



THE DAY AFTER

Supporting Democratic Transition In Syria

# Gender-Sensitive Transitional Justice in Syria

Lama Kannout



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The Day After organization (TDA) is a Syrian organization working in support of the democratic transition in Syria, with a focus on the following points: Rule of law, transitional justice, security sector reform, design of electoral systems and election of a Constituent Assembly, constitutional design, economic reform and social policies.

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In 2017, she published A book-length research titled "In the Core or on the Margin: Syrian Women's Political Participation," and in 2019 she published a book documenting the oral memory for a number of Syrian women detainees, under the title " So I'm not Kept in the Shadows." Furthermore, Ms. Kannout presented several papers on various topics such as the democratic change in Syria, the principles of gender-sensitive constitution, gender-sensitive electoral system, citizenship, and many other related topics.

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# **Chapter I: The Theoretical Framework**



## Executive Summary

Seven years after the start of the peaceful revolution in Syria, Syrians of all gender victims, including human rights defenders, and organizations working on transitional justice, are all still working to make war crimes, crimes against humanity, torture and extrajudicial executions visible. They are also working on highlighting the importance of transitional justice, given the international community's failure to protect civilians; as well as striving to put an end to impunity in Syria. The pain of Syrians the victims, has reassured all criminal parties involved, that transitional justice is absent from the political solution in Syria. Especially for Syrians who are far from being able to shape and influence that transitional justice, and are given an "either/or" option of achieving democracy and transitional justice, only if they give up peace in exchange; even though transitional justice is the necessary pathway to building sustainable peace and democracy.

The conflict in Syria, is considered one of the largest documented conflicts to be captured on video, and recorded in human rights reports, and via testimonies of victims, of all genders. However, the gender impact of crimes is still not sufficiently visible in the human rights violations reports, and in reports of organizations working on transitional justice in Syria. Many of the reports focus on victims' numbers, or a specific crime and its time and place of occurrence, but tend to overlook the impact of violence against women and girls, who were subject to political, societal, sexual, legal and economic violence. This misleading approach in highlighting violence in Syria, has resulted in the perpetuation of an extremely negative impact on women and girls, both individually and collectively, and for generations to come. The trends of some organizations working on transitional justice focus only on sexual violence, including rape; which, despite its importance, is ignoring the broader crimes, of direct and indirect violations that women suffer from, and continue to do so. Depicting violence against women as mostly sexual, such is the case of rape, entrenches in the public

consciousness that women are merely a body, and their honor comes from a man's honor or their families, and that they have no independent honor themselves, that they are responsible for. These trends reinforce their inferiority in the community, and simultaneously strengthen the structural violence against them supported by state-enforced laws. All while they were, and still are struggling for freedom, equality and citizenship.

On the other hand, women are absent when the subject of institutional reform, or rebuilding security are presented, as if those issues concern men alone.

Furthermore, the representation of organizations in international public meetings and advocacy is almost exclusively limited to men. The proportion of women's rights organizations in the sphere of organizations working on transitional justice is limited.

Without women's participation, their perceptions, experiences and entitlements, and response to their rights and needs, transitional justice would reflect only the views, priorities and experiences of men regarding violence.

With the exception of women-led organizations and women's rights activists working on transitional justice, many other organizations face a host of challenges that hamper gender mainstreaming in their programs, including the absence of gender equality from the structure of organizations, limiting gender mainstreaming in their policies and programs. Many organizations do not consider gender equality to be their priority and believe that it can be postponed for the future. Women are absent from decision-making positions for the most part, but if they happen to be in such a position, they are still disconnected from the structures of power.

There is weak coordination between Syrian organizations and women's organizations and women's rights organizations, in addition to weak collaboration among human rights organizations to issue joint reports that cover all crimes and violations in various geographical areas in Syria, particularly crimes and violations that include sexual and gender-based violence. That effort is very much needed to redress the large gap in the

documentation of socio-economic crimes and violations, their patterns, and their overlap with all forms of political, and sexual and gender-based violence. This large gap constitutes a serious and continuous harm to women and girls, especially when it comes to forced displacement, sexual violence, property rights, ownership, employment, education and health.

There is a lack of coordination among organizations working on transitional justice and women's organizations regarding the aforementioned issues, in addition to the issues of institutional reform and legislative reform. Furthermore, there is an absence of a gender expert in organizations, and a lack of specialized gender mainstreaming units for programming, especially in organizations with resources.

Many women also face discrimination in the workplace, and are subject to gender stereotyping, and their opinions are not taken seriously, due to the male-dominated public sphere, as well as the male monopolization when representing organizations, especially in international meetings. In addition, the manner in which some female activists attacked human rights organizations for not incorporating gender into their reports backfired; while they could have easily cooperated with human rights organizations, to address gaps in legal frameworks for documenting violations and gender-related crimes.

Despite the changing role of women in society, power structures are still male-dominated. Women's changing roles must be recognized during the gender-sensitive transitional justice process, in order for equity to be achieved, and for the roots of violence against women and girls to be understood; hence enabling the transitional justice process to change the power structures in society by integrating more women. Transitional justice is achieved by ensuring equal participation of women and men, who will set its course at all levels, so as to include not only the direct and indirect crimes and violations against women, and their impact, but also explore the social relations and legal structures that have facilitated for such occurrences to take place.

The focus on reporting on crimes and violations for advocacy purposes is extremely crucial, but the focus should also be on activating the jurisdiction of the International Criminal Court under (article 13), (section c), which states: "The Prosecutor has initiated an investigation in respect of such a crime in accordance with (article 15)." There should also be focus on preparing and organizing legal documents to be used in international courts.

## **Challenges**

Syrians of all genders were subjected to war crimes, crimes against humanity and systematic violations of human rights since the start of the revolution in March 2011. Those systematic crimes continue to take place to date, with no conflict witnessing such thorough documentation of such crimes such like the Syrian conflict. Despite the impact of the conflict on women, whether they were direct victims of crime and violation, or victims of collective punishment and state-run. political violence, the gender impact on those crimes during documentation is largely ignored, as well as its severe ramifications on generations to come. The sole focus on sexual violence in detentions, despite its limited documentation, established in the collective consciousness that women are merely bodies and victims, rather than activists seeking a democratic change in the structure of a state subjected to political violence.

Although some human rights organizations reports' included survivor testimonies, they were limited to the crime itself, and the conditions of detention, but without asking the survivor about the violence she was subjected to by her community and family, during and after her release from detention. Additionally, the impact of the social and economic structures on women are also frequently missing from reports, exacerbating their suffering as they continue to live in the conflict.

The limited representation of women in organizations working on transitional justice is a clear indicator of gaps and challenges in their work. Gender mainstreaming is nearly non-

existent in the work of institutional reform, particularly in the security and military sector, and the property restitution of refugees. Paradoxically, women's vision and their priorities are absent from the very justice they aspire for. Without women's vision and knowledge, the preparatory work for transitional justice will remain incomplete.

There is no mention of transitional justice in the UN Security Council Resolution 2254, or in peace talks on Syria. It's as if UN committees such as the International Independent Investigation Commission on the Syrian Arab Republic, the UN Joint Investigation Mechanism, and the International Impartial and Independent Mechanism, are proceeding with peace negotiations talks in parallel lines that do not converge in an international political resolution.

Despite the paramount importance of transitional justice as a mandatory corridor for building a just and sustainable peace in Syria, the representation of women, and women's organizations that help/support women remains limited. Particularly, the representation of women within alliances of organizations working on transitional justice, and whose work, so far, focused on accountability, lack a common vision of multi-gender transitional justice mechanisms — despite its importance.

### **Research Study Objective**

The research aims to

01. Highlight the challenges faced by civil organizations working on transitional justice in Syria, making them sensitive to gender.
02. Expose the extent of violations and crimes against women, and gender gaps in the reporting of human rights organizations.
03. Determine the definition of gender-sensitive transitional justice, and how to build a comprehensive integrated approach to gender-sensitive transitional justice that women can fully participate in.

04. Draw conclusions, and make recommendations to organizations working on transitional justice to redress gaps and make them gender sensitive, and to empower women's organizations and women's rights advocacy organizations.

### **Research Methodology**

Type of research: A desk-based and qualitative-type research, based on individual effort of the researcher, starting from February 15, 2018, and completed end of September 2018. The research study used individual Skype-interviews, including twenty heads of organizations working on transitional justice, between the period of April 18, 2018 and August 20, 2018. The responses were then analyzed to understand the dynamics of the organizations, their challenges, and the gaps leading to the limited inclusion of gender-based crimes and violations in the reports of Syrian human rights organizations. The analysis provided further clarity on the reasons of low representation of women in organizations working on transitional justice. Additionally, individual and collective interview sessions were held, with twenty-three Syrian female survivors in the Beqaa province in Lebanon. The duration of the interview session ranged between six and seven hours, the first on August 06, 2018 with ten survivors, and the second on August 11, 2018 with eight survivors. Furthermore, five survivors were interviewed individually, with a duration of one – one and half hour each, on August 16, 2018. The purpose of those sessions was to identify the crimes and violations directly committed against those groups of women, or against one of their family female members. Moreover, they were asked about their experiences during the war, and its ramifications, what justice meant to them, and any other violations and crimes that they believe must be addressed in the transitional justice process. The sessions aimed to understand the power structures that exist/ed between them and their partners at home, their community, peers, and parents, before and after 2011, and the kind of changes that have taken place within such power structures.

The research study is divided into six main chapters. The first chapter dealt with the theoretical framework of the research, the second chapter provides a background and examines cognitive concepts, and sheds light on the legislative framework in Syria, and defines transitional justice and gender-sensitive transitional justice. The third chapter deals with transitional justice mechanisms in five areas including trials, fact-finding committees and compensation commissions, institutional reform and legislative reform, and another section on the perspectives of some female survivors on gender-sensitive transitional justice. The fourth chapter provides an overview on some forms of crimes and abuses that transitional justice must address, including sexual and gender-based violence, enforced disappearance, detention, prisoner exchange deals, collective punishment, and property and labor.

The fifth chapter explores why gender gaps exist in most organizations' reporting, and provides a detailed study of the gender gaps in the documentation processes of Syrian human rights organizations, and the limited representation of women in groups working on transitional justice. Furthermore, the sixth chapter discusses examples of the transitional justice processes in Sierra Leone and Morocco.

### **The Importance of this Research Study**

Although transitional justice is a mandatory corridor in Syria to build peace, restore the division of society, end impunity, and although it recognizes the complex and multi-level impact of the Syrian conflict on women and girls, gender-sensitive transitional justice is not receiving enough attention in the research arena in Syria. This research comes to fill a knowledge gap, and to serve as input on which to build a broader understanding of how to build gender-sensitive transitional justice for us of all genders and Syrians.

Gender analysis has been used as a tool to understand the impact of conflict, crime and abuse on women and girls by analyzing the roles and responsibilities of women and men, their access to and control over resources, decision-making and authority, and family and

community power structures; gender analysis is the tool by which the linkages between these factors are examined in social, political, economic, legal and environmental contexts.

Because transitional justice process is characterized the objectives of recognizing the dignity of individuals, equity and social justice, preventing violations and crimes, and focuses on prosecution, reparation, institutional and constitutional reform; therefore, the establishment of transitional justice must be gender-sensitive, and must correct power structures that are based on inequality in society, as well as laws, state institutions and policy-making. This correction is the first step towards gender justice.

It should be noted that the report does not cover violations and crimes committed by all parties to the armed conflict, but focuses primarily on what the regime in Syria has done, because it has the primary responsibility to protect the population, and is represented in the United Nations. It is also a key party in the Geneva talks, despite committing war crimes and crimes against humanity. This does not mean that all armed groups that committed violations and crimes will be exempted from accountability and criminal prosecution.

### **Research Challenges**

A number of respondents gave ideal/exemplary answers, forcing me to ask follow-up questions, and from multiple angles to push them into giving me deeper details. There was a lack of knowledge products related to gender-sensitive transitional justice. The limited time for research made it difficult to research further into violations in education, for example; and there was also difficulty in obtaining survivor testimonies from the various geographical areas in Syria.

The most difficult part of this research study however, was the documentation of the horrific individual and collective crimes and violations against women. The documentation of the testimonials of some female survivors in particular, was extremely distressing, despite those women's resilience, and their determination to empower themselves and their children.

The deep fragmentation of society, has reinforced my belief, as other human rights activists I'm sure, that a gender-sensitive transitional justice is a necessary path in building a just and sustainable peace in Syria. A gender-sensitive transitional justice will achieve dignity of individuals, both women and men, and will help promote individual rights and freedoms, and will hold both men and women accountable for their actions in society, as well as building a state that is committed to the human rights of women and men.

## Transitional Justice Knowledge Products

### **“Dawlaty” Foundation Report, Transitional Justice from the Perspective of Syrian Youth/2016<sup>1</sup>**

The report was examined in a wide and diverse sample of participants (15-30 years) through 1,047 surveys; 92 in-depth interviews of victims and community leaders (or officials); and 88 group discussions in six governorates and twelve districts, who talked about violations, and shared their views on transitional justice measures. The report comes within the framework of a collective effort between a number of international and Syrian organizations inside and outside Syria. In terms of limitations of the report, it does not allow for a general outlook across the whole country "because of the inability of the team to access areas under the control of extremist armed factions, or those that fall under the control of the regime."

The report however, covered an excluded segment of society that is mostly ignored in the transitional justice process. Although the report was written in a gender-sensitive language — in the presentation of the results, it would have been more useful to have a graph showing the

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<sup>1</sup> - Transitional Justice from the perspective of Syrian Youth, My State Foundation, 2016, Beirut - Lebanon.

gender component in the types of violations, and how respondents perceive measures of transitional justice. This was the case with the data graph that showed “that women and older persons were less likely to report abuses than their male counterparts and younger persons.”<sup>2</sup>

**Nahla Valji, "A Window of Opportunity: Making Transitional Justice Work for Women," UN Women's Guide, 2010.<sup>3</sup>**

The guide addressed transitional justice as an opportunity to promote gender justice through the implementation of gender-sensitive mechanisms and to change the structures of inequality that underlie such violence. The guide recognizes the importance of transitional justice not only for dealing with the consequences of violations committed during the conflict, but also the social dynamics and relationships that made such abuses possible in the first place, including the rectification of the unequal power relations of the female and male genders in society.

The guide emphasized that women are not only affected by conflict, but because of unequal power structures between them and men, they are at exceptional risk during conflict, such as being subjected to sexual violence and gender-based violence. The guide tackles universal justice by linking economic and social violations with transitional justice mechanisms, and linking gender and development to universal justice.

The guide provides information and figures on the participation of women in all transitional justice mechanisms in a number of different global experiences. However, the guide intentionally omitted political violence against human rights activists and advocates, of both women and men, and focused on sexual violence, and primarily rape.

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<sup>2</sup> - Dawlaty, page 28.

<sup>3</sup> - Nahla Valji, Romi Sigsworth, Anne-Marie Goetz, "A Window of Opportunity: Making Transitional Justice Work for Women", UN Women, Second Edition, September 2012, page 08, seen on: 18/4/2018, /goo.gl/znULnx

When the guide presented the importance of the recommendations in the final reports of the fact-finding committees, the Morocco example, for instance, mentioned compensation for women, and recommendations for legislative reform, including a clear and precise definition of violence against women in accordance with international standards. Yet, the guide failed to mention, that the Reconciliation and Equity Commission, in its last report, focused on the violations committed against a number of women, because of their political views and their political and union affiliations, especially those who were members of leftist parties and organizations, and those that hide or supply rebels.

The methods of interrogation and torture were tailored because they were women, not only because they take on ideas against an existing political situation, but also because they challenge a social system in which public opinion is a “man’s business” and not a woman’s. This further subjected them to all kinds of humiliation and abuse.<sup>4</sup>

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<sup>4</sup> - The Equity and Reconciliation Commission, Final Report of the Equity and Reconciliation Commission, Report of the Consultative Council for Human Rights, National Council for Human Rights, November 30, 2005, page 88, seen on September 30, 2018, at: <https://goo.gl/LcByHT>

## **Chapter II: Background and Concepts**



## Introduction

The transitional justice process in Syria cannot cover crimes and violations from the beginning of the revolution of March 2011, unless a deep understanding of the roots of the conflict is reached. The extent of humiliation, marginalization and political violence was experienced by Syrians since the rule of Hafez al-Assad. The memory of the bloody massacres of Hama in 1982, are still recalled with terror among most Syrians. If there is a will, the transitional justice process must start from the roots, especially if we want a settlement with a bloody legacy of political violence in Syria.

Since February 2012, the Independent International Commission of Inquiry on the Syrian Arab Republic considered the situation in Syria to be "the legal threshold under which the existence of a non-international armed conflict can be confirmed. Therefore, during its assessment of the hostilities, the Commission has applied both the international humanitarian law and international human rights law."

The Commission found that members of the Syrian government forces and their Shabiha (state-sponsored militias), have committed crimes against humanity, and their crimes included: murder, torture, war crimes, violations of human rights and international humanitarian law, including unlawful killings, torture, arbitrary arrest and detention, sexual violence, indiscriminate attacks and looting and destruction of property. The Committee further stated that such violations "were committed according to the general policy of the State." Adding that "the large-scale operations carried out in the various Syrian governorates, and the similarity of their methods, and the complexity of their execution, especially between the security and military apparatuses, are an indication that there is involvement of the highest levels of authority in the armed forces and the security forces of the government." The report

also noted that the Commission has documented information that the crimes of the Shabiha took place in coordination with the government armed forces.<sup>5</sup>

Transitional justice poses difficult questions. Following the documentation of crimes and abuses committed in Syria, would a political settlement be reached at the expense of transitional justice? Can transitional justice be achieved without political transition, such as the Morocco model? Is it possible to restore confidence in state institutions, and build a modern state that is committed to human rights, without a transitional justice that recognizes the dignity of citizens and protects them, and prevents the recurrence of crimes and violations, and puts an end to impunity? Can the warlords turn into peace-lords? Can gender equality be achieved in the shadow of a bloody legacy of human rights violations, and a totalitarian regime?

The obvious answer is that a just and sustainable peace cannot be built without transitional justice, and that the nature of the regime in Syria, and its security apparatus, is correctly coined in Michel Seurat's book title "Syria, the Barbarian State."<sup>6</sup> As a professor of law says "The current regime, is the embodiment of sectarianism and hatred."<sup>7</sup>

Since the beginning of the revolution in Syria 2011, Bashar al-Assad established a sharp fragmentation in society, divided between supporters and defectors, and planted the concept of patriot and traitor. Since his first speech in the People's Assembly (March 30, 2011), he repeated the word "conspiracies - conspirators - conspiring" thirteen times, and heavily used the following words: (sedition - killing - intimidation - incitement), and emphasized that those

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<sup>5</sup> - "Report of the Independent International Commission of Inquiry on the Syrian Arab Republic," 50/21 / HRC / A, United Nations - General Assembly, 16 February 2012, pages 1-2, seen on 23/7/2018, at: <https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21>

<sup>6</sup> - Michel Seurat: A French scholar and journalist specialized in sociology, his family collected what he published about Syria in a book published in French in 2012 under the title "Syria, the barbarian state." The book contains an analysis of the structure of power in Syria according to Ibn Khaldun's approach. Seurat lived in Damascus from 1972 until 1978. He was kidnapped in Beirut in 1985 by the Islamic Jihad, which was declared dead in March 1986.

<sup>7</sup> - I refrained from mentioning the name for reasons related to his security.

"in the center"<sup>8</sup> have no place in Syria. In his speech on April 23, 2014, he referred to millions of Syrians as terrorists<sup>9</sup>, pointing out the masses of people in areas where protests had erupted against him. In his next speech on July 26, 2015, he stated that "The homeland is not for those who only live in it or hold its nationality and passport, but for those who defend and protect it."<sup>10</sup>

Following the displacement of half the population in Syria<sup>11</sup>, Assad said in an interview with the New York Times on November 1, 2016 that "the social fabric in Syria today is better than it was before the war."<sup>12</sup> The points raised by Assad in that interview, manifested into various forms of individual and collective crimes aimed at destroying civilian cities and populated areas, and deliberately subjugating them to war crimes, as well as murder, torture, and enforced disappearances in prisons and detention centers. Even in death, Assad's fighters were called "martyrs", while those who opposed him and were tortured to death, were given merely a number, as was shown in the Caesar photos.<sup>13</sup>

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<sup>8</sup> - "President Assad's speech in the People's Assembly," Voltaire Network, March 30, 2011, seen on July 24, 2018, at: <http://www.voltairenet.org/article173297.html>

<sup>9</sup> - Assad's meeting with a group of clerics and da'is, Syrian Arab TV, seen in "The speech of President Bashar al-Assad in front of a group of scholars, clerics, imams of mosques and da'iyat", YouTube video, 1:15:54, ", April 24, 2014, seen on October 07, 2018, at: <https://youtu.be/bwTdf-YRGMg>

<sup>10</sup> - Al-Baath newspaper "Assad's speech during a meeting with the heads and members of popular organizations and trade unions and chambers of industry, trade and tourism ... President Assad: the homeland is not for those who live in it or hold its nationality and passport, but is for those who defend and protect it. July 27, 2015, at: <https://www.youtube.com/watch?v=3JElpq-R-Zc>

<sup>11</sup> - "Syria" UNHCR, seen on 8/9/2018, at: <https://goo.gl/qeM4gy>

<sup>12</sup> - Anne Barnard, "Assad in Person: Confident, Friendly, No Regrets," The New York Times, November 01, 2016, seen on July 24, 2018, at: <https://www.nytimes.com/2016/11/02/world/middleeast/bashar-assad-syria-civil-war.html>

<sup>13</sup> - (Caesar/Caesar), pseudonym of the official forensic photographer of the military police in Syria, who photographed bodies of detainees, and helped archive thousands of them before he defected. He was able to move more than 50,000 pictures from Syria on magnetic disks and small storage discs, between May 2011 and August 2013, (the month in which he defected). "These images were entrusted to the Syrian National Movement, which in turn handed over 53,275 files to Human Rights Watch, the full collection of data collected by Caesar. Human Rights Watch said:" The images can be divided into three categories: the 1<sup>st</sup>, the largest, comprising of 28,707 photographs, which includes at least 6,886 bodies, and were persons who died while in detention or after being transferred to a military hospital, each body had identification numbers (3 identification numbers). The 2<sup>nd</sup> category, were bodies of army or security elements of the regime, taken in military hospital morgues, but unlike the 1<sup>st</sup> category, include name tags of the deceased, and sometimes their date of his death. The name is preceded by the word 'martyr', and the military rank of the deceased. The 3<sup>rd</sup> category of photographs, was taken by the Syrian military police, and can be described as scenes of crime, taken in the wake of attacks during the conflict, including bombings, assassinations of security officers, shootings and car bombs. The dossier includes the type and date of accident, and sometimes, the name of the victim. Source: "If the Dead

The official media discourse has been mired in the dualism of the “good citizen victim,” and “terrorist groups.” For example, during the process of evacuating residents of the al-Fuah and Kafarya villages, following their siege; reporters on Syrian state TV used the word "Ahalina" (our compatriots)<sup>14</sup>, while using the term “armed men/terrorist groups”<sup>15</sup> referring to the evacuees from eastern Ghouta — despite the presence of civilians, including women, and children who were also on board those buses. Bearing in mind that all the aforementioned towns and cities were subjected to the same crime of besiegement and forced displacement. In September 2017, the Syrian news agency threatened the Syrian diaspora, of refugees and residents outside Syria, via a message by the late commander of the Republican Guard Forces, Issam Zahreddine: "Whoever fled from Syria to another country, please do not return, we will not forget and we will not forgive."<sup>16</sup>

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Could Speak," Human Rights Watch, December 16, 2015, seen on September 15, 2018, at: <https://www.hrw.org/ar/report/2015/12/16/284536>

<sup>14</sup> - YouTube "Arrival of buses carrying residents of al-fuah and Kafarya via Tal al-Eis" July 19, 2018, seen on August 12, 2018, at: <https://www.youtube.com/watch?v=pVRIZPTVBC4>

<sup>15</sup> - YouTube "The latest developments from the heart of Ghouta with Jaafar Younis News correspondent," March 26, 2018, seen on August 12, 2018, at: <https://www.youtube.com/watch?v=DZPBnJh6OyM>

<sup>16</sup> - YouTube, " Issam Zahreddine advises fleeing Syrians not to return" al-Jisr satellite channel, September 11, 2017, seen on August 12, 2018, at: <https://youtu.be/PDbWKyl8uJE>

## Knowledge Products

### Victims

The UN General Assembly resolution of December 16, 2005 on the Basic Principles and Guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law; notes in paragraph 5/8:

“Victims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term “victim” also includes the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.”<sup>17</sup>

### Genocide

According to the Rome Statute of the International Criminal Court:

"Genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: a) Killing members of the group; b) Causing serious bodily or mental harm to members of the group; c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or

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<sup>17</sup> - "Resolution adopted by the General Assembly on December 16, 2005" United Nations - General Assembly, 147/60 / RES / A, March 21, 2006, page 07, seen on July 02, 2018, at [http://www.un.org/arabic/documents/instruments/docs\\_subj\\_ar.asp?subj=32](http://www.un.org/arabic/documents/instruments/docs_subj_ar.asp?subj=32)

in part; d) Imposing measures intended to prevent births within the group; e) Forcibly transferring children of the group to another group.<sup>18</sup>

### **Crimes against Humanity**

In accordance with the Rome Statute of the International Criminal Court, July 17, 1998, (article 7):

(article 7) Crimes against humanity 1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: a) Murder; b) Extermination; c) Enslavement; d) Deportation or forcible transfer of population; e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; f) Torture; g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; i) Enforced disappearance of persons; j) The crime of apartheid; k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.<sup>19</sup>

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<sup>18</sup> - "The Rome Statute of the International Criminal Court July 17, 1998," (article 6), seen on July 02, 2018, at: [www.un.org/arabic/documents/basic/rome\\_statute.pdf](http://www.un.org/arabic/documents/basic/rome_statute.pdf)

<sup>19</sup> - As previous source, article 07.

## War Crimes

In accordance with the Rome Statute of the International Criminal Court, dated July 17, 1998, (article 8):

Grave breaches of the Geneva Conventions of August 12, 1949, and includes: a) eight acts against persons or property protected under the provisions of the relevant Geneva Convention; b) twenty-six acts of other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law; c) In the case of an armed conflict not of an international character, serious violations of (article 3) common to the four Geneva Conventions of August 12, 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause, and would include a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; b) committing outrages upon personal dignity, in particular humiliating and degrading treatment; c) taking of hostages; d) the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.<sup>20</sup>

## Gender

Gender is a Latin word, and a sociological term, that is transliterated into Arabic, as “sociological type.” It refers to the socially constructed characteristics of women and men – such as norms, roles and relationships of and between groups of women and men. Associated social factors of gender are acquired and not inborn. Gender is a social, cultural and psychological term, adjusted to make development plans more equitable, and as defined by

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<sup>20</sup> - As previous source, article 08.

the World Health Organization: "The term used to describe the characteristics held by men and women as complex social constructs, and are different from binary male or female sex categories."

### **Gender-based Violence**

Defined by the World Health Organization in 2005: "Gender-based violence is a term that refers to any act that is perpetrated against a person's will, male or female, and violates a number of universal human rights protected by international conventions."

### **Gender Equality**

"The principle of gender equality refers to the enjoyment of opportunities, rights and responsibilities [by women and men] in all aspects of life. Everyone has the right to work and to support themselves, to balance both their professional and family lives, to participate in politics, and to live without fear of ill-treatment or violence. Gender equality also means that women and men have the same value, and that they enjoy equal protection before the law, and in practice."<sup>21</sup>

### **Feminism**

It is a revolutionary political movement that challenges the various repressive and exploitative structures that legitimize discrimination and gender-based violence. Feminists, both male and female, work to dismantle and destroy patriarchal structures by demanding gender equality in all areas and at all levels.

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<sup>21</sup> - Silvia Suteu and Ibrahim Draji, "ABC for a Gender Sensitive Constitution" - Euromed Feminist Initiative (IFE-EFI): L'Initiative Féministe Euromed, page 10.

## Transitional Justice

Transitional Justice, according to the United Nations: "Transitional Justice is the full range of processes and mechanisms associated with a society's attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. Transitional justice processes and mechanisms are a critical component of the United Nations framework for strengthening the rule of law."<sup>22</sup>

The Transitional Justice law in Tunisia that was enforced on December 24, 2013, defines "Transitional Justice as a comprehensive track of mechanisms and means adopted to understand and expose human rights violations, holding those responsible accountable; and rehabilitating victims to achieve national reconciliation. To also document and establish guarantees of non-repetition of violations, and transition from a tyrannical to a democratic system that would contribute to the establishment of a human rights system."<sup>23</sup>

"In its resolution 1325 (2000), and its subsequent resolutions on women and peace and security, including resolution 2122 (2013), the Security Council recognized the need to involve women in all aspects of peacemaking and post-conflict resolution, including the design, implementation and evaluation of Transitional Justice processes."<sup>24</sup>

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<sup>22</sup> - "Rule of law and Transitional Justice in conflict and post-conflict societies," Report No. S / 2004/616, United Nations - Human Rights - Office of the High Commissioner, August 23, 2004. Seen on: April 18, 2018, at: <http://daccess-ods.un.org/access.nsf/Get?Open&DS=S/2004/616&Lang=A>

<sup>23</sup> - "Basic Law No. 53 of 2013 dated December 24, 2013 relating to the establishment and organization of transitional justice" 1, Republic of Tunisia - The Presidency. Tunisia, seen on August 06, 2018, at: <https://goo.gl/nZAz2G>

<sup>24</sup> - "Analytical study focusing on sexual and gender-based violence in the context of transitional justice" United Nations - General Assembly - June 30, 2014, 21/27 / HRC / A, page 05, seen on September 11, 2018, at: <https://goo.gl/8XqWRQ>

## Section One: The Legislative Framework in Syria

### The 2012 Constitution<sup>25</sup>

The President of the Republic and the Council of Ministers exercise executive power on behalf of the people within the limits provided in the Constitution. According to (article 97): "The President of the Republic shall nominate the Prime Minister and his deputies, and nominate the ministers and their deputies and accept their resignation and exemption from their posts," and in (article 105): "The President of the Republic shall be the supreme commander of the army and the armed forces, and shall issue all decisions and orders necessary for the exercise of such authority and may delegate some of them." (article 106): "The President of the Republic shall appoint civil and military personnel and terminate their services in accordance with the law." (article 111): "The President of the Republic shall have the power to dissolve the Parliament." In (article 113): "The President of the Republic shall have legislative power outside a parliamentary session, or during its duration, if it is absolutely necessary; or during the period in which the Parliament is dissolved."

(article 117): "The President of the Republic is not responsible for the actions he carries out in the exercise of his duties except in the case of treason, and may be impeached by a parliamentary decision in a public vote and a two-thirds majority of the members of Parliament in a private session, will be tried by the Supreme Constitutional Court."

The second item of (article 124) states: "The President of the Republic shall have the right to refer the Prime Minister, his deputies and the Ministers to trial for any crimes committed by them during his or her [tenure]." In the case of the Judiciary and the Public Prosecutor's Office, (article 132) states: "The judiciary shall be independent. The President of the Republic shall guarantee this independence and will be assisted by the Supreme Judicial Council". As stated

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<sup>25</sup> - Constitution of the Syrian Arab Republic 2012, seen on August 24, 2018, at: [ncro.sy/wp-content/uploads/2016/04/2012.pdf](http://ncro.sy/wp-content/uploads/2016/04/2012.pdf)

in (article 133): "The Supreme Judicial Council shall be presided over by the President of the Republic. The law shall specify the manner of its composition, its terms of reference and the rules of conduct of work therein." As for the fourth section of (article 141) of the Constitution, it stipulates that: "The Supreme Constitutional Court shall consist of at least seven members, one of whom shall be a President appointed by the President of the Republic in a decree." (item 5) of (article 146) of the Constitution provides that one of the functions of the Supreme Constitutional Court is "the trial of the President of the Republic in case of high treason," which, as stated previously, he appointed, knowing that there is no definition or text in the Penal Code of Treason.

(article 148) states: "The Supreme Constitutional Court shall not be entitled to consider the constitutionality of the laws proposed by the President of the Republic on the popular referendum and the approval of the people."

The rule of the authorities of the President of the Republic, and the lack of respect by not separating the three branches of power: legislative, executive and judicial, constitute despotism. The principle of separation of powers is one of the principles of democracy, and stems from the necessity of non-domination of authority, and the maintenance of freedoms and the rule of law.

The deprivation of women from their right to assume the post of President of the Republic is reflected in (article 3-1): "The religion of the President\* of the Republic is Islam"(note\*:The word president, is in the masculine noun form, as the Arabic language nouns have separate feminine and masculine forms), and also in (article 4-84), requires the candidate for the presidency to "not be married to a non-Syrian\*" (\*the word non-Syrian is in the feminine noun form, which implies that the president is automatically a man).

As for the source of the legislation, (article 3-2) stipulates that "Islamic jurisprudence is a major source of legislation." This article made it possible for the most discriminatory and strict provisions to apply to women.

The fourth paragraph of (article 3) stipulates that "the personal status of religious communities is safeguarded and respected," which is the consolidation of the sectarianism in society, and perpetuates discrimination against women and deprives them of their civil rights.

