

# Designing for Context: Pragmatic Transitional Justice and the Independent Institution on Missing Persons on the Syrian Arab Republic

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The global project of transitional justice (TJ) assumes that states are partners in justice processes. Yet, the TJ framework has been increasingly promoted in contexts of authoritarianism and ongoing conflict, where political actors are often hostile to justice initiatives. TJ scholarship has noted the expansion of the field to these contexts and is exploring how this contextual hostility to justice is incorporated into specific TJ processes. This article contributes to this literature by studying the Independent Institution on Missing Persons on the Syrian Arab Republic (IIMP), created in 2023, before the fall of the Assad regime, when the prospects of a political transition were far from certain. It demonstrates that the tension between state hostility and a demand for justice was central to the development of the IIMP and argues that creating the IIMP became a viable policy option once the temporalities and functional possibilities of the TJ catalog became pragmatically separated. The solution was created in contrast to the idealism that permeates the field's grand theories of change. The article explores how contextualization and legalization contributed to the conditions of possibility for the IIMP, and reflects on the dilemma of contextualizing TJ.

Le projet mondial de justice transitionnelle (JT) suppose que les États sont des partenaires dans les processus de justice. Pourtant, le cadre de la JT a fait l'objet d'une promotion croissante dans des contextes d'autoritarisme et de conflit, dans lesquels les acteurs politiques se montrent souvent hostiles aux initiatives de justice. La recherche sur la JT a pris note de l'élargissement du domaine dans ces contextes et étudie l'incorporation de cette hostilité contextuelle à la justice dans des processus spécifiques de JT. Cet article contribue à cette littérature en étudiant l'institution indépendante des personnes disparues en Syrie (IIPD), créée en 2023, avant la chute du régime de Bachar el-Assad, quand rien n'était moins certain qu'une transition politique. Il démontre que la tension entre l'hostilité étatique et une demande de justice se trouvait au cœur de la création de l'IIPD. Celle-ci est devenue, selon nous, une option politique viable une fois que les temporalités et les possibilités fonctionnelles du catalogue de la JT se sont séparées sur le plan pragmatique. La solution a été créée par opposition à l'idéalisme omniprésent dans les grandes théories du changement de la discipline. L'article examine la contribution de la contextualisation et de la légalisation aux conditions de possibilité de l'IIPD et propose une réflexion sur le dilemme de la contextualisation de la JT.

El proyecto global de justicia transicional (JT) supone que los Estados son socios en los procesos de justicia. Sin embargo, el marco de la JT se ha promovido cada vez más en contextos de autoritarismo y de conflictos en curso, donde los actores políticos, a menudo, son hostiles a las iniciativas de justicia. Los académicos del campo de la JT han notado la expansión de su campo a estos contextos y están analizando de qué manera esta hostilidad contextual hacia la justicia se incorpora a procesos específicos de la JT. Este artículo contribuye a esta literatura debido a que estudia la Institución Independiente sobre Personas Desaparecidas (IIMP, por sus siglas en inglés) en la República Árabe Siria. Esta institución fue creada en 2023, antes de la caída del régimen de Assad, cuando las perspectivas de una transición política estaban lejos de ser seguras. El artículo demuestra que la tensión entre la hostilidad estatal y la demanda de justicia fue de vital importancia para el desarrollo de la IIMP y argumenta que la creación de la IIMP se convirtió en una opción política viable una vez que las temporalidades y posibilidades funcionales del catálogo de la JT se separaron pragmáticamente. Esta solución fue creada en contraste con el idealismo que impregna las grandes teorías del cambio que existen en este campo. El artículo estudia las formas cómo la contextualización y la legalización contribuyeron a las condiciones que posibilitaron la creación de la IIMP y reflexiona sobre el dilema de contextualizar la JT.

## Introduction

In Syria, the Assad regime's state terror and violent repression are well known and it has long been clear that any justice for its crimes has to be international. But what can transitional justice (TJ) look like in such a hostile context? This article analyses the creation of the Independent Institution on Missing Persons on the Syrian Arab Republic (IIMP) and demonstrates how it represents a pragmatic approach to TJ. Pragmatic TJ is a variation of the global project of TJ (Nagy 2008), a consolidated catalog of tools aiming idealistically to help societies "come to terms with a legacy of largescale past abuses, in order to ensure accountability, serve justice

and achieve reconciliation" (UN Secretary-General 2004, 4). This catalog covers truth-seeking, criminal justice, reparations, and guarantees of non-recurrence, four mechanisms for justice in transition (Gissel 2022). These tools are based on the justice imaginaries and policy choices of the paradigmatic liberal transitions of the 1980s and 1990s, in which states were willing stakeholders and interested partners in TJ (Gissel 2017, Destrooper et al. 2023a). This catalog, however, has been increasingly promoted in contexts of authoritarianism, ongoing conflict, or weak post-conflict settings where states are unwilling, hostile, or unreliable actors in justice processes (Destrooper et al. 2023a). TJ scholar-

ship has noted this expansion of the field (Hansen 2014; Destrooper et al. 2023b) and even made normative claims about the appropriateness of TJ in situations of ongoing conflict (Ambos 2009; Sarkin 2016). It is now beginning to theorize the tension between the assumptions of the TJ catalog and its application to hostile contexts (Hansen 2021; Quinn 2021; Logo 2022; Herremans and Bellintani 2023; Winter 2023).

This article contributes to this literature by investigating the coming into being of the IIMP, a pragmatic international response to the call for justice in a hostile context. The IIMP was established in July 2023 by the United Nations General Assembly (UNGA) to support Syrian families to find their missing relatives<sup>1</sup>. It is based on the right to know and follows a long tradition of truth-based TJ institutions inaugurated with Argentina's National Commission on the Disappearance of Persons. The IIMP was created in a context of hostility to justice: The Assad regime had arbitrary detentions and enforced disappearances among its main strategies of repression and vehemently opposed international justice.

The tension between the TJ catalog and the authoritarian context also explains the puzzling choice of TJ tool. By establishing the IIMP, the international community settled on a policy solution that was inherently limited by the context it aimed to address. Searching for the missing in Syria would require not only access to mass graves and a safe channel for Syrians to report and obtain information but also access to places of detention and ongoing human rights violations. It would require pressuring conflict parties to release prisoners, and if death was ascertained, to mediate the return of remains. These tasks require state cooperation and access to the Syrian territory, both of which the Assad regime was unwilling to grant. This lack of access was therefore anticipated by IIMP proponents (COI 2022, 7, and personal communications).

