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Sexual and Gender-Based Violence and the Rights of Women in Syria

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Submission by
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A. Introduction

1. No Peace Without Justice (NPWJ) is an international non-profit organisation founded by Emma Bonino and born of a 1993 campaign of the Transnational Radical Party that works for the protection and promotion of human rights, democracy, the rule of law and international justice. NPWJ’s International Criminal Justice program focuses both on international and national efforts to restore the rule of law and provide accountability and redress for the victims of crimes under international law, be they through the International Criminal Court, or through ad hoc Courts or Tribunals, national prosecutions or other accountability processes. The overall objective of the International Criminal Justice Program is to ensure that whatever solution is adopted, it is shaped and implemented so that it can contribute to the restoration of the rule of law, it is responsive to the needs of stakeholders and it adheres to the strictest human rights standards. NPWJ has been working on Syria since 2011 with local and international actors; on the one hand, to strengthen their work and capacities and, on the other hand, to maintain the resolve of Syrian civil society and bolster the political and strategic will to fight impunity and build a culture of accountability. The strategic goal of NPWJ’s work on Syria is to equip citizens to demand accountability and justice for violations that have been taking place on a daily basis for the past five years and, at the same time, to equip local and international actors to answer that demand. NPWJ does this through mentoring Syrian human rights actors to bolster their skills on documentation and advocacy and promoting their participation in political negotiations aimed at ending the conflict in Syria.

2. NPWJ conducted a scoping assessment on Sexual and Gender-Based Violence (SGBV) and the rights of women and children, particularly girls, in Syria in January 2014. This consisted of a comprehensive desk review followed by semi-structured interviews with Syrian lawyers, judges, police officers, political representatives, members of civil society and workers from INGOs and NGOs, most of whom did not want to be identified. Since then, NPWJ has continued to consult with Syrian human rights organisations and activists on the rights of women and the situation of and responses to SGBV, to assess any progress and identify emerging challenges. NPWJ has conducted numerous trainings on documentation and accountability issues, in particular on SGBV and the rights of children, including a dedicated workshop on SGBV in January 2014 and a workshop focusing on the rights of women and children in February 2016. This submission is based on NPWJ’s work as a whole on Syria, feedback from workshop participants, the scoping assessment and subsequent consultations as described above.

B. Sexual and Gender-Based Violence in Syria

3. The most recent report from the Independent International Commission of Inquiry on the Syrian Arab Republic of 11 February 2016 mentions the prevalence of SGBV and the documentation of the rape of women and men in government facilities, noting also the challenges for victims in speaking about what has happened to them. The same report highlights the setting-up of “markets” by ISIS for the buying and selling of Yazidi women, some as young as 9 years old.

4. In general, there continue to be widespread reports that SGBV crimes are taking place within Syria - and among displaced Syrian communities in bordering countries. Inside Syria, most reports about sexual violence in Syria name government forces and pro-

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government militia as the perpetrators, with SGBV also rampant within Islamic State in Iraq and Al-Sham (ISIS), while there are fewer reports about opposition forces committing SGBV.

5. The situation within besieged towns and villages leaves women particularly vulnerable to SGBV, as “after hours” visits to homes in those setting is unchecked and conducive to this kind of violence taking place. Similarly, the increasing prevalence of checkpoints creates increased risk of SGBV especially as women need to pass them in order to obtain food, visit relatives or obtain medical assistance. Multiple reports describe the gang rape of a single woman, or gang rapes involving a group of women, at checkpoints.

6. Nearly everyone NPWJ interviewed for the scoping assessment stressed the cultural stigmatisation attached to those who had been violated. Interviewees spoke about honour killings occurring in some parts of Syria, including the killing of children who had been raped. While the practice of honour killings also took place prior to the conflict (and therefore cannot be said to be only ‘conflict-related’), the security situation and societal chaos arising from the conflict creates an opaqueness of accountability that facilitates the commission of such crimes, thus invigorating a culture of impunity.

7. From the information NPWJ has gathered, it appears that the threat of rape, and rape itself, are largely not being committed by fighting forces as a means of extracting information, although they are used as a means of torture, particularly in detention centres. Rather, it appears that acts of rape and sexualised violence are mostly committed as a means of humiliating and punishing victims. There are reports of political and sectarian language being used during the violations and SGBV is being used as a weapon to undermine, humiliate and punish various ethnic groups as divisions deepen as the conflict persists.