## **Laws that protect criminals and perpetrators of human rights violations and gives them immunity<sup>26</sup>**

### **First: The Text of the Law Issued by Decree 61 in 1950 - Military Penal Code**

Military officers, military school students, soldiers, all persons employed in the military or armed forces or in any military capacity, civil servants of the Ministry of Defense, the gendarmerie, civilians employed in various interests of the army, prisoners of war, etc., must be tried before military tribunals whatever their nationality (article 50), and permission must be obtained from the Minister of Defense or an authorized representative to prosecute any of them according to the following articles:

(article 19):

1. "When the public prosecution ceases to take the complainant as a personal plaintiff, the public prosecutor has the right to pursue the complainant, even if the defendant is not a military person. However, if the complainant is from any military capacity, the personal prosecutor cannot proceed with the prosecution, without the consent of the public prosecution."
2. If the complainant works in any military capacity, the Army Command or the Chief of Staff, may still pursue the case if it deems it necessary, even if complainant withdraws the case.

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<sup>26</sup> - Legislative Decree No. 61 of 1950 - Military Penal Code, seen on August 25, 2018, at: [http://www.parliament.gov.sy/laws/Law/1950/penal\\_10.htm](http://www.parliament.gov.sy/laws/Law/1950/penal_10.htm)

(article 51): "Only the military judicial authorities may determine the jurisdiction of a case, and any dispute raised by another judicial authority in relation to the jurisdiction shall be referred to the military judicial authorities for review before considering the basis of the case. If the authorities decided that the case does not fall under its jurisdiction, then the case will be referred back to the court to which the case was filed earlier."

(article 52) states: "It is the duty of the Minister of Defense and the Chief of Staff to investigate crimes that are the responsibility of the military courts, and are assisted by regional commanders, brigade commanders, the General Gendarmerie and the military judicial officers, and in this capacity, in respect of their jurisdiction, all complaints and investigations will be raised to them."

1. The following are to be submitted to the Chief of Staff:

- a) Complaints (or dossiers) relating to crimes committed by a military officer against another military officer.
- b) Papers and arrest warrants against military personnel and perpetrators of crimes of which no civilian is connected to.
- c) Investigation records relating to crimes committed by military officers during their service.

2. Complaints, investigations and preliminary investigations shall be sent to the specialized Public Prosecution in order to obtain a prosecution order in the following cases:

- a) In the three cases mentioned in previous item if the suspect is held in detention.
- b) In all other circumstances not mentioned in this article.

(article 53) states: "Orders for prosecution shall be issued on the basis of the Military Prosecution's review as follows:

- 1- In times of peace:

- a) Against high-ranking officers and commanders by a decree issued based on the recommendation of the Commander-in-Chief of the Armed Forces.
- b) Against officers, employees, civil servants and workers affiliated with the army, by a decision of the Commander-in-Chief of the Armed Forces based on the recommendation of the Chief of Staff.
- c) Against subordinate civil servants and employees of the Ministry of Defense by order of the Commander-in-Chief of the Armed Forces.
- d) Against Captains and individuals by order of the Chief of Staff.

If there are military personnel of different ranks involved in one case, or there are military and civilians who need to be tried before military courts, the order to prosecute will be issued by the authority with the power to prosecute the highest rank.

- 2- In the Event of War: In the event of war, the order of prosecution shall be issued in all the aforementioned cases by the Commander-in-Chief of the Armed Forces. "

(article 54) states: "The Commander-in-Chief of the Armed Forces, and the Chief of Staff have the right to appoint the regional military commander/brigade commander/unit commander to order the prosecution of crimes against individuals whose cases are appealed. "

## **Second: Laws of Establishing the State Security Administration<sup>27</sup>**

- 1- Legislative Decree No. 14 of 1969: (article 16) states: "No person shall be prosecuted for crimes committed in the course of carrying out the specific tasks entrusted to them, unless a prosecution order is issued by the Director."

(Article 30) states: "This Decree shall not be published, and shall come into effect as of the date of its issue."

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<sup>27</sup> - Law on the Establishment of the State Security Administration and the Law of Internal Organization of State Security ", Syrian Human Rights Committee, February 6, 2004, seen on August 25, 2018, at: <http://www.shrc.org/?p=7451>

- 2- Legislative Decree 549 of year 1969: (article 74) states: "Any person employed by the State Security Department or assigned to, or seconded to, or directly engaged with, may not be prosecuted for crimes arising out of or during carrying out the tasks of their job, unless their case is referred to the administration's Disciplinary Board, and a writ of prosecution issued by the director."

(article 101) states: "This Decree shall not be published and shall be effective from the date of the issue of Decree No. (14) dated January 15, 1969."

**Third: Legislative Decree No. 69 Issued by the President of the Republic on September 30, 2008<sup>28</sup>**

Under which the military law was amended in Syria. (article 1): "Addendum to the (article 47) of the Penal Code and the Rules of Military Trials issued by Legislative Decree No. 61 dated February 27, 1950 and its amendments, the following paragraph reads as follows:

- 1- Crimes committed by officers, members of the Internal Security Forces, members of the Political Security Division, and members of the customs authorities, for the performance of the tasks assigned to them.
- 2- Orders for the arrest of officers and members of the Internal Security Forces, members of the Political Security Division and elements of the customs authorities, will be issued in a decision made by the General Command of the Military and the Armed Forces; in accordance with (article 53) of the Penal Code and the Rules of Military Trials and its amendments.

(article 2): Cases brought before the ordinary courts referred to in (article 1) that are referred to the military courts."

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<sup>28</sup> - New decree that protects security elements accused of torture from prosecution, Syrian Human Rights Committee, October 12, 2008, seen on August 25, 2018, at: <http://www.shrc.org/?p=9298>

Under this decree, a case cannot be brought before the ordinary courts because it requires the authorization of the general commander of the army, despite the fact that the police and political security officers fall administratively under the Ministry of the Interior.

#### **Fourth: Penal Code<sup>29</sup>**

One of the aspects of legal violence against women in the Penal Code relates to the discrimination between men and women in several provisions: (article 473): "1. The adulterous woman shall be punished by imprisonment for three months to two years. 2. The same sentence will apply to her adulterous partner if he is married; otherwise he will be imprisoned for one month to one year." (article 474) states: "1. The male adulterer shall not be punished except in the case of the adultery taking place in the marital home, and if he openly takes on a mistress in public. 2. Same applies to the adulterer's female counterpart." In other words, adultery is not punishable except in these two cases. If adultery occurs in a location (other than the marital home), the man shall not be punished, however, should the situation be reversed, the punishment shall be inflicted on the adulterous woman, wherever she is. (article 475) states: "The act of adultery may only be prosecuted if the husband files a complaint (If a marriage does not take place, the prosecution ceases based on a complaint filed by the guardian)." Sexual violence is not criminal if committed by the husband with his wife, according to the text of (article 489-1): "A person who coerces a woman other than his wife into having intercourse, shall be punished by hard labor for at least fifteen years."

The Penal Code allows for the killing of women under the pretext of "the noble motive" in (articles 548 and 192), and under the pretext of "the revolution of anger" in (article 242). In 2011, (article 508) was abolished (article 508) exempts the rapist from any penalty in the event of his marriage to his victim). Instead, a light penalty came into effect benefitting men who kill

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<sup>29</sup> - Syrian Penal Code, Ministry of Justice, seen on September 30, 2018, at: <https://goo.gl/pg1WV7>

women "out of honor," rather than consider that heinous act as a deliberate murder punishable by at least fifteen years.

The laws read as follows:

1. If a legal marriage is held between the perpetrator of one of the offenses mentioned in this chapter and the victim, the perpetrator shall benefit from the lighter penalty in accordance with the provisions of (article 241), provided that the penalty shall not be less than two years' imprisonment.
2. If a legal marriage is held between the perpetrator of one of the offenses mentioned in this chapter and the victim, the prosecution shall be suspended. If the case is adjudicated, the execution of the sentence shall be suspended.

This means that the law helps the offender to escape the punishment, and the victim's experience is perceived as a scandal, rather than her being perceived as a survivor. Allowing the killing of women under the pretext of honor and the pretext of the "revolution of anger" is a justification and encouragement for their killing, and the perpetuation of society's violence against them. The law establishes male ownership of women and their bodies.

#### **Fifth: Law of Naturalization<sup>30</sup>**

(article 3-a) of the Naturalization Law states: a)"A person shall be deemed Syrian Arab if they were born in or outside the country of a Syrian Arab father." This means that the Syrian father is the one who passes the citizenship to his children, deprives the mother of this right, and is also discriminative against non-Syrian Arabs.

#### **Sixth: Personal Status Law Model<sup>31</sup>**

The language used in describing the Personal Status Law affirms the inferiority of women and content of the law, based on misogynistic jurisprudence that affirms the centrality of

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<sup>30</sup> - Legislative Decree No. 276 of 1969 concerning Syrian Arab nationality, seen on August 24, 2018, at: [http://parliament.gov.sy/laws/Decree/1969/civil\\_01.htm](http://parliament.gov.sy/laws/Decree/1969/civil_01.htm)

<sup>31</sup> - Mamdouh Outri, "Personal Status Law", Al-Nouri Printing and publishing house, Damascus, Syria, 2010.

masculinity in matters of guardianship and power. For example, a woman is considered a person who is not fully qualified to make decisions, even if she reaches adulthood, and would require a guardian. (articles 27-151- 163).

- 1) The testimony of two women is equivalent to the testimony of one man (article 14).
- 2) The minimum age for marriage between male and female is not equal (articles 16 and 18).
- 3) The conditions of the marriage contract are not-binding for the husband/male (article 14).
- 4) The permissibility of polygamy (article 37).
- 5) The wife is obliged to travel with her husband, unless the marriage contract stipulates otherwise, or the judge finds a valid reason for travel (article 70).
- 6) Every person is responsible for their own expenses, except a wife, whose expenses are the responsibility of her husband" (article 154).
- 7) A woman may not travel with her child during marriage without the permission of their father." The reverse does not apply. (article 148).
- 8) Guardianship of a minor is granted to the father, in case of absence, to the paternal grandfather, and in case of absence, to the paternal male relatives. (article 170).
- 9) For inheritance, the male is granted the share of two females (article 277), although inherited public land is divided equally between both the male and female, and the law obligates the male and the female to support their parents (article 158).
- 10) The law allows the husband to divorce his wife based on his own individual will (articles 85 and 87).
- 11) Violation of women's privacy by monitoring their menstruation cycle (article 121).

Marriage in the Syrian law is a sales contract. Women have the price of dowry and it is considered an excellent religion (article 54-3). Therefore, the legislator was easily able to use the derogatory terms "the wages of breastfeeding - babysitting fees."

Additionally, the husband is entitled to recover the dowry, half or all of it, if he finds that there has been fraud: "If a person marries a woman assumed a virgin, but turns out not to be" (article 307).

When the divorce occurs, the law determines when the dowry is paid, and the amount to be paid: "If the divorce takes place before sexual intercourse, and before the couple spend time alone together, then the man is exempted from paying half the dowry." (article 58)

In the case of an invalid dowry: "If the wife leaves her husband before having sexual intercourse, then the dowry is invalid." (article 59) And "After the wife is paid her dowry, she is obligated to live with her husband" (article 66). Furthermore, the legislator considers the marriage contract still valid, even during a woman's legal waiting period, following separation from or absence of her husband: "If the absentee (husband) returns, or is released from prison, then he has a right to take back his wife" (without any resistance) (article 109-2)

In the case of separation due to absentees (husband) failure in providing alimony: "The judge may allow separation due to failure of spousal financial support, however, the husband may still take back his wife, if he shows willingness to pay alimony" (article 111)

The woman's guardianship is transferred from the owner (her father), to the buyer (husband), but her father's authority will not be negated, if the father finds the husband to be incompetent: "If the elder daughter marries without her guardian's approval, her guardian may request to dissolve the marriage if he finds the husband incompetent."

The guardian may practice his authority over a woman if she rebels, in the custody section of the law: "A woman's guardian may shelter her in his home if she is under forty years of age, even if she is not a virgin— if she rebels against him, then he will have the right to cease financial support." (article 151).

Non-Muslim women are subject to worse discrimination. They are deprived of alimony: "No alimony is granted if the woman is of a different faith" (article 160)

And her testimony is inadmissible in the marriage contract: "The validity of the marriage contract requires the presence of two witnesses, two men or a man and two Muslim women who are reasonable adults and are sound of mind" (article 12).

And she has no guardianship over a minor/her child: "The guardian must be able to carry out the guardianship with full capacity, and must be of the same faith as the husband." (article 178).

According to (article 305) of the law, the judge shall refer in all that is not stated in this law to the Hanafi doctrine in the law of Qadri Pasha, i.e. subjecting women to laws that are nearly one hundred years old.

A large part of the Public Personal Status Law discriminates against Christians and Mawsawis.<sup>32</sup>

The Constitution and the laws have legitimized the organized and systematic violence against women in a hierarchical society, allowing for the violation of women's bodies, by subjecting women to misogynistic laws that affirm men as guardians of virtue and honor. For example, in the Penal Code: "(A man) Must preserve the honor of his female siblings or relatives, including second-degree relatives" (article 531)

In the Personal Status Law, for example, physical confinement may be enforced on a woman during "idda" (the period a woman must observe after the death of her husband or after a divorce) in which the Personal Status Law sets out various laws and articles, to control a woman's body, by "disciplining" her if she rebels<sup>33</sup> (articles 74 and 151).

The legal system is a main cause for persecution against women. It continues to cause women a whole deal of suffering before and during the conflict in Syria. For example, depriving women of their right to guardianship over their children hindered their escape from siege and

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<sup>32</sup> - Lama Kannout, "Political Participation of Syrian Women between the Center and the Margin", Syrian Feminist Lobby, 2017, pages 126-127.

<sup>33</sup> - The Public Personal Status Law clarifies the meaning of "rebellion" (nushuz in Arabic) in Article 75: "A person who leaves the marital home without lawful justification or prevents her husband from entering her home before she asks to move to another house."

shelling. Simply because her detained/deceased husband's family are the decision-makers when it comes to her finances, work, and her children's mobility.

In some cases, and following their release, some female detainees were threatened with being deprived of their children, either by the husband or by his family. The Public Personal Status Law, in its language and content, portrays the mother as a vessel and a procreation tool only, especially when using derogatory terms such as 'breastfeeding fees', and 'childcare fees'.

The discriminatory set age for marriage for boys and girls (article 16) and (article 18), authorizes the judge to allow the marriage of a teenager boy at age fifteen, and for a girl at age thirteen, if he finds validity in their claim, and if their bodies are sturdy enough. Furthermore, the girl/woman's portrayal as a "sinful body" that may lead astray, and cannot control its instincts, and needs a guardian for guidance, was one of the reasons that led to the significant increase in the marriage of underage girls "protect" them during the conflict.

The conflict in Syria has revealed that violence against women is ingrained in its society and laws, both feeding off the other. In order to break this vicious cycle, the Transitional Justice process must adopt a transformative approach, and involve women in shaping policies and mechanisms through various capacities, including female judges, investigators, experts, human rights defenders, eye witnesses, and not just victims.

## Section Two: Gender-sensitive Transitional Justice

### Gender-sensitive Transitional Justice

Is achieved when both women and men are equally instrumental in establishing its mechanisms, so as to include not only the direct and indirect crimes and violations against women and the impact of the conflict on them, but also the social factors that have allowed for the continuation of such crimes and violations.

The design of a gender-sensitive transitional justice program is based on "a broad sector of women and girls being represented in various dialogues, and not only focusing on women's abuse, but also consider the evolution/devolution of gender roles during and after conflict. Furthermore, the role of women as vital contributors to the economy, heads of households, and guardians must be considered. Dialogues must be maximized to empower women, and address the prejudices against them."<sup>34</sup> These dialogues should extend to remote areas, where displaced women and refugees are located. Without these women's full participation, their views, and their rights and needs, Transitional Justice will only reflect the view of men "and their priorities and experiences [in relation to] violence". In addition, defining and affirming the importance of Transitional Justice, must precede dialogue, to bridge the knowledge gap and establish a foundation to start from.

Gender-sensitive transitional justice is transformational, and it addresses the inequality that has established gender-based violence. It changes power structures between the sexes by empowering women and girls, and highlights the fact that societal norms are unjust for women, which also served as an excuse for policy makers, to keep those misogynistic laws against women.

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<sup>34</sup> - "Analytical study focusing on gender and sexual violence in the context of transitional justice" United Nations - General Assembly - June 30, 2014, 21/27 / HRC / A, page 06, seen on September 11, 2018, at: <https://goo.gl/8XqWRQ>

Gender-sensitive transitional justice stems from the realization that the personal is political, and that the reason for gender-based violence is power, authority and control of resources in families, society and institutions, and that the division of public space into a “private space” and a “public space” is an imaginary division intended to consolidate the structure of male domination.

Transitional justice may not be able to bring about radical change, but it provides the legal tools for social movements, parties, trade unions and civil society organizations, and assists them in their struggle for gender equality, gender mainstreaming in development, policy-making, institution-building and legislation.

### **Establishing Gender-sensitive Transitional Justice is based on**

1. Women’s equal participation with men in establishing transitional justice and building its laws and mechanisms, and working to achieve the essence of justice in equity and justice, and understanding the roots of violence against women, and its complex forms and ramifications.
2. Recognizing gender equality, and that can only be achieved after dismantling the oppressive structure of tyranny in both the State and society. Then building a democratic system that guarantees individual rights and freedoms, and mainstream gender in development, policy-making and institution-building; monitor their application, address formal and informal challenges, eliminate discriminatory laws against women, and bring them into conformity with the international standards on women's rights.
3. Addressing political, social, economic and sexual crimes and violations, and their impact on women, girls and the female generations to come.
4. Disaggregating crimes and direct and indirect violations against women, and analyzing their impact when they intersect with poverty, age, illiteracy, religion/sect, nationality,

political position, geographical location, etc., and the need to redress them in a completely impartial and transparent manner—publicly. This will increase the confidence of individuals and communities in Transitional Justice and its mechanisms, especially as Syrian society is currently polarized.

### **The importance of Transitional Justice in Syria**

Gender-sensitive transitional justice in Syria is of exceptional importance based on several factors:

1. Syria cannot be governed or co-governed by those who have committed war crimes and crimes against humanity, whether from current officials in power or jihadi military factions, and to end impunity that has been prevalent for decades.
2. The restructuring of military and security institutions, direct catalysts of murder and crimes, and hold perpetrators accountable of war crimes and crimes against humanity, and to prevent their recurrence. Additionally, reform state institutions that were instrumental in committing crimes and violations, so that they respect human rights, maintain the rule of law, be accountable for their actions, and then integrate the Transitional Justice component. <sup>35</sup>

Institutional reform can include many reformative measures related to justice, for example:

- 1- Vetting staff eligibility: consideration of staff background during rehabilitation of the public, to avoid employing, and to simultaneously get rid of exploitative and corrupt officials.
- 2- Structural reform: Restructuring institutions to promote integrity and legitimacy, by ensuring accountability, building independence, ensuring representation and increasing responsiveness.

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<sup>35</sup> - "Institutional Reform" ICTJ, seen on September 11, 2018, at: <https://www.ictj.org/ar/our-work/transitional-justice-issues/institutional-reform>

- 3- Supervision: Establish publicly visible supervisory bodies within state institutions to ensure accountability to civil governance.
- 4- Conversion of legal frameworks: reform of legal frameworks, or the establishment of new legal frameworks, such as the adoption of constitutional amendments or international human rights treaties, to ensure the protection and promotion of human rights.
- 5- Disarmament, Demobilization and Reintegration: Dissolving armed actors - such as armed organizations - and providing justice-based processes and means through which ex-combatants can rejoin civil society.
- 6- Education: Establish training programs for officials and staff working on human rights and international humanitarian law. 36

The Syrian regime very much depends on war, crimes and violations against the various state institutions, without any legal accountability, thanks to the infiltration of its security services in society and state institutions. The regime's Court of anti-Terrorism and the Military Field Court are two examples of terrorism and suppression:

### **Court of Counter-Terrorism<sup>37</sup>**

Designed to protect the regime and fight against the opposition and human rights activists. It does not meet the minimum international standards and is not related to the judiciary. It is like a security branch, its judges and employees are part of the security apparatus. A staff member or a judge of that court shall be appointed only after obtaining a prior security

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<sup>36</sup> - Previous source.

<sup>37</sup> - "Law 22 of 2012 Establishing a Court for the consideration of terrorism cases based in Damascus" Syrian Arab Republic - People's Assembly " July 26,2012, seen on August 21, 2018, at: <https://goo.gl/gYREUs>

approval. The judge of that court has the power to question the person in custody without the presence of a lawyer.

“The judge will not respond to the request of the detainee or his lawyer to present evidence to forensics to ensure that he was subjected to torture, and the judge often complies with the security confessions in the detainee’s security dossier.”<sup>38</sup> (article 3-1) of the Syrian law states: “The Court shall be competent to hear the crimes of terrorism and the crimes referred to it by the Public Prosecution of the Court.”

(article 4) states: "The jurisdiction of the Court shall include all persons, civilian and military." In contrast to (article 3), paragraph 1, the party that refers the crimes to the Court is not the Public Prosecution but the security branches. The accusations include, demonstrations against the regime or those who were outspoken against the regime on social media, "all are terrorists in the eyes of the regime."<sup>39</sup>

In (article 6), if the case against the accused is dropped in absentia, and then he is eventually arrested, then the charges against the accused will still be valid, if he does not voluntarily turn himself in: "The court's sentence in absentia shall not be subject to retrial in the event of the convict’s arrest, unless he voluntarily turns himself in.”

### **Field Court Martials**

Formed by Legislative Decree No. 109 of August 17, 1968, (article 1) states: "The Court Martial, considers crimes within the jurisdiction of the military courts, and will be referred by the Minister of Defense in the following cases: In the event of war, during military operations, or enemy of war."<sup>40</sup> For the legislative decree No. 32 of July 01, 1980, an item

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<sup>38</sup> - "Counter -Terrorism Court in Syria", Legal Note, May 09, 2015, seen on August 21, 2018, at: <http://legal-agenda.com/article.php?id=1118>

<sup>39</sup> - Previous source.

<sup>40</sup> - Law on the Establishment of Field Court Martials, Syria Advocacy Forum, seen on August 21, 2018, at: <http://www.damascusbar.org/AlMuntada/showthread.php?t=22261>

was added at the end of (article 2, paragraph B): "or when internal disturbances occur," An example of a sentence issued against a civilian by this court, was the case of Bassel Khartabil Safadi (software developer and peaceful activist), who was arrested on March 15, 2012, and was later pronounced dead by his family on August 1, 2017.<sup>41</sup>

Therefore, the transitional justice process cannot be built without political transition, because the goal of transitional justice is to recognize human dignity, to recognize and hold accountable those responsible for crimes and abuses, to build national reconciliation and restore social peace, to compensate and commemorate the victims so as to ensure their rehabilitation and rights as citizens. Transitional justice is a compulsory path to change from a totalitarian state that has been involved in collective punishment of groups and individuals, to a democratic state, or at least help promote democratic transformation.

The Syrian regime is hateful and vengeful, and is convinced that it is immune from being held accountable for its heinous crimes,<sup>42</sup> and continues to systematically deny them. As was the case with the Caesar photos; following their publication, it was confirmed by Human Rights Watch that the pictures were taken in the courtyard of the military hospital 601 in Mezze, Damascus — of which the regime completely denied.<sup>43</sup> Assad said in an interview with Foreign Affairs on January 20, 2015: "None of these allegations are true; you can bring pictures from anyone and say this is torture. Who took the photos? No-one knows. There is no investigation to confirm this evidence is, so all the allegations are

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<sup>41</sup> - "Basel Khartabil Safadi, victim of the Field Court Martial", Justice for Life, August 3, 2017, seen on August 21, 2018, at: <http://jfl.ngo/?p=4679>

<sup>42</sup> - On June 20, 2018, the report of the United Nations Commission of Inquiry on the details of the Eastern Ghouta siege and the recovery process concluded: "Pro-government forces have committed a crime against humanity of causing severe mental or physical suffering through massive and continuous bombing of populated areas, and deprived food and medicine from civilians who were trapped during the period under review." Source: "UN Commission on the Investigation of Syria: War Crimes and Crimes against Humanity", United Nations Human Rights Council, June 20, 2018, seen on September 15, 2018, at: <https://www.ohchr.org/AR/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=23226&LangID=A>

<sup>43</sup> - "If the Dead Could Speak", Human Rights Watch, December 16, 2015, seen on September 15, 2018, at: <https://www.hrw.org/ar/report/2015/12/16/284536>

without evidence."<sup>44</sup> And the regime is still sticking to its narrative since the beginning of the revolution in 2011, that all those who revolted against it, women and men, are terrorists that betrayed the homeland, and the homeland is embodied in Assad, and those who return to the homeland must prove their allegiance, and show obedience to the regime. Ghada,<sup>45</sup> a survivor and activist from al-Zabadani tells her story, "Everyone who comes back to Syria has to adhere to what the regime wants, what Bashar wants basically. Anyone who wants to return to Syria has to start, prior to five months of returning, cheering the regime, and becoming outspoken in support, and speak publicly in line with the regime's narrative; that the terrorists are the ones who caused us to flee to Lebanon, they destroyed the country, and now we are done with terrorism, and we want to return to Syria. I have witnessed a horrific story. A person I knew was shot in the leg by a regime sniper, and when he arrived at a regime checkpoint while he was injured, those at the checkpoint did not believe his story about the sniper who shot him, and the soldier at the checkpoint beat him and struck his injured leg until he went into a coma. Unfortunately, he is currently outspoken in his support for the regime so he can return to Syria." The regime works to obliterate its crimes in several ways, including but not limited to: the exhumation of tombs in the Zamalka cemetery in August 2018, as some of the victims who died in the chemical attack on Eastern Ghouta were buried there, on August 21, 2013.<sup>46</sup> The chemical attack claimed the lives of 1,127 people, according to the Syrian Network for Human Rights.<sup>47</sup> The regime is also recently working on closing the dossier of detainees and the forcibly

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<sup>44</sup> - "Syria's president speaks", FOREIGN AFFAIRS, April 2015, seen on September 15, 2018, at: <https://www.foreignaffairs.com/interviews/2015-01-25/syrias-president-speaks>

<sup>45</sup> - Ghada (survivor and activist), a dialogue session conducted by the researcher with a group of survivors in a Syrian women's organization in Lebanon, August 06, 2018.

<sup>46</sup> - Adel Hammoud, "Graves of the victims of the (chemical) massacre in Zamalka and their exhumation" August 18, 2018, seen on August 22, 2018, at: <https://goo.gl/aBEc9a>

<sup>47</sup> - "On the anniversary of Ghouta massacre, the Syrian Network for Human Rights Network reviewed data of 221 incidents of chemical weapons used by the Syrian regime and ISIS," The Syrian Network for Human Rights, August 20, 2018, seen on August 22, 2018 at <http://sn4hr.org/arabic/2018/08/20/10328/>

disappeared, thereby reaffirming grievances and impunity. In July, the regime's civil registry alerted families of some of the detainees and the forcibly disappeared of their death. The document they were handed declared the cause of death of the victims as a heart attack, an attempt from the regime to hide their crimes of murder/torture against those who opposed them. The families were not informed about their relatives' burial place. Habib Nassar,<sup>48</sup> who published thousands of death certificates of victims said, "The founding act of the repressive regime is currently worse than the pre-revolutionary period in Syria, but this time under the auspices of Russia."<sup>49</sup> The regime is keen to incite hatred and insult victims, women and men, by various means.

For example, holding concerts on the ruins of destroyed cities. As activist Ghada so poignantly put it: "Every one of us dreams and thinks of going back to Syria, but what happens makes me think a hundred times about it, especially when I see pictures of parties, dancing, excitement and obscenity; such as the party that took place in the Silan Square at the Zabadani gate during the festival of Siwar Al Sham. And when I say obscene, I do not mean the songs or the dancing, but obscenity in the extravagance of those concerts - so much money going in them. I don't understand that happiness and excitement, while so many are detained and martyred and displaced. While 99% of the cities are destroyed and lifeless, if the camera that captures footage of the concert was turned slightly to a different angle, the difference between the bright colors of the party and the gray color of the destruction is so evident, one wonders how do those participating not feel the suffering of others?! This celebration in a square such as that of the Silan Square where hundreds of people were killed, will sow nothing but hatred."

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<sup>48</sup> - Habib Nassar (Director of Policy and Research, Impunity Watch), interview with researcher, June 06, 2018.

<sup>49</sup> - "On the strategies of the regime regarding the dossier of detainees" al-Jumhuriya, August 13, 2018, seen on August 22, 2018, at: <https://goo.gl/ssuYNE>

## **Chapter III: Gender-Sensitive Transitional Justice Mechanisms**



## Section Three: First Mechanism: Trials

An independent and professional investigation, and the prosecution of perpetrators of crimes and violations are essential components of Transitional Justice. Of course, the investigation must resort to specific allegations, and verify their authenticity and ensure the protection of witnesses, staff and evidence.

### Types of trials

Following the Nuremberg and Tokyo trials, the UN Security Council established an International Criminal Tribunal for the former Yugoslavia in 1993, and then the International Tribunal for Rwanda to follow up and prosecute the perpetrators of genocide in 1994. Both trials were a procedure to confirm the international obligation to hold war criminals accountable. However, the trials lacked the geographic and cultural proximity of victims and citizens in the Balkans and Rwanda. All of their staff were international staff, so their reform impact was weak on national state institutions, in addition to the high costs. The statute of both trials recognized that rape was a crime against humanity. Although the International Center for Transitional Justice (ICTJ) considers the trials to have "taken into account gender considerations in terms of procedural protection in relation to victims and witnesses and the training and employment of personnel,"<sup>50</sup> yet, UN Women considers that there are difficulties for women as witnesses in international courts and mixed courts, and that they are "poorly prepared, especially for crimes of a sexual nature, and the stigma associated with testifying as victims of sexual abuse, lack of sensitivity to victims, and general disregard for crimes of a sexual nature."<sup>51</sup>

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<sup>50</sup> - "Trials," International Center for Transitional Justice, Amnesty International, seen on September 02, 2018, at: <http://www.amnestymena.org/ar/Magazine/Issue14/Trials.aspx?media=print>

<sup>51</sup> - Valji et al, page 06.

The proportion of female judges at the International Criminal Tribunal for Yugoslavia was 27% (7 out of 26) and in the International Criminal Tribunal for Rwanda (26%) (5 out of 19).<sup>52</sup>

### **International Criminal Courts**

The International Criminal Court (ICC or ICCT) is an intergovernmental organization and international tribunal. The ICC began functioning on July 01, 2002, the date that the Rome Statute entered into force. The ICC has jurisdiction to prosecute individuals for the international crimes of genocide, crimes against humanity, war crimes, and crimes of aggression. "The Court may consider cases of persons directly charged with such offenses, or others who have indirect responsibility for them, such as the responsibility for conspiring, cover-ups, and incitement."<sup>53</sup>

The Court exercises its jurisdiction in the event that such crimes are committed on the territory of a State party to this Convention. As Syria is not a State party to the Rome Statute, and states that are not a party cannot be compelled to accept international criminal jurisdiction except via a decision of the UN Security Council. However, on May 22, 2014, the Security Council failed to refer the situation in Syria to the ICC due to Russian and Chinese vetoes.<sup>54</sup> Although the jurisdiction of the Court is in accordance with (article 13), (item c), which reads: "If the Prosecutor has initiated an investigation into an offense in accordance with (article 15)." Nevertheless, it has not yet been adopted.

The International Jurisdiction of the ICC is a crucial mechanism for the strengthening of the fight to end impunity, and specifically the failure to punish grave breaches of international humanitarian law.

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<sup>52</sup> - Valji et al, page 07.

<sup>53</sup> - "The International Criminal Court ... Its Establishment and Jurisdiction" Al Jazeera, March 04, 2009, seen on September 01, 2018, at: <https://goo.gl/7A2fyh>

<sup>54</sup> - Human Rights Watch, "Security Council - Vetoes Betray Syrian Victims" May 22, 2014, seen on September 01, 2018, at: <https://www.hrw.org/ar/news/2014/05/22/253832>

As stated in the ICC Statute, States retain the primary responsibility in the prosecution of international crimes. Under the Geneva Conventions and Additional Protocol I of 1977, States are under an obligation to search for or issue orders for alleged violations of the four Geneva Conventions and their Protocol I. States must prosecute people accused of war crimes, whatever their nationality,<sup>55</sup> before their own national courts or extradite them for trial elsewhere.

Serious violations are required to be included in a state's national legislation. In the futile situation of Syria, referral to the International Criminal Court and the non-activation of (article 13) (c), human rights activists resort to justice and submit complaints to European courts. The last of these complaints was filed in Germany and Austria. General Prosecutor in Germany issued an international arrest warrant against General Jamil Hassan (head of Air Force Intelligence) on charges of war crimes and crimes against humanity.<sup>56</sup>

### Hybrid Courts

They operate under the auspices of the United Nations and the States concerned, Hybrid courts are defined as courts of mixed composition and jurisdiction, encompassing both national and international aspects, such as the geographical proximity of victims and witnesses and the positive impact on national State institutions, with the benefits of international participation, expertise and resources. Their cost of is less than international tribunals. For example, the budget of the Special Tribunal for Sierra Leone was almost five times less than the annual budget of the International Criminal Tribunal for Yugoslavia. In this type of court, national law and international law are applied, usually operating within the jurisdiction where

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<sup>55</sup> - "Scope and application of the principle of universal jurisdiction: United Nations General Assembly - Statement of the International Committee of the Red Cross," International Committee of the Red Cross, October 14, 2016, seen on September 05, 2018, at: <https://goo.gl/oC3muZ>

<sup>56</sup> - "Germany issues an international arrest warrant against the Syrian Air Force Intelligence Director," Reuters, June 8, 2018, seen on September 07, 2018, at: <https://ara.reuters.com/article/topNews/idARAKCN1J427L>

the crimes occurred, established to evaluate the impact of hybrid courts on states and societies in transition.

