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Joint submission to the Human Rights Committee
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List of Issues and list of issues prior to reporting
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I. Introduction

In this joint submission, Huquqyat¹ and the Women's International League for Peace and Freedom (WILPF)² draw the attention of the Human Rights Committee to concerns around the impacts sexual and gender-based violence and its weaponisation in the context of the conflict in Syria; the structural legal discrimination against women, including under the Nationality and Personal Status laws, as well as under the Penal Code; and accountability and access to justice.

This joint submission is substantially based on Huquqyat's briefing statement to the UN Security Council's (UNSC) open debate on Sexual Violence in Conflict in 2022. The full statement can be accessed at <https://www.womenpeacesecurity.org/resource/statement-mariana-karkoutly-security-council-open-debate-sexual-violence-in-conflict/>

Similar concerns were also raised in a joint submission, — by Urnammu for Justice and Human Rights, the Syrian League for Citizenship (SL4C), Women Now for Development, Dawlaty, the Badael Foundation, the Syrian Female Journalists Network (SFJN) and WILPF, — to the latest Universal Periodic Review (UPR) of Syria, which took place in 2022. In addition to legal discrimination against women and girls, the joint UPR submission presents concerns relating to the situation of women journalists and women human rights defenders; the impact on women of the continued massive scale of enforced disappearances; and the impact of forced displacement on women. The joint UPR submission, provided as a Annex to this document, can also be found in English and Arabic at this link: <https://www.wilpf.org/publications/joint-submission-for-the-upr-of-syria/>.

WILPF's and Dawlaty's policy briefs "The human rights of women in Syria"³ and "Sexual Violence by the force of arms against women in Syria"⁴ also covered similar concerns, expanding on the pre-existing situation of women and girls in Syria prior to the war, as well as on the instrumentalisation of sexual violence in the conflict.

¹ Huquqyat is a non-profit organisation that aims to enable Syrian women lawyers and legal practitioners to participate directly in the efforts for criminal accountability for the crimes committed since 2011 in Syria through funding, training, and capacity-building. See more at <https://www.huquqyat.org/>

² WILPF is a membership-based organisation that works through feminist principles, in solidarity and partnership with sister activists, networks, coalitions, platforms, and civil society organisations. WILPF has member Sections and Groups in over 40 countries and partners around the world, an International Secretariat based in Geneva, and a New York office focused on the work of the United Nations (UN). Since our establishment in 1915, we have brought together women from around the world who are united in working for peace by non-violent means and promoting political, economic and social justice for all.

³ <https://www.wilpf.org/wp-content/uploads/2021/02/The-human-rights-of-women-in-Syria-single-pages.pdf>

⁴ <https://www.wilpf.org/publications/policy-brief-sexual-violence-by-force-of-arms-against-women-in-syria/>

II. Weaponisation of sexual and gender-based violence:

In March 2018, the UN Commission of Inquiry (Col) on Syria released a report on sexual and gender-based violence,⁵ which brought to the forefront the complexities of such violence in conflict-affected areas over a drawn-out period of time. It showed that all those who are made vulnerable by the conflict and by the power dynamics within it are affected by sexual and gender-based violence, as well as the differential ways in which they are affected. As documented by the Col in that report, sexual and gender-based violence has been used against civilians during ground operations, at checkpoints and in detention, across the country since 2011, primarily by government forces and associated militia, but also by other armed groups. The Col called sexual and gender-based violence a “devastating and pervasive feature” of the Syrian conflict and part of a widespread and systematic attack against civilians, amounting to crimes against humanity.⁶

According to information collected by the Syrian Network for Human Rights, over the last decade, at least 150,000 people in Syria are estimated to have been arbitrarily arrested, detained or disappeared; at least 9,700 women still are.⁷ These women — many of them lawyers, journalists, activists — have been detained for opposing the regime, or, often, in order to punish or threaten male relatives who have.⁸ In places of detention, sexual violence is used to humiliate them, to punish them for rebelling, to force confessions, and to deter future opposition. Women in detention have been subject to all kinds of acts of sexual violence, including rape, electric shocks directed at genital areas, and other forms of torture, intimate searches, forced abortions, and forced nudity, and sexual harassment.⁹ The violations have

⁵ “‘I lost my dignity’: Sexual and gender-based violence in the Syrian Arab Republic”, UN Index: A/HRC/37/CRP.3, 8 March 2018, available at: <https://www.ohchr.org/Documents/HRBodies/HRCouncil/ColSyria/A-HRC-37-CRP-3.pdf>