8. Syria is a party to the Four Geneva Conventions and is subject to customary international law, which criminalise these kinds of offences, although Syria is not a party to the Rome Statute of the International Criminal Court, meaning the ICC does not have jurisdiction over these offences being committed in Syria by non-ICC State Party citizens. There has been no accountability for the crimes described above, whether those committed by government forces or by other parties to the conflict.

9. At its first UPR process in 2012, the Syrian Arab Republic accepted, inter alia, the following recommendations:
   a. Step up efforts to prevent and combat trafficking in persons, in particular women and children;
   b. Incorporate into domestic law and enact the provisions of the international instruments, particularly CAT, CEDAW and CRC;
   c. Immediately halt the violence against its citizens, which is causing many deaths and injuries, including those of women and children;
   d. Put into place domestic measures and mechanisms aimed at strengthening accountability and ensure redress and reparations for victims of possible human rights violations.

10. The Syria Arab Republic noted, but did not accept, a recommendation to ratify the Rome Statute of the ICC, which it signed in 2000.

11. There has not been any progress towards fulfilling any of these recommendations.
C. The Syrian Justice System

iv. Legislative Framework

12. Sexual offences under the Syrian Penal Code are seen as being a matter of public morality as opposed to violations against the individual; they are even listed in the Code under the title ‘Offences against public morals and morality’. Further, acts that are increasingly being decriminalised around the world are offences under Syrian law. For example, under article 523, ‘Anyone who [publicises] contraception propaganda...or offers to reveal processes intended to prevent conception, shall be punished’.

13. The definition of rape in the Penal Code is somewhat vague and excludes rape committed against a spouse: ‘Whoever, with violence and threat, coerces a woman other than his wife to sexual intercourse, is punished with hard labour for no less than five years, and no less than 11 years if the victim is 15 or younger’. Provisions regarding some forms of consensual sex involving women under the age of 21 are also vague, as are provisions relating to ‘public decency’ and ‘good morals’.

14. The judge has discretion to pass a reduced sentence for a crime if it is deemed that the offence was ‘honourable’; while ‘honour’ no longer provides a complete defence, the penalties are reduced for some forms of honour-related murder. Homosexuality is an offence; in strict legal terms, male victims of rape are deemed as perpetrators under Syrian law. Sentences for men and women accused of adultery are not equal.

15. The Code does not provide any detailed provisions regarding rules of evidence and how courts should assess different types of evidence; culpability is largely determined by confession. Several lawyers and police officers that were interviewed mentioned the importance of gaining a confession, which is also reflected in the Code. Sufficient provisions safeguarding fair trials are notably absent in Syrian criminal law.

16. At its first UPR process in 2012, the Syrian Arab Republic accepted, inter alia, the following recommendations:
   a. Revise its Personal Status Act to ensure that women and men have equal rights;
   b. Adopt and enforce laws against domestic violence, and remove mitigating factors from the punishment of “honour-crimes” against women.

17. There has not been any progress towards fulfilling any of these recommendations.

v. Personal status law and the Unified Arab Code

18. The Syrian Personal Status Law, no. 59 of 1953 (modified by law 34 of 1975) sets out various provisions relating to the status of citizens. These provisions legitimise ongoing

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3 Syrian Penal Code, article 489.
4 Syrian Penal Code, article 510: ‘Anyone who, to satisfy the passions of another, had employed, driven, or diverted either a woman or girl of less than 21 years of age, even with her consent, or a 21 year old girl or woman by fraud or violence, threats, money or any other form of duress, shall be punished by at least a year of imprisonment and a fine that shall not be less than one hundred Livres’.
6 Syrian Penal Code, article 192.
7 Syrian Penal Code, 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 five up to seven years in prison’.
8 Syrian Penal Code, article 520: ‘Any carnal conjunction against the natural order shall be punished by imprisonment up to one year’.
9 A woman convicted of adultery can be sentenced to a term of imprisonment for three months to two years, whereas a man can be imprisoned for the same amount if he is married, but if he is unmarried he can be imprisoned for a term of one month to one year: Syrian Penal Code, article 474.
10 For example, Syrian Penal Code, article 473 (3), which states that the ‘only proof that may be admitted against the co-author shall be, other than official confession or a flagrant act, that resulting from letters or other documents’.
violations that are occurring, fuelled and exacerbated by the conflict (in particular domestic violence and child abuse). The legal age of marriage in Syria is 17 years for women and 18 years for men, but a judge may decide to allow a boy to marry at the age of 15 and a girl at the age of 13.¹¹ Women cannot get married without the consent of their male guardian and it is their guardian who signs the marriage contract. Up-to-date figures are not available, but in 2001, UN data indicates that approximately 10.9% of Syrian girls aged between 15 and 19 were married, divorced or widowed.¹²

19. With regard to divorce, the right of repudiation is given to the husband, which is one-sided and unconditional.¹³ The wife can petition for divorce only in very restrictive circumstances.¹⁴ The wife owes obedience to her husband in return for maintenance, but she forfeits her maintenance rights if she works outside the home without her husband’s consent.¹⁵ Rules on inheritance are governed by Islamic law, namely, a woman’s share is generally smaller than a man’s entitlement. It is therefore evident that aside from social pressures, many women will opt to remain with abusive husbands because of their diminished legal status.