Based on a process tracing analysis of the IIMP's creation, this article argues that the IIMP was the outcome of a pragmatic problem formulation and policy design, needing to make the IIMP viable in the face of a hostile context of operation. In the process of advocating and designing the IIMP, its proponents distilled the search for the missing into two temporalities: one based on the short term and what was possible to do despite the issues of access and authoritarianism, and one based on the long term and what could become possible if the authoritarian context was to change, "justice after Assad." In this sense, while the TJ catalog offers a range of options for addressing different kinds of injustices, an international institution for the missing could be presented as a viable option not because it addressed the full range of expectations associated with TJ, but because it addressed more narrow, feasible goals. In this process, the TJ catalog and international law were deployed to both illuminate the possibilities of addressing the issue of the missing and to limit the controversies among justice advocates about the IIMP proposal. Both the limitations of the context and the possibilities of the TJ catalog shaped the possibility of justice for Syria.

This article first demonstrates the anchoring of the TJ catalog in international law and explores how it is enabling justice aspirations and policy design. It then introduces process tracing as a methodology appropriate to outcome-centric lines of inquiry. Next, the article periodizes the devel-

opment of the IIMP around three phases in which the issue of the missing incrementally moves from a broadly defined justice aspiration paired with a prioritization of accountability to a concrete proposal for an international truth-based mechanism attuned to a context hostile to its goals. Finally, the article reflects on the challenges of contextualizing TJ and discusses the potential of pragmatism for justice efforts in hostile contexts.

### Between Morality and Technique: Law and the TJ Catalog

The TJ catalog has been anchored in international law and the language of rights, particularly human rights. The four tools that have come to constitute the TJ standard are directly associated with the rights to justice, truth, reparations, and non-repetition. These rights were formalized in the Joinet/Orentlicher principles (1997/2005) commissioned by ECOSOC's Human Rights Committee and in several hard and soft law instruments (Gissel 2022). The right to truth is anchored in the Basic Principles and Guidelines on the Reparation of Victims of Gross Human Rights Violations (2005), the Convention for the Protection of all Persons from Enforced Disappearance (2010), and resolutions by the UN Human Rights Council (Sisson 2010). The issue of enforced disappearances, which is one of the instances usually covered by the right to truth, is further entrenched in at least 216 cases of jurisprudence and over 100 legal instruments and sources of soft law (European Human Rights Advocacy Centre 2024). These instruments offer a legalized connection between instances of harm and the TJ catalog as a source of remedies.

This anchoring in international law has contributed to a predominantly legal approach to TJ, whereby law is seen as an instrument for transitioning societies (Teitel 2000). This is not to say that TJ is reduced to the application of laws, but that, as an instrument, law lends its attributes to how transitions are envisioned and evaluated (Turner 2013). In this sense, the pathway between law, the TJ catalog, and concrete policies is often facilitated by the practices of the legal community, that is, the organized patterns of activities that this community recognizes as the proper way of exercising its function (Pouliot 2014).

Legal practice has a markedly technical self-image (Riles 2011). Central for legal practice is the resolution of conflict through the production and assessment of claims and counterclaims, whereby facts are made meaningful by associating them with legal text and documents rather than with context (Riles 2011). By making events, claims, and conflicts "fit in larger conceptual wholes" (Koskeniemmi 2018, 28), the law places limits "on social, political, and analytical relations alike" (Riles 2011, 56). This reduces the perceptions of the complexity of these events, claims, and conflicts (Kang 2018). The law is seen as a neutral tool, independent of its users and their purposes—a mere technical instrument for problem-solving (Riles 2011). In this sense, by turning social problems into legal problems, law is often used to replace political concerns with a discussion of responsibilities and entitlements (Scheingold 1974).

TJ scholarship has already noted the role of law in the constitution and theorization of the field (Bell 2009; Turner 2013). An influential perspective is that of legalism (McEvoy 2007), the idea that moral conduct can be defined as rule-following and that the law is superior to politics as a form of solving conflict (Shklar 1971). From this perspective, virtue cannot be found in the "dirty business" (Kennedy 2004)

<sup>1</sup>United Nations General Assembly, Resolution 77A, "Independent Institution on Missing Persons in the Syrian Arab Republic," A/77/L.79 (June 29, 2023), <https://digitallibrary.un.org/record/4013906?ln=fr>.

and power games of politics (Kang 2018), but rather in law (Scheingold 1974). Indeed, the legalization of TJ was a strategy to insulate the nascent field from the vicissitudes of politics (Orentlicher 2007). While the ideological register of law is based on its claims of moralization and depoliticization (Shklar 1971), framing justice issues as legal issues does not do away with their political dimensions. One of these dimensions is a politics of knowledge that defines what counts as relevant knowledge and which knowledge should be acted upon (Jones and Lühe 2021).

This politics of knowledge is mediated by the expertise of what has been known as the TJ “industry” (Subotić 2012), which has routinized activities such as capacity building, trainings, consultations, and the writing of reports and guidelines. These practices constitute communicative routines by which the TJ catalog is shared, learned, and normalized as an appropriate tool for dealing with the legacies of mass atrocities. They create a culture of expertise, in which the very skills required to produce these knowledge practices are shared and reproduced through apprenticeship rather than formal education (Riles 2011). In this sense, even though scholars associate lawyers with the consolidation of contemporary understandings of TJ (Bell 2009; Vinjamuri 2010; Gissel 2017; Sharp 2018), it is worth noting that TJ knowledge practices are fostered by legal experts and laypeople alike.

Knowledge practices in TJ draw extensively from past experiences, which are repackaged as lessons learned, best practices, and things to avoid (Subotić 2012; Gissel forthcoming). Elements of particular justice processes are separated from their complex contexts and attached to often reductionist and normative claims of success or failure. These decontextualized pieces of knowledge are used to inspire and evaluate solutions. By doing so, they add a sense of possibility to what might be seen as generic and lifeless ideas (Hull 2005). Even if the codification of truth and justice into rights may not necessarily reduce the overall level of uncertainty about the meaning of these concepts, knowledge from TJ experiences may. Thus, it is not only international law that stabilizes the TJ catalog, but also knowledge and ideas from prior TJ experiences that add a sense of possibility to the realization of legalized objectives.