### **National courts:**

Experts and researchers often prefer to resort to national courts for a number of reasons, including: local capacity for follow-up, a broader understanding of the political context in general and its changing context in the political transition, it is less costly, and there is better communication with victims and witnesses, and better connectivity to the evidence. This requires however, people's trust in the independence of the judiciary, and also requires the availability of a legislative framework for criminal law and procedures, trained judges, and a political and secure environment capable of handling trials and what follows.

A document issued by the International Center for Transitional Justice (ICTJ), through various experiences relating to national follow-up,<sup>57</sup> concludes:

- 1- Due to lack of resources and time constraints, the vast majority of human rights violators will not be prosecuted, and as a result, other mechanisms of justice need to be established, in particular corrective/fact-finding and reparation measures.
- 2- "If the follow-up strategy was harsh since it began, it could quickly lead to public insecurity, requests for amnesty..."
- 3- Focus on persons [who] have major responsibilities based on a combination of criteria, such as their position, nature of the crimes committed and the frequency and form of involvement in each crime. And focus on follow-ups that prove the existence of "crimes of the regime" that may reveal the highest involvement in collective human rights violations. What will follow, is the emergence of the obvious complexities associated with political will, witness protection and the cooperation and integrity of institutions.

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<sup>57</sup> - "Trials," International Center for Transitional Justice, Amnesty International, seen on September 02, 2018, at: <http://www.amnestymena.org/ar/Magazine/Issue14/Trials.aspx?media=print>

- 4- Collective trials and bargaining on admission of charges may give flexibility and effectiveness to national justice efforts to conform to international standards.
- 5- When the follow-up is not immediately viable, it is important to maintain a mechanism to look into a case at a later date. For example, resist calls for a general amnesty, and prepare cases for future trials and/or to appoint a special prosecutor, and make resources available to citizens who wish to file for a case.
- 6- The follow-up agenda must be based on the interests of the victims, not the interests of governments.
- 7- The technical empowerment of the process must be foreseen, for example, how will the follow-up proceed from the initial complaint to the end of the trial, what skills should be available? Who will provide training? Often these details of great importance are undermined due to their technical difficulties.



## Section Four: Second Mechanism: Fact-finding Committees

Are formal and non-judicial committees, even if their composition includes individuals from the judicial body<sup>58</sup> that have legal character, but are independent administratively and financially. Their work ends according to a specific period of time, and can be extended for justified reasons. They work towards achieving truth and accountability, and investigating and officially recognizing crimes and violations, and determining victims. In addition to establishing an archive to record crimes and human rights violations, and "break the link with the past ethically/symbolically, contribute to a culture of respect for the rule of law and human rights, make recommendations for institutional reform and serve as a platform for nation-building and reconciliation."<sup>59</sup> Within a time period determined by the Transitional Justice Law.

The representation of women in fact-finding committees must be balanced. For example, the transitional justice law in Tunisia stipulates that at least one-third of the sexes must be women,<sup>60</sup> and there must be members who are experienced in gender issues. These gender experts must be selected by a Legislative Council, and are to be reputable, both men and women, and must have the integrity, impartiality, competence and respect needed for their position.

In order to ensure gender mainstreaming, the Committee shall appoint a consultative group of gender experts throughout its term of office, with powers and resources, and access to its work, to participate in some hearings, and recommendations of the committee in its final report. There will be focus on gender-based violence, in addition to the gender impact on crime and violations. The committee must be informed on the linkages between political, societal,

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<sup>58</sup> - Mohamed Ezz, Transitional Justice and National Reconciliation in Egyptian Society: A Conceptual Perspective and Methodology "Urbanized Dialogue, March 26, 2015, seen at: August 23, 2018, at: <http://www.ahewar.org/debat/show.art.asp?aid=461075>

<sup>59</sup> - Valji et al, page 09.

<sup>60</sup> - "Basic Law No. 53 of 2013 dated December 24, 2013 relating to the establishment and organization of transitional justice," - Legislation chapter, Tunisia, December 31, 2013, seen on August 23, 2018, at: <https://goo.gl/KaUfBJ>

economic, cultural and legal pre-conflict inequalities, and their connection to gender-based violence during conflict. The committee must organize meetings with women and women organizations, and try to involve them in modifying the committee's recommendations (if need be) in its final report on institutional reform and change of laws, promotion of women's rights and protection against violence.

Fact-finding committees are usually established as countries seek to move from authoritarian regimes or from civil war to democratic states. "Fact-finding committees and other mechanisms aimed at realizing the right to the truth, may grant perpetrators partial immunity or reduced penalties in exchange for testifying, but cannot grant full immunity to the perpetrators."<sup>61</sup>

The example of East Timor (2002-2003), is an important example that focused on integrating both the violation of women's social and economic rights, and the sexual violence against them together; hence an increasing impact of the conflict on women was perceived during hearings. The report of the Commission on Truth, Reception and Reconciliation in East Timor stated that "the consequences of forcibly displaced women that ranged from hunger to extreme vulnerability, sexual abuse, forced labor and deprivation of fundamental freedoms were intricately linked with their civil and political rights." Percentage of women in the committee was 29% (2 women out of 7 members in total).

In Morocco, the Equity and Reconciliation Commission (IER) adopted gender as a "methodological choice," and assessed the specificity of women's abuses, the extent of damage, and their experiences in coping with the damage. The Commission considered in its final report that the paucity of data, writings and testimonies, and the absence of studies on gender and gross violations of human rights has made their suffering invisible. The Commission therefore adopted a methodology to highlight the gender dimension in the gross violations of human rights by listening to women's testimonies in closed and individual

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<sup>61</sup> - "Rule of law tools for post-conflict countries - amnesty measures" UN High Commissioner for Human Rights, United Nations New York and Geneva 2009, page 34, seen on August 23, 2018, at: [www.ohchr.org/Documents/Publications/Amnesties\\_ar.pdf](http://www.ohchr.org/Documents/Publications/Amnesties_ar.pdf)

sessions, public hearings, and "extracting quantitative data to identify general trends on the types of violations, and the ramifications on women victims"

The Commission also organized meetings with women's associations, and attempted to engage them in the crystallization process of the Commission's recommendations to repair the harm inflicted on women at the collective, symbolic and public rights level. Additionally, there was a focus on the violations that affected women because of their views and their political and union affiliations.<sup>62</sup> I will speak about the Morocco example in more detail in the section on experiences.

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<sup>62</sup> - Equity and Reconciliation Commission, Final Report of the Equity and Reconciliation Commission, Report, Advisory Council on Human Rights, National Council for Human Rights, November 30, 2005, page 88, seen on May 16, 2018, at: <https://goo.gl/Kw6mKE>

## Section Five: Third Mechanism: Reparation

The State is committed to recognizing its responsibility for war crimes and crimes against humanity that it has committed. Individual and collective reparation aims to address the damage caused to the victims (as defined earlier), their families, cities and areas that have been partially or totally destroyed due to collective punishment. The right to compensation, that is to say, compensation must be material and moral, add to that all that is necessary to support the victims, women and men, and support them medically, psychologically and socially.<sup>63</sup>

Compensation must not exacerbate gender inequalities that have led to continued violence against women. Otherwise, justice will have no meaning. Compensation programs should be fair and seek to change such structures. Compensation should include compensation for political violence that targeted women directly, indirectly, and sexually, socially and economically, creating double the suffering during the conflict.

The design of the reparation and compensation program must be preceded by long-term awareness and outreach activities. Victims, of both women and men, must participate in the design of the program, with gender and development experts, and organizations including women organizations.

Plans, policies and projects must respond to:

- 1- The complex and multilevel impact of violence against women, and its overlap with forms of discrimination against them, such as economic factors (poverty), level of education (illiteracy), political factors, nationalistic and religious affiliations, geographical location and customs and traditions.

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<sup>63</sup> - "Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power," United Nations - Human Rights - Office of the High Commissioner, seen on August 23, 2018, at: <https://www.ohchr.org/AR/ProfessionalInterest/Pages/VictimsOfCrimeAndAbuseOfPower.aspx>

- 2- Mainstreaming gender in development, that is, linking women's capacities to health, education, economic and political participation and other development axes; ensuring gender equality in participation and access to resources, contributing to equal results and poverty reduction, and with that, ultimately eliminating gender disparities.

### **Forms of Reparation for Victims**

**Economical Compensation:** Through individual grants, contributing to empowering women in the economic realm. The state will also provide facilities for the establishment of small enterprises, and will aid in marketing, and exempt those enterprises from taxes during the early years of incorporation. Compensation can also include free or preferential health services (Rehabilitation), education (Lost Opportunities) and housing (Restitution).

Furthermore, that state shall work to restore rights to victims, women and men, at work, and to abolish arbitrary decisions that have led to the deprivation of their pension rights.

To comply with the Pinheiro Principles<sup>64</sup> section II, that states that refugees and displaced persons have the right to have restored to them any housing, land or property of which they were arbitrarily or unlawfully deprived, as a fundamental right of its own. And receive compensation, "namely when housing, land and/or property is destroyed or when it no longer exists, as determined by an independent, impartial tribunal."

"States shall demonstrably prioritize the right to restitution as the preferred remedy for displacement and as a key element of restorative justice. The right to restitution exists as a distinct right, and is prejudiced neither by the actual return nor non-return of refugees and displaced persons entitled to housing, land and property restitution." (principle 2.2)

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<sup>64</sup> - UN Principles on Housing and Property Restitution for Refugees and Displaced Persons – The Pinheiro Principles Amnesty International, 2005, seen May 28, 2018, at: <http://www.amnestymena.org/ar/Magazine/Issue21/PrinciplesonHousingandPropertyRestitution.aspx?articleID=112>

And as mentioned in (principle 4.1), regarding equality between women and men, “States shall ensure the equal right of men and women, and the equal rights of boys and girls, to housing, land and property restitution. States shall ensure the equal right of men and women, and the equal right of boys and girls, inter alia, to voluntary return in safety and dignity, legal security of tenure, property ownership, equal access to inheritance, as well as the use, control of and access to housing, land and property.”

“States should ensure that housing, land and property restitution programmes, policies and practices recognize the joint ownership rights of both male and female heads of the household as an explicit component of the restitution process, and that restitution programmes, policies and practices reflect a gender-sensitive approach.” (principle 4.2).

“States should incorporate protections against displacement into domestic legislation, consistent with international human rights and humanitarian law and related standards, and should extend these protections to everyone within their legal jurisdiction or effective control.” (principle 5.2).

“States shall prohibit forced eviction, demolition of houses and destruction of agricultural areas and the arbitrary confiscation or expropriation of land as a punitive measure or as a means or method of war.” (principle 5.3).

“States shall take steps to ensure that no one is subjected to displacement by either State or non-State actors. States shall also ensure that individuals, corporations, and other entities within their legal jurisdiction or effective control refrain from carrying out or otherwise participating in displacement.” (principle 5.4).

States should take measures to ensure gender equality in this regard, as mentioned in the “Adequate consultation and participation in decision-making” (principle 14.1), “States and other involved international and national actors should ensure that voluntary repatriation and housing, land and property restitution programmes are carried out with adequate consultation and participation with the affected persons, groups and communities.”

And mentioned the importance of the representation of women in (principle 14.2), “States and other involved international and national actors should, in particular, ensure that women, indigenous peoples, racial and ethnic minorities, the elderly, the disabled and children are adequately represented and included in restitution decision-making processes, and have the appropriate means and information to participate effectively. The needs of vulnerable individuals including the elderly, single female heads of households, separated and unaccompanied children, and the disabled should be given particular attention.”

(principle 19), on the other hand, prohibited discriminative and arbitrary laws, as mentioned in (principle 19.1) “States should neither adopt nor apply laws that prejudice the restitution process, in particular through arbitrary, discriminatory, or otherwise unjust abandonment laws or statutes of limitations.” And in (principle 19.2) “States should take immediate steps to repeal unjust or arbitrary laws and laws that otherwise have a discriminatory effect on the enjoyment of the right to housing, land and property restitution, and should ensure remedies for those wrongfully harmed by the prior application of such laws.” According to (principle 19.3) “States should ensure that all national policies related to the right to housing, land and property restitution fully guarantee the rights of women and girls to be protected from discrimination and to equality in both law and practice.”

Gender-sensitive transitional justice requires the State's commitment to the principles of housing, land and property restitution, and the introduction of legislative provisions that protect citizens from displacement, discrimination and punitive measures. It must also highlight the importance of repealing arbitrary laws promulgated by the regime, such as Law 10.

Law 10 has significant implications for the property rights of Syrians, and exploits the absence of its owners who are displaced, or refugees. Additionally, the Transitional Justice process should include the amendment of discriminatory inheritance laws against women and girls, the recognition of equal inheritance between women and men, clear mechanisms for

implementation, penalties for those deprived of their rights and assistance to refugees and displaced persons. And last but not least, assisting the victims, both women and men, in recovering their abandoned property and providing support to rebuild what is being destroyed. Compensation for property, housing and land must be in the name of the woman who became the head of household, and whose husband, or her breadwinner, died. It is also necessary that the States, companies and international organizations that are involved in the rebuilding process, must not participate in blurring the human rights violations that have occurred and continue to occur; and/or contribute to new violations of human rights and the international law. In this context a number of prominent jurists in the field of international law issued a statement under the title "Statement of eminent jurists on legal obligations when supporting reconstruction in Syria" on September 25, 2018 addressed to Antonio Guterres, Secretary-General of the United Nations, and Federica Mogherini, High Representative of the Union for Foreign Affairs and Security Policy and Vice-President of the European Commission, and Jim Yong Kim, President of the World Bank, and the Ministers for Foreign Affairs of donor countries. The document included 10 principles for reconstruction in Syria<sup>65</sup> that reflect the obligations of the international human rights law, the international humanitarian law, and the international criminal law.

I will address in greater detail the complexity of property issues in relation to housing and land in Syria in the Ownership section.

Furthermore, special rehabilitation programs for victims, women and men, and their families, health care providers should also be established, and the state shall ensure the costs of litigation for victims of crimes and human rights violations.

To drop the charges imposed by the state against activists, activists, defenders and human rights activists, and compensate for their harm.

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<sup>65</sup> - "Human rights questions on Syria's rubble," legal memorandum, September 25, 2018, seen on: September 26, 2018, at: <http://legal-agenda.com/article.php?id=4863>

Granting the mother's surname to her children of an unknown lineage, and amending the text of (article 3-a) of the Nationality Law to establish her right to grant her children the Syrian nationality.

**Symbolic Reparation:** Symbolic reparation contributes to social solidarity with the victim, perpetuates the memory of crimes and violations in collective memory, helps to restore unity in society, builds civil peace and national reconciliation, and includes a wide range of symbolic actions, such as the following: naming public places after victims like schools, museums, public squares, art galleries etc. Sending official letters of apology by the state to families of victims, and proper burial ceremonies for victims.

In Syria, the Syrian regime worked on polarizing societies, especially when it punished cities collectively for a long time. I experienced this polarization at its extreme when I met with survivors. That polarization was not exclusive to cities, but sometimes, seeped into neighborhoods as well. On the other hand, Armed Extremist Groups also collectively also incited this division through kidnappings, bombings and other violations and crimes. It is therefore very important that national reconciliation be given special attention in the establishment of transitional justice, and the creation of different forms of mechanisms of culture and dialogue, at various stages and levels in neighborhoods and between cities, and among provinces.

The Morocco example succeeded in individual and collective reparation programs. "The IER has chosen not to adopt the concept of inheritance as defined in Moroccan inheritance laws when distributing benefits to families of victims, in order to give equal treatment to both male and female beneficiaries." It was also considered that all women who had been detained also suffered gender-based violations, giving further reparation to complainants on that basis

without having to make a specific request.<sup>66</sup> Furthermore, the political violence that the State had directed against women politicians was also recognized.

The Sierra Leone fact-finding committee recommended the establishment of a comprehensive reparation program, including free health care, educational support, skills training, microcredit and microenterprise, community reparation, symbolic reparation, housing and pensions, and a number of gender-sensitive institutional reforms.<sup>67</sup> On symbolic reparation, the President of Sierra Leone in 2010 offered an official apology to women victims of the armed conflict, asking them for forgiveness on behalf of the armed forces, and pledged to protect the rights of women.<sup>68</sup>

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<sup>66</sup> - "Analytical study focusing on gender and sexual violence in the context of transitional justice," United Nations - General Assembly, June 30, 2014, 21/27 / HRC / A, page 20, seen on September 11, 2018, at: [reliefweb.int/sites/reliefweb.int/files/resources/A\\_HRC\\_27\\_21\\_ARA.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/A_HRC_27_21_ARA.pdf)

<sup>67</sup> - Previous source, page 21.

<sup>68</sup> - Valji et al, page 18.

## Section Six: Fourth Mechanism: Institutional Reform

One of the transitional justice measures is the reform of public institutions that were instrumental in the repression of the public, and a major cause for crimes and systematic violations of human rights (committed by the security apparatus and the military, police, judicial or other institutions). Therefore, Transitional Justice should guarantee safety and security for the citizens who fall under such public institutions. The reform of these institutions must include the legislative and executive laws and regulations, and rid them of corruption, crimes and repression that took place during the period of armed conflict and before that.

In addition, training women and men, to apply and practice the concepts of human rights, international humanitarian law, gender issues and democratic accountability to ensure that violations and crimes are not repeated by establishing professional standards of conduct and procedures. These institutions must be built on gender responsiveness and the establishment of gender units.

State institutions that are established following conflict, rarely include the participation of women in the formation of their structure and mechanisms of their work. Hence, the majority of these institutions are male-dominated. This domination is rooted in different mechanisms of violence. The military/armed forces and the security services in totalitarian regimes, like in Syria, are an appropriate example in this context.

Institutional reforms need to bring about change, prevent the recurrence and normalization of sexual and gender-based violence,<sup>69</sup> remove and hold accountable the individuals who have committed them; build sustainable peace, restore trust between victims and state institutions, and build a political system based on justice and gender equality. It should be noted that "the criminalization of all forms of gender and sexual violence, including marital rape and domestic violence, is necessary to break the silence surrounding that violence, establish a mandate to

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<sup>69</sup> - "Analytical study focusing on gender and sexual violence in the context of transitional justice," United Nations - General Assembly - June 30, 2014, 21/27 / HRC / A, page 22, seen on September 11, 2018, at: <https://goo.gl/iwJ19G>

prevent and hold those crimes accountable,<sup>70</sup> and harmonize national laws to ensure consistency and clarity."

The reform of the security sector (the army - the security apparatus - the police) should include a quota of at least 30% of women employment, and allocation of resources to deal with, and respond to gender issues in terms of skills, knowledge, policies, powers and procedures within security sector institutions.

With regard to the police sector, in addition to the above, programs should be established to develop a methodology for dealing with complaints and issues of violence against women, including domestic violence and marital rape.

The judiciary and law enforcement institutions (Ministry of Justice, Prisons, Criminal Investigations, Parliamentary, Judiciary, and judicial bodies) The independence of the judiciary, and the drafting of a constitution and laws that support and provide for equality between men and women, and supporting the judicial protection of individual and collective rights and freedoms, must also be defined. However, ways of supporting women's access to justice and enabling them to resort to all courts, including the Constitutional Court, especially for women who live below the line of poverty, must be available to help women defend their rights.

Of global examples, Liberia, Sierra Leone and Kosovo have taken advantage of the institutional reform to increase the proportion of women in security and law enforcement, "recognizing the linkages between improved gender equality, high levels of gender and sexual violence reporting, and increased gender sensitivity at the institutional level."

In training and capacity-building for gender-sensitive security forces and law enforcement institutions, Rwanda developed standardized action procedures on violence against children,

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<sup>70</sup> - Previous source.

domestic violence, gender and sexual violence, as well as a training curriculum. The police and army have established women's police stations or specialized units for sexual and gender-based violence in each of Sierra Leone, Eastern Timor and Kosovo. The units include female staff members only, or trained personnel whose task is to raise awareness of sexual and gender-based violence in communities and institutions, and to assist victims in their access to justice.<sup>71</sup>

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<sup>71</sup> - "Analytical study focusing on gender and sexual violence in the context of transitional justice" United Nations - General Assembly, June 30, 2014, 21/27 / HRC / A, page 24, seen on September 11, 2018, at: <https://goo.gl/iwJ19G>

## Section Seven: Fifth Mechanism: Legislative Reform

### In the Constitution

The constitutional guarantees of equality between men and women are based on gender-consistent principles that establish a constitution that reflects the will of men and women citizens. It states that the people are the sovereign and the source of authority, and guarantees human rights and freedoms. It includes a pluralistic political system that guarantees transparency and the legal basis for accountability, hence ensuring the rule of law, separation of powers, and the independence of the judiciary, to move from the era of tyranny to the era of freedom, justice and equality.

A constitution that conforms to a gender-equality perspective, is a democratic constitution that corrects the political and economic historical absence of women, and provides the legal basis for their empowerment, and ensures that they and men enjoy equal rights and protection before the law. It should reflect positively on their interests, which are currently subject to customary laws and jurisprudence.

### The Content of the Constitution Must Adhere to Several Main Principles

- 1- To be a secular constitution that provides for the separation of religion and state, so that the political and legislative institutions are completely independent of the religious establishment, while guaranteeing freedom of religion, and practice of religious rites.
- 2- To provide for substantive equality as a constitutional principle.
- 3- It should ensure mechanisms for increasing the participation of women in all aspects of political and public life, such as the establishing quotas for women, and to reaffirm that such positive measures are temporary measures, until full and equal participation is achieved.

- 4- All international human rights treaties and agreements ratified by the state should be subject to national laws. The constitution and national legislation should be harmonized with international conventions on political, economic and social rights, international conventions, in particular the CEDAW, and ensure that all reservations are unconditionally lifted, and to ratify its optional protocol thereto.
- 5- Prohibit direct and indirect discrimination on the basis of gender, in accordance with international law, in particular the CEDAW Convention.
- 6- The State party should take measures to eliminate violence against women in all its forms, and to protect victims of gender-based violence.
- 7- It should provide for the establishment of constitutional bodies specifically concerned with the achievement of gender equality, provided that they are independent and have powers and resources.
- 8- The constitution should be written in a gender-sensitive language, and should substitute the terms "all citizens" or "individuals," with "women and men" to emphasize that women and men are equal in value and law.

### **The Tunisian Constitution Model<sup>72</sup>**

Following the revolution of December 17, 2010, the Tunisian constitution stated on the equality between men and women citizens in Chapter 21: "Men and women citizens are equal in rights and duties, and they are equal before the law without discrimination."

(article 20) of the Constitution provides for the supremacy of ratified treaties, which is a tool to change any discriminatory law: "Treaties approved by the House of Representatives are above the law, but do not necessarily adhere to the constitution."

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<sup>72</sup> - National Constituent Assembly, "Constitution of the Republic of Tunisia," seen on August 26, 2018, at: <https://goo.gl/aLgS2Z>

(article 46) states: "The State shall ensure the equal rights of women and men to assume various responsibilities in all spheres. The State shall endeavor to achieve equality between women and men in elected councils. On violence against women." (article 49) states: "No amendment shall impair the gains of human rights and freedoms guaranteed in this constitution."

The National Constituent Assembly in Tunisia has reached a compromise in circumventing the various jurisprudential elements regarding the lives of women in the constitution. The Tunisian Constitution does not provide for the source of the legislation, in its first Chapter, it states: "Tunisia is a free, independent, sovereign State. Islam is its religion, Arabic is its language and it is a Republic. This chapter cannot be amended."

This allowed men and women to fight for full equality between women and men. The best example is the report of the Committee on Individual Liberties and Equality, issued on June 1, 2018, which dealt with the equality of inheritance between men and women.

"The issue of inheritance is today one of the issues that have a distorted nature: it is a purely social matter that has been transformed into a doctrinal issue, inheritance is primarily a social issue because it is a method of distributing wealth within the family."<sup>73</sup>

Distribution of wealth is linked to the economic and social conditions of each era, and to each historical era. "The Commission also presented a draft bill on the elimination of discrimination against women and children and other proposals in support of individual freedoms and equality."

The removal of the source of legislation from Syria's next constitution will pave a way out of outdated personal status laws that are completely incompatible with human rights and the building of a modern state.

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<sup>73</sup> - Committee on Individual Liberties and Equality, "Report of the Committee on Individual Liberties and Equality," seen on August 26, 2018, at: <https://goo.gl/L1nDFN>

## Laws

The current legal system in relation to women's lives, fails to address customary practices with severe penalties, and has made crimes and abuses against women either complex or redundant or invisible in reports of national human rights organizations, that have focused on war crimes and crimes against humanity. Transitional justice must therefore transcend the system, and establish new legal provisions that free women from degrading practices, stipulate gender equality, promote individual rights and freedoms, and affirm the independence and responsibility of the individual for what he or she produces, for example:

To enact a law on the elimination of violence against women, and for that law to include all forms of discrimination and violence based on gender discrimination, regardless of the perpetrators' positions, whatever their scope; and whether the crime was physical, moral, sexual, economic or political. The law must also include the threat of assault or pressure, or denial of rights and freedoms, whether in private or public life, and to establish a foundation to protect women from violence, provided that they enjoy legal protection, access to legal information and litigation procedures, fair compensation and health, psychological and social follow-up. Furthermore, mechanisms must be places to receive complaints of violence against women, including special courts units that include female judges and judges specializing in violence against women.

Abolish all discriminatory provisions against women, in both the Penal Code, the Nationality Code and all other laws, and enact a modern family law guaranteeing respect for women's dignity and gender equality.

## Models

- Tunisia: Basic Law on the Elimination of Violence Against Women August 11, 2017.<sup>74</sup>
- The prohibition of polygamy, and the imposition of a penalty on a person who marries while being married, before the dissolution of their previous marriage. Tunisia: Personal Status Code, August 13, 1956 (article 18.1.2):<sup>75</sup> "Polygamy is prohibited. Anyone who marries while being married, before the dissolution of the former marriage is punished with one year's imprisonment and a fine of 240 thousand francs; or by one of the two penalties. Even if the new marriage has not been concluded, the provisions of the law would be applied."
- Turkey, 1926: Prevention of polygamy.<sup>76</sup>
- End divorce proceedings in court in which the spouses have equal rights, and the proceedings are in the best interests of their children.
- Tunisia, Journal of Personal Status August 13, 1956 (chapter 29):<sup>77</sup> "Divorce shall only take place in court."
- Unification of marriage age for both sexes, and anyone who has not reached the age of eighteen years cannot conclude the marriage. Tunisia, Personal Status Code Law No. 32 dated May 4, 2007 (chapter 5):<sup>78</sup> "Both spouses must be free of legal impediments, and any person who has not attained the age of eighteen years cannot validate a marriage contract."

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<sup>74</sup> - "Basic Law No. 58 of 2017 dated August 11, 2017 on the elimination of violence against women" Chapter - legislation. Tunisia, Republic of Tunisia - Presidency of the Government, August 11, 2017, seen on June 18, 2018, at: <https://goo.gl/Ym6RsD>

<sup>75</sup> - "Republic of Tunisia - Personal Status Journal - August 13, 1956" August 13, 1966, seen on March 18, 2018, at: <http://wrcati.cawtar.org/preview.php?type=law&ID=10>

<sup>76</sup> - Joe Hammoura, "A New Role for the Clerics in the Marriage Contract: Another Undoing of Turkish Secularism" Legal Note, November 23, 2017, seen on June 18, 2018, at: [http://legal-agenda.com/article.php?id=4059#\\_ftn3](http://legal-agenda.com/article.php?id=4059#_ftn3)

<sup>77</sup> - "Republic of Tunisia - Personal Status Journal - Aug 13, 1956" August 13, 1966, seen on March 18, 2018, at: <http://wrcati.cawtar.org/preview.php?type=law&ID=10>

<sup>78</sup> - "Law No. 32 of 2007 dated May 14, 2007 related to the revision of some provisions of the Personal Status Code" Legislations Tunisia, Republic of Tunisia - Presidency of the Government, May 14, 2007, page 6, seen on June 18, 2018, at: <https://goo.gl/Ma2QgT>

## Section Eight: New Mechanisms for Syria

The International Independent Investigative Mechanism on the Syrian Arab Republic CO1-22 August 2011<sup>79</sup> has been entrusted with the mandate to investigate all alleged violations of international human rights law since March 2011 in the Syrian Arab Republic.

United Nations Joint Investigative Mechanism JIM - August 2015:<sup>80</sup>

The United Nations Joint Investigative Mechanism (JIM) was established based on the Security Council resolution 2235 (2015), and is a joint body of the United Nations and the Organization for the Prohibition of Chemical Weapons (OPCW), to investigate the use of chemical weapons in Syria. The UN Security Council resolution gave the green light to establish a joint investigation mechanism to identify those responsible for use of chemical weapons, whether individuals, associations, groups or governments involved; including chlorine or other weapons. The JIM found "the existence of what it described as (sufficient evidence) indicating three cases of chemical weapons use - 2 chlorine attacks by the Syrian regime air force on civilians, and another use of sulfur mustard gas by ISIS in the Syrian Arab Republic between 2014 and 2015.

Depending on the circumstances, these attacks may amount to war crimes and crimes against humanity."<sup>81</sup> "The mechanism's duration is one year but may be extended in the future."

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<sup>79</sup> - "International Independent Investigative Mechanism on the Syrian Arab Republic," United Nations - Human Rights Council, seen on: September 11, 2018, at: <https://www.ohchr.org/AR/HRBodies/HRC/IIICISyria/Pages/IndependentInternationalCommission.aspx>

<sup>80</sup>- "Security Council agrees to investigate those responsible for the use of chemical weapons in Syria" UN News, August 07, 2015, seen on June 30, 2018, at: <https://news.un.org/ar/story/2015/08/233032>

<sup>81</sup> - "Implementation of the resolution establishing an International Impartial and Independent Mechanism to assist in the investigation and prosecution of those persons responsible for the most serious crimes under international law committed in the Syrian Arab Republic since March 2011" United Nations - General Assembly, January 19, 2017, 71 / A, seen on July 01, 2018, at: <https://goo.gl/VtsDa6>

### **International Impartial and Independent Mechanism IIIM-2016**

On December 21, 2016, the United Nations General Assembly adopted resolution 71/248, establishing 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. The Mechanism's mandate, as stated in (paragraph 4) of resolution 71/248, is "to collect, consolidate, preserve and analyze evidence of violations<sup>82</sup> of international humanitarian law and human rights violations and abuses and to prepare files in order to facilitate and expedite fair and independent criminal proceedings, in accordance with international law standards, in national, regional or international courts or tribunals that have or may in the future have jurisdiction over these crimes, in accordance with international law."

The mandate of the IIIM differs from other models of international criminal justice mechanisms that have preceded it, as it is not a court or a judicial body that has been given jurisdiction, and in view of this limitation it has been described as "Supporting criminal prosecutions, and applying criminal justice methodologies in their work, even if they are unable to issue indictments or ultimately prosecute."<sup>83</sup>

And that "accountability for fundamental international crimes is usually dependent on complementary approaches among national, regional and international jurisdictions." One of the key lessons learned from the establishment of United Nations ad hoc tribunals, is that there is considerable potential for international mechanisms to act as a starting point for facilitating accountability at the national level. Therefore, bringing these threads together to develop a model from the outset until involved parties are held accountable, spawning a responsibility

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<sup>82</sup> - "Protocol of Cooperation between the International, Independent and Impartial Mechanism and Syrian Civil Society Organizations participating in the Lausanne Platform." seen on July 17, 2018, at: <https://iiim.un.org/ar/states/>

<sup>83</sup> - "Report of the International, Independent and Impartial 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," A / 55/767, General Assembly, February 28, 2018, page 06, Seen on July 17, 2018, at: <https://iiim.un.org/ar/core-documents/>

that extends across multiple jurisdictions and includes coordination between national and international actors.

More importantly, it is also a model that recognizes the synergy between international investigation of human rights realities and international criminal justice processes. In particular, the intensive work of the International Independent Investigative Mechanism on the Syrian Arab Republic provides an important source of information to consider patterns of violations and other evidentiary factors. There is also a great deal of synergy between the work of the IIIM and other bodies, such as the Organization for the Prohibition of Chemical Weapons (OPCW) - the Joint United Nations/NGO Investigative Mechanism that initiated the process of linking crimes with potential perpetrators.<sup>84</sup> "The Mechanism will continue to work on accountability independently of developments in the Syrian peace process, based on the principle that no amnesty can be granted for fundamental international crimes."<sup>85</sup> Sexual and gender crimes will receive special attention, and the Mechanism will ensure that its "gender-related work is not limited to sexual violence, but will also address the full range of emerging gender crimes in the Syrian context. In addition, other gender issues, such as ensuring that women's voices are appropriately heard, will be included in the accountability process."<sup>86</sup> Furthermore, the Mechanism will recognize the important role played by the Syrian civil society in the process of accountability, including the documentation of violations, abuses, mapping of events, and the important contribution it can make to pave the way for justice."<sup>87</sup> On April 3, 2018, the Mechanism signed a cooperation protocol with twenty eight civil society organizations<sup>88</sup> "to provide them with information and evidence in their possession that may

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<sup>84</sup> - Previous source, pages 6-12.