⁶ See, for example, UN Commission of Inquiry on Syria: Sexual and gender-based violence against women, girls, men, and boys a devastating and pervasive feature of the conflict and must end now, 15 March 2018, available at: <https://www.ohchr.org/en/press-releases/2018/03/un-commission-inquiry-syria-sexual-and-gender-based-violence-against-women?LangID=E&NewsID=22833>

⁷ Syrian Network for Human Rights: On the 11th Anniversary of the Popular Uprising: 228,647 Syrian Civilians Documented Killed, including 14,664 by Torture, with 151,462 Arbitrarily Detained/Forcibly Disappeared, and 14 Million Others Displaced, 15 March 2022, <https://snhr.org/wp-content/uploads/2022/03/R220307E.pdf>, p. 12-15.

⁸ Syrian Network for Human Rights: International Day for the Elimination of Violence against Women: Tenth Annual Report on Violations against Females in Syria mostly at the hands of the Syrian Regime, 25 November 2021, https://snhr.org/wp-content/pdf/english/International_Day_for_the_Elimination_of_Violence_Against_Women_Tenth_Annual_Report_on_Violations_en.pdf, p. 16.

⁹ Amnesty International: “You’re Going to Your Death” – Violations against Syrian Refugees Returning to Syria, 2021, <https://www.amnesty.org/en/wp-content/uploads/2021/09/MDE2445832021ENGLISH.pdf>; Human Rights Council: “I lost my dignity”: Sexual and gender-based violence in the Syrian Arab Republic, A/HRC/37/CRP.3, 8 March 2018, <https://reliefweb.int/sites/reliefweb.int/files/resources/A-HRC-37-CRP-3.pdf>

occurred in the course of being arrested, while en route to detention facilities, upon admission, and during detention.

III. The multi folded impacts of sexual and gender-based violence

Survivors of rape and other forms of sexual violence in detention, estimated to number in the thousands, have largely been unable to report these crimes for fear of marginalisation or further retaliation. Discrimination and violence against women and girls who have been detained, or who have faced sexual violence, have resulted in abandonment, divorce, so-called “honour killings,” and suicide. Men, boys and transgender women, have also been subjected to rape and other forms of sexual violence, both by the Syrian government and by other parties to the conflict.¹⁰ While women and girls are disproportionately targetted, men and boys are also impacted by conflict-related sexual violence, and are affected by the lack of specialised services that address their needs, as these are focused mostly to the needs of women and girls.¹¹

a) Weaponisation of sexual violence against women and girls

The Syrian regime has taken advantage of the social stigma against survivors of sexual violence present in the country and its repercussions. They are aware that by targeting women in this way, they are in fact targeting their families and communities. This is why arresting and detaining women, leaving their families with no information about their fate, has been a key tool used to suppress dissent since 2011. The systematic occurrence of these crimes across the country provides reasonable grounds to assert that the regime has weaponised sexual and gender-based violence, including in places of detention, as a matter of State policy.¹²

Furthermore, sexual and gender-based violence in Syria is structural, and its crimes are closely linked to patriarchal cultural and social contexts that have long placed women in an inferior position, whether by socialising them into traditional roles or imposing upon them the burden of the cultural system. Acts of sexual violence committed by all parties to the conflict perpetuate women's unequal status by negatively affecting their social, cultural, and economic statuses in the private sphere as well as the public spheres. This severe inferiority in the status of women survivors of sexual violence directly and significantly affects their political position as primary actors in influencing current and future political prospects in Syria. This structural and systematic violence on women survivors of sexual violence thus strips them of political status, confirming and stigmatising them as “non-political entities”, without political agency or influence.

Thus, the impact of sexual violence against women goes beyond simply placing them in the category of “victim,” perpetuating the “victim-aggressor” binary, which limits any approaches to

¹⁰See more at <https://www.hrw.org/report/2020/07/29/they-treated-us-monstrous-ways/sexual-violence-against-men-boys-and-transgender>

¹¹ Ibid.

¹² Human Rights Council, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, A/HRC/46/55, 11 March 2021, <http://undocs.org/A/HRC/46/55>, p. 22

the consolidation of feminist or sustainable peace in Syria to addressing the issue from a narrow individual perspective.