Early TJ literature contrasted legalism with a pragmatic view of TJ measures (McAuliffe 2013). Legalism was associated with a logic of appropriateness based on promoting universal standards of justice, whereby tribunals should not be sacrificed in the name of other political goals (Vinjamuri and Snyder 2004). The distinction between pragmatism and legalism paralleled the truth versus justice debate, which pitted the moral and transformative imperatives of truth commissions against those of trials (Roht-Arriaza 2006). This debate emerged with the early TJ experiences in Latin America and South Africa, where perpetrators retained positions of power in and after the transition. The fear that aggressive pursuits of accountability could turn transitional actors into spoilers motivated a pragmatic choice of truth-based institutions often paired with amnesties. The field of TJ has since recognized the complementarity of truth and justice. In fact, proponents of truth have since theorized how truth-telling mechanisms support the liberalizing and reconciliatory goals of TJ (Roht-Arriaza 2006). What was once seen as a pragmatic mechanism in TJ has become a central element of a consolidated model.

The interplay between international law and the TJ catalog is useful for understanding how the IIMP became the international response to the issue of the missing in Syria. From the start of the Syrian revolution, international law

has been the lens through which both international and Syrian justice proponents saw the production of violence and injustice in Syria. It contributed to assembling and sustaining a community in which the language of rights and legal expertise was central to the mobilization of resources, attention, and political will. Moreover, these tools are also strategically used in the process of framing the IIMP as a context appropriate policy. In this sense, the TJ catalog is seen as a tool in the “assemblage of discourses, institutions, capital flows, technologies, practices, and people devoted to providing redress for mass human rights violations and enabling a transformation of a society from this violent past to a better future” (Hinton 2018, 6). In the Syrian context, this assemblage includes citizen journalists documenting human rights violations inside Syria, diaspora communities and their justice advocacy associations, diplomats, UN civil servants and institutions, lawyers, foreign courts, and the flows of documents, knowledges, resources, authority, and legitimacy that mediate their interactions. This approach does not assume homogeneity or consensus among these diverse actors. In fact, different actors advance different justice priorities in this system, sometimes in competition with each other, in the hope to spark some form of response to their demands. Their justice agenda comprises a collection of unsettled priorities and demands, both pragmatic and idealistic. Before moving to how the IIMP emerged and consolidated as a policy response in this assemblage, it is useful to clarify the study’s methods of analysis.

## Methods

The article seeks to understand an outcome, the establishment of the IIMP. Process tracing is a suitable and useful method for analyses with an outcome-centric purpose. Process tracing is an umbrella term for a family of tools with different conventions and standards of proof (Norman 2021), but it generally pays careful attention to time, sequencing, and process description (Collier 2011). This article is informed by a chronology of the IIMP, from the publication of its terms of reference in 2024 to its earliest mention in the post-2011 uprising. It considers the uprising to be a turning point in the formation of the transnational Syrian justice system. This chronology was contextualized by the conversations, debates, and practices surrounding a general justice agenda for Syria, including the issue of the missing. The contextualization enabled the identification of patterns and dynamics that were leveraged analytically to periodize the IIMP’s coming into being. The periodization serves to highlight how the dynamics emerging in one period influence subsequent ones (Langley 1999).

While data collection for process tracing tends to be purposive (Tansey 2007), the study took an expansive approach to identify critiques and put into perspective different narratives about the creation of the IIMP. Indeed, institutional contexts may provide incentives for actors to either inflate or downplay their influence over a process (Tansey 2007), which requires an attention to data diversity to develop a more parsimonious understanding of the IIMP creation. The present study analyses 180 documents from 2011 to 2024, including resolutions, reports, and statements from international organizations and Syrian civil society, as well as data from twenty-seven semi-structured interviews with activists, international civil servants, and experts associated with justice efforts for Syria. It has coded the data inductively using *Nvivo*. Conducted in 2023 and 2024, interviewees are anonymized to protect their identities. The analysis was also informed by observation notes from events, webinars, and



briefings organized either by civil society or international organizations.

The article refers to Syrian NGOs as a group, but it does not assume their homogeneity. When portrayed as a group, the goal is to highlight patterns in their practices; when specificity is required, NGOs are named. There is a separation between the NGOs formed 2011–2015 and the victims, survivors, and families' associations formed 2016–2020. This distinction is useful for understanding the different roles they played in the efforts leading to the IIMP establishment. A choice has been made to refer to them generally as families' associations, as they are primarily formed by the relatives of the missing. This is for brevity and to respect that in this diverse group some activists prefer—or resist—the label of victims or survivors, seeing them as politically loaded categories.

### The Development of the IIMP

#### *Detention, Authoritarianism, and Activism in Syria before the 2011 Uprising*

This article traces the conditions for the creation of the IIMP to 2011, with the start of the Syrian uprising and the formation of a transnational justice system. However, it is important to note that both the issue of the missing and activism in Syria have longer histories. The development of the system of imprisonment and repression in Syria stretches to colonial times, with some of the most infamous prisons in Syria having been created by Ottoman and French colonial rulers (Baker and Üngör 2023). This system was consolidated in the successive democratic period (1946–1963) and authoritarian period inaugurated by the Baath Party and Hafez al-Assad (Baker and Üngör 2023). Political and human rights activism also have a longer history in Syria, as demonstrated by the Damascus Spring of 2001, in which the issue of detention was a central topic. As the former political leader and left-wing intellectual, Riad Türk, stated, “fear has become an integral and inherent part of social and political life in our country” (2001). As a path forward, he stressed the need for “redressing grievances,” “seeking truth and justice,” and “settling on the principle of national reconciliation” (Türk 2001). The Damascus Spring was short lived, and Türk went on to be detained and exiled.

Many of the activists who became prominent in the period after 2011 have a personal history not only with the Damascus Spring but also with the issue of detention predating the 2011 uprising. By starting the story of the IIMP in 2011, this article does not deny that older legacies of detention occupy a central space in Syrian revolutionary and justice aspirations. Yet, the scale of the 2011 uprising, the unprecedented levels of arbitrary detention and disappearances (Baker and Üngör 2023), alongside many other dynamics of injustice, displacement, and international involvement offer a better starting point to understand contemporary dynamics of justice efforts for Syria.

#### *2011–2015: International Law and the Syrian Transnational Justice Assemblage*

While the IIMP was formally established in 2023, the conditions for its emergence as a policy proposal are rooted in the knowledge practices of a Syrian transnational justice assemblage that started to form between 2011 and 2015. This assemblage had international law as its favored frame of reference both in the Syrian civil society and in the interna-

tional human rights system that became seized of the situation in Syria. It is in this setting that justice demands have been advanced and policy responses produced. Therefore, understanding the legalistic roots of this assemblage is necessary to understand the conditions for advocating the IIMP as a remedy for the issue of missing persons in Syria.