<sup>85</sup> - Previous source, page 07, B. Principles and guidelines, 1. Independence and Impartiality.

<sup>86</sup> - Previous source, page 09, 6. Development of effective approaches to sexual and gender-based violence and crimes against children.

<sup>87</sup> - "Protocol of Cooperation between the International, Independent and Impartial Mechanism and Syrian Civil Society Organizations participating in the Lausanne Platform." seen on July 17, 2018, at: <https://iiim.un.org/en/states/>

<sup>88</sup> - "International Impartial and Independent Mechanism" seen on July 19, 2018, at: <https://iiim.un.org/en/states/>

be connected to international crimes in Syria."<sup>89</sup> In addition, the mechanism may ask them to assist in communicating with potential witnesses and may not "disclose to the investigative or public prosecution authorities any evidential material referred to them by a non-governmental organization without the latter's consent." The mechanism will also establish strong security measures to reduce risks in evidential material transfer, and to protect the confidentiality of the data in their possession."<sup>90</sup>

It also commits itself to "an integrated approach to witness protection and support. The Mechanism is committed to providing a referral process to assist the victims it communicates with, including medical support and psychosocial support."<sup>91</sup>

The inclusion of gender impact on crime and violations in the documentation and reporting of human rights organizations, and the participation of women's organizations and women's rights organizations with organizations working on transitional justice, provide for a gender-sensitive transitional justice.

## **Section Nine: Gender-sensitive Transitional Justice from the Point of View of Some Survivors**

In the design of gender-sensitive transitional justice, the following must be considered:

- What does justice mean to women affected by conflict?
- What experiences did women have during the conflict?
- What are the existing power dynamics between the sexes?
- What is the impact of the violations they have suffered?

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<sup>89</sup> - "Protocol of Cooperation between the International, Independent and Impartial Mechanism and Syrian Civil Society Organizations participating in the Lausanne Platform." seen on July 17, 2018, at: <https://iiim.un.org/en/states/>

<sup>90</sup> - "Protocol of Cooperation between the International, Independent and Impartial Mechanism and Syrian Civil Society Organizations participating in the Lausanne Platform." seen on July 17, 2018, at: <https://iiim.un.org/en/states/>

<sup>91</sup> - Previous source.

- What violations will the justice process target?<sup>92</sup>

The women survivors I met gained the strength, the resilience and the ability to move forward with their skills through work, despite the intensity of the oppression and pain they often suffered from. During the dialogues they stopped for a minute to control their tears and catch their breath, but continued to tell their story, with an intent on telling the world the truth, rather than the Syrian regime's version of the "truth." The majority of the women I interviewed have very little knowledge (or none) on transitional justice and its mechanisms; while few of them have some broad knowledge. The vast majority however, do not know the difference between arbitrary arrest and enforced disappearance.

Most of the survivors, who had property, confirmed that they were registered in their husbands' or fathers' name, and indicated that they currently did not have any documents of ownership. They either lost them when their homes were bombed or demolished, or they thought they would return to their homes. All those interviewed, with very few exceptions, do not want to return to Syria as long as the regime remains in power.

Despite the survivors' feelings of hopelessness in achieving justice, prosecuting those who committed crimes and violations offers a window of hope, and paves the way for the release of detainees and detention. Haifa,<sup>93</sup> a survivor from Zabadani, said that what really pleases her is to try Bashar al-Assad, his entourage, and his army, for war crimes. According to her, "They let us down," referring to the Syrian army. Ghada,<sup>94</sup> who is also from Zabadani, is sure that no one will be held accountable, but she wants to acknowledge what happened and

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<sup>92</sup> - Valji et al, page 03.

<sup>93</sup> - Haifa (survivor), a dialogue session conducted by the researcher with a group of survivors at a Syrian women's organization in Lebanon, August 06, 2018.

<sup>94</sup> - Ghada (survivor and activist), a dialogue session conducted by the researcher with a group of survivors at a Syrian women's organization in Lebanon, August 06, 2018.

wants to identify the names of the criminals, and expose the injustices committed against the people of Zabadani.

Justice for Ward al-Sham,<sup>95</sup> is freedom. She wonders and asks: "Why the tyranny? Why should we live in fear?" I have been living with fear for years. They spoke to me about my detained nephew, and I lost consciousness because I know from my experience in prison that men are tortured more than women. Justice for Manal<sup>96</sup> is: "To bear witness to the accountability of everyone who has wronged and tortured us, like the tank operator who killed Khawla. Khawla was my neighbor, and like family to me. I took her body out of the rubble; her body was crushed, and it split in half as I pulled it out. Her body was severely burned due to the missile that hit her home. Before her children and family came to see her to bid her final farewell before burying her, I wiped her face so that her children would not see her in a bad condition, and put a flower next to her face. She was in her home cooking when the missile hit her. I want to see them being tried, I want to see the sniper who sprayed bullets between my feet when I crossed the street being tried; a glass fragment hit my eye when he shot me, and left me blind for a whole month. I want Tariq and Abu Tareq al-Lahham, who were killed by a missile, while sitting in front of their home drinking tea to be avenged. I want my rights from the dictator who sold the country and did not apologize to his people. At the beginning of the revolution we wanted to apologize, we wanted him to tell us: Let us open a new page together! I'm sure everyone would have agreed, but why this God-complex? He brought all the tyrants — Putin, Iranians, Hezbollah and Afghans, to fight his people! Why? Our demands at the beginning were not great, we wanted freedom, why didn't he let us breathe a little? Besieging people to death, and carrying out air strikes on his own people?! What kind of criminality is this ?! He called us terrorists and insisted on that."

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<sup>95</sup> - Ward al-Sham (pseudonym, survivor), a dialogue session conducted by the researcher with a group of survivors at a Syrian women's organization in Lebanon, August 06, 2018.

<sup>96</sup> - Manal (survivor and activist from Zabadani), a dialogue session conducted by the researcher with a group of survivors at a Syrian women's organization in Lebanon, August 06, 2018.

Survivors focused on the following crimes of siege, arrest, sniping and shelling civilians, and demanded that they be exposed in the transitional justice process.

Sima Nassar,<sup>97</sup> another survivor, identified what justice means to women victims, especially those who documented violations or abuse of a family member: "The issue is very complex, it was easier before; now they lost faith in justice, many of them did since 2015, and because of the political factor, they no longer trust any justice on earth, and instead await heavenly justice, and no longer want to document any crimes they witness because they have lost hope in accountability.

Since the beginning of the revolution, they wanted to document crimes because they were under the impression that holding criminals accountable was in their hands. For them, as long as the revolution was ongoing, it meant that the country would be re-built, and the criminal will be held accountable. For them, it was a psychological compensation when losing a husband or child. And now, because the criminal (Assad) hasn't been tried, the revolution is sabotaged, creating an additional wound for her, because she lost her son or husband in vain, rather than losing them to the success of the revolution, or a cause that benefits the country." As to the issue of the structures and power dynamics between the sexes before and after the revolution.

The survivors were asked: Who makes and how is the decision taken within the family? Are decisions taken collectively at home, and have decisions been made for you in each of the following cases: property (purchase/sale), inheritance, travel, your children's education, childbearing, going out of the house, visiting parents, your clothes, decision to work/stop working, sexual intercourse.

Many of the survivors who were interviewed did not fully understand the power dynamics in their nucleus family, or their extended family. Some of them recounted a long story to discover,

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<sup>97</sup> - Sima Nassar (Program Director at an NGO), interview, April 18,2018

or for me to find out, who the decision maker was in their family. In the beginning, everyone, with the exception of three survivors, two of whom were married as minors, confirmed that the decisions were made collectively at home, and during the discussion, and the discussion of these issues, the responses differed. Survivors whose husbands were detained or deceased, gave an ideal answer, along the lines of "decisions were made collectively." One woman states that women are the "Ministry of the Interior at home," meaning that they had the authority. However, survivors confirmed that property, if any, was exclusively in the husband's name, and that he was entitled to it because he was the one who worked. Others mentioned that the husband would take their earnings from work; one woman said that her husband would open her bag and take her wages from work, and she didn't dare object.

However, a number of them felt that the money of the family, the money that the man earns, remains in the woman's possession. About a quarter of the survivors I met said they had been abused by the partner, i.e. before divorce, death or detention. One woman I interviewed was still abused by her husband.

It was noted that after the revolution, and the result of repeated displacement and the mixing of people with each other; pushed the most hardened communities to open up. Manal gave examples of some areas in Zabadani, that opened up and became less conservative because of tourism, while in other areas of the city, she described the communities there as "fossilized minds." Manal classified those communities as male-dominated, and talked about a woman who was constantly abused by her husband, and not allowed to move and work, but her situation changed after the revolution.

She became mobile, and her husband did not dare prevent her from freedom of movement. All the ten survivors agreed during the first meeting that the changes in the situation of women after the revolution was positive, whether they were merely participants/activists, or whether a family member joined the revolution. Women have become the breadwinners, and hence

the heads of households, especially in the absence of men who were either arrested or deceased.

As for mutual decision-making between them and their husbands, most of the women reaffirmed that consultations frequently took place, but Ghada replied: "They'll hear out our opinions, only to disagree with us." They agreed that the decision to travel is usually the man's; anything related to the children's education is the woman's; and as for the decision of their children's marriage, it's usually a mutual one, but the man has the last say. As for the decision to move from one house/flat to another, is explained as follows by a female survivor:

"The woman continues to nag until she finally changes the flat." On armed activism, Manal stated "If you do not accompany your husband to where he is fighting, you are considered an abnormality. One of the women was pregnant while accompanying her husband, she was injured during the fighting and had a miscarriage. Her mental state deteriorated, and she wanted to leave the area where her husband was fighting. When she left the area though, her husband married another woman, and refuses to divorce her so far." She added: "Even the decision of divorce is in the hands of the man."

Ghada states, "It is a disgrace for a woman if she does not accompany her husband to the area where he is fighting, it is compulsory," Magda's<sup>98</sup> experience on the other hand, was different, she brought food to her husband and her son once a week to the battle zone, and her husband insisted that she leave and not stay with them out of fear for her life.

The decision to procreate or stop the use of contraceptives, is usually a mutual decision, or is made because of the wife's insistence, while Ward al-Sham responded honestly: "I inserted an IUD at the request of my husband." As for leaving the house and visiting parents/family, the husband needs to be informed, and his consent must be obtained, while there is no need for the woman's approval in a reverse situation. As for Magda, she said the following:

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<sup>98</sup> - Magda (survivor from Zabadani), in an interview conducted by the researcher with a group of survivors in a Syrian women's organization in Lebanon, August 06, 2018.

"I must not take a step outside the house without my husband's permission, it is his right, and Shari'a orders it." And on intercourse, Ibtisam<sup>99</sup> replied that her husband would accept her refusal to go through with it on occasions. Majida said: "There is a Hadeeth about the Prophet, 'If a man invites a woman to his bed, and she refuses, she will be cursed by the angels until she agrees,' so I was afraid and I did what he asked of me." Another survivor, Hala,<sup>100</sup> agreed with Majida. As for Nagham,<sup>101</sup> who got married when she was a minor, was raped by her husband constantly, "I refused to have sexual intercourse with him because I hated him, he continued to beat me all the time for eight months, and forced me to have sexual intercourse with after he beat me."

All of them confirmed that they could not go back to the way it was before 2011, as one of them so eloquently expressed: "The butterfly came out of the cocoon." Those who are working now see their work as essential for their well-being, and will not leave work under any circumstances in the future. On raising their children before and after 2011

"My daughters were under my wing, and they agreed with everything I said. Now each one of them has an independent personality, they refuse my interference, especially when it comes to what they wear. They have been deeply affected by the communities we live in now," she said. "Before 2011, I was very strict with my children and my daughters, now I am open to discussions with them, and I very much respect what my daughters are doing. The relationship between me and them has turned into a friendship, my daughter laughs and tells me (You're the mother! Act like it!) I feel I have changed."

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<sup>99</sup> - Ibtisam (survivor from Zabadani), in an interview conducted by the researcher with a group of survivors in a Syrian women's organization in Lebanon, August 06, 2018.

<sup>100</sup> - Hala (survivor), in an interview conducted by the researcher with a group of survivors in a Syrian women's organization in Lebanon, August 06, 2018.

<sup>101</sup> - Nagham (survivor), in an interview conducted by the researcher with a group of survivors in a Syrian women's organization in Lebanon, August 06, 2018.

"I sometimes get tired because of their father's absence," she adds. "A friend asked me, if you find out that your husband is alive and out of detention, will you go back to the way you used to be? And I said, no, I cannot, but I wish my husband is with me to help carry this burden. It's a very heavy burden." Most survivors do not have access to personal status laws, and their lack of knowledge about them, raises concerns about their children, inheritance and property. One of them summed up the subject: "We have no knowledge of the laws except what we studied in sessions on raising women's awareness of their rights. Before 2011, we did not hear any sessions to raise awareness on women's rights, everything we read in our textbooks was that women had the right to vote, and can work as teachers." Analyzing the power dynamics between women and authority, requires in-depth research. However, suffice to say, the changes that took place regarding the roles of women in society following the revolution, due to frequent displacement, asylum and mixing with other societies, does not mean a change in power structures/dynamics,

In many cases, it increases their burden. According to several testimonies by the survivors, women keep the money safe, but property is in the name of a man, and the decision to sell or buy or move to another home is exclusively his decision. Some women remain limited within specific roles assigned to them by society. For example, female survivors who live with their children alone, raising them in the absence of men, have had their roles pre-defined by society as being the "nurturing and soft" individual, while the role of men is limited to reason, intensity and decision-making, in line with the old adage "the father disciplines, and the mother is flexible." Those female survivors however, do not know how to merge between the two roles, statements like these have come up frequently during interviews, "I need someone who makes the decision to raise children," "We are not able control our teenage children," "I want to settle near my parents' house, for my daughter," "If the father was there, he would have set limits and boundaries."

"My son is my weakness," "How I wish my father were here to tell my son: Your mother is a red line. You must listen to her and obey her." One of the survivors said that many young adults and teens were undermining their mother's role in managing the household, in the absence of their father, and some of them even go as far as saying "Mother running things now?! Whatever!"

As for the impact of the conflict on those women survivors, and the impact of crimes and violations on them, I will discuss some of them further in this study.

**Gender-sensitive transitional justice mechanisms must be transformative in Syria, and based on gender equality and justice. It should correct their relationships and power dynamics, linking political, economic and social crimes and abuses with transitional justice mechanisms, gender-related development, and women's changing roles, desires and will. It should build a state of freedoms.**

## **Chapter IV: Crimes and Violations**



## Section Ten: Sexual and Gender-Based Violence

According to the Office of Higher Commissioner for Human Rights, Gender-based violence “Is considered to be any harmful act directed against individuals or groups of individuals on the basis of their gender. Gender-based violence may include sexual violence, domestic violence, trafficking, forced/early marriage and harmful traditional practices.”<sup>102</sup>

(article 27) of the Geneva Fourth Convention states that “Women shall be especially protected against any attack on their honor, in particular against rape, enforced prostitution, or any form of indecent assault.”<sup>103</sup> The Convention also considers that “Willfully causing great suffering or serious injury to body or health”<sup>104</sup> is a grave violation during war, or during clashes between two armed groups or more.

(article 7-g) of the ICC Rome Statute declares that "Forced pregnancy" means the unlawful confinement of a woman forcibly made pregnant is a “Grave violation of international law,” and it also defines crimes against humanity as "Crimes committed as part of a widespread or systematic attack directed against any civilian population."<sup>105</sup> (article 75.1) of the first Protocol, additional to the Geneva Convention strictly forbids "Violation of personal dignity and, in particular, degrading and degrading treatment of the person and coercion of prostitution and any form of indecent assault.”<sup>106</sup>

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<sup>102</sup> - "Analytical study focusing on gender-based and sexual violence in relation to transitional justice" United Nations - General Assembly – June 30, 2014, 21/27 / HRC / A, page 03, seen on September 11, 2018, at: [reliefweb.int/sites/reliefweb.int/files/resources/A\\_HRC\\_27\\_21\\_ARA.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/A_HRC_27_21_ARA.pdf)

<sup>103</sup> - "Fourth Geneva Convention, 1949" International Committee of the Red Cross, seen on July 19, 2018, at: <https://www.icrc.org/ara/resources/documents/misc/5nsla8.htm>

<sup>104</sup> - Previous source, Article 147.

<sup>105</sup> - "Rome Statute of the International Criminal Court July 17, 1998," article 7, seen on July 19, 2018, at: [http://www.un.org/arabic/documents/basic/rome\\_statute.pdf](http://www.un.org/arabic/documents/basic/rome_statute.pdf)

<sup>106</sup> - "Additional Protocol I to the Geneva Conventions, 1977," International Committee of the Red Cross, November 11, 2017, seen on July 19, 2018, at: <https://www.icrc.org/ar/resources/documents/treaty/protocol-i-additional-to-the-geneva-conventions>

(article 76) of the Protocol affirms that "Women shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any other form of indecent assault,"<sup>107</sup> considering the fact that they are civilians and do not take part in hostilities.

The following equally applies to women, as stated in (article 3) of the Geneva Convention IV: In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

- Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed ' hors de combat ' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria.<sup>108</sup>

The International Criminal Court - Elements of Crimes (article 7 (1) (g) - 1) states that the elements of rape constituting a crime against humanity are as follows:

- 1- The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.

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<sup>107</sup> - Previous source.

<sup>108</sup> - "Fourth Geneva Convention, 1949" International Committee of the Red Cross, seen on July 19, 2018, at: <https://www.icrc.org/ara/resources/documents/misc/5nsla8.htm>

- 2- The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.
- 3- The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
- 4- The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.<sup>109</sup>

The International Criminal Tribunal for the Former Yugoslavia (ICTY) in 1993 registered an important transformation. It was the first court to include rape in the Statute as a crime against humanity, due to the struggle and courage of local women, and the solidarity of women from other countries,

The International Criminal Tribunal for Rwanda (ICTR) sentence in the Akayesu case in 1998, was the first of its kind in convicting genocide at an international court, and the first institution to recognize rape as a means of perpetrating genocide. The ICTR defined rape as follows: *"...any act of a sexual nature which is committed on a person under circumstances which are coercive. Sexual violence is not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact ..."*<sup>110</sup>

Resolution 1325 that was adopted by the Security Council in the year 2000, called on all parties to conflict "to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, in situations of armed conflict." It further "reaffirms the responsibility of all States to put an end to impunity and to prosecute

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<sup>109</sup> - "International Criminal Court - Elements of War" University of Minnesota - Human Rights Library, seen on July 19, 2018, at: <http://hrlibrary.umn.edu/arab/iccelements.html>

<sup>110</sup> - Valji et al, page 06.

those responsible for genocide, crimes against humanity and war crimes, including those relating to sexual and gender-based violence against women and girls.”<sup>111</sup>

Security Council Resolution 1820 reaffirms to eliminate all forms of violence against women and girls, including by ending impunity and by ensuring the protection of civilians, in particular women and girls, during and after armed conflicts. The Resolution recognizes that “Civilians account for the vast majority of those adversely affected by armed conflict; that women and girls are particularly targeted by the use of sexual violence, including as a tactic of war to humiliate, dominate, instill fear in, disperse and/or forcibly relocate civilian members of a community or ethnic group; and that sexual violence perpetrated in this manner may in some instances persist after the cessation of hostilities.”<sup>112</sup> Furthermore, the Resolution reaffirms the important role of women in the prevention and resolution of conflicts and in peacebuilding, and stressing the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security, and the need to increase their role in decision-making with regard to conflict prevention and resolution. However, it is deeply concerned also about the persistent obstacles and challenges to women’s participation and full involvement in the prevention and resolution of conflicts as a result of violence, intimidation and discrimination, which erode women’s capacity and legitimacy to participate in post-conflict public life.

Sexual violence during conflict is part of the destruction of individuals and communities, especially in communities where women’s body are considered public property, in the sense that they either symbolize virtue or shame. The Syrian regime used the threat of rape, and rape as a weapon of war — forcing people to leave their homes. In a report issued by the International Federation of Human Rights in December 2012 entitled “Violence Against

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<sup>111</sup> - "Resolution 1325 (2000)" United Nations - Security Council, United Nations peacekeeping operations, October 31, 2000, seen on July 19, 2018, at: <http://www.un.org/ar/peacekeeping/issues/women/wps.shtml>

<sup>112</sup> - "Resolution 1820 (2008)" United Nations - Security Council, June 19, 2008, United Nations peacekeeping operations, seen on July 22, 2018, at: <http://www.un.org/ar/peacekeeping/issues/women/wps.shtml>

Women in Syria: Breaking the Silence,"<sup>113</sup> based on an evaluation mission conducted by the Federation in cooperation with the Arab Women's Organization, during which groups of women were targeted in three refugee camps in Jordan, in addition to meetings with eighty refugees living outside the "official" camps, where the mission focused on assessing the impact of the conflict and its impact on women. The report said that all women left Syria fearing rape. Several women interviewed stated the following reasons, all relevant to sexual assault/violence:

- 1- Indirect accounts of rape and other forms of sexual violence committed by pro-government forces during house searches.
- 2- The impact of detainment at checkpoints.
- 3- Detainment.<sup>114</sup>

According to Human Rights Watch, "Syrian government forces have used sexual violence to torture men, women, and boys detained during the current conflict. Witnesses and victims also told Human Rights Watch that soldiers and pro-government armed militias have sexually abused women and girls as young as twelve during home raids and military sweeps of residential areas."<sup>115</sup>

According to several local and international organizations that document crimes and violations, the extent of crimes of sexual violence is often unknown because of the "stigma"<sup>116</sup> and "culture of silence"<sup>117</sup> that make victims reluctant to report crimes and abuses. Additionally, because of the risks that survivors may face when they report these crimes, makes

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<sup>113</sup> - "Violence Against Women in Syria: Breaking the Silence," International Federation for Human Rights, December 2012. Seen on: April 18, 2018, at: [https://www.fidh.org/IMG/pdf/12\\_09\\_13\\_syria\\_web.pdf](https://www.fidh.org/IMG/pdf/12_09_13_syria_web.pdf)

<sup>114</sup> - Previous source, page 05.

<sup>115</sup> - "Syria: Sexual Assault in Detention Security Forces Also Attacked Women and Girls in Raids on Homes" Human Rights Watch, July 15, 2012. Posted on: April 18, 2018, at: <https://www.hrw.org/ar/news/2012/06/15/246678>

<sup>116</sup> - "Violence against women in Syria ..." International Federation for Human Rights, page 05.

<sup>117</sup> - Previous source, page 05.

their access to medical and psychological treatment difficult and limited, and thus is reflected in access to legal aid and social support.

The culture of silence and the policy of impunity, imposed by both society and/or state institutions, and blaming female survivors, and threatening their lives if they report sexual crimes, are clearly revealed in the official statistics of the Directorate of Health.<sup>118</sup> The Directorate has recorded cases of sexual assault on women in 2017. During the first quarter of 2017, about 1,228 cases were recorded, while the second quarter recorded 1,101 cases, the third recorded about 1,630 cases, and the fourth about 1,700 cases. The Ministry of Health estimates that these numbers constitute 20% of the real number.

Since a long time ago, the rhetoric in the region in general, and in Syria in particular was associated with the "protection of land and honor," which was enough to induce the desire to defend them; eventually becoming two symbiotic issues deeply ingrained in the collective consciousness, with the bodies and honor of women at the heart of it. The notion that women's bodies must be protected from "shame and desecration," has been enshrined in Syrian laws in relation to the lives of women. From this point, the regime's use of sexual violence and rape became a weapon of war against men and women, who rebelled against his authority at the start of the revolution in 2011.

The documentary "The Muffled Scream" records testimonies of courageous women from Assad's prisons. The documentary included a testimony of a captain from the province of Daraa, who served with the Assad regime for eight years: "Following my defection, I found out that any citizen who joined the revolution was coerced into surrendering himself to the regime, in exchange for the release of his wife, sister or daughter, who were being detained by the Assad regime. The word "rape" was used by the regime to humiliate the Syrian man."<sup>119</sup>

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<sup>118</sup> - Unpublished statistics for the public, accessible from reliable sources.

<sup>119</sup> - "Syria, The Cry of the Mute," directed by Frenchman Manon Loizeau, edited by journalist Enrique Cogan, Magnéto Presse, with the support of the French Channel 2 television, seen in: " Syrie: La Guerre Silencieuse", YouTube video, 1:13:31, Via "Journal Net TN", December 13, 2017. Posted on: April 18, 2018, at: <https://youtu.be/MBFSP4iBoW4>

Mariam Khalif, from Hama, born on May 18, 1986, a student and worker, who participated in the demonstrations against the regime, stated that following the "Children of Freedom" massacre (in which 750 people were killed, including 350 children), she entered and trained in a field hospital in al-Hamidiyeh. She worked undercover, and became a nurse assisting in surgeries. Soon after, the regime began searching for her, and raided her home and arrested her because of her work in the field hospital.

Mariam described how the regime elements dragged her from her house and threw her in a closed armored car with four women, and began to beat them. When they arrived at the detention for interrogation, they announced their arrival: "The terrorists came!" and took them to Lieutenant Colonel Suleiman from Tartus, and insulted them with obscene words. In the evening they chose beautiful women to be raped in the room of Lieutenant Colonel Suleiman, who called other men to commit these crimes. "My friend was raped in front of me, one of them was also pregnant, they raped us all, and they took turns in raping women." Mariam adds, "State Security, Fourth Division, Case No. 2, the room was blue and white, they beat us in the mornings and raped us in the evenings."<sup>120</sup>

Another survivor of Assad's prisons speaks of Branch 215 nicknamed "the branch of death" - is Kafar Sousah: "A hand touched my body ... I screamed, my body was between the hands of the monsters ... everything was falling apart ... life ended here." She continued: "I woke up, I found myself without clothes, on a dirty mattress ... I was trying to understand what happened ... The word rape is very difficult ... no one can bear it... what happened with me in happened with many other girls, and continues to happen. Time stops, and a minute is a yearlong. I felt I was a slave, I had no rights. The last time I was raped there were five of them, all rotating, with the fourth one I felt great pain, as if I was giving birth, the pain was terrible and I didn't understand what was happening, I was screaming, I heard them tell the fourth rapist to

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<sup>120</sup> - Previous source.

continue, and that it's fine, I did not understand what that meant ...I felt something happening. The fifth man said to them: 'It's a lot', I moved and looked down, and I saw a pool of blood. They all moved away from me, I tried to move to go to the bathroom, I could not, and lost consciousness. I did not know what happened next. I woke up and found myself in a hospital. I then tried to understand what happened but I could not speak. The doctor said to me: You had a stroke. They brought you here from the branch. The doctor left the room, and a nurse entered. Then she said to me: You had a stroke. The doctor sympathizes with you greatly, we will release you from the hospital, and he will tell them that you are dead."<sup>121</sup>

Human Rights Watch interviewed ten former detainees, including two women, who described being sexually abused or witnessing sexual abuse in detention, including rape, penetration with objects, sexual groping, prolonged forced nudity, and electroshock and beatings to genitalia.<sup>122</sup>

The International Independent Investigation Commission on the Syrian Arab Republic documented in a paper entitled "I Lost my Dignity: Sexual and Gender-based Violence in the Syrian Arab Republic,"<sup>123</sup> the rape of women and girls in twenty of government political and military intelligence branches, and the rape of men and boys in fifteen branches.<sup>124</sup> The paper noted that sexual and gender-based violence is "a persistent issue in Syria since the uprising in 2011."<sup>125</sup>

An interviewee described how, following the move of the regime forces into the Bab Amr neighborhood of Homs city in February 2012, pro-Government militiamen stormed his house, killed five of his male relatives, and forced him to watch the gang-rape of his wife and two

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<sup>121</sup> - Previous source.

<sup>122</sup> - "Syria: Sexual Assault in Detention", Human Rights Watch.

<sup>123</sup> - Human Rights Council, International and Independent Commission on Inquiry on the Syrian Arab Republic, "I Lost my dignity: sexual and gender-based violence in the Syrian Arab Republic", March 15, 2018, seen on May 08, 2018 at <http://www.ohchr.org/AR/HRBodies/HRC/IICISyria/Pages/IndependentInternationalCommission.aspx>

<sup>124</sup> - Previous source, page 02.

<sup>125</sup> - Previous source, page 03.

daughters, both minors. Afterwards, the interviewee was raped in front of his family.<sup>126</sup> Sexual violence and killings regularly took place in parallel.<sup>127</sup> In several instances eyewitnesses recalled women and girls being killed after being raped.<sup>128</sup>

In many instances, women and girls were arrested during house raids and taken to Government detention facilities as a way to pressure their male relatives into surrendering.<sup>129</sup>

A sixteen year-old girl from Karam el-Zeitoun recalled how she watched the rape of two women and afterwards was forced to walk in front of the tanks for several hours.<sup>130</sup> In a few cases, women and girls detained at checkpoints were raped in front of male relatives.<sup>131</sup>

Evidence of the use of rape as a tactic in the Houla massacre in May 2012 did not emerge until after the publication of the Commission's report of its special inquiry into the events of Houla.<sup>132</sup> While in most cases, the victims were adult women aged between 18 and 45, the Commission also documented the rape of several girls, the youngest a nine-year-old.<sup>133</sup>

[Cases of] sexual violence against women in shelters in Syria were concealed, and weren't documented. Rape took place at the warehouse of one of the shelters in Harasta by a supervisor and his colleague who provided cleaning materials to the families. One of the survivors recounted that she wasn't the only one raped at the center. Other women were threatened by cutting off food from their families, or exposing videos that filmed them when they were assaulted; therefore, they all stayed silent, and did not file a complaint. When one victim told her story, it backfired, and she was kicked out of the shelter along with her family.

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<sup>126</sup> - Previous source, page 12, item 16.

<sup>127</sup> - Previous source, page 12, item 17.

<sup>128</sup> - Previous source, page 12, item 17.

<sup>129</sup> - Previous source, page 12, item 18.

<sup>130</sup> - Previous source, page 23, item 19.

<sup>131</sup> - Previous source, page 14, item 23.

<sup>132</sup> - Previous source, page 12, margin 2.

<sup>133</sup> - Previous source, page 16, item 29.

In some cases, the sexual attacks on women and children were carried out by volunteers who frequented the centers. Those cases of rape and sexual harassment have not been documented and no legal action was taken by the centers' administrations.<sup>134</sup> The volunteers were dismissed, but without any legal accountability.

Sexual violence leads to severe and long-term physical and psychological trauma, and survivors are stigmatized and ostracized by their families and communities. During armed conflicts, rape is often denied by survivors because of guilt or shame or fear of reprisal. This causes a huge undermining of the case, and therefore, victims do not receive support.<sup>135</sup>

In Syria, survivors of sexual violence, of both men and women feel shame, guilt, humiliation and despair. Women and girls feel that they are responsible for the shame of their families, while a number of rape victims have been killed by their families, and others have been ostracized and blamed. In many cases, married women who were raped were deprived of their children, and were divorced by their husband following their arrest. Similarly, men and boys who were raped feel they have lost their manhood.<sup>136</sup>

The majority of male and female respondents to the questions asked by researchers to document violations, reported that the rate of rape documentation by male survivors is much lower than the female survivors', although the latter is also very limited. Nour al-Khatib added:<sup>137</sup> "According to my experience, documenting the crimes of sexual violence against

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<sup>134</sup> - Jouri Mohamed, "The Law does not protect abused women inside shelters," Syrian Women Journalists Network, file in the context of a training workshop on covering sexual violence cases, seen on May 24, 2018 at: <https://goo.gl/gPyiwh>

<sup>135</sup> - "Sexual violence in armed conflict: an invisible tragedy," International Committee of the Red Cross, December 19, 2013, seen on September 15, 2018, at: <https://www.icrc.org/ara/resources/documents/faq/sexual-violence-questions-and-answers.htm>

<sup>136</sup> - Human Rights Council, International and Independent Commission on Inquiry on the Syrian Arab Republic, "I lost my dignity: sexual and gender violence in the Syrian Arab Republic", March 15, 2018, pages 38-39, seen on May 08, 2018, at <http://www.ohchr.org/AR/HRBodies/HRC/IICISyria/Pages/IndependentInternationalCommission.aspx>

<sup>137</sup> - Nour Al-Khatib (Director of the Department of Detainees and Disappeared Persons and Special Reports on Special Violations in Women - Syrian Network for Human Rights), interview with researcher on May 23, 2018

men is much more difficult than documenting such crimes against women, especially in areas outside the regime's control, such as Hama and Idlib.

Although we assign a man to interview a man, there is still great difficulty in getting him to open up. However, if the interviewee lives outside Syria, he is more flexible because of the new skills and beliefs he acquired in his new community abroad. He is better able to give a testimony, without considering himself less of a man for doing so. Women, on the other hand, are able to talk to other women, as they consider the discussion to be a form of venting. The men, however, consider the sexual violence committed against them an insult to their dignity, their manhood and their status in society.

Although harassment in prisons and during house raids happened to most men, they do not consider it sexual abuse, but rather perceive it as torture." There are numerous forms of male rape in official and informal detention centers, but most commonly are carried out with batons, wooden sticks, pipes and electrocution to the genitals, usually accompanied with threats of raping their female relatives. "In extreme cases, the perpetrators forced male relatives to engage in incestuous sexual intercourse with their female relatives, resulting in devastating psychological consequences for the victims."<sup>138</sup>

### **Various Forms of Gender and Sexual Violence against Women and Girls in Areas under the Control of Extremist Armed Groups**

In areas under armed extremist groups' control, strict measures were imposed regarding the dress code of women and girls. For example, on December 14, 2015, the court of justice issued an appeal to the residents of Idlib stating: "If a woman who has not complied with the Shari'a dress code, her guardian will be held accountable, and will be referred to court."