To socialise change in gender norms, Syrian civil society must be able to fully and freely function and engage with their own government. Change in gender norms must also take into account the pre-existing patterns of violations against women and girls based on structural discrimination against them in law and practice that were exacerbated by the conflict.¹³

IV. Structural legal discrimination against women

In Syria, obtaining Syrian citizenship does not automatically enable women (and in some cases, also men)¹⁴ to enjoy all their rights, whether political, civil, economic, cultural, or social. Many structural factors have contributed to preventing this enjoyment of rights; the most prominent of which is, perhaps, the blatant legal discrimination against women. The Syrian Constitution and legal framework contain several gaps and provisions that contradict the principle of full equality between men and women. Syrian law abounds with many clauses that are discriminatory on a gender basis; the Nationality Law,¹⁵ which denies Syrian women the right to pass their nationality to their children, the Personal Status Law,¹⁶ and the Penal Code¹⁷ also contain flagrant examples of legal discrimination against women. Such legal discrimination is one of the most prominent factors that has undermined, and continues to undermine, the status of women as active participants in the society.¹⁸

a) Gender-based violence

For instance, laws in Syria do not explicitly criminalise sexual or gender-based violence against women or marital rape.¹⁹ There are also currently no laws in Syria prohibiting domestic violence.

¹³ A/HRC/46/54, para 48 “Civilians’ experiences in the conflict in the Syrian Arab Republic have been deeply gendered. Sexual and gender-based violence against women, girls, men and boys has been documented by the Commission since 2011. While the immense suffering induced by those practices affected Syrians from all backgrounds, women and girls were disproportionately affected and victimised on multiple grounds, irrespective of the perpetrator or geographical area.”

¹⁴ For instance, the Kurdish community and Palestinian refugees. See more at <https://statelessjourneys.org/wp-content/uploads/StatelessJourneys-Syria-August-2019.pdf>

¹⁵ Full legislative decree available in English at <https://www.refworld.org/pdfid/4d81e7b12.pdf>

¹⁶ See 2019 revised law available in Arabic at <https://bit.ly/3i7gkx0>

¹⁷ Available in Arabic at <https://learningpartnership.org/sites/default/files/resources/pdfs/Syria-Pe-nal-Cade-1949-Arabic.pdf>

¹⁸ See more in WILPF’s and Dawlaty’s Policy Brief’s “The human rights of women in Syria”. Available at <https://www.wilpf.org/wp-content/uploads/2021/02/The-human-rights-of-women-in-Syria-single-pages.pdf>

¹⁹ Article 489 of the Penal Code states: 1) Any person who has sexual intercourse with someone other than their spouse, without their consent, whether by violence or threat shall be punished with hard labour for at least 15 years; 2) The sentence shall be the death penalty if: A- the victim is less than 15 years of age.

This is despite Syria having received recommendations from the CEDAW Committee²⁰ and the Committee against Torture²¹ to adopt legislation to prevent and criminalise domestic violence and to criminalise marital rape, and having supported in 2016 a UPR recommendation to “Adopt national legislation criminalizing domestic violence.”²²

b) Personal Status Law

During 2016 UPR, Syria also received recommendations to amend discriminatory provisions under the Personal Status Law,²³ which grants unequal rights to women and men regarding marriage, divorce, custody and inheritance, as observed by the CEDAW Committee in 2014.²⁴ In 2019, Law No. 4 of 2019 was promulgated,²⁵ amending some articles of the Personal Status Law. Despite an impression of improvement with regard to combating discrimination against women, the new provisions still include gaps and clauses that make the change a mere redraft that retains the discriminatory spirit of the previous law. In most cases, the amended law itself gives judges wide discretion to make the final decision.²⁶ For example, the most prominent

²⁰ CEDAW/C/SYR/CO/2, para 31 and 23.

²¹ CAT/C/SYR/CO/1, para 27.