The revolutionary moment that started in 2011 and its impetus of civil and political effervescence created a window of opportunity in which a nearly absent Syrian civil society could flourish, including through the formation of NGOs (Al-Om 2018).<sup>2</sup> Most of these organizations were founded and staffed by lawyers, and they have been active in diffusing international law and TJ knowledge within the Syrian civil society. Moreover, they have acted as intermediaries between the emerging grassroots documentation of violence and international actors that could not access the country to document by themselves (Stokke and Wiebelhaus-Brahm 2019). Their legal expertise was essential for this connection, as they could ensure that local documentation was up to international standards (Aboueldahab 2018). These lawyers became important links between the production of knowledge about injustice in Syria and international actors pushing for accountability, such as the Friends of Syria, a coalition of Western states opposing Assad, NGOs such as PAX, Human Rights Watch, Amnesty, No Peace Without Justice, and the ICTJ, the Office of the High Commissioner for Human Rights (OHCHR), and the then recently formed United Nations Independent International Commission of Inquiry on the Syrian Arab Republic (COI). These documentation practices have been central to the reporting of atrocities in Syria to international audiences by both the NGOs and the international organizations.

These connections also formed a platform for developing claims for redress. Legal experts assumed the role of not only training the emerging Syrian civil society in the language of international law and TJ but also of writing guides for a future TJ process in Syria (The Day After 2012; Dawlaty 2014). Beyond the civil society, the COI and the OHCHR were also proponents of justice as a remedy for the unfolding violence in Syria, with very early on calls for accountability to end impunity, referrals to the ICC, and reparations for victims (COI 2011; OHCHR 2012). These practices contributed to developing a knowledge base in the Syrian justice assemblage that normalized not only international law as its language but also TJ knowledge as its natural complement.

Already then there were signs that the Syrian context would not welcome justice initiatives, as demonstrated not only by its growing violence, but also by its resistance to international monitoring mechanisms. The COI notes already in its first report the lack of access to Syria, a challenge that it has repeatedly faced ever since. Despite these signs, there was an expectation among justice advocates that a liberal transition in Syria was not only possible but upcoming. In fact, as an interviewee from the Syrian civil society puts it, “in 2012, everyone was so sure that Assad would fall and then we would have this super supportive new authority doing everything of transitional justice.”<sup>3</sup> While this hope was associated with an openness to the different possibilities offered by the TJ catalog (Dawlaty 2014), public discourse favored account-

<sup>2</sup>While some of these organizations had been operating since the early 2000s, such as the Syrian Center for Media and Freedom of Expression and the Syrian Legal Studies Center, many others were formed in this period, such as the Syria Network for Human Rights, the Syrian Legal Development Program, the Syria Justice and Accountability Center, the Syrian League for Citizenship, The Day After, Dawlaty, the Syrian Archive, and the Violations and Documentation Center.

<sup>3</sup>Interviewee 1. Interview with the author 05/2023.

ability, based on the idea that ending impunity could deter further violations.

This priority to accountability also influenced the issue of the missing. In a statement delivered at a Human Rights Council meeting, Navanethem Pillay, former High Commissioner for Human Rights, demonstrated a sense of possibility that the Syrian regime may adopt some aspects of the TJ catalog, beyond granting access to places of detention to the International Committee of the Red Cross (ICRC) and releasing prisoners, as: “The Government must launch prompt, independent and impartial investigations in accordance with international standards to end impunity, ensure accountability, bring perpetrators to justice, and to take measures to ensure adequate, effective and prompt reparation for the victims” (OHCHR 2012). The ongoing nature of violations, however, led Pillay to prioritize calling for accountability, including by defending that a referral to the International Criminal Court would be “a step in the right direction” (OHCHR 2012). In her view, it was necessary to signal to “those committing atrocities in Syria” that “the international community will not stand by and watch this carnage and that their decisions and the actions they take today ultimately will not go unpunished” (OHCHR 2012). So, while she recognized that reparations could play a part in remedying the issue of the missing, she further emphasized accountability by drawing on the deterrence function associated with courts. A similar move happened with the COI. It was the first body to recommend the creation of a mechanism for the missing in Syria already in its first report (COI 2011). While it has continuously recognized the issue as a violation of several legal instruments, it has dropped the mechanism from its recommendations while retaining the emphasis on accountability.

This emphasis on accountability was also present in international actors’ reaction to the Caesar Photos. In 2014, a regime defector codenamed Caesar leaked around 8,000 photos of deceased detainees that shed light on the scale of regime abuses in places of detention. France used the momentum generated by the photos to push for a new resolution in the UNSC to refer Syria to the International Criminal Court, which was vetoed by Russia and China (UN Press 2014). At the same time, many Syrians identified in the photos some of their relatives that had disappeared during the revolution. The focus on criminal accountability in this case overshadowed the need for many Syrians to obtain information about their missing relatives.

This period marked the formation of a justice assemblage based on international law and legal expertise, which had an enduring influence on justice responses for Syria. It consolidated a culture of expertise that has continued to reproduce a combination of legal knowledge and an idealistic view of the TJ catalog among activists. This view was rooted in the legalism of the justice assemblage and stressed a desire for the full package of the TJ catalog in the event of Assad’s fall, including its promises for securing a sustainable peace and societal transformation (The Day After 2012; Dawlaty 2014). In this token, the issue of the missing was seen as a problem of impunity, which led to a prioritization of accountability as a favored form of remedy. This problematization demonstrated an acute sense of the ongoing nature of the conflict and the urgency in halting violations, for which the TJ catalog could offer courts as a potential solution, besides naming and shaming. In this sense, the Syrian context was seen not simply as unsettled and changing, but as something that could be changed by the very use of these tools. But as demonstrated by the reactions to the Caesar photos, this understanding of context also had its blind spots, par-

ticularly the families of the missing need to know what had happened with them.

### 2016–2020: Shifting Context, Victim Activism, and a New Engagement with the TJ Catalog

The period between 2016 and 2020 saw a shift in the prioritization of accountability in the agenda of the missing. This process was marked by a change in the context of the Syrian uprising, with Russia’s involvement in the civil war and the respite it gave to the Syrian regime. At the same time, the composition of the Syrian civil society changed as families of the missing formed associations. These changes contributed to new considerations about what the context in Syria meant for the prospects of addressing the issue of the missing. This shift highlighted the limitations of the then predominant approaches to the issue of the missing, such as political pressure and accountability. At the same time, a new sense of possibility started to be drawn from the knowledge of law and TJ that had been consolidated in the practices of the pre-2016 period. These instruments were used not simply to frame new demands, but to constitute authoritative subjectivities, particularly from the families’ movement, who were able to occupy the spaces that had been previously dominated by the “first wave” of post-2011 civil society.