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<sup>138</sup> - Previous source, pages 21-22.

As for the rules regarding how a woman must wear the veil; it should be loose, long, free of ornamentation, and in black, dark blue, or brown color.<sup>139</sup> Hayat Tahrir al-Sham in Idlib issued decrees asking women and girls over the age of nine, to wear a black, or a dark brown loose gown when outside the house.

In addition, HTS issued a decree prohibiting widows from living alone. The International Independent Investigation Commission noted that investigations were still under way regarding these decrees. In some parts of Idlib, HTS imposed male guardianship on women and girls, and in turn, prohibiting them from going to restaurants on their own. Any violation of these rules can lead to flogging. HTS also detained women to force men to "surrender or swap."

HTS' armed female guards,<sup>140</sup> patrol the streets and markets and university entrances in Idlib, to ensure that women and girls comply with the dress code imposed by HTS.<sup>141</sup> There were incidents in which women and men were stoned to death for adultery, carried out by Jabhat al-Nusra, ISIS, and Jabhat Fatah al-Sham.<sup>142</sup>

"There was no indication that there was a systematic practice or policy of armed groups using sexual and gender-based violence to generate fear, extract information or force allegiance." The incidents that took place were in contexts mostly involving elements of exploitation, sectarianism or revenge, and were directed against women and girls.<sup>143</sup>

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<sup>139</sup> - Lama Kannout, "Political Participation of Syrian Women between the Center and the Margin"

<sup>140</sup> - Jabhat Fatah al-Sham is the new name taken by the terrorist organization, Al-Nusra Front in July 2016. On December 28, 2017, it formed with a group of factions the organization Hayat Tahrir al-Sham.

<sup>141</sup> - Human Rights Council, International and Independent Commission on Inquiry on the Syrian Arab Republic, "I lost my dignity: sexual and gender-based violence in the Syrian Arab Republic", pages 30-31, March 2018, seen on May 08, 2018, at <http://www.ohchr.org/AR/HRBodies/HRC/IICISyria/Pages/IndependentInternationalCommission.aspx>

<sup>142</sup> - Previous source, pages 30-32.

<sup>143</sup> - Previous source, pages 24-25.

### **Sexual and Gender-Based Violence in Areas under the Syrian Democratic Forces Control**

Violations in areas under the Syrian Democratic Forces control included torture of male detainees, the threat of burning or burning of genitals. The 'Syrian Democratic Council' and the 'Autonomous Administration' operating in the areas retrieved from ISIS , confiscated identity documents of camp residents and arbitrarily prevented them from leaving. This put families at an increasing risk of exploitation, separation and restricted their access to health care. Both aforementioned authorities are a constituent of the Democratic Union Party.<sup>144</sup>

Women and girls in detention camps who fled alone from the fighting in Deir ez-Zur and Raqqa in the second half of 2017, cannot leave the camps because "they cannot pay the SDF, to appoint a sponsor or a guarantor to leave the camp."<sup>145</sup> This was a rule imposed by the SDF on displaced persons in camps.

Recent research by Human Rights Watch found that "the People's Protection Units (YPG) continue to recruit under-age boys and girls to serve in the armed forces." The researchers also found that "young boys and girls were being recruited in IDP camps, with the process specifically targeting vulnerable families in need of social support or humanitarian assistance." The results of HRW's meetings with eight families living in the camps of al-Sadd, al-hol and Ain Issa in May 2018, showed that children between the ages of 13 and 17 were recruited to join the People's Protection Units (YPG) in northern Syria. Most of them knew that their children went for training, but did not know details; one family was denied contact with their child when he left for training.<sup>146</sup>

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<sup>144</sup> - "Syria: Thousands of People Held in Camps" Human Rights Watch, August 2018, seen on September 15, 2018, at: <https://www.hrw.org/ar/news/2018/08/01/320921>

<sup>145</sup> - Human Rights Council, International and Independent Commission on Inquiry on the Syrian Arab Republic: "I Lost My Dignity: Sexual and Gender Violence in the Syrian Arab Republic", page 37, March 2018, seen on May 08, 2018, at <http://www.ohchr.org/AR/HRBodies/HRC/IICISyria/Pages/IndependentInternationalCommission.aspx>

<sup>146</sup> - Human Rights Watch (Human Rights Watch) letter to the (People's Protection Forces) of the Kurdish Democratic Union Party, Human Rights Watch, June 22, 2018, seen on September 15, 2018, at: <https://www.hrw.org/ar/news/2018/08/03/321171>

It should be noted that (article 8 - 26) of the Rome Statute of the International Criminal Court provides that: "Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities."<sup>147</sup>

### **Infants and Children of Unknown Lineage**

The number of children, whether male and female, from a Syrian mother and from an unknown father, whether foreign or Syrian, is unknown. This issue is in need of legal, social and medical attention, because it causes successive harm to generations. The mothers and their children are exposed to all forms of violence, including marginalization, ostracism and stigmatization, and deprives the children from the protection and care that the State must provide.

The absence of personal status records for those children, male and female, deprives them of their basic rights, such as the right to nationality, education, employment, mobility and protection against violence and exploitation. The legal treatment of this issue takes place in the framework of the right of the Syrian mother to give her children, male and female, a right to nationality.

### **Crimes against the LGBT Community<sup>148</sup>**

The International Independent Investigation Commission on the Syrian Arab Republic noted that it had received, "on a regular basis, allegations that members of extremist and terrorist groups imposed medieval-like punishments on men accused of homosexuality." At the beginning of 2016, two men were charged with homosexuality, and were thrown from the third floor in Khan Shaykhun in Idlib. On another front, Nusra fighters announced the

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<sup>147</sup> - "Rome Statute of the International Criminal Court adopted in Rome on July 17, 1998," International Committee of the Red Cross, seen on August 15, 2018, at: <https://www.icrc.org/ara/resources/documents/misc/6e7ec5.htm>

<sup>148</sup> - The LGBTQ community: They are: Lesbian, Gay, Bisexual, Transgender and Queer. They are referred to in Arabic as the "Meem" community (all words in acronym begin with the letter 'm' in Arabic). ", More: <https://goo.gl/vgpkGU>

consequences for homosexuality charges via loudspeakers. Recently, fighters from Jabhat Fatah al-Sham, and in coordination with an armed group executed seven men by shooting, in the city of Ar-Rastan, in Hama, on the charges of homosexuality. ISIS, on the other hand, also executed men on charges of homosexuality, but included children raped by those men in the executions. Such executions frequently took place in several of the areas ISIS had controlled.<sup>149</sup>

### **Genocide against Yazidis**

The International Commission of Inquiry on the Syrian Arab Republic concluded on June 15, 2016, according to its mandate, that ISIS committed genocide against Yazidis in Syria, and sought to eradicate them in various ways — through murder, sexual slavery, enslavement, inhuman and degrading treatment, causing serious physical and mental harm, and causing living conditions that cause slow death.

Furthermore, ISIS imposed measures to prevent the birth of Yazidi children, including forcing adults to convert to Islam, separating Yazidi men and women, causing mental trauma, and separating Yazidi children from their families, and indoctrinated them into becoming fighters, hence eliminating the beliefs and practices of their community, and erasing their Yazidi identity.<sup>150</sup>

As such, those actions are considered genocidal.

Genocide was first recognized as a crime under international law in 1946 by the United Nations General Assembly (A/RES/96-I). *In the present Convention, genocide means any of*

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<sup>149</sup> - Human Rights Council, International and Independent Commission on Inquiry on the Syrian Arab Republic "I lost my dignity: sexual and gender-based violence in the Syrian Arab Republic", pages 29-33, 2018, seen on May 08, 2018, at: <http://www.ohchr.org/AR/HRBodies/HRC/IICISyria/Pages/IndependentInternationalCommission.aspx>

<sup>150</sup> - "They came to destroy: crimes against the Yazidis" International Commission of Inquiry on the Syrian Arab Republic, United Nations - Human Rights Council, A / HRC / 32 / CRP.2, June 15, 2016, pages 29, seen on September 15, 2018, at: <https://www.ohchr.org/AR/HRBodies/HRC/IICISyria/Pages/IndependentInternationalCommission.aspx>

*the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:*

1. Killing members of the group;
2. Causing serious bodily or mental harm to members of the group;
3. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
4. Imposing measures intended to prevent births within the group;
5. Forcibly transferring children of the group to another group.

### **Violence against widows**

Violence against women in villages or shelters in Idlib, where widows are present, is completely absent from human rights organizations reports. One respondent says:<sup>151</sup> "In Idlib, there's a large number of widows and their children, and they live in dire condition: 1- when the child turns fourteen years, she must either leave him with her husband's family, or leave the shelter with him. 2- It is forbidden for women and girls to leave the shelter at certain times. In winter, they are not allowed to leave the shelter after 4:00 PM. In summer, they are not allowed to return to the shelter after 8:00 pm. If the woman wishes to stay outside the shelter (with her family or her husband's family), she must obtain the approval of the shelter's director. 3- They are forbidden to leave the shelter, unless they are accompanied by a male guardian; a member of her family or her husband's family.

I have constantly criticized these conditions, but the organizations that manage and sponsor those shelters, are of an extremely conservative background, and claim that these conditions are set for the protection of women. Sometimes the organizations funding these complexes do not agree with these conditions, but it is the authorities on the ground that ultimately have the

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<sup>151</sup> - Respondent names remains anonymous at her request.

last say. For example, Al-Nusra Front/HTS, stirs trouble with the shelter management when they find irregularities. It is unknown exactly who imposes those conditions, perhaps in the future and after al-Nusra Front is gone, it will be clear who was imposing those conditions."

The respondent adds, "Each organization that builds those shelters for widows, impose specific conditions. Shelter in Qatmah, and the 'village of widows' in Termanin, Idlib, impose similar conditions. Some add conditions, such as: If a widow has been absent for more than 48 hours from the shelter without informing the shelter's management, and obtaining its approval, she will be evicted immediately."

Those responsible for communities appoint themselves as guardians of the widows who need shelter, and deal with them as if they are incapable of doing so for themselves. They claim that they are protecting those widows, but that "protection" is only a mean of persecuting, subjugating and controlling them. In addition, dealing with the 13-year-old child as a fully grown man is a grave violation of children's rights, and human rights organizations must monitor and document these violations.

A report published by the Sunday Times entitled "Syrian widows forced to give naked pictures to aid worker" on June 03, 2018, revealed that a humanitarian aid worker in western Aleppo countryside was asking women, most of them widows, to send naked pictures of them in exchange for food baskets.<sup>152</sup>

Violence against widows, overlaps with poverty, education, age and other factors, and must be visible to the gender-sensitive transition process. Widows must be included in consultations, compensation, health care, education and ownership, and enacting laws that protect their rights. Additionally, they must be provided with free legal advice, to protect their rights and the rights of their children.

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<sup>152</sup> - Sunday Times: Syrian widows forced to give naked pictures to aid worker "BBC, June 03, 2018, seen on: September 12, 2018, at: <http://www.bbc.com/arabic/inthepress-44345305>

## Domestic violence

The Declaration on the Elimination of Violence Against Women was adopted without vote by the United Nations General Assembly in its resolution 48/104 of December 20, 1993, defines the term 'violence against women' as: "means any act of gender-based violence that results in, or likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life."

(article 2-a) defines violence within the family as: "Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation."<sup>153</sup>

Domestic violence usually escalates during armed conflicts and wars, but in the Syrian context, with the exception of some reports about family violence against a female detainee following her release, domestic violence against women and girls has been ignored. Furthermore, the release of studies and reports in relation to domestic violence in Syria dropped after 2011.

The Day After organization carried out a survey, published in August 2017, under the title "Discrimination Against Women in Syrian Society 2/2 - Perception of Domestic Violence,"<sup>154</sup> covering six provinces in Syria, in areas controlled by the regime, the opposition and the Autonomous Administration, in addition to a few camps in Turkey. The number of respondents totaled 2091; 1,120 men and 971 women, identifying that "The percentage of women who said that they have experienced domestic violence is 21.2%, which is double the percentage of men who reported the same answer."

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<sup>153</sup> - "Declaration on the Elimination of Violence against Women" United Nations - Human Rights - Office of the High Commissioner, seen on June 22, 2018, at: <https://www.ohchr.org/AR/ProfessionalInterest/Pages/ViolenceAgainstWomen.aspx>

<sup>154</sup> - "Discrimination against women in Syrian society 2/2 - Perception of domestic violence" The Day After, August 2017, page 01, seen on August 10, 2018, at: <https://goo.gl/n5VGey>

In 61.5% of cases the abuser is the partner, but only a small percentage of victims (less than 7%) reported the abusive husband to one of the concerned institutions. In general, women do not report domestic violence practiced against them. The results also reveal that the majority of domestic violence incidents (69.2%) occur in the presence of minors (sons, relatives or others). In more than a third of these assaults these minors are also exposed to violence.

The report found that women are more aware of abusive incidents of this kind, and that their concern for the children and “the feeling of shame and the desire not to share their problems with others,” in addition to the absence of an institution that women trust can protect them, were the most prominent reasons why abused women remain silent.

Emphasis is placed on one of the most prevalent forms of domestic violence against women; spousal violence. The greater percentage of men (more than one-third) believe that the prevalence of this kind of violence is small or rare, while the largest percentage of women (43.3%) say it is prevalent to some extent, or that it is widely prevalent.

The study further revealed that there is almost a consensus that physical abuse and deprivation of liberty are cases of violence that require legal accountability, around a third of respondents do not believe that this applies to verbal threats and abuse. However, looking at the data based on gender shows a dramatic difference in attitudes, as half of the men do not wish to punish the perpetrator of physical abuse, and the majority of them reject such punishment for the perpetrator of the deprivation of liberty.

Results also identified that justifications for such violence is religious (Islamic Law allows the beating of wives in some cases), and for laying the responsibility on women for the violence committed against them, being the ones who push their husband to commit violence in some cases. In both cases, the proportion of those who refused these two justifications is up to one-third.

Prior to 2011, the results of a survey conducted in a 2005 study, covering 1,891 households, showed that women are exposed to all forms of gender-based violence:

"About 17% of women give their wages voluntarily to the head of their families; 4.5% of them are forced to give their wages (6.3% in rural areas and 6.2% in urban areas); 14% of families decide who their daughter will marry. As for the educational level of the women, percentages vary: 10% of women completed their secondary education, 19% their primary education; 7.5% of these families choose the future husband for their daughters against their will; 6.6% of heads of households married before the age of 15; 6% of urban areas and 7% of rural areas. 38% of women are married between 15 and 19 years of age; 2.6% of women become pregnant before the age of 15; 9.1% in urban areas; and 3.5% in rural areas. 29.8% of women become pregnant from 15 to 19 years of age: 29% in urban areas and 31% in rural areas. 5.4% of pregnant women were treated poorly during their first pregnancy by their husbands. This percentage increased to 9% in their last pregnancy; 12.4% of the sample married two wives: 9% in urban areas and 16.3% in rural areas; 13% of couples commit acts of violence against wives in the rural areas; while 1.2% of wives commit acts of violence against their husbands; 6% do not allow their wives to visit their families or friends; 12% choose their wives' clothing without consulting them; 43% disagree with their wives about the education of their children, 56% of the errors made by women are punishable by the heads of the families with abuse and name-calling, regardless of the education level of the head of the family; 14% of these errors were neglect of their family duties family. The husband beats his wife in 49% of these cases; insults them in 38% of these cases and resorts to silence in 8.4% of the cases; 67% of women are punished in front of their families; 52% of women that are punished are simultaneously insulted; 56% are denied pocket money and 87% are beaten; 21.8% of women are exposed to some other kind of violence. Insulting the woman comes at 50.2%, followed by beatings 48.2%, sexual harassment 14.1%, then 10.7% robbery and physical assault, 2.3% abduction; 71.8% of women are assaulted by a family member ; 12.4% by a person they know; 7.6% by a stranger; 76.4% of the abused women were insulted or beaten by a family member. Husbands were responsible for the abuses in 54% of cases, fathers for 36% and

brothers for 3%; 52.6% of abused women are sexually harassed by a male member of the family; 18.6% are harassed by a stranger, and 16.5% are harassed by a person they know; 54.4% of women are robbed by a family member; 21.5% are robbed by a stranger, and 14.8% by a person they know; 73% of abused women are physically assaulted by a family member; 11.5% are assaulted by a stranger, and 9% by someone they know; 51.4% of abused women are abducted by a family member; 24.3% are abducted by a person they know; Women are punched in the following cases: 79% of the cases during which insults and name-calling occurred; 84% during beatings; 65% during sexual harassment; in 63% of cases of theft; in 55% physical assault cases and in 84% of abductions; the stick was used against women in 23% of cases during which insults and name-calling occurred; 26% during beatings; 20% during sexual harassment; 42% during cases of theft; 75% during cases of physical abuse; family members defended the abused women and blamed the aggressors 49% of the time when they insulted and name called; 48% for beatings; 72% for cases of sexual harassment; 44% for cases of theft, 38% for physical abuse cases and 36% for cases of abduction.

In other cases, family members accused and blamed women, prevented them from engaging in social life, insulted and beat them; one of the main reasons that prevent women from informing their families about their abuse is their fear from their attacker, their families, and the potential of creating problems for their families, and defying customs and traditions; men are primarily responsible for 66% of cases of beatings of women, 57% of cases of sexual violence,

In 55% of cases, husbands killed their wives because of adultery, and in 45% of the cases, killed their wives because of establishing a friendship with another man other than her husband. And in 66% of the cases, both husband and wife were responsible for divorce."<sup>155</sup>

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<sup>155</sup> - "Report on the Analysis of the National Situation - Women's Human Rights and Gender Equality - Syria" Report, "Promoting Equality between Women and Men in the Euromed Region", European Union, July 2010, pages 47-48, seen on May 20, 2018, at: [https://library.euneighbours.eu/sites/default/files/arabic\\_1.pdf](https://library.euneighbours.eu/sites/default/files/arabic_1.pdf)

I will refer to the findings of the survey of this study on violence against women in relation to inheritance, in the section on inheritance.

With women being stay-at-home wives, and working at home, contributed to the decline in their social status, and participation in decision-making within the family, compared to men, who were associated with spending money on women and their families. Therefore, the family property, in most cases, is registered in the husband's name; and that wouldn't have happened if the women didn't have to work full time at home, and men were responsible for supporting the family by working outside the home. On the other hand, the burden doubles for working women who are responsible outside and inside the home, increasing their working hours, without sharing the domestic work with their husbands, and are often deprived of the wages they earn, as noted in the previous study.

### **Sexual violence against children within the family**

The crimes of sexual violence against children that occur within the family are among the social taboos that are often kept silent, and covered by all members of the family, even though the penal code raises and strengthens punishment against perpetrators of this type of crime.

Lina, a respondent,<sup>156</sup> told a story, "A father from Bab Touma was having sexual intercourse with his 11-year-old daughter, and no one said a thing. We asked everyone to raise the issue to the church as he is a Christian, but everyone refused raising the issue against him. His daughter knows that he brings boys home to rape them. She told her school counsellor: 'When I saw a used box of Vaseline, I knew that my father brought and raped boys.' The counsellor conveyed what the daughter had told her to the school principal, who did nothing.

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<sup>156</sup> - Lina (pseudonym, member of a Syrian women's organization), interview with researcher on May 25, 2018.

Of course, this man uses his power and authority to commit those heinous acts. He works at the checkpoint and terrorizes the children, and brings them to his home and rapes them. He is known to work in the committees, so the school principal is afraid of him. This is why everyone is silent, because of his power, he is able to abuse little boys, and his own daughter." Such crimes and most cases of harassment occur in secret. Sometimes, if the girl is impregnated by a family member, her mother takes her to the doctor to abort the fetus illegally. Lina believes that the ways to deal with such crimes and protect children is through a law criminalizing family rape, but also protects the woman when she files the charges against the perpetrator, guaranteeing that he will not retaliate by beating her, or accuse her of fabricating the charges.

The Syrian Penal Code<sup>157</sup> (article 491-1) states: "Any person who has sexual intercourse with a minor who is under fifteen years of age shall be punished by hard labor for nine years." (article 492-1) states: "Any person who has sexual intercourse with minor under between the ages of 15-18 has sexual intercourse, and is one of his or her legal guardians, or who exercises a legitimate or actual authority over the minor, shall be punished by hard labor for nine years." (article 493) provides that "1. Any person who commits another act of violence or threatens to carry out an indecent act against a minor shall be punished by hard labor for a period not less than twelve years. 2. The minimum sentence shall be eighteen years if the victim is fifteen years old or younger." (article 495) "1. A person who commits an indecent act or commits an offense against a minor under the age of fifteen is punished by hard labor for nine years. 2. The penalty shall not be less than twelve years if the child is two years old." (article 496) states: "Every person who is described in (article 492) commits an indecent act against a minor between 15 and 18 years of age, shall be punished by hard labor for a period not exceeding fifteen years." (article 497) provides for the lifting of penalties for each of the above-mentioned

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<sup>157</sup> - Syrian Penal Code, Ministry of Justice, seen on May 08, 2018, at: [www.moj.gov.sy/index.php](http://www.moj.gov.sy/index.php)

(articles: 491, 493 and 495) "if the offender is one of the persons referred to in (article 492)", as stated in the text of (article 247): "... the death penalty is replaced by hard labor, the penalty is slashed from one third to one half, and the fine is doubled." What distinguishes an act that is contrary to indecency, from an act that is disrespectful is the seriousness of the act and the places in the body that were assaulted/abused. If they are places in the body that are supposed to be covered, but were not prior to the criminal act, then it will amount to an act of indecency by the victim.<sup>158</sup>

Despite the existence of decrees that criminalize sexual violence against boys and girls, women rarely resort to justice due to fear of society, as it will be a source of shame for them and their families, as well as the financial burdens of litigation, and the lack of safe and confidential mechanisms to file lawsuits, and access to justice.

### **Crimes against Women and Girls in the Name of Honor (honor killings)**

The murder of women in the name of "honor," mentioned in the Syrian Penal Code, sympathizes with that heinous act as an act of "rage," and reduces its sentence under the pretext of being an "honorable motive." There is no documentation of honor killings. Only in 2016, the first one was documented, by the Damascus District Attorney General, Maher al-Olabi, who indicated that the rate of honor killings has significantly increased. The second crime was documented by Ahmed Bakri, head of the Criminal Chamber of the Court of Cassation, stating that rates of honor killings had "quadrupled before the crisis." He said: "The Syrian Penal Code provided an excuse for the crime of honor, and if the man entered and found his wife or one of his relatives or a member of his family on the marital bed with a foreign man, and kills her, the law considers this a crime of honor, and perpetrators benefit from this excuse as the penalty is reduced." He added: "I am not with the repeal of this article,

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<sup>158</sup> - Ahmed Abu Al-Zein, Decree 584/1988 - basis 601 - Court of Cassation - Civil Chambers - Syria, rule 104 - m. Law 1989 - Hammurabi Reference Number: 12008, Syria Advocacy Forum, seen on May 08, 2018, at: <http://www.damascusbar.org/AlMuntada/showthread.php?t=28781>

since the legislator who wrote this article took into account all the social conditions, including a man's honor. When a man sees his wife with another man in bed, the first human instinct is for him to kill his wife, or both adulterers." This statement by the head of the Criminal Chamber of the Court of Cassation is an example of the extent of society's hostility towards women and men, and fail to notice the obligations of States towards human rights, and agreements ratified by Syria, such as the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of Children, including the right to life and security of life. It should be recalled that the General Assembly adopted a resolution on December 20, 2004 to eliminate crimes against women and girls in the name of honor,<sup>159</sup> affirming "the need to treat all forms of violence against women and girls, including crimes committed in the name of honor, as criminal offenses punishable by Law."

It also reaffirmed "The need to identify and address effectively the root causes of violence against women, in particular those committed in the name of honor, in all their multiple forms; and recognizing insufficient data on violence against women, including crimes committed in the name of honor, as they create an obstacle for policy analysis at the national and international levels, and efforts to eliminate such violence." The resolution also highlighted "the importance of empowering women, and their effective participation in decision-making and policy-making processes as a vital tool in preventing and eradicating crimes against women and girls in the name of honor." This requires the amendment of the texts of those crimes in the Syrian Penal Code, and the implementation of public awareness campaigns by state and civil society organizations, highlighting the need to raise awareness to prevent and eliminate such crimes against women and girls, in the name of honor.

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<sup>159</sup> - "Action to eliminate crimes against women and girls in the name of honor," A / RES / 59/165, General Assembly, 59th session of the United Nations General Assembly, February 10, 2005, <http://www.un.org/arabic/documents/GARes/59/59res2.html>

## Child Marriage

Child marriage is a form of gender-based violence, a violation of human rights and the rights of children. UNICEF defines "child marriage as a formal marriage or informal association before the age of eighteen." Maternal mortality is associated with minors' pregnancy and childbirth, annually causing the deaths of seventy thousand girls. Mothers under eighteen years of age are at a greater risk of their baby dying in the first year of their life by 60%, over mothers who are above the age of nineteen. Even if the baby lives, he/she is more likely to be underweight, malnourished,<sup>160</sup> and delayed physically and cognitively. Furthermore, underage girls who marry are subjected to violence, exploitation and abuse.

Child marriage in Syria was common before the revolution in 2011, amounting to 7%. The percentage increased in the year 2015 to more than 30%, and in 2013, child marriages were held in the Islamic courts in Damascus at a rate of 10% of the marriage contracts. In remote rural areas, the percentage of unregistered child marriages in the courts is 60%.<sup>161</sup>

The marriage of underage girls is related to the concept of "spinsterhood." In some areas, generations are taught that the woman is only secure with her husband and in her home. The husband is the guardian, the protector, the patron and the provider in the present and the future. In addition to legal provisions, for example, the Public Personal Status Law (articles 16 and 18), are laws that entrench the concept that women are merely vessels for having babies. The accumulation of these issues, including displacement, collective punishment, the threat of sexual violence, religious opinions, the proliferation of arms and the imposition of de facto forces, has led to the increase in child marriages.

As for the refugee communities in neighboring countries, add to the aforementioned factors social beliefs, economic reasons, dangers of sexual violence against girls, religious opinions,

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<sup>160</sup> - Child marriage, UNICEF, seen on September 05, 2018, at: [https://www.unicef.org/arabic/protection/24267\\_25755.html](https://www.unicef.org/arabic/protection/24267_25755.html)

<sup>161</sup>- Sahar Hawija, "Forced Marriage and Factors of how marriages affects Syrian minors", Syrian Center for Legal Studies and Research, August 28, 2017, at: <http://www.sl-center.org/news/78?language=arabic>

and the dire and fragile conditions of refugees. In Jordan, for example, there are no mechanisms to protect women and girls from gender-based violence, or a safe and free process for them to achieve justice. Furthermore, there is no access to free health care for the victims, and most women are in an extremely vulnerable situation due to the loss of identity documents, marriage contracts, and child birth certificates. Additionally, the difficulty in accessing education and discrimination against women on the basis of asylum, all contribute to the reduction of their rights and access to assistance (work, health and education) and loss of security — hence, increasing their risk of sexual violence.<sup>162</sup>

Dominique Hyde, the local representative of the United Nations Children's Fund (UNICEF), said UNICEF was aware of the magnitude of the problem of child marriage in Jordan, and added that it was "executed as a coping mechanism."<sup>163</sup> The number of marriages of Syrians under the age of eighteen years reached 1,059 during the first half of 2017, while the number of minors was forty-four in the same period. The Arab Organization for Democracy and Development (ARD) of Jordan noted that the rate of early marriage among Syrian refugees in Jordan is 35% of all marriages in 2017.<sup>164</sup>

The violations often overlap with those who were married as minors, two of the survivors I met who had been subjected to violence by the partner, were also forced to leave their education. Nagham,<sup>165</sup> from Zabadani, currently aged nineteen, married at sixteen, a Hezbollah fighter when she and her mother fled Syria to Baalbek in Lebanon. She says, "My husband abused me and my family, my father is dead and I have no one. He tortured me. I was not allowed to see my mother, or my brother. I can only see them once a month. He

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<sup>162</sup> - Rania Al-Sarayra, "Report: The rise of early marriages among Syrian women to 35%," Al-Ghad, Jordan, January 22, 2017, seen on September 06, 2018, at: <https://goo.gl/aDcvGK>

<sup>163</sup> - "Child marriage perceptions" BBC, September 03, 2012, seen on September 05, 2018, at: [http://www.bbc.com/arabic/interactivity/2012/09/120903\\_comments\\_syria\\_refugees\\_marriage.shtml](http://www.bbc.com/arabic/interactivity/2012/09/120903_comments_syria_refugees_marriage.shtml)

<sup>164</sup> - "In Figures ... Marriages of Syrian minors in Jordan" SPUTNIK, October 27, 2017, seen on September 05, 2018, at: <https://goo.gl/4YbubR>

<sup>165</sup> - Nagham, a dialogue session conducted by the researcher with a group of survivors in a Syrian women's organization in Lebanon, August 06, 2018.

prevented me from using the phone, and disconnected the internet connection when he left the house. Later, I found out that I was pregnant, I asked him to register our marriage in court but he didn't. I was on the verge of a nervous breakdown because of all the beatings and torture, so one time I shaved my head completely. He and his mother's prevented me from seeing my newborn daughter hours after she was born." She continues, "If I'm going to fight for something in my life, I'll fight early marriage." As for the power dynamics between her and her ex-husband, she was not a decision maker, nor was she involved in making any decision related to her family and her life, and was subjected to violence in all its forms including marital rape, throughout her marriage. As for life under ISIS, unmarried women and girls above the age of puberty are "a threat to their faith and their society." The International Independent Investigation Commission on the Arab Republic notes that the vast majority of documented cases of victims of forced marriages were girls between the ages of 12 and 16. Some families accepted marrying their girls to the organization's fighters fearing the consequences should they refuse, or they were in need of money and benefits that the fighters offered. It was also an opportunity for the family to rid themselves of an extra mouth to feed. Some families who refused that arrangement, fled to areas outside of ISIS control, or sent their daughters away. However, young women, who were smuggled out of their own homes from fear of kidnapping or being forced to marry at a young age, were still subjected to abuse and exploitation.

## Section Eleven: Enforced Disappearance, Arrest and Prisoner Exchange Deals

### Enforced Disappearance

"Enforced disappearance" is defined in (article 2) of the Convention as:

“the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.”<sup>166</sup>

(article 5) of the Convention considers that the practice of enforced or general enforced disappearance is a crime against humanity and provides (article 17-f) to ensure the right of "... Guarantee that any person deprived of liberty or, in the case of a suspected enforced disappearance, since the person deprived of liberty is not able to exercise this right, any persons with a legitimate interest, such as relatives of the person deprived of liberty, their representatives or their counsel, shall, in all circumstances, be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of the deprivation of liberty and order the person's release if such deprivation of liberty is not lawful.”<sup>167</sup>

(article 24-1) of the Convention states that "victim" means the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance.<sup>168</sup> (article

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<sup>166</sup> - "International Convention for the Protection of All Persons from Enforced Disappearance" United Nations - Human Rights - Office of the High Commissioner, seen on June 10, 2018, at: <http://www.ohchr.org/AR/HRBodies/CED/Pages/ConventionCED.aspx>

<sup>167</sup> - Previous source.

<sup>168</sup> - Previous source.

24), (item 4) states that "Each State Party shall ensure in its legal system that the victims of enforced disappearance have the right to obtain reparation and prompt, fair and adequate compensation." And (item 5) of the same article, the right to obtain reparation referred to in (paragraph 4) of this article covers material and moral damages and, where appropriate, other forms of reparation such as:

- a. Restitution;
- b. Rehabilitation;
- c. Satisfaction, including restoration of dignity and reputation;
- d. Guarantees of non-repetition.

Furthermore, (article 12.1) of the Convention states that, "Each State Party shall ensure that any individual who alleges that a person has been subjected to enforced disappearance has the right to report the facts to the competent authorities, which shall examine the allegation promptly and impartially and, where necessary, undertake without delay a thorough and impartial investigation. Appropriate steps shall be taken, where necessary, to ensure that the complainant, witnesses, relatives of the disappeared person and their defense counsel, as well as persons participating in the investigation, are protected against all ill-treatment or intimidation as a consequence of the complaint or any evidence given."

The Rome Statute (article 7-2i) defines enforced disappearance as: "Enforced disappearance of persons" means "the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time."<sup>169</sup>

The Syrian Network for Human Rights documented that at least 95,056 persons are still under forcibly disappeared in Syria "between" March 2011 until August 2018. They are distributed

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<sup>169</sup> - "Rome Statute of the International Criminal Court adopted in Rome," International Committee of the Red Cross, July 17, 1998. Posted on: April 18, 2018, at: <https://www.icrc.org/ara/resources/documents/misc/6e7ec5.htm>

according to the following percentages: 85.9% forcibly disappeared by the Syrian regime (81,652 in total, of which 4,837 are women), 10.51% by radical Islamic organizations such as ISIS and HTS (9,994 people, including 237 women), 1.99% by armed opposition factions (1,887 persons, 411 women), 1.6% by the Syrian Democratic Forces (1,523 people, including 63 women). It is noted that the highest number of cases of enforced disappearance come from the countryside of Damascus, amounting to 19,945 people, compared with the number in Damascus, which is 10,081, and Aleppo 10,585. The cumulative index has also risen since March 2011. The number of people who disappeared in 2011 was 10,312, and had risen to 95,056 by the end of August 2018.<sup>170</sup>

This shows that the perpetrators can rest assured about the absence of accountability, even though it is a crime against humanity. According to the Syrian Network for Human Rights, 836 persons who have been forcibly disappeared by the Syrian regime have recently been declared dead. The regime sent lists with the names of those declared dead to the civil registry, without providing any material evidence that the disappeared person has died,<sup>171</sup> a tactic used to not recognize the crimes. This allows a systematic continuation of impunity for the perpetrators, and protects them legally, depriving the families of the deceased of justice and truth.