²² A/HRC/34/5 (UPR 2016), 109.15 Adopt national legislation criminalizing domestic violence (Sierra Leone). For the source of Syria’s position, see UPR matrix prepared by OHCHR and available at: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/SYindex.aspx>

²³ A/HRC/34/5 (UPR 2016), 109.91 Conduct a review of the personal status law and other relevant laws, which will remove the provisions that are discriminatory towards women, such as those not granting them guardianship of their children, disabling them from travelling on their own with their children or not allowing them to transfer their citizenship to their children (Czechia), and 109.92 Repeal all discriminatory provisions in the personal status code and ensure equality of rights between men and women (Ghana); A/HRC/19/11 (UPR 2012), 102.14 Revise its Personal Status Act to ensure that women and men have equal rights (Brazil); CEDAW/C/SYR/CO/2 (CEDAW 2014), 46. The Committee recommends that the State party: (a) Repeal all discriminatory provisions of the Personal Status Act, in particular those relating to unequal rights of women and men regarding marriage, divorce, custody, inheritance, polygamy and child and/or forced marriage; CRC/C/SYR/ CO/5 (CRC 2019), (d) Amend the Personal Status Code to ensure that children of Muslim mothers and non-Muslim fathers, children born to unmarried parents and children born from situations of sexual violence are recognized, registered and have access to birth registration documents.

²⁴ CEDAW/C/SYR/CO/2 (CEDAW 2014), para 17 “The Committee notes that article 33 of the Constitution of 2012 enshrines the formal principle of equality of Syrian citizens without discrimination. The Committee is concerned, however, at the: (a) Lack of a definition of discrimination against women in line with article 1 of the Convention; (b) Reinforcement by article 3 of the Constitution of rules of religious communities, a situation that will further complicate and delay efforts to eliminate discrimination against women, to the detriment of women’s rights; (c) Discriminatory provisions against women in various articles of the Penal Code (e.g. arts. 473-475, 508 and 548), the Personal Status Act (e.g. arts. 12, 37, 70, 85 and 163) and article 3 of the Nationality Act; (d) Lack of detailed information on the continuing review of all legislation, in line with article 154 of the Constitution, in particular as regards the amendment or repealing of any legal provisions that discriminate against women.

²⁵ Available in Arabic at <https://sana.sy/?p=892746>

²⁶ Ibid.

amendment was Article 16, which sets the legal age for marriage at 18 for both men and women. However, it does not necessarily prohibit under-age marriage of girls, since according to Article 18, judges can allow teenage marriage under certain circumstances.²⁷ The Personal Status Law is also discriminatory in regard to custody of children. It favours male-blood relatives, as shown in Article 23, paragraph 2, which stipulates that guardianship shifts to the mother only if there is no male relative, and if she meets the conditions of guardianship, competency and the dowry.²⁸ Furthermore, and despite the recent amendments, Syrian Muslim women are still prohibited from marrying non-Muslim men, while Christian women are allowed to marry Muslim men; women's right to inheritance remains limited; and polygyny remains legal.²⁹

c) Nationality Law

In 2014, the CEDAW Committee also urged Syria to amend its Nationality Law, "in particular Article 3, in order to ensure that women and men enjoy equal rights to acquire, transfer, retain and change their nationality, in line with Article 9 of the Convention, and ensure its implementation"³⁰ The CEDAW Committee also expressed concerns as to Syria's reservations to the Convention, including to Article 9, paragraph 2, concerning the granting of a woman's nationality to her children.³¹ Article 3 of the Nationality Law has not been amended, and children of Syrian women continue, therefore, not to be entitled to Syrian nationality except in specific conditions. According to the law, a Syrian father can pass on his nationality to his children wherever they are born, while a Syrian mother cannot automatically pass her nationality to her children. Although Article 3. b of the Nationality Law³² provides Syrian mothers with the right to pass their nationality to their children if they are born in Syria and if their fathers are unknown, this does not apply to children of Syrian women refugees and asylum seekers in host countries, since this provision only applies to children born in Syria.³³

²⁷ Article 18, 1), stipulates that if a 15-year-old adolescent has reached puberty and expresses the conscient wish to get married, a judge will grant authorization for the marriage to take place, if he believes their claim, their physical ability and their knowledge of marital rights. See more at <https://sana.sy/?p=892746> in Arabic.

²⁸ Under Article 23 of the Personal Status Law, stipulates that male blood relatives are still given privileged status in the area of guardianship. It states that the guardianship for the marriage shifts to the mother only if there is no 'male agnate', and if she meets the conditions of guardianship, competency and the dowry. The male agnate is the father or the person acting on the father's behalf according to the line of legal inheritance among unmarriageable kin.

²⁹ See more at <https://syria.chathamhouse.org/research/new-amendments-to-personal-status-law-offer-small-gains-for-womens-rights>

³⁰ CEDAW/C/SYR/CO/2, para. 38, a).

³¹ CEDAW/C/SYR/CO/2, para 16.

