesar’s pictures will be crucial for any future international tribunal when the cases are finally tried.¹⁶

There is a catch, however. Both Cole and Crane were hired by Carter-Ruck, a British law firm that was paid for the deed by the Government of Qatar. When CNN revealed the images and their report, they too were informed by a Qatari covert official to connect with Carter-Ruck.

Indeed, Qatar has supported several rebel factions in Syria and has been actively involved in trying to bring down Bashar al-Assad. Therefore, the question is: Can any investigation funded by them be credible?. Other experts this author has spoken to say that the evidence must be analysed on their own merit and not based on who has funded their authentication.

CIJA Documents

The documents gathered by CIJA have not been released in the public domain. They will only be accepted as evidence if the lawyers can prove they are real and that the people who signed on the orders were indeed high-ranking Syrian officials.

Oral Testimonies

Syrians who are being given protection in the countries sheltering them are more likely to testify in a court of law. However, those languishing in camps and who manage to speak to journalists and activists may not come forward in court.

While a lot of the personal accounts do present a picture of abuse of power on the part of the Syrian state forces, some of those who are opposing the regime have also been found to be either exaggerating charges or else fabricating them altogether. The war crimes inspectors would have to ensure that their stories are double-checked.

The ongoing case in Germany, for example, is largely based on testimonies of people who were allegedly tortured. Anwar al-Bunni, the Syrian lawyer in Berlin, says they have enough evidence to get warrants of arrest issued against Assad and his men. He says the issuance of the warrant by the top German court is in itself indicative of the credibility of the evidence.


INDIA'S ROLE

Indian officials who are familiar with India's dealings with West Asia have acknowledged in off-the-record conversations with this author that the Syrian regime did indeed deal with the uprising with an iron fist. India continues to support President Assad's government because of the belief that he is facing a resistance that, although rooted in popular discontent, is backed by Islamist jihadis and sectarian forces.

India prefers to keep the Syrian state intact and functioning, rather than have it spiral into total chaos as has happened in Iraq and Libya. Yet, as a major democratic power—and one that purports to regard as valuable its moral compass—India must dig deeper and play a larger role in ascertaining the truth behind the allegations against Assad and establishing the validity of the evidence that have been collected so far. A case can be made for a commission of investigators from various countries—and not merely from

those against the Syrian regime—to look into Caesar’s photographs, CIJA’s documents and ECCHR’s investigations. With its missions in Syria, Turkey, Lebanon and Jordan, India can also conduct independent enquiries in the refugee camps in those countries. This will allow probers to collate the accounts of Syrians themselves who—in this author’s experience—could reveal stories of the extent of the Assad government’s excesses, if indeed there are. India can also seek access to Saydnaya prison and areas in Najha and Qatana where, as AI alleges, those executed have been buried.

Narratives and counter-narratives have blurred the truth in Syria. The world opinion is divided as most Western powers oppose Assad, while states such as China, India and Russia continue to support him. With its democratic tradition and strong institutions, India can play the role of an honest arbiter. Perhaps among the few countries to realise that there are no absolute heroic sides in the Syrian war, India must actively engage in the exercise to determine the truth.

Preferring to walk the middle path in its foreign policy, India must use in a more productive manner both its proximity to the Assad government and its global stature as a country determined to deliver on human rights. It must get involved, and not simply watch the events unfold from the side-lines. 

ABOUT THE AUTHOR

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ENDNOTES

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