Enforced disappearance is accompanied by a series of physical, psychological and social violations. The detainee's suffering begins from the moment of detention, often accompanied by a large number of verbal insults, beatings and torture. The interrogations witness terrible tortures that often lead to death or disability.<sup>172</sup> The International Independent Investigation Commission on the Syrian Arab Republic documented violations in Syrian detention centers where "many women and girls were subjected to various types of sexual violence, including

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<sup>170</sup> - "At least 95,000 were forcibly disappeared in Syria since March 2011," Syrian Human Rights Network, August 30, 2018, pages 5-6, seen on September 15, 2018, at: <http://sn4hr.org/arabic/2018/08/30/10347/>

<sup>171</sup> - Previous source, page 07.

<sup>172</sup> - "Years without a trace" Syrians for Truth and Justice, 2017, page 11, seen on September 14, 2018, at: <https://stj-sy.com/ar/view/238>

rape, sexual torture, sexual assault and humiliation"<sup>173</sup> and "included boys up to the age of eleven, who were also subjected to a range of sexual violence, including rape, sexual torture and humiliation."<sup>174</sup>

The parents of the victims also greatly suffer from psychological, social, legal and financial consequences. For example, a mother of one forcibly disappeared victim, 'Mohammed Dib Khaled Bakhur', went into a coma after his arrest in June 2012. Doctors even alerted her children not to mention her son's name before her and not to speak of his arrest.<sup>175</sup>

The de facto authorities of the Salafist factions applied enforced disappearance against activists to suppress civil and juridical movements. For example, on December 09, 2013 in the city of Duma in Eastern Ghouta, under the control of opposition armed groups back then, most notably Jaysh al-Islam, human rights defenders Razan Zaitouneh, Wael Hamada, Samira al-Khalil and Nazem Hammadi were kidnapped. The Center for Documentation of Violations, where they worked, was attacked by masked men, and all four abductees are still absent to date.<sup>176</sup> On July 25, 2018, ISIS kidnapped thirty-four hostages (16 women and 18 children) from several villages in the eastern province of As-Suwayda. Hayat Tahrir al-Sham, through its security forces, kidnapped, arbitrarily arrested, ambushed and broke into areas outside their control, targeting activists in the media and in humanitarian organizations. Additionally, they forcibly disappeared many detainees, prompting many activists to flee with their families areas under HTS' control.<sup>177</sup>

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<sup>173</sup> - Previous source.

<sup>174</sup> - Previous source.

<sup>175</sup> - Previous source.

<sup>176</sup> - "The road is still long ... post-revolution and post-dream ... a dream that binds us all." Syrians for Truth and Justice, December 10, 2017, seen on September 15, 2018, at: <https://stj-sy.com/ar/view/352>

<sup>177</sup> - "At least 95,000 have been forcibly disappeared in Syria since March 2011," Syrian Human Rights Network, August 30, 2018, pages 15-16, seen on September 15, 2018, at: <http://sn4hr.org/arabic/2018/08/30/10347/>

## Detention and its Impact on Women

The regime used arbitrary arrest and detention as a weapon of war. Since the revolution began, women activists have been arrested, tortured and abused for their anti-regime views. Women have also been detained as a means of pressure on their relatives to surrender and stop their operations. Their detention was also used as a bargaining chip in prisoner exchanges between different parties of the conflict.<sup>178</sup> In order to mar their reputations, the regime forced child detainees to appear in its official media outlets, claiming to have had sex with fighters, such as Rawan Kaddah (16 years) kidnapped by Syrian Security in November 2012, and appeared on Syrian TV on September 22, 2013, and Sara Khaled al-Allou (15 years)- also appearing on the same station on August 11, 2013, and was forced to say on national TV that she was a prisoner of Jabhat al-Nusra in al-Bukamal.<sup>179</sup>

Arbitrary arrests of women and detention in inhumane conditions are not confined to cells that lack the most basic health conditions and basic quantities of food,<sup>180</sup> but also to terrorizing practices to intimidate them. For example, Ward al-Sham<sup>181</sup> was threatened with cutting off her finger if she does not remove her ring, she speaks of the incident, "I was arrested on the Syrian border in 2013 while I was on my way to visit my nephew, who was residing in Lebanon. They took me to branch 227, and asked me to remove my ring, I told the security police that I could not remove it, one of them came forward to cut my finger off, I was mortified and managed to remove my ring. After five days of investigation, they accused me of financing the rebels in Zabadani with 2.5 million Syrian lira. I told them it wasn't true. "

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<sup>178</sup> - Sima Nassar, "The Detention of Women in Syria as a Weapon of War and Terror," Euro-Mediterranean Human Rights Network, May 01, 2015, page 11, seen on June 10, 2018, at: <https://goo.gl/huraCC>

<sup>179</sup> - "Human Rights Violations of Journalists in Syria and the Arab World: Lack of Accountability and Violation of Professional Conduct," Syrian Human Rights Committee, September 09, 2015, seen on September 14, 2018, at: <http://www.shrc.org/?p=22865>

<sup>180</sup> - Human Rights Council, International and Independent Commission on Inquiry on the Syrian Arab Republic, "I Lost my dignity: sexual and gender-based violence in the Syrian Arab Republic", March 15, 2018, page 19, seen on April 08, 2018, at: <http://www.ohchr.org/AR/HRBodies/HRC/IICISyria/Pages/IndependentInternationalCommission.aspx>

<sup>181</sup> - Ward al-Sham (pseudonym, survivor from Zabadani), a dialogue session conducted by the researcher with a group of survivors in a Syrian women's organization in Lebanon, August 06, 2018.

More female detainee stories below:

Every one of these women have a story of the women found a story. A fifteen-year-old girl from Damascus, was in contact with one of the soldiers at a regime checkpoint, the soldier later defected, but the authorities learned that the girl had been in contact with the soldier. The Syrian regime authorities arrested her, and since the first day in detainment, the girl wanted to die, and asked her friends to wish her death because she brought shame to her family—especially if they learned that she was in detention because of her contact with a soldier. She was ready to stay in prison and to die, rather than have her family know she was in contact with a man.

On another night, one girl was thrown into a jail cell drenched in her own blood because of continuous torture that lasted three days. It was later found out that she was threatened with rape during her interrogation, and when she rejected the charges against her of smuggling weapons to the rebels, the investigator took his clothes to rape her, forcing her into writing and signing a confession that she did it.

Another detainee tells her story, "Before I was released in an exchange deal, I was taken to the air force intelligence branch. On our way there, the soldier asked us to pray for our souls before we died. You cannot imagine my fear; I still suffer from fainting when I am afraid or sad. We stayed there for two months until the exchange of prisoners' deal took place during the water cut in Damascus. During my stay, we were awakened at night by the screams of young men being tortured, and when I was released, the screams and the smell of blood still haunted me. They rinsed the hallways in the prison 4 - 5 times a day because there was too much blood. I was not tortured myself, but the psychological torture because of what I saw and what I heard was very intense. I almost went insane when I imagined that it was my son who was being tortured. After leaving the prison, I didn't set foot outside my home for five months."

The suffering of women prisoners does not end after their release. Additional violence against them comes from the community and/or from their families. This aspect is not visible in the reports of human rights organizations, and is often equally harsh as the harshness of the detention, if not more. One of the respondents,<sup>182</sup> who had contact with a number of survivors, described the impact of detention on women's lives: "The fear of rape is a concern for 90% of women when they enter the prison, one of the women was arrested for a month while she was fetching her wedding dress. She told me that she had not been tortured inside the prison, but her life after her release was turned upside down. Her fianc  left her and she lost her job and was ousted by her community. Not all families welcome back their daughters after their release. Very often after their release, they are sent away outside their town/city or outside the country to remain out of sight. Another woman, a fifty-year-old teacher, both her husband and son stopped talking to her following her release from detention."

There were detainees who were embraced by their families, but the wider circle was harmful to them. Several detainees told me that the most disturbing thing was that they were being harassed with the questions, "Did anyone rape you? Is there rape in prison?" Some were even accused of lying, and were met with such comments, "You are lying that nothing happened to you in prison!" One respondent told me that her family were carefully selecting the people who wanted to visit her after her release, to avoid situations in which someone might say something wrong, and hurt her. However, several of her friends still asked her if anyone had attacked her while she was detained.

The respondent continues to speak about numerous forms of the community's violence against her and other women, following their release, and the impact of detention on them and their children:

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<sup>182</sup> - Preferred to remain anonymous for security reasons.

"Many women were accused of prostitution, and it even went as far as accusing some of them that they were not arrested on the charges of supporting the revolution, but for other reasons. One woman was detained for 3.5 years, and following her release, and said she that she felt there was a gap between her and her children, adding to her feeling of inadequacy of her role as a mother. Many of the detainees demanded psychological treatment for their children, as many were arrested with their children, or their children were present at the moment of their arrest, and in some cases, children were arrested with their mother but were later released. One of the detainees reported that the prison guard kept on insulting her in front of her 3-year-old child, when finally the child tried to attack him as a result of his abuse. Former female detainees also suffer from the experience of detention from another angle; as many former female detainees were mainly housewives, who weren't able to support themselves, and were completely dependent on their husband. The question that poses itself, is if they are shunned by society and their family, how can they manage their lives and support their children, when they were already deprived of their basic rights in the first place?

If these women do not have a school certificate at least, how will they build themselves? It is very difficult, and more challenging to them than cases of educated detainees. One of them told me: When her husband heard that she wanted to attend a workshop, and before she was allowed to attend, he was asking her all sorts of questions: Is the whole audience women? And asked her not to mention her name. Men are certainly not exposed to all those challenges. Another detainee, and after being released from detention, was asked by her husband to cover her face, even though she did not want to, but because the Syrian regime forced her to appear on national television and declare that she was a terrorist, her husband did not want people to know who his wife was, although he wasn't a religious man. She was very happy when she took part in women's group discussions, so that she can take off her coat and veil. Another woman was divorced by her husband following her detainment. He left her their children, making it extremely challenging for her to rebuild her life following her release."

Another former detainee adds her story, "A few fellow former detainees and myself created a group on WhatsApp to share our experiences and photos. At some point, one of the husbands of a woman in the group saw that his veiled wife had taken off her coat in one of the workshops, after he looked through her phone, and went absolutely crazy, and abused her as a result. Some of the girls in the same group rushed to me, and demanded that she be taken out of the group, because her husband can stir trouble, despite the fact that the session was only-women.

Other female detainees were always keen to show that getting arrested had nothing to do with a prostitution case. For example, one detainee raised her hand in a V for victory when she was leaving detainment, as she was worried that passersby would think she was arrested for prostitution. Unfortunately, the consequences of this action were severe, as she was beaten by the security police, and was then forced to confess to participating in a demonstration, despite her previous denial during the interrogation."

The respondent believes that the concern about rape in prison is due to the collective realization that nothing prevents the regime from committing any crime, and there is no moral deterrent to committing them. In addition to the brutality that the regime can use at any time and whenever it wishes, and because they are women, sexual violence and rape in particular can break them. Many women said that they are not afraid of torture, but are terrified of rape, and they mention it openly and clearly, with many of them refusing to publish their names or have their pictures taken, so that people wouldn't know they were detained, and possibly raped.

When their husband or son is detained or is forcibly disappeared or killed under torture, women are often subjected to abuse and extortion and become more vulnerable to sexual violence. Diab Seriyeh<sup>183</sup> speaks of this effect: "We cover Sednayah Prison. This prison is

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<sup>183</sup> - Diab Seriyeh (General Coordinator of the Association of Detainees and Missing Persons of Sednayah Prison), interview with the researcher, dated April 27, 2018.

different from the rest of the Syrian prisons. During the revolution, it became a death camp, and conditions of detainees were far worse than other prisons, such as the Adra and As-Suwayda prisons. Although human rights violations were frequently committed in Adra and As-Suwayda, such as beatings, torture and denial of visits, yet these violations were nothing compared to the human violations committed in Sednayah. We have searched extensively and found no trace of women detainees in Sednayah, but we are now working on the issue of missing persons there. From personal experience, I have found that women who are mothers, wives and daughters have a great ability to work and follow-up on this matter more than men,

I get 5-6 calls every week from women who ask about their children, and whether they are in Sednayah prison. Men usually call me once or twice a week. One woman whose brother was detained, called me to ask about her brother. Her story was very painful. She sold everything she owned, cleaned houses, even worked as a maid in the home of an intelligence officer, but eventually stopped because he tried to rape her — all in hopes of hearing something about her missing brother. I told her she had utilized all her options, and must wait until someone was released from Sednayah so we can ask about her brother.”

Women's responsibility and pain increases when it comes to the arrest or disappearance of their children, especially since there is no information on the identity the perpetrator, or there is missing evidence linking the victim to the offender. Often, the silence of women is reflected in the entire communities.<sup>184</sup> A report by the Urnammu Organization for Justice and Human Rights, entitled “Forgotten Children,”<sup>185</sup> tells the story of Salem (9 years) and Ghanem (11 years), who’s impoverished family fled to Jarabulus. The boys disappeared while bringing food from a soup kitchen. This coincided with the Syrian Democratic Forces storming the region.

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<sup>184</sup> - "Forgotten Children", Urnammu Organization for Justice and Human Rights, May 24, 2018, page 33, seen on September 14, 2018, at: <http://www.urnammu.org/forgotten-children/>

<sup>185</sup> - Previous source page 33.

The mother was sure it was the SDF who captured her children but did not dare speak as she would be mistakenly be accused of being affiliated with ISIS. When children disappear, their mother is often questioned by the Ministry of Justice and the Military Police,<sup>186</sup> and may be at risk of arrest and extortion, as is the case with the majority of families who follow up on cases of their detainees.

### **Prisoner Exchange Deals**

The statement of the Action Group for Syria that was issued on June 30, 2012, regarding the issue of the release of female detainees, included in one of its points (of the six-point plan) that "Intensification of the pace and scale of release of arbitrarily detained persons, including especially vulnerable categories of persons, and persons involved in peaceful political activities; provision without delay through appropriate channels of a list of all places in which such persons are being detained; the immediate organization of access to such locations; and the provision through appropriate channels of prompt responses to all written requests for information, access or release regarding such persons"<sup>187</sup>

Security Council Resolution 2139 of February 22, 2014 strongly condemned arbitrary detention in its (article 11), which states: "Strongly condemns the arbitrary detention and torture of civilians in Syria, notably in prisons and detention facilities, as well as the kidnappings, abductions and forced disappearances, and demands the immediate end of these practices and the release of all arbitrarily detained persons starting with women and children, as well as sick, wounded and elderly people and including UN personnel and journalists;"<sup>188</sup>

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<sup>186</sup> - Previous source page 34.

<sup>187</sup> - "Geneva 1," Al Jazeera Net, January 26, 2012. Posted on: April 18, 2018, at: <https://goo.gl/eoJNj>

<sup>188</sup> - Resolution 2139 adopted by the Security Council at its 7116th meeting, on February 22, 2014. Posted on: April 18, 2018, at: <https://goo.gl/8wosWq>

Security Council resolution 2254 (2015) states: "...release any arbitrarily detained persons, particularly women and children, calls on ISSG states to use their influence immediately to these ends, and demands the full implementation of resolutions 2139 (2014), 2165 (2014), 2191 (2014) and any other applicable resolutions;"<sup>189</sup>

And despite all the provisions of the Geneva Declaration 1, and the Security Council resolutions on detainees, however, during talks/negotiations, there was no implementation of these decisions and the dossier was transferred to the Astana negotiations, and specifically to the Astana round 6. In this context, the Syrian Organization for Truth and justice in a report entitled "The exchange of fighters does not solve the crisis of tens of thousands of detainees and missing in Syria,"<sup>190</sup> documented at least thirty-seven exchange deals since 2012, until the date of issue of the report in October 2017. The exchanges took place among all the conflicting parties in Syria, especially the Syrian regime and the armed opposition. Civilians, both men and women, were used as tools of political and military pressure between the parties to the conflict.

The failure of the United Nations to separate the issue of detainees and abductees from the negotiating dossier as a humane and fundamental issue, is a compromise of human rights. Transferring the dossier to Astana, and leaving it in the hands of the parties to the military conflict, consolidated the influence of armed groups, and resulted in generating considerable financial resources for them.<sup>191</sup>

For example, according to one report, an exchange took place involving sixteen nuns who were abducted from the Mar Takla (Saint Takla) monastery in the town of Maaloula in

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<sup>189</sup> - Text of Security Council Resolution 2254. Seen on: April 18, 2018, at: <http://idraksy.net/di2254/?print=pdf>

<sup>190</sup> - "(exchange of fighters) does not solve the crisis of tens of thousands of detainees and missing persons in Syria," Syrian Organization for Truth and Justice, October 30, 2017. Posted on: April 18, 2018, at: <https://www.stj-sy.com/ar/view/293>

<sup>191</sup> - Previous source page 10, "The year 2014 saw the occurrence of 71 exchanges, as 71 were exchanged at different periods by the armed opposition factions in exchange for the release of 53 detainees in the Syrian security services,"

December 2013, by Jabhat al-Nusra.<sup>192</sup> Al-Nusra was paid large sums of money for the exchange to take place.

Women have always suffered ten-fold in cases of failed exchanges.<sup>193</sup> Previously, Jaysh al-Islam used abducted women from Adra, and put them in metal cages as human shields on October 1, 2015.<sup>194</sup> Their cages were dragged all over the town of Duma, and then they were scattered all over the town in public places and markets that were daily targets for Syrian regime and Russian bombardment.<sup>195</sup> Mervat, one of the female abductees in Duma, tells her story

After she was released from the prison during an exchange in April 2018, she says "The Syrian state didn't care for us, and didn't even try to work on our release. We were under the mercy of Jaysh al-Islam, women were not allowed to see men, and in cases where a prisoner and her husband or children were detained together, they were allowed to meet for one hour every fifteen days in a yard at the prison. They tried to brainwash children and plant ideas in their mind that were presented in weekly sessions. Women were forced to dress in black from top to bottom, they were given a copy of the Quran, without forcing them to read, and medicine was restricted to only Paracetamol."

Fatima Salim, who was also released in the exchange itself, said: "A large number of men were executed by shooting. Jaysh al-Islam was venting their anger against prisoners. And if a prisoner was a militant, the torture he would go through at the hands of Jaysh al-Islam was beyond comprehension. Many of the women who stayed with us died because they were too

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<sup>192</sup> - Previous source, page 20.

<sup>193</sup> - Previous source, page 21.

<sup>194</sup> - The previous report (para. 13) referred to the responsibility of Jaysh al-Islam for the situation of the hostages in cages. Human Rights Watch said in its report entitled "Syria - Armed groups taking hostages in cages to deter attacks," published on November 2, 2015, that the responsibility for the kidnapping of the workers, which took place on December 11, 2013 rests with Jaysh al-Islam and Jabhat al-Nusra, United Nations Fact-Finding Mission, according to the Human Rights Watch report declared that "there are concerns to be among the detainees in cages." Posted on: April 18, 2018, at: <https://www.hrw.org/ar/news/2015/11/02/282947>

<sup>195</sup> - YouTube, "The Complete Video of the Alawite Prisoners in Cages in Duma," Posted by: "aboyosha3homs," November 01, 2015. Posted on: April 18, 2018, at: <https://www.youtube.com/watch?v=xmN5cAaJSSI>

weak to live. The food was inedible (raw), the bathroom was used once every ten days, and we bathed in cold water without soap. We were divided into several groups for cooking and cleaning, and if some women refrained from work, they were taken to be flogged or electrocuted."<sup>196</sup>

Women have been targeted and detained from most of the parties to the conflict to gain more leverage in the prisoner exchange negotiations, and have been used as a bargaining chip.<sup>197</sup>

"The criterion in exchanges is that relatives are responsible for their release. Every exchanged aimed at releasing a pivotal person. If this objective is not achieved, the process does not take place. This usually applied to the regime and the opposition. In small exchanges (2-3 persons), the names of female relatives who request/manage the exchange process are listed. In the larger exchanges, such as the exchange of women from the countryside of Latakia, (54 persons in this case), Rasha Sharbaji was the central figure, the wife of a supplier of arms to Ajnad al-Sham. She was arrested along with her children and sisters, although she had nothing to do with her husband's activities."

"The International Committee of the Red Cross and the Syrian Red Crescent may intervene in the negotiation process, but their impact is limited to the process of selecting the detainees to be released," he said. In the field, members of the Commission tend to act individually, in cooperation with certain security or military bodies and opposition political parties. Independent civil society groups or human rights organizations are generally excluded from the first phase of the negotiating process. A list with the names of women detained in prisons determines who will be released in exchange for captured soldiers.<sup>198</sup> "Women are often included in the exchange lists, and security agents and officials are bribed by these women's

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<sup>196</sup> - "Stories of torment from the prison of repentance", SPUTNIK Arabic, April 11, 2018, seen on September 15, 2018, at: <https://sptnkne.ws/hnah>

<sup>197</sup> - Sima Nassar, "The Detention of Women in Syria, Weapons of War and Horror," Euro-Mediterranean Human Rights Network, May 01, 2015, page 12, seen on June 10, 2018, at: <https://goo.gl/huraCC>

<sup>198</sup> - Previous source, pages 12-13.

families for release. The process is carried out in secret. No detainee is released without the consent of the security services. The National Reconciliation Commission is limited to communicating with the other party and making recommendations. If the security services are forced to release some persons as a result of pressure, they were arrested again later, prompting many women to leave the country following their release.”<sup>199</sup>

## Section Twelve: Collective Punishment

### **Political Violence, Collective Punishment and the Deliberate Destruction of all State-supported Livelihoods**

The roots of the conflict in Syria are based on the political violence in which the Assad family has used during its rule for more than four decades. Through the institutions of the state, the Assad family employed a brutal security system, with the Hama massacres in the 1980s coming to mind as a stark example. Following the start of the revolution in March 2011, these tools of brutality expanded increased. The method of collective punishment supported by the state under the policy of countering terrorism was an integral part of the violent and totalitarian approach to controlling society, in both discourse and in practice. In one of his speeches, Bashar al-Assad described millions of Syrians as terrorists: “There are tens of thousands of Syrian terrorists, I am not talking about any terrorist who came from abroad, but Syrian terrorists who are members of this society. When we talk about tens of thousands of terrorists,

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<sup>199</sup> - Previous source, page 13.

we are coexisting with these terrorists. They could be a neighbor, or a friend; we are talking about hundreds of thousands and perhaps millions of Syrians"<sup>200</sup> he stated.

The total death toll at the end of 2017 added up to more than 400 thousand, in addition to more than one million wounded, according to United Nations estimates. Banos Mumsis, humanitarian coordinator for Syria, stated that the year 2017 is the bloodiest year for children, killing more than 910 children,<sup>201</sup> while Assad stated in the same year that he maintained an inclusive society, he said: "We lost our best youth and infrastructure, and that cost us a lot of money and a lot of sweat for generations, but we won a healthier and more inclusive society in the real sense."<sup>202</sup>

In the context of the Syrian regime's practice of war crimes and crimes against humanity, the collective punishment in many regions was applying the fascism term "homogenous society" to what was happening in the country. Additionally, the regime indiscriminately shelled homes, hospitals, medical centers and infrastructure,<sup>203</sup> using all kinds of munitions,<sup>204</sup> and imposed sieges that took years and starved many people, repeatedly denied or restricted access to humanitarian aid,<sup>205</sup> causing death to many civilians,<sup>206</sup> and planted mines that led to the displacement of civilians.<sup>207</sup> These brutal tactics led to:

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<sup>200</sup> - "President Bashar al-Assad's meeting with the scholars, clerics, imams, and preachers" April 25, 2014, seen on May 22, 2018, at: [https://m.onlaga.site/video/--v\\_I0zcyjPQv8Y.html](https://m.onlaga.site/video/--v_I0zcyjPQv8Y.html)

<sup>201</sup> - United Nations News, "United Nations: 2017 is the bloodiest for the children of Syria" March 13, 2018, seen on May 22, 2018, at: <https://news.un.org/ar/story/2018/03/1004242>

<sup>202</sup> - PreidentSy, "President Assad's Speech at the Opening of the Conference of the Ministry of Foreign Affairs and Migration," published on August 20, 2017, seen on May 22, 2018, at: <https://www.youtube.com/watch?v=6cyUznVnrcg>

<sup>203</sup> - Human Rights Watch, "Syria Events 2016" report, seen on May 22, 2018, at: <https://www.hrw.org/ar/world-report/2017/country-chapters/298280>

<sup>204</sup> - Syrian Network for Human Rights, "The Deadly Truce (killing 83 civilians, including 21 because of hunger in Madaya)," Report, January 08, 2015, seen May 22, 2018, at: <http://sn4hr.org/arabic/2016/01/08/5423/>

<sup>205</sup> - United Nations News, "Human Rights Council issues a resolution demanding an urgent investigation into the events of the eastern Ghouta" March 05, 2018, seen on May 22, 2018, at: <https://news.un.org/ar/story/2018/03/1003592>

<sup>206</sup> - Amnesty International, "Syria 2018/2017" Report, seen May 22, 2018, at: <https://www.amnesty.org/ar/countries/middle-east-and-north-africa/syria/report-syria/>

<sup>207</sup> - Syrian Human Rights Network, "The Deadly Truce (killing 83 civilians, including 21 because of hunger in Madaya)," Report, January 08, 2015, seen on May 22, 2018, at: <http://sn4hr.org/arabic/2016/01/08/5423/>

1. Isolating cities and rebel areas from the public sphere, i.e. the whole of Syria geography, and punishing the “spirit of rebellion,” labeled those who rebelled as terrorists, which led to the cultivation of hatred between them and the cities, and discrimination based on identity, regional or sectarian or both, causing a severe social rift. This rift will only heal through a transitional justice that achieves national reconciliation and builds lasting peace.
2. Women suffered tenfold at checkpoints around cities and towns that rebelled against the regime, especially those belonging to conservative environments, and the regime was well aware that it would, and had already ignited conflict among the people in Syria.

Haifa,<sup>208</sup> whose husband, daughter and daughter-in-law were killed, told her story, and all other nine survivors have supported her, sometimes reminding her of some details between 2012 and 2013, all from Zabadani,<sup>209</sup> said: "When we went out to buy some items at the beginning of the siege, from Bloudan or Madaya, they would ask us at the checkpoints to walk and leave what we bought on the ground, after we paid so much money for the items! I was afraid of them, and so I did as they told me and walked away with my identity card. There is discrimination based on your identity card, your family name in particular. Cars that carry the people from Bloudan bypass the waiting line, and cut through the checkpoint even if dozens of cars are ahead of them. They are allowed to pass immediately. Any woman from Bloudan can raise her hand and point out to the military that she is from Bloudan, and they would allow her to pass immediately. They would insult us by saying things like Do you see Zabadani? We will plant it with potatoes, all of it" one regime soldier told me. "They wouldn't

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<sup>208</sup> - Haifa (survivor from Zabadani), a dialogue session conducted by the researcher with a group of survivors in a Syrian women's organization in Lebanon, August 06, 2018.

<sup>209</sup> - A dialogue session conducted by the researcher with a group of survivors. The session lasted 7 hours in one of the Syrian women's organizations in Lebanon, August 06, 2018.

allow us to bring bleach, but we needed it to clean our sewers, and for cleaning in general. At one point I bought a very small quantity and put it in a bag and hid it. The soldier at the checkpoint told me I was helping terrorists when he saw the bag, and accused me of supplying them with bleach so they can make bombs. I swore to him that I wasn't helping the terrorists. They even accused me of supplying terrorists with food, when they saw a bundle of bread in my bag."

Ghada,<sup>210</sup> an activist from Zabadani, said her husband was detained and she did not know whether he was alive or dead. "One time, the soldier at the checkpoint confiscated candles which I bought so my children can study. He threw the candles and crushed them with his feet. I used candles for lighting so that my children can read and prepare for their exams. Everything was forbidden to us: electricity, diesel, candles." Haifa added "We were even prevented from keeping a small flashlight, and had to hide it among our clothes, but if they found it, we would be in deep trouble."

The ten survivors agreed that their fear and horror were associated with the demonization of Zabadani and its people. "It was our town, and we had all the right to move back and forth and come back to it, but we were searched at the checkpoints before entering, and the supplies we bought to survive were thrown on the ground," she said.

Most of the ten survivors spoke about the insults directed at them by the residents in Bloudan when they were forcibly displaced there from Zabadani. They talked about the meagerness of assistance, including the Mazout rations that were distributed by the Red Crescent unfairly with the residents in Bloudan receiving the larger share of rations, and preventing the people of Zabadani from receiving any. Ghada said, "I rented a room in Bloudan, and although the mold was permeable in all the walls, I paid a monthly rent of 25,000SL. One time I went to a drugstore in Bloudan, a saleswoman who looked Russian was cursing the people of al-

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<sup>210</sup> - Ghada (survivor and activist), a dialogue session conducted by the researcher with a group of survivors in a Syrian women's organization in Lebanon, August 06, 2018.

Zabadani. I interrupted her and told her to stop cursing, so she kicked me out of the pharmacy."

The survivors talked about how the residents in Bloudan treated them: "They insulted us. They said to us: 'you ruined the world, and now you've come to ruin this place', 'you played dirty, you deserve what is happening to you.' We were living in dread, and they hate us till now." Manal<sup>211</sup> added, "The thing is, you're either with the regime or against it, they (residents of Bloudan) benefited from salaries and trade during our siege, although before 2011, if they wanted to buy groceries or clothes they bought them from al-Zabadani."

Darayya and its residents were subjected to the most heinous crimes of brutality and discrimination. Ghufuran,<sup>212</sup> from Darayya, a 24-year-old survivor, married since she was fifteen, and had two children at the age of seventeen, is currently a refugee in Lebanon and is not documented. She witnessed one of the worst massacres that were carried out by the regime that took place one night in Darayya. During a wedding on the second day of Eid al-Fitr, near the Abu Sulaiman mosque where she lived, they killed thirty-two young men, along with their wives and their children at the end of 2012, only one young man survived, and his legs were chopped off. Their wives and children were gathered in one room and shot dead, all forty of them. She continues, "The army broke into Darayya, and within five days 750 people died. My house was bombed. They entered the houses and took the men. My husband was among them. They asked them to raise their hands against the wall. Thank God the soldier who entered my house was very respectful, saw the flag of revolution in one of the rooms, and did not enter the room that was full of women and left. However, many other men were tortured to death, and the number of bodies gathered in the Abu Suleiman Mosque were more than

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<sup>211</sup> - Manal (survivor and activist), a dialogue session conducted by the researcher with a group of survivors in a Syrian women's organization in Lebanon, August 06, 2018.

<sup>212</sup> - Ghufuran (pseudonym, survivor), a bilateral meeting with the researcher on August 17, 2018. for an hour and 15 min.

five hundred bodies, the stench filled the place, and some bodies remained outside for a period of five days until the army came and shoveled them away." At that time, I fled to Tal Shihab area in Daraa, which was besieged, and I remained there for four months. "I was violated by the Free Syrian Army, although I didn't consider them the Free Syrian Army " she continues, "In the second district of my displacement, in Tal Shihab, it was mostly controlled by Jabhat al-Nusra and other FSA factions. We were the last family to flee to the Jordanian border, but weren't allowed to enter. We stayed in a school building, and the situation there was the same as that of the regime, but without torture. It was miserable, we were severely harassed by members of the FSA who managed the school. They treated us like garbage, and did not distribute aid coming from Jordan until it had expired. On one occasion in 2013, the UN envoy, Lakhdar Brahimi entered in a tank to visit the school, and distributed small boxes of aid. We took photos with the boxes, and after Brahimi left, they immediately took the aid from us. There were about two hundred women and children in the school. Men were forced to stay in the courtyards. I was forbidden to go to my husband in the evening. On one occasion my husband was ill and I wanted to give him medicine, but one of the school officials stopped me and said, 'I will be your husband if you want'. We stayed for four months on the Jordanian border. US and another family later left the school and went to live in an abandoned house with no doors or windows. Eventually, we left the area and decided to go to Lebanon because Jordan was impossible to enter. On the way, my husband handed me all his papers and money because he expected that he was going to get arrested as we passed the checkpoints, because our ID cards said Darayya. As expected, he was about to get arrested at the Sabburah checkpoint, but I broke down and begged the officer to let him go, they ordered him to stand in front of the wall and raise his hands up and after two hours they released us, and we entered Lebanon."