In 2015, Russia became involved on the side of the Syrian regime, and the civil war moved into a new phase where the government stabilized its zone of control (Lund 2018). While the outcome of the conflict remained uncertain, the shift in the balance of power and the respite it gave the Syrian regime shifted the expectations of a political transition in the near future: It moved further away in the future (Haugbolle 2019). The years of war and destruction also led to a deepening of human suffering in the country, marked by impoverishment, displacement, and trauma. As an interviewee puts it, “the more time passed, the more crimes and the more the Syrian regime literally won, the more people had to re-understand everything, I guess.”<sup>4</sup> For this activist who had been training her peers in international law and TJ, facing the Syrian context led to a sobering view of these tools. It was “difficult to reconcile between what are the rights in international law and what the rights of transitional justice acknowledge and the reality of context, like the Syrian one, where even the most basic right has been violated.”<sup>5</sup> Yet, despite the context’s sobering effect on the views of TJ, this same interviewee still saw it as “a very valuable framework.” She elaborates that “the fact that it has been standardized, and now it has been established in so many different practices and so many different books, and the UN itself has established clearly in their own work, it gives a very objective framework to victimized communities.”<sup>6</sup>

Victimized communities started organizing in associations around 2016 and were prominently linked to the issue of the missing. Their formation was facilitated by the Syrian transnational justice assemblage, which created spaces and opportunities for the families to connect and learn about international routes to justice and the experiences of families in other countries. Thereby they reproduced the knowledge practices under the label of capacity building that normalize the TJ catalog as a potential remedy for their needs, even if it seemed to pale in comparison to the scale of atrocities in Syria. The professionalization of the families’ movement and the instrumentalization of the language of rights, inter-

<sup>4</sup>Interviewee 1. Interview with the author. 05/2023.

<sup>5</sup>Interviewee 1. Interview with the author. 05/2023.

<sup>6</sup>Interviewee 1. Interview with the author. 05/2023.

national law, and TJ allowed them to share spaces of advocacy, debate, and public attention with other Syrian organizations. They participated in donor conferences and consultations with UN actors such as the COI and the OHCHR. To become proficient in these languages was seen as a way to gain a “powerful position” to form alliances and to be more effective in consultation processes,<sup>7</sup> while resisting the claims from other Syrian civil society actors aiming to discredit their views on justice.<sup>8</sup>

The change in the Syrian context also opened new ways in which the COI problematized the issue of the missing, particularly by adding a different functional value to remedying it. In February 2016, the COI published a report focused specifically on the situation of detainees in Syria, which picked up its 2011 recommendation to create a mechanism for the missing, but this time proposing it as an international institution. Whereas in 2011 the recommendation was based on the idea of providing families with a place to lodge requests for information and to foster investigations, in 2016 it was also framed as a matter of confidence building for the peace process. This framing mirrored the UN Security Council resolution 2254<sup>9</sup> which requested the UN Secretary-General to identify confidence building measures to foster the peace process in Syria. The implicit theory of change behind this idea is that the exchange of information between conflict parties can build the base for effective dynamics of engagement and negotiation while leading to reconciliatory attitudes at the community level (Robins and Stockwel 2024). Even though this idea lacks an empirical base, it has currency among TJ practitioners. In this sense, while the COI used law to single out the issue of the missing, its use of the narratives underlying the TJ catalog demonstrate its strategic engagement with the context of ongoing conflict in Syria.

This development in the COI’s approach was also associated with a shifting perception of the priority given to accountability so far. As one of the Commissioners puts it:

the priority that accountability trumps everything else, it seemed to me, was being set by the international community, and the Syrian groups were sort of following the international community in the hope that if it’s achievable, then that might remove the main obstacle, as they saw it to their situation in Syria. And what I tried to do was to say let’s talk to the Syrians on the ground in Syria, let’s talk to the families and others and see what their priorities are. And again, that came a bit from my experience with transitional justice (...).<sup>10</sup>

To the Commissioner, this came from the assessment identified in other contexts in which “the number one issue” for the families was not accountability, but understanding what happened with their missing relatives.<sup>11</sup> From this came also a shift in the engagement of the COI with the Syrian civil society to foster an increased space for victims. For instance, the impetus to create the Caesar Families Association, a group of families that identified their missing relatives through the Caesar photos, came from a workshop organized by the Syrian Center for Media and Freedom of Expression with the participation of the COI, and in which

the relatives learned about TJ and the experiences of families in Argentina and Bosnia.<sup>12</sup>

For most of this period, however, the families’ movement rhetoric was based on political pressure for the release of detainees and neglected the COI calls for a new mechanism for the missing. This approach heeded the urgency of having a loved one detained in Syrian prisons. As an activist briefing the UNSC in 2019 puts it, it was the UNSC’s responsibility to protect the Syrian population against a regime that kills and tortures its population in violation of international law. She hoped the Council would adopt a resolution pressuring the parties of the conflict to reveal the names and whereabouts of detainees, to grant access to humanitarian organizations to places of detention, and accountability for perpetrators (UN News 2019). Efforts through the UNSC were, however, increasingly seen as moot due to Russia’s vetoing resolutions involving justice. An interviewee involved in the preparation of this briefing reflected that “back then, the strategy was to get a Security Council resolution on the issue of detention and forced disappearance. But that did not end up working out for obvious reasons. And around that time, people started thinking of alternatives because the Security Council is basically held hostage by the Russian veto when it comes to Syria.”<sup>13</sup>

While accountability had been the favored aspect of the TJ catalog,<sup>14</sup> its deterring ability was becoming less appealing in a context of prolonged conflict enmeshed with great power politics. For one activist, it was by learning about the experiences of institutions for the missing in Colombia and Cyprus through capacity-building exercises that the associations found the inspiration to advocate for a similar solution for their problem.<sup>15</sup> Still, the families’ movement only got behind the proposal for an international institution in 2020, on the civil society track of the Brussels IV Conference with donor countries.<sup>16</sup> This position was later consolidated by the formation of an alliance of associations, the Truth and Justice Charter Group, which became the main advocate for a new mechanism in the Syrian civil society. The final declaration of the Brussels Conference also marked the first time international decision-makers recognized a need for a mechanism “to clarify the fate and whereabouts of all missing persons, without distinction” while also recognizing the “need to support the families of those unaccounted for and the need to deal with the past” (European Council 2020). By mid-2020, driven by the COI and the families’ movement, there was a broadening of the problematization of the issue of the missing with a greater focus on the issues faced by the families. This opened a new track for this agenda beyond accountability and political pressure.