³² Article 3, "The following shall be considered as Syrian Arabs ipso facto: A) Anyone born inside or outside the country to a Syrian Arab father; B) Anyone born in the country to a Syrian Arab mother and whose legal family relationship to his father has not been established."

³³ Available in English at <https://www.refworld.org/pdfid/4d81e7b12.pdf>

d) Penal Code

Syria has introduced some law reforms since 2019. For instance, Law No. 2 of 2020 was promulgated to repeal Article 548 of the Penal Code³⁴ and all legal texts that replaced it, which had previously allowed perpetrators of femicide to benefit from mitigating circumstances if the murder was based on a so-called “honourable intent.” As such, the article justifying “honour crimes” was abolished in theory. However, while the law has to some extent been reformed, judges’ interpretation has not evolved yet. Courts can indeed still use this mitigating factor in accordance with general rules stipulated in other articles of the Penal Code, such as Article 242, which allows judges to commute sentences in cases of murders committed (by men or women) in the event of anger, or when motivated by an “illegal act” provoked by the victim³⁵. Such “illegal acts”, for instance, can be interpreted to cover extra-marital affairs, which are illegal in Syria.³⁶

In addition, Article 192 of the Penal Code, allows judges to reduce sentences for crimes conducted on the ground of “honour”.³⁷ Provided that “honourable motive” is not defined in Syrian law, this article leaves it entirely to the judge’s discretion to assess the crime’s motive and to qualify it as such, as well as to commute sentences on this ground. Thus, the abolition of Article 548 of the Penal Code does not address the issue of impunity for crimes committed against women including “honour killings”.

V. Accountability and ending impunity for violations of women’s rights

Accountability efforts are critical for Syrians, who are desperate for justice after more than a decade of war. Women’s access to judicial redress remains limited, or even non-existent, due to the lack of independence within the judiciary, the spread of bribery, forgery and tampering, the lack of specialised law enforcement agencies, and intimidation and constant threats of death for reporting incidents.³⁸ Trauma and stigmatisation of survivors of sexual violence also affect the ability and willingness of victims to come forward.

³⁴ Article 548: “He who catches his wife, sister, mother or daughter by surprise, engaging in an illegitimate sexual act and kills or injures them unintentionally must serve a minimum of two years in prison.”

³⁵ Article 242 of Penal Code states “He who commits a crime in a state of great anger resulting from a wrongful and dangerous act on the part of the victim shall be liable to the mitigating clause.”

³⁶ See more on legal discrimination against women and girls in Syria under WILPF’s joint submission to the UPR of Syria, available at <https://www.wilpf.org/publications/joint-submission-for-the-upr-of-syria/>

³⁷ See more at <https://english.enabbaladi.net/archives/2020/03/how-have-provisions-of-honor-killings-evolved-in-syrian-law/>

³⁸ Seif, J. and Nassif, W: Words Against Silence. Syrian Center for Legal Studies and Research, 2020, <https://sl-center.org/wp-content/uploads/2020/03/WORDS-AGAINST-SILENCE.pdf>; UN Security Council: Conflict-related sexual violence – Report of the Secretary-General, S/2021/312, 30 March 2021, <http://undocs.org/S/2021/312>; Human Rights Council: “I lost my dignity”: Sexual and gender-based violence in the Syrian Arab Republic, A/HRC/37/CRP.3, 8 March 2018, <https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/ColSyria/A-HRC-37-CRP-3.pdf>, p. 4, 7; Dawlaty and WILPF: Sexual violence by force of arms against women in Syria, 2020,

Any current or future accountability efforts carried out by the Syrian regime or by the international community should redress grievances suffered by women, and seek to reform structural discrimination and tools (political, security, patriarchal, sectarian, and economic) that have cemented the unequal status of women in society including with regard to citizenship. These efforts should employ gender-responsive, victim-centered, independent and impartial transitional justice mechanisms. They should address more than de facto or de jure legal discrimination, to also address the root causes of such discrimination, to gradually and systematically lay the foundations for enhancing women's equal rights within political, societal, economic, and other contexts.

<https://www.wilpf.org/wp-content/uploads/2020/10/Sexual-violence-by-force-of-arms-against-women-in-Syria-t.pdf>, p. 19-20; Global Justice Center, Submission to the UN Human Rights Council Universal Periodic Review – 26th Session, Syrian Arab Republic, <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=3112&file=EnglishTranslation>, p. 2.