Amal,<sup>213</sup> a survivor from Jdaydet Artooz in rural Damascus, told her story, "Peaceful demonstrations at the beginning of the revolution took place every Friday for four months, and the situation escalated after the regime's security opened fire, and we received a threatening message from the regime that they would break into the area, if the demonstrations did not stop. In our town, people of all sects were living with everyone, and following the threat, young men carried knives in an attempt to prevent the regime from entering. A few days later, we heard that the regime's Shabiha wanted to enter the area again with lists of wanted men. The lists included my father's name. The regime forces entered and arrested Dr. Ziad Bekai first, and then began to arrest a group of young people, with the help of informants. We were surprised there were arms in Jdaydet Artooz, and young men from the district started shooting the Shabiha, and violent clashes broke out. The young men killed a number of Shabiha, and seized a DShK while the remaining Shabiha fled. We were later on subjected to daily threats by the regime until they stormed the district with their forces including the Defense brigades, the Fourth Division and the Yusuf al-Azma brigades, and attacked the district with vengeance. The regime's forces entered the houses and killed all the young men, including the Bekai household (6 young men and their father). They killed the educated and well-known people in the area, engineers, doctors and lawyers. They even killed people who had nothing to do with the demonstrations and some supporters. They even brought meat hooks from butcheries, and hung young men from them while they bled to death and forced others to take of their clothes. Two young men were crushed with a tank in front of my own eyes, they killed and tortured people in different ways. Families were watching from the balconies, some of them were cheering for the Shabiha, and telling them (God protect you! May God strengthens you) Some women chanted from the balconies, while young people were hanged in the streets! It was a shock to us that our neighbors were cheering for the Shabiha, who killed most of the

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<sup>213</sup> - Amal (a pseudonym, survivor, completed her university studies in Damascus, 28 years-old), a dialogue session conducted by the researcher with a group of survivors in a Syrian women's organization in Lebanon, August 11, 2018.

young men. Another young man who tried fleeing, was caught and tortured and was skinned alive. He died behind my aunt's house. This horrific massacre took place on August 01, 2012. Eventually, the Shabiha got tired and began to withdraw, but some remained inside the town and were still shooting at people who wanted to bury the bodies. After they withdrew completely, the residents tried to gather the bodies for burial. They did not dare bury them in the town's public cemetery, but buried them in the plains and called it "The cemetery of martyrs." They could not find all the bodies scattered all over town, but found them later after they were eaten by dogs.

All the pictures of the massacre are documented and on the Internet." Amal continues to describe the massacre committed by the Shabiha in the next four days:

"They committed a second massacre because they did not break into all the houses, they burned houses they chose randomly. What happened in Jdaydet Artooz was not a conflict between supporters and opponents of the regime, it was purely sectarian. The massacre was documented and on the Internet. On the day of the first massacre, the Shabiha closed the two main roads around the town, but I was surprised that my Christian friend had contacted me, a resident of the same town, and she asked me: What is happening with you? I am in Bab Touma. I said to her: No way, how were you able to leave? The entrance to the town is closed, how did you go out?! And she said they allowed the Christians to leave. Two days after the first massacre, they brought a backhoe loader to the cemetery, and desecrated the graves." Amal continued with her story: "I did not take public transportation because it meant arresting me at the checkpoints. My family name was listed as opposed to the regime. One of our neighbors was a state official, and I used to go with him in his car every day to attend my lectures at the university, I succeeded and got the highest marks. However, I was going crazy on the inside, my friends in Damascus were going to the university and everything was normal, while my town was destroyed and we could not move in fear of arrest. Every day, as I was going to university with our neighbor, and at the 'forty' checkpoint, where elements of the Fourth

Division were stationed, I always saw corpses lying on the ground. We walked among them, until the scene became normal for me. Many people were killed at this checkpoint. On one occasion, an elderly woman was carrying six bags of bread and she wanted to cross over to Darayya. The man asked us to walk, and while we did the woman was behind us seated in a minibus, and I heard them say to her: Who is this bread for? One of the bus passengers answered: (You want to take them to the terrorists!) They removed her from the bus and hanged her. Her body remained lying on the ground at the checkpoint for ten days, to serve as a lesson to everyone."

The rape cases at the beginning of the revolution had the purpose of deterrence — to deter the protests and the demonstrations. After the militarization of the revolution, the aim was revenge. As Sima Nassar puts it, "At each stage of the conflict in Syria, sexual violence took place in a different way and for a different purpose. In 2011, the purpose of rape cases in detention centers was to deliver threatening messages to stop demonstrations. For example, in Latakia, Idlib and Homs it was public, and the rape crime that took place in the Latakia Political Security branch during 2011 was done in front of the detainees. In the second phase of the revolution, when the opposition was scoring victories, sexual violence took place with the purpose of revenge. In many cases, rape was just "for fun", the offender felt that he had the right and the green light to do what he wanted, at each stage the target was different and the victim and the style were different. In 2011, rape cases went public, but in 2018 the regime was more thoughtful and intelligent, as they white washed the crimes, and turned the women detainees against each other, as one would state that there was no sexual violence, while another confirmed it, and a third says that one woman was raped because she is bad, forgetting that they were in prison and that their rights must be protected, not violated."

## The Unjust Impact of Siege on Women

Eastern Ghouta was besieged for more than five years, for the purpose of targeting and starving civilians. The Syrian regime and its Russian ally launched military attacks that took thousands of civilian lives, women and men and children. Humanitarian relief and access to medicine was prohibited, leading to an increase in the number of patients requiring immediate evacuation and medical attention.<sup>214</sup> The most severe cases of acute malnutrition during the siege were documented.<sup>215</sup> The United Nations Investigation Commission on Syria described the siege of Eastern Ghouta as the longest siege in modern history, and pointed out that it "affected civilians physically and psychologically while they were being bombarded on a daily basis, recording several cases of death that could have been avoided." The Commission concluded that the siege may be considered a war crime. Between February and April 2018, "as the regime forces fought to retrieve Ghouta, it resorted to aerial and ground bombardment, killing hundreds of Syrians, men, women and children."

In April, many houses, hospitals and markets were completely bombed to the ground. After the regime regained control of Eastern Ghouta on April 14, 2018, the Committee estimated that some 140 thousand people had been displaced from their homes and that tens of thousands of them, were women and children.<sup>216</sup>

The siege imposed on Ghouta, and the denial of access to humanitarian assistance has clearly affected women. The lack of food and medical care has adversely affected the health of

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<sup>214</sup> - "As if it's Doomsday! Syrians for Truth and Justice, Fact Sheet on the recent massacres committed in Eastern Ghouta and exposure to one of the most brutal and violent attacks, February 23, 2018. Posted on: April 18, 2018, at: <https://www.stj-sy.com/ar/view/438>

<sup>215</sup> - "United Nations Investigation Commission on Syria: Urgent demands of victims and families should be taken into account in light of the destruction of Ar-Raqqah and Deir ez-Zur," International Independent Investigation Commission on the Syrian Arab Republic, Geneva March 06, 2018, seen on April 18, 2018, at: [http://www.ohchr.org/Documents/HRBodies/HRCouncil/ColSyria/Presser\\_A-HRC-37-72\\_AR.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/ColSyria/Presser_A-HRC-37-72_AR.pdf)

<sup>216</sup> - "UN Commission on the Investigation of Syria: War Crimes and Crimes against Humanity," United Nations Human Rights Council, June 20, 2018, seen on September 22, 2018, at: <https://www.ohchr.org/AR/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=23226&LangID=A>

pregnant and nursing women,<sup>217</sup> and contributed to high infant mortality rates, and many children died of malnutrition or loss of fluids.<sup>218</sup> Targeting of hospitals has also deprived the population of health care. Pregnant women have suffered in most of the besieged areas, as anemia, miscarriages and birth defects have increased significantly.<sup>219</sup>

Dr. Mohamad Katoub said: "Caesarean delivery rates have increased due to fear of sudden labor during the bombing, as doctors were unable to perform normal deliveries. The percentage of caesarean sections for pregnant women has increased, yet the anesthesia that was supposed to be used by doctors during birth deliveries was used for other medical conditions. Caesarean sections increased because movement was difficult, so it was difficult to control when the patient needed a normal birth. The easiest way was the caesarean section, as the delivery was scheduled based on many factors including whether or not there was shelling, or the availability of the delivery room etc. There were two gynecologists who supervised those deliveries, but the physicians who performed the deliveries were female due to Ghouta's conservative community."

"When violence occurs, gender-based violence rises, and it is the side-effect that women bear, and I'm not only talking about harassment and rape. When a man becomes a fighter in society, women bear burdens in the absence of males. At the beginning of the revolution, they were forced to carry out logistical operations, considering that their movement was a little easier and the checkpoints initially allowed them to pass. After the siege, the society was exhausted and violence entered the home. The siege deprived the household of its most basic needs, such as diapers and tissues. The woman becomes more affected than the man because she usually manages the household, and hence she notices those needs. The man on the other

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<sup>217</sup> - United Nations - General Assembly - Human Rights Council, 30<sup>th</sup> Session, August 13, 2015, para. 63. Posted on: April 18, 2018, at: [http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Documents/A\\_HRC\\_30\\_48\\_ARA.DOCX](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Documents/A_HRC_30_48_ARA.DOCX).

<sup>218</sup> - Previous source, para. 77.

<sup>219</sup> - Previous source, para. 101.

hand, takes responsibility for fighting, because he is a man who must fight and carry arms, while simultaneously being expected to provide financially for his home, which he can no longer afford, and so he becomes under great psychological pressure. Women in a conservative society such as Eastern Ghouta have been provided with opportunities to work in traditional occupations. The role of uneducated women has been activated because of the large number of widows, whether she is a homeowner or a mother, she became the breadwinner, and must feed her children". "They told us that the road was closed and no one could enter or leave the area," said Lubna al-Kanawati, who runs a women's organization that lives in the city of Mesraba and travels to Duma and Harasta where she works. What helped you on the life disappear from the market, the siege was a shock to all the population, suddenly disappeared from the market bread, flour, bulgur, wheat, rice, at the beginning of the winter was only the moon of religion and cabbage and flower, my neighbor was sending me food in a cup of coffee, which is equivalent to two laps, and says to me: "Your desire is beautiful, my son!" "I did not know what to do. There were no towels in the market," a salesman once told me. One towel was 1,100 lbs. He opened a bag of towels and asked me to take one towel. I said to him: the price is expensive, and what do I do with one towel?! He said to me: I sell with one piece, there are women other than you, I went out and did not buy, after a while, they sewed women and children (stitched) and made of plastic, but they cannot be used, they were trying to overcome the siege.<sup>220</sup>

Manal described the severe suffering caused by the siege of Zabadani: "Besiegement is a crime, because it means starvation. An elderly woman died while begging for a few grains of rice to feed her grandchildren, what a great grandmother! What a hero. My brother's wife was calling me to tell me that she was beating her hungry children to stop screaming, and she covered her ears so she would not hear them cry. She felt guilty because she was hard on them. She could

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<sup>220</sup> - "Memoirs of Syrian woman: a towel," edited by Robert T, November 15, 2017. Posted on: April 18, 2018, at: <https://www.youtube.com/watch?v=6JM10WMne7E>

not do anything. The children wrote letters of apology for their mothers before they went out looking for food in dangerous places, many legs were blown off due to mine explosions. The regime has planted mines in places where there's any source of food." "I ate the leaves of mulberry trees" one said, another said, "We became like locusts, we ate green leaves, added water and spices to it, and were poisoned many times from eating the eucalyptus leaf. Many children died as a result of poisoning from leaves that were deemed inedible. When the UN brought food into Ghouta, some children died when they ate the food, others suffered from convulsions. There should have been instructions on how to eat after going without food for a long period of time."

Marwa Abdel Muttalib Tohfa,<sup>221</sup> from al-Boida in rural Damascus, a mother of three, the youngest four months old, was exhausted by the siege and her children exhausted from hunger. She told her story, "The price of one kilo of cracked wheat was 12,000 SYP, and rice is 10,000 SYP, and we did not have the money to buy food at such high prices. Young people were scavenging in destroyed houses for leftover food, and the soup, which was prepared by the Free Syrian Army for the people was very dark in color, the result of the spread of mice droppings. I still drank the soup, I was starving, and I needed to breastfeed my son. After seven months of living in misery we couldn't bear the situation and so we tried to leave. My husband, my aunt and all the men were taken away and taken on a bus used to transport animals. My children and I were left at the checkpoint. I was carrying both my children, and begged the guard for a loaf of bread for my hungry son, but he refused, and began to insult me and hit me with a stick in front of my children. I kept begging him while he was hitting me, as I preferred to die beaten than die of starvation with my children, he finally let me go, I was the only one with my three children that came out of the siege that day."

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<sup>221</sup> - Marwa Abdel Muttalib Tohfa (survivor), an individual meeting with the researcher for an hour and 15 min, conducted on August 17, 2018.

## **Systematic destruction of property and the impact of displacement and forced displacement**

Since 2012, the regime has deliberately demolished entire buildings using bulldozers and explosives in Damascus and Hama, and according to the media's claim that this was done "as part of the urban planning efforts to remove buildings erected in violation of the law." However, the demolitions were conducted under the supervision of military forces, and were often carried out in the wake of fighting between government forces and the opposition in those areas, and with that violating international humanitarian law or the laws of war. Human Rights Watch documented seven large-scale demolitions to impose collective punishment on the population. The first demolition occurred in July 2012 in an area of 140 hectares of multi-story apartment buildings. And in July of 2013, a building was burned in Homs,<sup>222</sup> despite historical and legal reference to the property owners.

United Nations statistics indicate that the population of Syria on 1 July 2018 was estimated at 18,284,407,<sup>223</sup> and the number of refugees, women and men, registered with UNHCR as of 30 September 2018 reached 5,606,895,<sup>224</sup> while the number of displaced persons in November 2017 reached 6.3 million.<sup>225</sup>

The shelters that were occupied by displaced people, need a large number of approvals, for journalists or civil societies to be able to access them. Even the residents need approval to leave the shelter to receive healthcare treatment. One resident in the Duer center said: "When I go to the bathroom, I go with my sisters and mother and we wait for each other at the bathroom door. We do not feel safe here. We aren't safe. We don't have the money to rent a

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<sup>222</sup> - Syrian Human Rights Committee "Burning the Land Registry in Homs by the Government Military Forces" July 03, 2013, seen on May 04, 2018. at: <http://www.shrc.org/?p=15314>

<sup>223</sup> - World Population Review, seen on September 30, 2018, at: <http://worldpopulationreview.com/countries/syria-population/>

<sup>224</sup> - United Nations High Commissioner for Refugees, seen on September 30, 2018, at: <https://data2.unhcr.org/ar/situations/syria>

<sup>225</sup> - United Nations High Commissioner for Refugees, seen on September 30, 2018, at: <https://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=5a1d283e4>

house, and we have nowhere else to go. Even if we want to go for treatment outside the center, we need the approval of the center's management, we are not minors and they're not our guardians." One of the respondents said: "In the garages of Tartus, in one of the shelters, there were two bathroom/shower stalls, one stall had a short door. One time, a woman was inside the stall and she noticed a man peeking at her from under the door. They later set up private bathrooms and changed the doors and installed locks." Another respondent said: "There was not one washing machine in all the shelters. No one thought about installing a washing machine, so now every 4 or 5 women collect their money and buy a washing machine. Each woman is entitled to wash one day a week, but now the clotheslines cannot carry this large amount of laundry."

Sexual violence crimes against women, girls and children in shelters remains unaccounted for and are not documented by human rights organizations. One of the directors of the centers attributed the harassment cases to the high number of people in the centers, and that several families are sometimes placed in one room separated by a piece of cloth, which, he continued, "children and young people are forced and often exposed to watching sexual intercourse, or hearing voices during their sleep, and often children try it out among themselves."<sup>226</sup>

Displaced families who could not afford to rent a house or room, and those who did not have the opportunity to live in a shelter, set themselves up in public parks. One of the respondents said, "Public parks are full of families, how do women clean themselves and bathe? In the park located on al-Thawra Street in Damascus, a woman stood near the water sprinkler and raised her shirt and cleaned herself with soap. However, she was caught by the park's guard, and he cursed and shouted at her, and closed the main faucet." Then the respondent continued to criticize the distribution of aid to displaced people and displaced persons: "They distribute soap, but they do not consider that there is no water or shelter to go with that soap. Where is

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<sup>226</sup> - Jouri Mohamed, "The Law does not protect abused women inside shelters," Syrian Women Journalists Network, in the context of a training workshop on covering sexual violence cases, seen on May 24, 2018. at: <https://goo.gl/gPyiwh>

the gender sensitivity? And what about the UN Security Council Resolution 1325? Dozens of workshops have been held, yet no mechanism has been set for protecting women. The Security Council resolution 1325 is merely ink on paper, especially since there are no mechanisms for protection, control and prevention." Adding: "The whole process of dealing with this revolution, the uprising, whatever you want to call it, was on an emergency-basis, and it still is! Reduced to a basket of aid and sanitary pads for women, while basic rights were not observed. People and even activists, men and women, consider gender-sensitivity a luxury. It is a humanitarian catastrophe in every sense of the word.

Women do not have a say in finances, they have no job and no compensation. I know a girl who is the sole breadwinner of her family, a man she works for brought her a sponge mattress from his warehouse, and he has sex with her when he wants, and not in exchange for her salary, but to buy clothes for her siblings. The absence of gender-sensitivity in crises leads to women using their own body for gains. Women whose husbands died, even if they were employed; do not receive a compensation. The husband's family forces the wife to either marry her late husband's brother if she's widowed, or tell the woman who has a small child or a pregnant woman: Leave the child to us and go back and live with your own family, you can still get married. All in order for the husband's family to receive their son's retirement wages.

Laws are needed to treat women's trafficking in times of war as a crime. Until women find a way to gain control of their bodies, there will always be excuses to avoid laws that protect women. Instead of issuing laws to criminalize the marriage of underage girls, Mahmoud al-Marawi (head of the Shari'a court) allowed for a third and fourth marriage for men. We must acknowledge that some women's organizations provided a few women with a knitting machine, great! But who will manage the sale of those products?! It's as if I brought the woman a cow, she is milking it and taking care of it, but her husband sells the milk and puts the profit in his pocket, what is her share? Nothing!"

## Section Thirteen: Ownership

### Rights of refugees and displaced persons in recovering their property

The World Bank issued a study to assess the impact of the conflict on economic and social outcomes in Syria from the beginning of the revolution until early 2017. It focused on ten Syrian cities: Aleppo, Raqqa, Daraa, Duma, Ayn al-Arab/Kobane, Homs, Hama, Palmyra, and Deir ez-Zur. According to the report, 27% of the infrastructure was damaged, 7% was completely destroyed, and 20% was partially damaged.<sup>227</sup> The Norwegian Refugee Council indicated that 70% of the refugees lacked formal identification documents that entitled them to apply for proof of ownership.<sup>228</sup> After Law 33 was passed in 2017, relevant to the reconstruction of lost or damaged real estate,<sup>229</sup> and according to the report of the International Independent Investigation Mechanism (37th Session) on February 1, 2018, it stated that: "It seems that the law does not address the situation of internally displaced persons, and does not envisage provisions for notifying them if they have an interest in retrieving their real estate documents for administrative or judicial procedures."<sup>230</sup> The report also stated that a number of internally displaced persons interviewed by the Committee spoke of their difficulties in obtaining reliable legal information on matters affecting property rights, which is another obstacle to their right to return to their places of origin.<sup>231</sup>

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<sup>227</sup> - "The losses of war: The Economic and Social Consequences of the Conflict in Syria," World Bank, July 10, 2017, pages 3-5, seen on May 28, 2018, at: <http://www.albankaldawli.org/ar/country/syria/publication/the-toll-of-war-the-economic-and-social-consequences-of-the-conflict-in-syria>

<sup>228</sup> - Samer Abu Rass, "Syrian refugees' documentation crisis," Norwegian Refugee Council (NRC), January 26, 2017, last seen: May 30, 2018, retrieved from: <https://www.nrc.no/news/2017/january/syrian-refugees-documentation-crisis/>

<sup>229</sup> - "Law Regulating the retrieval of a Lost or Damaged Real Estate Document" Sana, October 26, 2017, seen on June 05, 2018, at: <https://www.sana.sy/?p=649244>

<sup>230</sup> - "Report of the International Independent Investigation Mechanism on the Syrian Arab Republic" United Nations - General Assembly - Human Rights Council, HRC / 72/72, page 18, item 63, February 01, 2018, seen on June 05, 2018, <http://www.ohchr.org/AR/HRBodies/HRC/IICISyria/Pages/IndependentInternationalCommission.aspx>

<sup>231</sup> - Previous source, page 18, item 64.

Another Norwegian Refugee Council survey also identified 734 internally displaced families in five districts of Daraa and Al Qunaitra provinces, issued in 2017. "Two thirds of the respondents who had ownership documents confirmed that they had left them or lost them." Sixty-three of the total number of families (734 families), were in possession of a Title Deed, as evidence of their ownership. More than half of the respondents reported that the Title Deed was issued in their name, while only 9% women had the Title Deed issued in their name compared to 68% of men.<sup>232</sup>

The results of the 1994 agricultural census show that the number of land owners reached 610,000 holders. The percentage of male landowners was 94.7% of the total holders in Syria, while the percentage of women landowners was only 5.3%. Only 3.6% of females owned sheep, while 96.4% of men owned sheep, and the total number of animal ownership in general, including sheep, cows, goats and chickens, is 0.3% for females and 99.7% for males. 99% of men owned agricultural equipment, compared to the 1% of women.<sup>233</sup>

In 2002, the percentage of male farmers was 95% while female farmers formed only 5%. The rate of possession of agricultural resources for males was 82.5% and for females 57.4%, although women's general contribution to agriculture was 40%. The results of a field study on violence against women conducted in 2005, in cooperation with the General Union for Women, the Syrian Commission for Family Affairs, the Central Bureau of Statistics and the United Nations Housing Fund, included 1,891 households from urban and rural areas in fourteen provinces, 17.4% of women did not receive their inheritance, with the percentage divided between 14.7% in urban areas versus 20.2% in rural areas; 24% of women are

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<sup>232</sup> - "Displacement, Housing, Land and Property Rights, and Access to Civil Documents in the South of the Syrian Arab Republic" Norwegian Refugee Council, July 2017, page 11, seen on May 30, 2018.

<sup>233</sup> - Samira Soubh, "The Role of Women in Agriculture and Gender Issues in Syria," National Center for Agricultural Policies (NAPC), Working Paper, Ministry of Agriculture and Agrarian Reform, April 2006, pages 24-25-26, seen on May 20, 2018, at: [http://agriportal.gov.sy/public/dwnld-files/working\\_papers/ar/18\\_womenrole\\_ss\\_ar.pdf](http://agriportal.gov.sy/public/dwnld-files/working_papers/ar/18_womenrole_ss_ar.pdf)

compensated for part of their inheritance.<sup>234</sup> Customs and traditions in some areas of Syria prevent women from their right to inheritance. For example, a field study conducted in the region of Jabal al-Hoss in Aleppo countryside in 2003, focused on the concept of gender among members of the community in that region and on the rights of women in inheritance. Women were viewed inferior in the community, and their roles reduced in the social and economic fields, so women are not given options that empowered them financially. The study also found that women were allowed to work in the field, but were not allowed to own the land, and were not allowed to own any property including vehicles or anything related to agriculture and land, but were allowed to own jewelry and possess cash.<sup>235</sup>

Discrimination against women in their inheritance or and depriving them of it continues to this day. Refugee women in both Lebanon and Jordan who were interviewed by the Norwegian Refugee Council indicated that only 4% of them had real estate registered in their name. Displaced women "suffered great difficulties in restoring land, as they were prevented from securing and restoring their inheritance rights."<sup>236</sup> Nearly half of the Syrian refugee families in these countries indicated that disputes on inheritance were the most common before 2011.<sup>237</sup> In relation to these facts, Laila al-Odaat says:<sup>238</sup> "The large refugee influx that came from the east and went to Lebanon, and from the north and the west that went to Turkey, only 4% of the females owned land, homes or property, although 50% of them worked in agriculture. When women return to Syria, they have no land to go back to, because it was

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<sup>234</sup> - "Report on the analysis of the national situation - Women's human rights and gender equality - Syria" Report, "Promoting equality between women and men in the Euro-Mediterranean region" EU, July 2010, page 48, seen on May 20, 2018, at: [https://library.euneighbours.eu/sites/default/files/arabic\\_1.pdf](https://library.euneighbours.eu/sites/default/files/arabic_1.pdf)

<sup>235</sup> - Samira Soubh, "The Role of Women in Agriculture and Agrarian Reform, April 2006, page 29, seen on May 20, 2018.

<sup>236</sup> - Laura Cunial, "Brief Note: Housing, Land and Property in the Syrian Arab Republic," Norwegian Refugee Council, July 2016, page 15, seen on May 20, 2018, at: <https://www.nrc.no/globalassets/pdf/reports/final-nrc-syria-hlp-briefing-note-arabic-may-2016.pdf>

<sup>237</sup> - Previous source, pages 14-15.

<sup>238</sup> - Laila al-Odaat (lawyer Syria), interview with the researcher on April 20, 2018.

owned by their fathers and brothers. If the transitional justice process cannot transform and change the existing injustice, the female survivor will not have the ability to live and feed their children. Worse yet if she was a widow, unmarried or divorced"

The laws and practices of inheritance are based on discrimination against women. For example, (article 277-2) provides for the fourth chapter entitled "Inheritance according to family lineage," of the Public Personal Status Law of 1953, as amended by Law No. 34 of 1975,<sup>239</sup> that "one male receives the share of two females," which is also in accordance with Shari'a Law. And as stipulated in the following (article 257 - c) "The inheritance shall be left to the children of the son, and in turn, to his children, and if females were to inherit, then one male receives the share of two females." While customary practices in some areas rob women of their rights; in As-Suwayda, for example, the Druze community, deny inheritance through a will, "the most powerful legal document to determine the distribution of inheritance."<sup>240</sup> (article 307) (h) of the Personal Status Code states: "A third of the inheritance, or more, shall be granted through the will to the inheritor." The will gives the owner the right to grant his property to whomever he wishes, and the will is often used to withhold the inheritance of women and to not grant them shares.<sup>241</sup> Additionally, a room called "Chamber of the deprived," which is a room that comes with furniture in the home of the woman's father, specifically a woman who has been widowed, divorced or single but has surpassed the age of marriage.<sup>242</sup> Many women in Syria are denied inheritance, or many women are forced to voluntarily waive their right to their male relatives as a result of ignorance of their rights, fear of stigmatization, and family pressure.

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<sup>239</sup> - Outri, Personal Status Law, pages 93- 100-87.

<sup>240</sup> - Rawad Ballan, the special chamber for the exiled women of As-Suwayda "I am human", June 07, 2018, seen on June 15, 2018, at: <https://goo.gl/aab3jG>

<sup>241</sup> - A group of women researchers, "Discrimination in the Personal Status Law in Syria" Dar Atar, 2014, page 108.

<sup>242</sup> - Rawad Ballan, the special chamber for the exiled women of As-Suwayda "I am human," June 07, 2018, seen on June 15, 2018, at: <https://goo.gl/aab3jG>

Usually, after conflicts end, women are increasingly deprived of making decisions about housing, property and land restitution and/or return to their homes,<sup>243</sup> and Syrian women are no exception. All laws and practices indicate that they are the weakest link in the Syrian dossier, and the cycle of violence, oppression and impoverishment will continue against them, unless those issues are addressed.

The previous figures related to the extensive destruction of cities and property, the loss of official documents, the asylum and displacement of about half the population of Syria,<sup>244</sup> the enforced disappearance of at least eighty-five thousand people,<sup>245</sup> the burning of civil records, the forging networks of official agencies and documents to seize the property of displaced persons and refugees,<sup>246</sup> discrimination against women in customary laws and practices and the spread of corruption.<sup>247</sup> The regime has displaced half the population and destroyed properties in areas that were out of its control, and claimed the property from its owners and redistributed the property to its elements, and businessmen who support it. All these facts make the issue of property and compensation one of the most complex issues, especially as these issues over the past decades have been compounded.<sup>248</sup> The issue of rural-to-city migration, which has escalated in the first decade of the twenty-first century, caused families to live in squatter areas, or build houses without an official permit.<sup>249</sup>

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<sup>243</sup> - "Women and the right to adequate housing," 11 / PUB / HR / 02, United Nations, Human Rights, Office of the High Commissioner, 2012, page 58, seen on June 02, 2018, at: [http://www.ohchr.org/Documents/Publications/WomenHousing\\_HR.PUB.11.2\\_ar.pdf](http://www.ohchr.org/Documents/Publications/WomenHousing_HR.PUB.11.2_ar.pdf)

<sup>244</sup> - "Syria" UNHCR, seen on September 08, 2018, at: <https://goo.gl/qeM4gy>

<sup>245</sup> - "Enforced disappearance is a weapon of war in Syria, no less than 85,000 forcibly disappeared" Syrian Network for Human Rights "August 30, 2017, seen on June 01, 2018, at: <http://sn4hr.org/arabic/2017/08/30/8607/>

<sup>246</sup> - Mokhtar Ibrahim - Ahmad Haj Hamdo, "Dual alienation: fraudulent networks that seize the real estate of Syrians," al-Iqtisadi, October 30, 2014, seen on May 24, 2018, at: <https://goo.gl/gyKkfW>

<sup>247</sup> - Seen on June 02, 2018, at: [https://www.transparency.org/news/feature/corruption\\_perceptions\\_index\\_](https://www.transparency.org/news/feature/corruption_perceptions_index_)

<sup>248</sup> - For more details, Jihad Yazigi, "Reconstruction after destruction: how the regime exploits the destruction of property and land legislation" Friedrich Ebert, Republic, October 18, 2017, seen on June 03, 2018, at: <https://goo.gl/7twb6m>

<sup>249</sup> - Tom Rawlins, "Legislative Decree 66: Assad's Plan to Rebuild Syria" IRIN, April 20, 2017, seen on June 03, 2018, at: <https://goo.gl/oTtjC8>

Since the early years of the revolution, and because of the resistance in some areas of Damascus city, neighborhoods such as Al-Mazzeah and Kafar Sousah<sup>250</sup> were evacuated from their original inhabitants, their properties destroyed and bulldozed, and their residents were threatened when they wanted to inquire about their rights.<sup>251</sup> This was especially true after issuing Legislative Decree No. 66 of 2012<sup>252</sup> to "redesign unauthorized or illegal housing areas." Initially the decree promulgated by Bashar Al-Assad allowed the Damascus governorate to expel the populations of two large areas in Damascus, including Basateen el-Razi, in the district of Mazzeah—a residential area near the presidential palace and Kafar Sousah—where the development of the high-end real estate project of Marota City is under construction. The second area includes Al Qanawat, Basateen, Darayya, and Qadam and is approximately 880 hectares (2,174 acres), or ten percent of the area of Damascus. Not surprisingly, pro-regime illegal housing areas, such as Mezze 86, al-Sumariyah, and Esh el-Warwar were not subject to decree 66. The promulgation of Decree No. 10 of 2018<sup>253</sup> supported the cycle of demographic change and the forcible appropriation of the property of displaced civilians.<sup>254</sup>

Decree no. 10 contravenes international law and human rights relating to restitution of housing, property and land to refugees and displaced persons. How can reconstruction be achieved without the cessation of war and political transition in accordance with UN Security Council Resolution 2254 and Geneva 1. Many of those who criticized the law found similarity with the Israeli Absentee Property Law of 1950, in which Israel expropriated the property of

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<sup>250</sup>. "Damascus Mezze: Demonstration in front of the Iranian Embassy February 18, 2012" YouTube, Damascene Free, February 19, 2018, seen on June 03, 2018, at: <https://www.youtube.com/watch?v=LGpPQJjnhuE>

<sup>251</sup> - "Behind Al Razi and al-Ikhlas ... Views and Witnesses", Qasioun, June 5, 2016, seen on June 03, 2018, at: <https://www.youtube.com/watch?v=LGpPQJjnhuE>

<sup>252</sup> - "Legislative Decree No. 66 of 2012 to establish two organizational zones within the province of Damascus" September 18, 2012, seen on June 03, 2018, at: [http://parliament.gov.sy/laws/Decree/2012/m\\_66\\_2012.htm](http://parliament.gov.sy/laws/Decree/2012/m_66_2012.htm)

<sup>253</sup>. "Law No. 10 of 2018" Syrian Arab Republic - Presidency of the Council of Ministers, April 02, 2018, seen on June 03, 2018, at: <https://goo.gl/vPKeWw>

<sup>254</sup>- Bilal Yassin, "Robert Fisk: These are the goals of Assad's Law No. 10" Arab 21, May 31, 2019, seen on June 04, 2018, at: <https://goo.gl/bo3zjC>

Palestinians displaced “between” 1947-1948. This law will deny all displaced citizens from recovering their property, and their relatives cannot come forward to claim their rights on their behalf for fear of detention and because the regime adopts a policy of hostage-taking, and to be able to organize any power of attorney needs security approval.

Omar Abdul Aziz al-Hallaj<sup>255</sup> explains the history of the complex issue of property ownership in Syria. Al-Hallaj divides those phases into the following:

- First Phase: Ottoman Land Law (1858).
- Second Phase: During the French colonization (1925-1926), a new legal system was developed.
- Third Phase: The development of civil law and personal status law and the nationalization of endowments (1949).
- Fourth Phase: When the state established a socialist system and reformed the private sector and reconstructed the power of public property (1974-1979).
- And finally what happened from 2011 to this day.

"From 1858 to 2011, in the span of 150 years, successive governments in Syria issued about 100 property laws, either in terms of regulation, investment, or taxes and penalties. From 2011 until this day, the state has issued fifty new laws that directly or indirectly affect property. What is happening now is a complete change of structure. This change will only exacerbate unresolved issues that have been simmering throughout the country's history."