20. Syria ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 2003. However, reservations were made against several articles of the Convention, including in respect of the nationality law, which prohibits women from giving their nationality to their children, honour killings, and others.

21. At its first UPR process in 2012, the Syrian Arab Republic accepted, inter alia, the recommendation to adopt and implement necessary legislative and administrative measures to promote a greater inclusion of women in the country’s public and political life, ensuring that they effectively participate in the decision-making process, and lift the reservations made to the CEDAW. There has not been any progress towards fulfilling this recommendation.

vi. Police in Syria

22. There are several police forces in Syria, including the military police, civil police and the judicial police. Many police officers in Syria have studied law. Police training in Syria has no human rights component, e.g. how to treat people in detention centres. They are not taught any crowd control techniques, apart from being told they had to beat protestors or shoot them. There are very few female police officers, only in Alawite areas.

23. One officer interviewed by NPWJ described how a case involving sexual violence would be processed by police in Syria. If the victim attends the police station, a report is written about the allegation. The report is written before the victim is examined by a doctor and it was not clear that any psycho-social support would be offered. The victim is not allowed to choose the doctor who examines her, but a female nurse is present during the examination if the doctor is male. If it was not clear whether the victim was telling the truth or not, the victim and perpetrator would be brought together in one room so that the police could ‘see who was telling the truth’. Police stated that they would not proceed with investigating a case if the families involved did not wish for it to be prosecuted. Furthermore, personal status laws dictate that women are under the guardianship of a male relative, so the police do not want to be accused of sending somebody’s daughter for a medical examination without the permission of her father or brother.

¹¹ Syrian Personal Status Law, article 18(2).
¹³ Syrian Personal Status Law, article 91.
¹⁴ Syrian Personal Status Law, articles 105-115.
¹⁵ Syrian Personal Status Law, articles 73 and 74.
24. There is no victim protection unit or a victim and witness support service in Syria. There is no multi-disciplinary coordination between the police, prosecution and judiciary regarding the best interests and protection of victims and witnesses.

25. At its first UPR process in 2012, the Syrian Arab Republic accepted, inter alia, the recommendation to enhance policies and measures to protect social vulnerable groups, especially women, children and elderly persons. There has not been any progress towards fulfilling this recommendation.

D. Recommendations

26. In light of the above, No Peace Without Justice recommend to the authorities of the Syrian Arab Republic to:
   a. Adhere to the terms of the ceasefire and allow humanitarian aid to all those in need in Syria;
   b. Ensure a domestic definition of torture in line with the Convention against Torture and other Cruel, Inhuman, Degrading Treatment or Punishment in Syrian legislation and remove its reservation to article 20 of the Convention;
   c. Take all necessary steps to ratify the Rome Statute of the International Criminal Court and enact implementing legislation to incorporate Rome Statute crimes in Syrian law and provide for cooperation with the Court;
   d. Develop a robust legal framework for the promotion and protection of human rights by ensuring that the constitution and national legislation are fully compliant with international human rights standards, including by a comprehensive review of the Penal Code, the Personal Status Code and all other relevant legislation, with a particular focus on gender discrimination and SGBV;
   e. Adopt and enforce laws against domestic violence, remove mitigating factors from the punishment of “honour-crimes” against women and repeal article 548 of the Penal Code that allows a lesser sentence for “honour killing”;
   f. Step up efforts to prevent and combat trafficking in persons, in particular women and children;
   g. Adopt and implement necessary legislative and administrative measures to promote a greater inclusion of women in the country’s public and political life, ensuring that they effectively participate in the decision-making process, and lift the reservations made to the CEDAW;
   h. Enhance policies and measures to protect social vulnerable groups, especially women, children and elderly persons, including by developing a victim protection unit and victim and witness support service and ensuring coordination between the police, prosecution and judiciary regarding the best interests and protection of victims and witnesses.