This process was consolidated by the Human Rights Council resolution 44/21<sup>17</sup> of July 2020 that requested the COI to prepare a report on detention in Syria to be presented in its forty-sixth session. The resolution emphasized “the need to ensure that all those responsible for such violations and abuses [of international human rights and hu-

<sup>12</sup>Interviewee 2. Interview with the author. 05/2023.

<sup>13</sup>Interviewee 7. Interview with the author. 09/2023.

<sup>14</sup>In fact, by December 2016, the UN General Assembly had created a quasi-prosecutorial body to facilitate accountability processes, the International, Impartial and Independent Mechanism to assist in the investigation and prosecution of persons responsible for the most serious crimes under International Law committed in the Syrian Arab Republic since March 2011 (IIIM).

<sup>15</sup>Interviewee 2. Interview with the author. 05/2023.

<sup>16</sup>Interviewee 2. Interview with the author. 05/2023.

<sup>17</sup>United Nations Human Rights Council, “Situation of human rights in the Syrian Arab Republic.” A/HRC/RES/44/21 (July 17, 2020), <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2FRES%2F44%2F21&Language=E&DeviceType=Desktop&LangRequested=False>.

<sup>7</sup>Interviewee 6. Interview with the author. 09/2023.

<sup>8</sup>Interviewee 4. Interview with the author. 09/2023.

<sup>9</sup>UN Security Council, S/RES/2254 (December 18, 2015), <https://www.chicagomanualofstyle.org/qanda/data/faq/topics/Documentation/faq0448.html>.

<sup>10</sup>Interviewee 5. Interview with the author. 09/2023.

<sup>11</sup>Interviewee 5. Interview with the author. 09/2023.



manitarian law] are held to account, reaffirms the importance of establishing appropriate processes and mechanisms to achieve justice, reconciliation, truth and accountability for such crimes, and reparations and effective remedies for victims (. . .)” (HRC 2020, 1). While this was a broad statement about abuses in Syria, by assigning to the COI the duty of zooming in on the issue of detention, the Council opened an entry point for the IIMP proposal to the UN’s decision-making system. This led to a process starting in 2021 of back and forth between the technical human rights bodies, such as the COI and the OHCHR, and the UN decision-making bodies, like the HRC and the General Assembly, in which the issue of the missing was increasingly specified as a matter to be addressed by an international institution. In this sense, justice advocates ability to deploy the language of international law allowed them to address an authoritative audience, UN member states in the human rights track.

*2021–2023: The Broadening of the Justice Gap and the Contextualization of the TJ Catalog*

The previous periods consolidated a dynamic in which Syrian issues could be articulated in a justice assemblage grounded in the language of international law and human rights. While justice advocates had favored a discourse of deterrence and accountability, international law as a universal tool for the layman and the expert allowed for different justice perspectives to be advanced in response to a shifting context of protracted conflict and the adjusted expectations about a transition in Syria. The singling out of the issue of the missing by the UNHRC resolution 44/21 then opened a new phase of increasingly technical discussions among justice actors. These were marked by the mobilization of legal and TJ knowledge to craft a problematization of the issue of the missing whereby an international institution could be presented as a pragmatic context-sensitive solution.

In this process of specification of the issue of the missing and of the IIMP proposal, the context of authoritarianism and ongoing violations were central topics of concern. They were raised not only by sectors of the Syrian civil society and international organizations, but also by the states being lobbied to facilitate this process at the UN.<sup>18</sup> The concern was that an international institution could do little to help without access to the Syrian territory and places of detention, which the Syrian regime was unlikely to grant. These concerns were deflected by expanding the problematization of the issue of the missing. This process was based on expanding the scope of victimhood in the issue of the missing, highlighting different temporalities in the search process, and depoliticizing the agenda through a humanitarian mandate. Ultimately, these strategies contributed to finding gaps in the current justice efforts for Syria, which, as a UN staff member said, “was a more diplomatic version of [asking] what is broken.”<sup>19</sup>

This first step of defining the gap was to highlight the victimization of the families of the missing. Drawing on a general comment from the Human Rights Committee, a body of independent legal experts concerned with the implementation of the International Covenant on Civil and Political Rights, the COI argued that: “[t]he victims of enforced disappearances are not limited to the persons who were forcibly disappeared, but also comprises their families,” which have been particularly vulnerable to extortion and bribery in the course of searching their loved ones (COI

2021, 25). The Charter group highlighted its position of bearers of unfulfilled rights in relation to the agenda of the missing, including by the fact that “most detainees are men, while the burden of dealing with the absence of male detainees falls mainly on women” (Truth and Justice Charter Group 2021, 4). The Group also drew on “Article (1) of the Declaration on the Protection of All Persons from Enforced Disappearance, which states that the ‘anguish and sorrow’ of families to know the truth about the fate and whereabouts of the disappeared reaches the threshold of torture for those left to live with its impacts” (Truth and Justice Charter Group 2022, 5). By placing the families as central beneficiaries of the institution, some of its needs could then be addressed as gaps in the justice assemblage, for which a more comprehensive justice was needed (OHCHR 2021). Member states, for instance, tended to be concerned about the fact that there were already three different international organizations working toward accountability for Syria, the COI, the OHCHR, and the IIIM. As a UN official says, when this critique came up, the strategy was to flag the complementarity between different “forms of accountability, other means of justice, other steps towards justice, basically. Which, frankly, was another way of talking about transitional justice” (Interview December 7, 2023). The appeal to complementarity was also part of the COI rhetoric of fulfilling a justice gap: “Beyond prosecutions, there are a number of restorative justice measures that (. . .) remain both relevant and unfilled. They include: the need for a mechanism to coordinate, consolidate and transmit information concerning the estimated 100,000 missing and disappeared persons” (COI 2021, 18). The focus on families’ needs also opened the track of support that a potential new institution could provide, for instance, legal and psychological counseling. And building on good practices from elsewhere, a new institution could also issue certificates of missing relatives that “can help families resolve both legal status, property and civil documentation issues as well as obstacles to accessing services, without forcing them to declare a missing loved one dead” (COI 2022, 5).

The gap was furthered by a process of separating different temporalities within the issue of the missing, which motivated the anticipation of some functional values of an institution, and the deferral of others. This process is also connected to the problems of unfulfilled families’ needs, particularly in relation to the fragmentation of ongoing search efforts by the Syrian civil society and international organizations such as the ICRC, the International Center for Missing Persons, and the UN Working Groups on Enforced Disappearances and Arbitrary Detentions (COI 2021, Sarkin 2021). The multiplication of documentation efforts was associated with potential retraumatization of families, which had to relive the traumatic experience of loss while lodging search requests at multiple sites. Moreover, these fragmented efforts were framed as limited in relation to the scale of the phenomenon (COI 2022). The institution was then presented as a way to consolidate and coordinate existing search efforts, which did not depend on access to Syria. For a UN staff member, “the institution should not try to do what the others are doing” but instead “it can play a role in pulling them together, relying on their expertise, etc.”<sup>20</sup> This focus on coordination deferred to the future other aspects of the search process, such as DNA collection, which was seen as “very important work, but in a way maybe further down the line than the work that needed to be done right

<sup>18</sup>Interviewee 12. Interview with the author. 07/2024.

<sup>19</sup>Interviewee 9. Interview with the author. 11/2023.

<sup>20</sup>Interviewee 5. Interview with the author. 09/2023.

now.”<sup>21</sup> This anticipation and deferral of different tasks an institution could have, was justified on technical grounds, as lessons learned show

that the sooner you begin that process of gathering the information and verifying it and keeping it safe, the better it will be when you have to come and deal with it. When the circumstances are right for it to be brought out, the information will be there. If you look at experiences, I think elsewhere that when those processes have begun after the transition has happened, people have often lamented that the information has gotten lost, that they should have started much earlier, because they would have been able to gather more information or verify this or that. So, the hope is that this will be one big part of what the institution will be able to do is to gather and protect information.<sup>22</sup>

As this quote shows, while context can be a barrier, it is also unsettled, and may, at some point, become “right.” When context is approached from this angle then, other aspects of the search for the missing can appear as problems in their own right, for which a new institution may be an appropriate solution. This process then distills the temporalities of the IIMP between the short and the long term.

Finally, the institution was given a humanitarian mandate, which is to say that its role would not include criminal accountability. The idea was to depoliticize the search process to increase the likelihood that the Syrian regime would cooperate with the IIMP.<sup>23</sup> While there were still no assurances that this framing would be enough to convince the regime to cooperate, this framing demonstrates that the IIMP proponents were aware of its potential limitations (COI 2022, 6). While the concern with the issue of access is political in nature, the humanitarian framing was justified as a technical decision based on best practices as defined by a guide from the ICRC about establishing missing persons institutions (Crettol et al. 2017). This framing also entailed a legal translation, as the institution became associated with the humanitarian right to know, fulfilled by knowledge about the fate of the missing, rather than the right to truth, fulfilled by knowledge and punishment.<sup>24</sup> This separation was contentious for some justice advocates, including within the families’ movement, who believed that the humanitarian nature of the institution would hinder their ability to hold perpetrators accountable. While this is an issue that was never fully settled, for some of the IIMP proponents, they were pragmatically deferring accountability for the future as a condition to anticipate the process of learning the fate of the missing.<sup>25</sup>

Through this process of reproblematicization of the issue of the missing, and deferral of the more politically and technically sensitive tasks of the search process, the IIMP was consolidated as a pragmatist policy response attuned to what was possible in a context of unsettled transition and authoritarianism. While the critique about the lack of a willing state partner was associated with the expected inability of the IIMP to fulfill its promises, the institution could still be presented as a solution for other aspects relevant to the Syrian context, that is, unfulfilled needs of families and fragmentation of efforts. It was a policy that “even if the Syrian government doesn’t cooperate, there are small things that still

could be done in the interim.”<sup>26</sup> In this sense, it was a policy based on two temporalities, with its functional possibilities divided between the short and the long term. International law and TJ knowledge were important not only as tools in this process but also for ensuring a continuity between advocacy claims—a rights problem—and policy design—an issue for human rights experts to deal with. In this sense, when the UNGA 3rd Committee for Social, Humanitarian, and Cultural Issues requested the Secretary General in December 2021 to prepare a feasibility study for a new institution, this task was assigned to the OHCHR,<sup>27</sup> which then concluded that it would be feasible, building on the problematization of the issue of the missing that had been developed by the COI and the families movement (UN Secretary-General 2022, 2023).

The creation of the IIMP in July 2023 was welcomed as a great victory for the families of the missing in Syria, even if it did not “include the full package”<sup>28</sup> of the TJ catalog. However, there were still concerns about the issue of access by the time its terms of reference were published. To one of the IIMP’s proponents, the IIMP would have to figure out a way to engage with the Syrian government; otherwise, it risked becoming “a bronze zeppelin unable to fly.”<sup>29</sup> Furthermore, some of its promises, such as the certificates of missing relatives, also became more controversial, as they could put the families inside Syria at risk. In this sense, even if a pragmatic engagement with the TJ catalog could point to some solutions for the issue of the missing, the IIMP was still limited by the context of its creation.

The pragmatism of the IIMP marks a departure from the truth versus justice debate that marked early developments of the TJ field. The exclusion of accountability from the IIMP mandate did not mean giving up on courts or that amnesties should be given to perpetrators. This decision happened in a context of ongoing accountability efforts through other avenues, such as the IIM, universal jurisdiction, and even the COI, whose mandate is to document human rights violations and identify perpetrators. The IIMP’s design assumes that different aspects of justice can be fulfilled in different venues and at different temporalities. This form of balancing truth and justice was thus consistent with the legalism that favored accountability in the Syrian justice assemblage. Moreover, it also follows the consolidation of the TJ catalog, which highlights complementarity as a central component. In fact, the UN’s latest guidance note on TJ is based on the notion of holism, that is, the notion that different “elements of redress complement and reinforce processes of criminal accountability” (UN 2023, 2). In this sense, the exclusion of accountability from the IIMP was not about the risk of spoiling the transition, as in early TJ debates, but about spoiling the search for the missing. The implication of this form of pragmatism is a break with the view of TJ as a tool for liberal transitions, democratization, and reconciliation. It favors justice specific goals instead and manifests a humility about what TJ institutions in hostile contexts could—and should—accomplish.

With the fall of Assad in December 2024, a new set of possibilities and challenges has emerged for the IIMP. On the one hand, some of the tasks that the IIMP’s pragmatic policy design had postponed to the future may become possible sooner than expected. Many places of detention have

<sup>21</sup>Interviewee 5. Interview with the author. 09/2023.

<sup>22</sup>Interviewee 5. Interview with the author. 09/2023.

<sup>23</sup>Interviewee 8. Interview with the author. 10/2023.

<sup>24</sup>Interviewee 11. Interview with the author. 03/2024.

<sup>25</sup>Interviewee 8. Interview with the author. 10/2023.

<sup>26</sup>Interviewee 14. Interview with the author. 09/2024.

<sup>27</sup>United Nations General Assembly, “Situation of human rights in the Syrian Arab Republic,” A/RES/76/228 (December 24, 2021), <https://digitallibrary.un.org/record/3952169>.

<sup>28</sup>Interviewee 3. Interview with the author. 07/2023.

<sup>29</sup>Interviewee 13. Interview with the author. 08/2024.



been liberated, and this has enabled a wave of family reunions and new information that may illuminate the fate of those still disappeared. On the other hand, there are still uncertainties about the future of the Syrian transition, and the IIMP will still have to deal with actors who have been involved with arbitrary detention and enforced disappearances. Hayat Tahrir al-Sham, the rebel group that toppled the Assad regime, has itself been labeled a terrorist organization by the UNSC, a label that the UN Special Envoy for Syria wants revised (UN News 2024). The IIMP's terms of reference recognize that it should adapt to keep up with contextual changes and that it could become a national system if conditions on the ground became appropriate. These contextual developments have changed the possibility of the IIMP becoming a bronze zeppelin, but they have also meant that the IIMP will likely have to be re-contextualized to address a developing situation. Ultimately, this dynamic speaks to a dilemma of contextualization in policy design: Context is a moving target that can, at best, only be heuristically and temporarily apprehended. This difficulty need not veer into nihilism about the possibility of contextually relevant justice initiatives, and in fact, the story of the IIMP shows that pragmatism might just be the key.

## Discussion

The truth versus justice debate has been central to the development of TJ. Its underlying question was about what, and how much, the field should aspire to accomplish. In its infancy, the field adopted a pragmatic approach that favored "the whole truth and as much justice as possible," as famously put by José Zalaquett, a member of the Chilean Truth Commission and prominent TJ advocate (Orentlicher 2007, 7). The field has since overcome these dichotomies by emphasizing holism and the complementarity between the different tools in the TJ catalog (De Greiff 2010; UN 2023). Under this view, TJ's aspirations have become more ambitious, and now they include societal healing, democratization, and restoration of the rule of law. The contemporary rendition of pragmatism in TJ builds on the idea of complementarity and rejects truth versus justice in the terms of Zalaquett. It does, however, break with the grandiose goals TJ has been posited to achieve, and with it, the notion of transition as a political transition.

The expansion of TJ to hostile contexts such as Syria, while marked by pragmatism, has relied on law's moral and technical appeals. On the one hand, the anchoring of the TJ catalog in law has turned it into a tool for victimized communities regardless of their context. On the other, contextual concerns are not easy to ignore, particularly in places where even the most basic steps of repairing injustices may be limited and dangerous. In this sense, law is deployed not simply to define duties and entitlements, but also as a tool to problematize issues, to define what is relevant about a context, and, in this process, to point to some solutions in detriment of others. Thus, law can be a tool for both the idealist and the pragmatist. So even if pragmatic solutions may sacrifice the idealism of TJ, they are still consistent with the legalism that has dominated the field.

## Conclusion

This article demonstrates how the international community adopted a pragmatic policy response to the issue of missing persons in Syria through the establishment of the IIMP. It shows how the connection between law and the TJ catalog is deployed by justice advocates to influence policy responses,

and, in the process, to strategically engage with issues of context. In this sense, even if the Syrian context presented limitations to the ability of an international institution to fulfill the families' right to know the truth, its advocates were able to craft a credible proposal by anticipating some functional aspects of the search process while postponing others. The ability to deploy legal and TJ expertise was crucial for carving space in an agenda crowded by the priority granted to accountability in advocacy efforts.

After the 2011 revolution, justice advocates at both the Syrian and international levels had an idealistic approach to TJ marked by an openness to the possibilities of its catalog. This openness was based on expectations about the transition and the transformative potential of a fully fledged TJ program, which became increasingly frustrated from 2015 with the Russian military involvement in the civil war. This shift in expectations opened the way for a more pragmatic approach to TJ by justice advocates. An idealistic approach to TJ could combine a diverse set of justice policies, with the full range of their functional possibilities. A pragmatic approach, however, was based on the art of the possible: some policies and some functional possibilities. The IIMP in particular was designed to focus primarily on coordinating search and support efforts, due to the difficulty of accessing places of detention, mass graves, and the Syrian population in many parts of the country. In this sense, even though the TJ catalog is associated to grandiose theories of change and promises, its contextualization in the Syrian case was based on more humble assumptions about what it could achieve.

The IIMP's pragmatism was not fully separated from the idealism of its advocates. In fact, the IIMP was seen as a way to lay the foundations for a future system, based on the assumption that a transition was still possible, even if it could take a long time to happen. It did however break with grandiose ideas about the transformative potential of the TJ catalog. In this sense, the IIMP was a pragmatic middle ground between idealism and nihilism about the possibilities of justice in Syria, a humbler approach to TJ. The surprising fall of the Assad regime in December of 2024 demonstrates the wisdom of preparing for the future, though further research will be required to assess the ability of the IIMP to adapt to this changing context and to deliver on its promises.

This pragmatism comes at a time in which the field of TJ has undergone an expansion in its ambitions and in its geographical reach. It also comes at the back of over a decade of critical TJ scholarship, and a crisis of legitimacy (Nesiah 2016), of which an important part seems to be associated with the field's disappointing record in matching its own ambitions (McAuliffe 2013). The attachment of these grandiose ambitions to justice processes may in fact create the idea that it is oxymoronic to talk about TJ in the absence of a political transition. It is worth asking then, what is the benefit of turning people's concrete justice needs into an idealistic program for transitioning societies? This is both an empirical and an ethical question that goes beyond the scope of this article. Still, a turn to pragmatism may do more than mend TJ's legitimacy. It may, in fact, facilitate the field's engagement with the places where justice seems most out of reach.

## Funder Information

My research for this article has been supported by the Independent Research Fund Denmark Grant No. 1028-00206B.

## Acknowledgments

For their crucial feedback, I would like to thank the editors and the two anonymous reviewers, Line Engbo Gissel, Line Jespersgaard Jakobsen, Thomas Obel Hansen, Sune Haugbølle, Lukas Bogner, and members of the Global Political Sociology research group at Roskilde University.

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