As for the gender dimension during these phases in history, he said: "When the Ottomans changed the land law, chaos prevailed. The most complicated issue was the rights of women. When we studied the statistics of Damascus and its countryside, we found in certain areas that less than 20% of land ownership belonged to women, whereas in Islamic courts during the 17th or 18th century, when we searched the archives of rents and endowments, 38-39% of

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<sup>255</sup> - Omar Abdul Aziz al-Hallaj (Development Expert), interview with researcher on May 07, 2018.

land belonged to women. However, with the new laws that have recently been issued, we have found a significant decline in these quotas."

As for the problem of the enactment of laws in general and their fairness, Al-Hallaj points out that each law has its beneficiaries, and others who are harmed. "It is true that the law is regulated, but it is always based on politics. We have big unresolved problems." al-Hallaj presents several examples of these accumulations, the first of which is the expropriation of the 1960s and 1970s: "It was supposed to benefit the farmers, but they were not able to invest in the land and they had debts, so what happened? It led to the fragmentation of the properties, and the inability of the farmer to compete with small capital, while prices shot up. Ultimately, real estate was bought by those in power. So to conclude, new laws are made in favor of a framework dominated by social and political influencers."

Al-Hallaj gives another example of a more recent problem, namely, the redesigning of the Kafar Sousah neighborhood in the capital, Damascus. He said "Land was purchased by people at 4 SYP per square meter, then the state expropriated the buildings, as whole units,<sup>256</sup> and bought them for 1,000 SYP per meter square. The state then sells the buildings at 100,000 and 50,000 SYP per meter square. The man who owned the land was living off his farmland produce, the state bought it from him for 1,000 SYP per meter square, and re-sold the land for 50,000 SYP per meter square, leaving the man utterly shocked and dismayed." Al-Hallaj said: "A very large part of the resentment of people against the government in the areas surrounding the large cities like Damascus, Aleppo and Homs was because the state had acquired land from these people, and had not fairly compensated them."

Al-Hallaj points out that each region has its own problems: "In Deir ez-Zur, it was because of the pastoral lands. In Aleppo, illegal housing, and expropriation in Damascus, each region having its own history and causes."

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<sup>256</sup> - Roofed buildings.

"Of the worst laws issued since 2011 to date regarding property" Al-Hallaj continues: "is Law No. 10. What Assad has done, was that he provided municipalities, who have no funding, with a weapon through which they can generate money, but with 0 planning, and with no idea on how that money was generated. He placed great power in the hands of municipalities that have no knowledge of the law, and do not work closely with communities at a grassroots level. This is certainly disastrous. Basically, applying a law that would organize an area with illegal housing, with the participation of the community, and that is overseen by the municipality, will bring excellent results, but this law has not been issued in a timely manner, and has not been placed in the hands of the appropriate authorities, and there is no real supervision of things, in addition to the absence of refugees and displaced persons and the existence of widespread corruption." Al-Hallaj added, "If you give a moron a gun, and you tell him not to misuse it, he is still a moron. That's the situation of municipalities in Syria. They have no credibility or legitimacy. Even if we assume that the 2011 elections are legitimate, we are now in 2018! Those municipalities have neither experience nor planning, nor the necessary competencies, nor accountability to local communities. They are completely outdated."

The other serious matter, according to Al-Hallaj, is "the law that also allows municipalities to set up holding companies, namely Law No. 19 of 2015.<sup>257</sup> Under this law, state municipalities are allowed to set up companies with private entities, and seize public property and integrate that ownership into corporate law. In short, the public property was removed from public use and public control and placed in the hands of the "private sector". The new law, allowed the municipalities to restore the operational plans of the an area destroyed in the war, with the municipalities having the final say regarding the ownership of that property, due to the lack of presence by the public. The municipalities are the legitimate representative of the population,

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<sup>257</sup> - "Legislative Decree No. 19 of 2015", Syrian Arab Republic, Council of Ministers, April 30, 2015, seen on August 26, 2018, at: <https://goo.gl/Nk1Aga>

and if we talk to them, we do not need to talk to the population. This is a dangerous path. Any municipality represents the population for four years and is committed to issues that will affect future generations. Unfortunately, the participation of the population and keeping an open dialogue with the municipalities, does not exist in practice.”

However, the areas where Law No. 10 has been implemented, are mostly areas whose residents have been forcibly displaced, and were subject to a large demographic change.

As Khalid al-Helu<sup>258</sup> puts it, "There are statistics issued by the real estate registry about the number of registered real estate areas in Syria. In Syria, the boundary-marking and registration began one hundred years ago, and is not yet over," he said. So far, only 53% are registered. There are multiple real estate records, property interests' records, associations, military housing and industrial cities but not all of which are present in the land registry. There is also the issue of common property, thousands of people still own one property, making the process of its acquisition extremely challenging and difficult. Although the Syrian constitution stipulates that expropriation must be for public benefit in exchange for fair compensation, which was never the case. The land is seized by the state, and if one wanted to issue a patent for the property they had to pay more than the value they would get, so people were giving up their property, this happened in Aleppo and several other provinces in Syria. The state bought the property for cheap as a result, passed it on to the housing associations, which were run by corrupt officials, and then sold at a high price. Post-2011, because of the destruction that took place in those areas, many displaced residents who returned were not able to retrieve their properties, as they had no identification documents to prove they were the owners. The guidelines developed by Pinheiro Principles reaffirm that *any* means of proof must be accepted. We are in a state of mass displacement. People do not have papers, they most probably lost them. In Bosnia, some organizations issued magazines to educate people about

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<sup>258</sup> - Khaled al-Helu (Judge, Chairman of the Board of the Syrian Judicial Council), interview with the researcher on May 02, 2018.

their property rights, and revealed statistics on the number of houses, private property and state property, guiding them so they know their rights, and made use of organizations capable of providing legal assistance.

Al-Helu considers the example of Bosnia and Herzegovina as one of the best and most useful examples in this aspect, as citizens were able to retrieve almost 90% of their lawful properties. Mutasem Syoufi<sup>259</sup> adds: "The complexities of real estate go back to pre-2011. Today, there is a party that sees itself as a victor. And states that had once opposed this party, now see it as a victor as well. This is the regime, and now it is enacting legislation and adopting policies that serve its new order for Syria, including reconstruction in accordance with a policy aimed at several objectives, the first is punishing people/civilians; second, changing the demographic nature of the areas that were the strongholds of the revolution. Some people explain this demographic change as sectarian, that the regime will substitute Sunni residents with Shiites, but I don't see this as being the case. Areas such as al-Qadam, al-Mokhayam and al-Hajar al-Aswad are inhabited by different social strata that do not conceive any revolutionary action. We know that it's the strips around urban areas/cities that embraced revolutionary action. Areas like Al Mazzeh or Abou Roummaneh cannot instigate a revolution. The regime wants demographic change through urbanization and investment. The third objective is to benefit networks of corruption associated with reconstruction. As the regime receives foreign funding for refugee returns, it utilizes this funding to normalize its relations again with countries that had previously cut off relations with it. This is all exacerbated when it comes to women, their situation is extremely compromised. There is no focus on women when it comes to human resources development. For example, how many women are working and educated in these areas? Many have lost their husbands, children and property, so there is always a problem

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<sup>259</sup> - Mutasem Syoufi (Executive Director of "The Day After"), interview with researcher on August 20, 2018.

with property, and now they have multiplied in the areas we are talking about. The rights of women to own property and housing is a serious problem. "

Regarding my question on transitional justice, and how it should address the amendment of the discriminatory inheritance laws against women and girls, and recognize equal inheritance between women and men, Syoufi replies, "There must be legislative reform regarding inheritance laws, and I believe that in this situation, there must be legislative and exceptional reform. We must have a law that imposes full equality between men and women, even within the jurisprudence Islamic sphere. The jurisprudence 1400 years ago, and the conditions of society were different. Women were not working and they were not allowed to own property, their status was deteriorating. When a woman's husband dies, she is "passed on" to another breadwinner. Now we are in a different society. Now women are like men. I know a lot of families in which women and men share their money. Today women are in a better education and professional situation. Even their responsibilities are not less than men's. So how is it possible that a legal system does not take this into consideration, only because there are certain legislations and a certain interpretation of a religion that is 1400 - 1500 years old?

The problem is, this issue overlaps with religion, while it has nothing to do with it, but is rather related to how human beings organize their lives." Syoufi believes that the issue of women's inheritance is related to violence against women. He also gives an example, in the Hama countryside, women aren't allowed to own land, but are compensated with crops. This is due to a number of factors, including customs, religion and economic factors. Although a change of laws, and equality between men and women in inheritance is required, the situation in areas destroyed during war need exceptional effort and must not go through any delay. Of course, we are assuming that equality in inheritance requires a longer struggle to achieve the ideal requirement, because women are suffering greatly."

### **Some international frameworks for ownership rights in housing, land and property**

(article 11) of the International Covenant on Economic, Social and Cultural Rights states: "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent,"<sup>260</sup> which was signed by Syria in 1969.

The Pinheiro Principles on housing and property restitution have been defined for refugees and displaced persons who have been arbitrarily or illegally deprived of their property as a fundamental right of its own, as stated in the text of (article 2. "2.1) All refugees and displaced persons have the right to regain any housing or land and/or property that they have been denied, arbitrarily or illegally, or to be compensated for any residences, land and/or property that cannot be effectively returned to them, as determined by an independent and impartial tribunal.

2.2 States give a clear priority to the right to restitution as the preferred remedy for displacement and an essential element of compensatory justice. The right to restitution as a separate right does not detract from the actual return of refugees and displaced persons who are entitled to the recovery, non-return or return of housing, land and property."

The principles in section III - Basic principles, (article 4.1) states that "The State shall ensure equality between men and women and boys and girls in the right to restitution of land, land and property." States shall ensure equality between women and men and between boys and girls, including safe and dignified voluntary return, legal security of tenure, property, equal inheritance, as well as the use, control and access to housing, land and property." (article 4.2) states: "States should ensure that housing, land and property restitution programmes, policies

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<sup>260</sup> - "International Covenant on Economic, Social and Cultural Rights" December 16, 1966, United Nations - Human Rights, seen on May 28, 2015, at: <http://www.ohchr.org/AR/ProfessionalInterest/Pages/CESCR.aspx>

and practices recognize the joint ownership rights of both male and female heads of the household as an explicit component of the restitution process, and that restitution programmes, policies and practices reflect a gender-sensitive approach." (article 4.3) states: "States shall ensure that housing, land and property restitution programmes, policies and practices do not disadvantage women and girls. States should adopt positive measures to ensure gender equality in this regard." (article 14.1) of the Principles, states "States and other involved international and national actors should ensure that voluntary repatriation and housing, land and property restitution programmes are carried out with adequate consultation and participation with the affected persons, groups and communities."

Those consultations were summarized in (article 14.2) to ensure that "States and other involved international and national actors should, in particular, ensure that women, indigenous peoples, racial and ethnic minorities, the elderly, the disabled and children are adequately represented and included in restitution decision-making processes, and have the appropriate means and information to participate effectively. The needs of vulnerable individuals including the elderly, single female heads of households, separated and unaccompanied children, and the disabled should be given particular attention."

(article 19) prohibits discriminatory and arbitrary laws

19.1 "States should neither adopt nor apply laws that prejudice the restitution process, in particular through arbitrary, discriminatory, or otherwise unjust abandonment laws or statutes of limitations.

19.2 States should take immediate steps to repeal unjust or arbitrary laws and laws that otherwise have a discriminatory effect on the enjoyment of the right to housing, land and property restitution, and should ensure remedies for those wrongfully harmed by the prior application of such laws.

19.3 States should ensure that all national policies related to the right to housing, land and property restitution fully guarantee the rights of women and girls to be protected from discrimination and to equality in both law and practice."<sup>261</sup>

The Pinheiro Principles are an important tool in for IDPs and/or refugees to recover their property and/or in the abolition of arbitrary laws promulgated by the regime, especially in the absence of consultations with the population of stakeholders who have been forcibly displaced. They are crucial for setting a baseline in the amendment of discriminatory inheritance laws against women and girls, and the adoption of equal inheritance between women and men, with clear mechanisms for implementation, and the adoption of penalties for those deprived of their rights.

### **Lessons learned from post-conflict countries include a new inheritance law guaranteeing women's rights**

**Sierra Leone:** In June 2007, the Parliament of Sierra Leone enacted a new inheritance law that entitles spouses to a legal right to inheritance and also grants women the right to the property of their husbands upon their death "without undue interference by members of the extended family."<sup>262</sup>

**Rwanda:** "In 1999, Rwanda adopted a new law on marriage, freedom and inheritance systems in the wake of the 1994 genocide. Serious housing and land problems impacted widows who could not claim their original homes, and despite its slow implementation, the law was crucial

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<sup>261</sup> - "The Pinheiro Principles on Housing and Property Restitution to Refugees and Displaced Persons," Report of the Human Rights Commission, Amnesty International, Electronic Magazine 21, 2005, seen on May 27, 2018, at: <https://goo.gl/PVQHxD>

<sup>262</sup> - "Women and the right to adequate housing," 11 / PUB / HR / 02, United Nations, Human Rights, Office of the High Commissioner, 2012, page 64, seen on June 02, 2018, at: [http://www.ohchr.org/Documents/Publications/WomenHousing\\_HR.PUB.11.2\\_ar.pdf](http://www.ohchr.org/Documents/Publications/WomenHousing_HR.PUB.11.2_ar.pdf)

in recognizing the equality of children and daughters in inheritance rights, and allowing widows to manage their property."<sup>263</sup>

Lessons learned from Bosnia and Herzegovina in the right to housing and property restitution: The term "ethnic cleansing" was used for the first time to describe the use of torture, rape, indiscriminate killing, the detention of people in concentration camps and the expulsion of thousands of civilians from their homes and towns in order to achieve a "pure ethnicity."<sup>264</sup> About 263,000 people died in the conflict. two million people were displaced from the total population of 4.4 million before the war, leading to demographic changes in the ethnic composition.

The number of internally displaced persons (IDPs) was about one million, the number of refugees to other countries was about 1.2 million. The ethnic composition was as follows: 610,000 Bosniaks, 307,000 Bosnian Croats, 253,000 Bosnian Serbs, 23,000 other races.<sup>265</sup> The text of Annex VII to the Dayton Peace Agreement, formally signed on 14 December 1995, enables displaced persons to return to their homes, and the return of "minorities," meaning that their ethnic group became a minority in their country of origin, following the ethnic cleansing that took place. The challenges in the restoration of property did not only include property that was destroyed by the war, and those who had strongly opposed its restoration, but those who had subsequently occupied the property of the same ethnic group. The property law, conceived by the international community in 1999 and overseen by the Commission for Refugees and Displaced Persons, retrieved 200,000 occupied housing units; 21% of them in the first year, and 92% in the fourth year. However, lack of funding was the reason for the limited reconstruction of the property because it was classified as humanitarian assistance. UNHCR estimated the number of units that were partially or totally destroyed to be about

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<sup>263</sup> - Previous source, page 64.

<sup>264</sup> - María Del Pilar Valledor Álvarez, "Annex VII: Why are we still discussing it?" "Dayton + 20 Bosnia and Herzegovina Twenty Years after the Dayton Peace Agreement", *Forced Migration*, No. 50, September 2015, page 06, seen on August 09, 2018, at: <https://www.fmreview.org/ar/dayton20>

<sup>265</sup> - Previous source, page 06.

459,000 units. As of 2008, only half of the number, about 260,000 houses, had been built. There was no interest in returning or compensating property other than housing, such as shops and land that had been seized. The percentage of minority returns, as defined above, was reduced to cities rather than rural areas due to security and economic factors, as well as discrimination.<sup>266</sup>

Despite all the above, thousands of people were still displaced, and the success of implementing Annex VII of the Dayton Peace Agreement was limited. The authorities who mandated to protect the return of minorities were the same ones who ordered the ethnic cleansing during the war.<sup>267</sup>

Lana Pašić points out that although Annex VII of the Dayton Agreement sought "to restore the multi-ethnic character of Bosnia and Herzegovina, ethnic boundaries emerged after the divisions that occurred in wartime, and when the exiled groups were no longer generally returned to their former places of residence, end ethnic homogeneity was more present. As a result, separate uniracl communities emerged integrating other ethnic groups. This not only created institutional and structural boundaries, but also emotional and psychological ones."<sup>268</sup> The level of mistrust remained high, and there were "some cases of racial intolerance, with no possibility of building strong, integrated societies." As a result, reconciliation efforts have failed at the community and "national levels, divisions had increased, nationalism increased, creating a state of political fragmentation," which of course, reflected on the economy.<sup>269</sup>

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<sup>266</sup> - Inmaculada Serrano, "Property rights and reconstruction in the Bosnian return process" "Dayton +20 Bosnia and Herzegovina twenty years on from the Dayton Peace Agreement," Forced Migration, No. 50, September 2018, page 18, seen on August 09, 2018, at: <https://www.fmreview.org/sites/fmr/files/FMRdownloads/en/dayton20.pdf>

<sup>267</sup> - María Del Pilar Valledor Álvarez, "Annex VII: Why are we still discussing it?" "Dayton + 20 Bosnia and Herzegovina Twenty Years after the Dayton Peace Agreement", Forced Migration, No. 50, September 2015, page 06, seen on August 09, 2018, at: <https://www.fmreview.org/ / dayton20>

<sup>268</sup> - Lana Pašić, "The Political and Social Consequences of the Continuation of the Deportation in Bosnia and Herzegovina," "Dayton + 20 Bosnia and Herzegovina Twenty Years after the Dayton Peace Agreement," Bulletin of Forced Migration, No. 50, September 2015, page 07, seen on August 09, 2018, at: <https://www.fmreview.org/ar/dayton20>

<sup>269</sup> - Previous source.

## Section Fourteen: Work

A number of employees, women and men activists, were arbitrarily dismissed from work, often following their release from detainment, without relying on the legal reference provided by the law to employees of the State. The Violations Documentation Center (VDC) issued a report in 2014<sup>270</sup> recording cases of arbitrary dismissal from work, either because of “revolutionary activity,” or because of whistleblowing, or because the person belonged to a specific family or area, or because of the refusal to blackmail security services to allow them to go out in anti-regime protests. Those dismissed from work are dismissed on the basis of corruption, with the objective of tarnishing their reputation. The report monitored more than 1,200 cases across the Hama province, in which State employees were dismissed on accusations of corruption, which had negatively affected their families, with their source of income cut off.

Ghazal,<sup>271</sup> from Zabadani and the mother of a teenage boy and girl, spoke of discrimination in her work as an employee at the Agricultural Research Center in Serghaya (following the closure of the Serghaya road the center temporarily relocated to Bloudan): "My brother was with the rebels in Zabadani. During my work, they began harassing those who had a relationship with all who were involved in the revolution. One incident, caused me to flee the country. The regime's army at one of the checkpoints distributed aid to staff, mainly from the United Nations. All employees with a work ID received their share of aid, all except for me. The soldier at the checkpoint told me the reason for that was because my brother had joined

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<sup>270</sup> - Violations Documentation Center in Syria "Special Report on Cases of Arbitrary Segregation of Public Sector Employees in Hama Governorate", Report, May 2014, seen on May 02, 2018, at: <http://www.vdc-sy.info/index.php/ar/reports/1400502918#.Wumtqpe-kcQ>

<sup>271</sup> - Ghazal (survivor), a dialogue session conducted by the researcher with a group of survivors in a Syrian women's organizations in Lebanon, June 06, 2018.

the rebels in Zabadani. This incident scared me, and although my manager told the colonel responsible for our area that I was a widow, and my husband died fifteen years ago, and I had nothing to do with my brother, he still refused to allow me to access aid. One colleague, who had worked thirty-three years in the center, was immediately dismissed from work because they learned his son had joined the rebels. He was deprived of his retirement and all other benefits, and was also banned from traveling. Although my colleague was a member the Baath Party, that didn't make a difference to the decision makers in our center, and to add wound to the injury, they insulted him as well. Based on that, and the fact that I was flagged by security because my brother had joined the rebels, I left Syria for Lebanon."

No laws or regulations have been issued to protect female and male employees of the state in places of armed conflict. Lina,<sup>272</sup> one of the respondents, said: "The absence of female and male employees of state institutions in contested areas was completely neglected, even if a shell fell over their heads, no one cared. They had options to either resign, or be held accountable for their absence, or ask to be transferred elsewhere. The majority of women who worked in the private sector after 2011 had no health insurance, were not registered in social security, and worked without an official contract. The women who were abducted by Jaysh al-Islam from Adra, worked at a special factory for food packaging. When they were kidnapped, the factory owner did nothing to try and bring them back. He did not respond to the questions of their relatives when they asked about them."

She gave a further example of women's working condition post-2011: "There is a cheap market in the neighborhood of al-Qabas in Dwela that was popular pre-2011. Suddenly, and after 2011, all the staff in shops that were points of sales were young women. None of these young women worked full-time from 9am to 8am, and the shop owner employs two to three young women (at least two work in every shop), and spend time in the shop lounging while they do

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<sup>272</sup> - Lina (pseudonym, member of a women-led organization, resident in Damascus), interview with researcher on April 25, 2018.

the work. The young women secure a salary of 35,000SL, and some stay working at the shop till the evening (8-9pm) to earn 45,000SL. However, the majority work from 9am-3pm because their parents do not allow them to stay outside after sunset. The owner of the shop either runs the business from remotely or sits outside the shop. None of these young women are registered with social security, or have health insurance. The owners of the shops say: "There are girls everywhere." An expression that indicates inferiority of women, and is void of dignity."

Although (article 17) (item 93- paragraph a) of the Workers' Rights Act<sup>273</sup> in Syria stipulates that: "That adequate work conditions and environments must be set forth in this law, and decisions issued thereunder, for collective labor, and an agreement relating to his work shall be provided," Paragraph (e) states: "Refraining from harming workers and their dignity," in practice, there was no support for the workers, in both the public or private sectors.

The bombing of civilians and their displacement and sieges, exacerbated the suffering of women, especially with the loss of their breadwinner, and their overnight responsibility they were given to secure the needs of their families, while many of them do not have the needed qualifications for decent work. The overall poverty rate was estimated at 85.2% in 2015, and 69.3% of the population was in extreme poverty and were unable to meet their basic food and non-food needs.<sup>274</sup> With the loss of the breadwinner, child labor became very widespread, with no law prohibiting their employment and exploitation, or protecting their childhood and preventing school dropouts, despite Law No. 7 of 2012, obligating parents of children aged between 6 and 15 years of age to enroll them in school.

The report on "Forced Dispersion: A Demographic Report on Human Status in Syria" issued by the Syrian Center for Policy Research in 2016 noted the large disparity between males and females in the labor market. In 2001, males in the labor force was 81% compared to 21% for

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<sup>273</sup> - "Law No. 17 on Workers' Rights in Syria and regulation of Labor Relations", Law, approved by the People's Assembly on March 29, 2010, seen on May 07, 2018, at: [http://parliament.gov.sy/laws/Law/2010/K\\_17\\_2010.htm](http://parliament.gov.sy/laws/Law/2010/K_17_2010.htm)

<sup>274</sup> - Syrian Center for Policy Research "Syria - Facing Fragmentation" Report on the Effects of the Syrian Crisis in 2015 "Report, February 2016, page 08, seen on April 06, 2018, at: <http://www.arabcp.org/page/471>

females. These ratios declined for both sexes in 2010, while the disparity between them continued, with the male rate being 72.2% and female only 12.9%. The report noted: "This large marginalization of labor, especially for women, has significant negative repercussions, including the waste of human capital and increase of fertility rates, and reducing the incentive for education, and even greater marginalization of women."<sup>275</sup>

As for how both Syrian men and women perceive inequality between women and men in the work field is indicated in a field study entitled "Discrimination against women: Awareness of Women Rights and Freedoms" by The Day After organization, issued in August 2017.<sup>276</sup> In order to assess awareness of women rights and liberties in Syrian society, The Day After (TDA) conducted a comprehensive survey in six Syrian governorates in areas under opposition and regime control in addition to refugee camps in Turkey (İslahiye camp and Kilis camp). The number of respondents was 2,091 including 1,120 men and 971 women in different Syrian provinces. The research found that "Upon delving into details of certain aspects of this inequality (education and work), however, the study revealed that most men are satisfied with this inequality in the field of work as 75% said they object to women work or have conditions thereon, while women were equally divided. 21.6% of men said that they support their wives' working, provided that there is no direct interaction with men, 16.1% of women support this condition, 17.9% of men oppose the work of women under any circumstances." The study also pointed out that discrimination against women is concentrated in promotion to higher administrative levels. This was confirmed by the majority of women and men (about 60% of women and men).

In civil society organizations, one respondent pointed out<sup>277</sup> a pattern of behavior that was prevalent with female staff: "During my work in a civil society organization, and while

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<sup>275</sup> - Syrian Center for Policy Research, "Forced Dispersion - The Human Condition in Syria - Demographic Report" Report, 2016, page 35, seen on May 21, 2018, at: <https://goo.gl/pX9HVY>

<sup>276</sup> - "Discrimination against Women (1/2): Recognition of Women's Rights and Freedoms" The Day After, August 2017.

<sup>277</sup> - Respondent wanted to remain anonymous.

attending a meeting with several other organizations, the meeting facilitator, who was a colleague whom I worked with in the same organization, would not give me the opportunity to speak." I confronted him during the coffee break and said, "You did not give me the opportunity to speak!" He gave me the excuse that the meeting attendees were upset because we were from the same organization, and outnumbered everyone else there. I told him "It doesn't matter; I wouldn't have taken up much time anyway." She continues, "The problem is when you are a woman in an environment like this, you either have to be rude and extremely outspoken and assertive to be able to get a point across, or if you remain "nice and shy", then no-one takes you seriously. Sometimes I am forced to be rude and outspoken, although my nature is very different, but I need to get my point across. Now, I think a lot before I say anything during the meetings, and I refrain from speaking unless it is very important, because when I participate and say something that is not of an urgent nature, I get dismayed looks from the people in the meeting, as if they're telling me "Ahh, this is what you wanted to say!" In public and in front of people they claim to be feminists and support women's rights, but in practice and within some organizations and in closed meetings they are extremely misogynistic." A 2016 field study entitled "Inclusion of women in civil society organizations"<sup>278</sup> targeted 100 Syrian civil society organizations in the city of Gaziantep, Turkey. The sample did not include women's organizations. The percentage of women working in these organizations is 20%.<sup>279</sup> The reason for that meager percentage was due to the following reasons:

- 1- Most women lack the competencies, skills and experience.
- 2- Long working hours that are not compatible with the nature and responsibilities of women in the household.

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<sup>278</sup> - Malak Kassem "Inclusion of women in civil society organizations" Field research, Ana Hiya and Hanin Cultural Forum, Center for Civil Society and Democracy, 2016, pages 13-16, seen on May 04, 2018, at: <https://goo.gl/XLLcaj>

<sup>279</sup> - Previous source, page 16.

- 3- Nepotism when selecting someone for a position.
- 4- Some organizations attributed the reason for the lack of the women working force is the situation inside Syria, especially the bombardment that hinders women's movement.
- 5- The need for maternity leave, which led some organizations to refrain from paying the salaries of a female employee on maternity leave,<sup>280</sup> which would sometimes take up to three months, considering the fact that they would have to pay someone a full salary for "doing nothing". The survey also showed that there is a preference for the age range between 20-30 years<sup>281</sup> when hiring women<sup>282</sup>, and those who are hired over the age of forty, are very few in number.<sup>283</sup>

We see from the above the discrimination against women at the workplace (in these organizations), regarding employment and access to decision-making positions, in addition to a composite discrimination against women over the age of forty, and preference for the appointment of single women to married women.

I asked Dr. Mohamad Katoub why that is, and he answered, "We have traditional occupations in Syrian to which women have been limited to, such as teaching, pharmacy and sewing, and the situation varies from one region to another, and is dependent on several factors, such as whether we are talking about the urban or rural areas, and the level of education, but it is basically the same everywhere."

Women working does not mean a change in the power dynamics between women and men, but it is a necessary factor for her liberation. For example, Lina, one of the respondents, said: "The caretaker of our building accompanies his wife to the houses where she cleans. She has very little say regarding the family's spending, and has limited authority despite being the

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<sup>280</sup> - Previous source, page 17-18.

<sup>281</sup> - Previous source, page 19.

<sup>282</sup> - Previous source, page 20.

<sup>283</sup> - Previous source, page 21.

breadwinner." Lina added: "The wife of another caretaker bought a washing machine, and her husband accused her of hiding money behind his back, although she tried to convince him that it was the washing machine that allowed her to have time to work and make money."

Rola al-Rukabi<sup>284</sup> adds: "There are widows in refugee communities who suffer not only from the pressure of the regime and society, but from their husbands' families, even if the husband is dead. There is a woman from Darayya who has three children and works in Lebanon with her deceased husband's family. She earns a salary of US\$450 and spends it on the entire family. Her husband's brother, who does not work, takes her salary away from her and controls her earnings. She was fed up with the situation and left her in-laws' home and rented a room for her and her children. Her brother in-law kept on threatening her, and even raised the issue with the Lebanese security, although he had absolutely no authority over her. Thankfully, she was able to keep her salary, he could no longer take away her money."

Even female workers who have leadership skills and a dynamic personality, and are able to make some decisions about their lives, their husbands often threaten them with divorce, if they feel their masculinity has been compromised. al-Rukabi continues, "One of the female refugees in the Beqaa area of Lebanon, started working, and was supported by her peers which empowered her and she became a leader in that community. She had a strong influence over the other women she worked with. She was invited to participate in a meeting in Geneva but she could not travel because her husband threatened to divorce her if she traveled. So she cancelled the trip, out of sympathy for her husband whose role had been reversed to the caretaker at home, as he washed the clothes, did the dishes and took care of the children while she went to work."

As for what I would like to call economic violence against women, that would include depriving women of inheritance, unequal inheritance between men and women, devaluing

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<sup>284</sup> - Rola al-Rukabi (Director of Women Now in Lebanon), meeting with the researcher on May 01, 2018.

women's labor, unequal pay for women and men, denial of promotion, defamation, depriving her of the right to rest and the right to healthcare, and social security after retirement, maternity leave, and any discrimination that falls within the framework of the labor policy.



## **Chapter V: Gender gaps in some organizations and in some reports**



## Section Fifteen: Reports

Reports on crimes and abuses against women and girls:

- 1- **A brief report issued by the Syrian Network for Human Rights entitled "A Brief Overview on the Targeting of Syrian Women on International Women's Day"<sup>285</sup> issued on March 08, 2018**

The report identified patterns of targeting and stereotyping of Syrian women, foremost of which are the horrendous acts of killing women, at the rate of ten women killed daily, followed by forced displacement, in which about 2.5 million women who have been displaced as a result of crime, arbitrary detention, torture and enforced disappearances. The database of the network, which contains violations by the various parties to the conflict, produces a wide disparity among the parties and the Syrian regime, with 80% of the crimes committed against women came from the regime, while the remaining 20%, such as restrictions on clothing, travel, freedom of expression and community participation came from other parties, most prominently, extremist armed groups.

The report documented the number and severity of crimes and violations against women, yet neglected the gender impact of the crimes. For example, family and community violence against many women who had been released from detention was neglected, bearing in mind that it was no less harsh than the abuses that occurred against women during detention, and the effect of forced displacement and torture.

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<sup>285</sup> - "A Brief Overview on the Targeting of Syrian Women on International Women's Day", Syrian Network for Human Rights, March 8, 2012, seen on June 27, 2018, at: <http://sn4hr.org/arabic/2018/03/08/9582/>

**2- Report by the 'Syrians for Truth and Justice' entitled "The exchange of fighters does not solve the crisis of detainees and those missing in Syria"<sup>286</sup> October 2017**

The report documented at least thirty-seven exchanges between 2012 and the report's date of issue, between all the conflicting parties in Syria, but especially the Syrian regime and the armed opposition. The report covered the suffering of thousands of civilians who have been used in exchanges, and how they have been used as instruments of political and military pressure. However, the effect of arrest and tradition on women and girls, and the violence they were subjected to following their release from detainment, was not covered, and as one respondent puts it, "its effects are more severe than the detention itself."

**3- As far as United Nations reports go, I will talk about the report of the International Independent Investigation Commission on the Syrian Arab Republic, entitled "I lost my dignity: sexual and gender violence in the Syrian Arab Republic" of 23 March 2018**

The report is considered one of the most important reports issued in this matter, which influenced the gender impact of crime, but overlooked the violent legal system that governs the lives of Syrians. The report pointed out that "Jabhat Fatah al-Sham and Hayat Tahrir al-Sham, have applied a strict interpretation of the teachings of Islamic law in a way that systematically discriminates against women and girls and leads to their subordination in both the public and private spheres. In all areas under the control of these two factions, these interpretations have led to the support of a social structure that favors male Muslims. For example, women and girls have to obtain the consent of male guardians before getting married, and the guardian also has the power to impose a marriage on a woman or girl without her consent. And when a man utters to a woman that he is divorcing her three times, without any legal paperwork to back it up, the

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<sup>286</sup> - "*The exchange of fighters does not solve the crisis of detainees and those missing in Syria*" Syrian Organization for Truth and Justice, pages 5-6, October 30, 2017. Posted on: April 18, 2018, at: <https://www.stj-sy.com/ar/view/293>

divorce is still considered valid. On the other hand, any woman or girl must obtain her husband's consent before the divorce." The report also pointed out that Hayat Tahrir al-Sham follow the strict Islamic law that the "Testimonies of two women are equal to the testimony of one man." The report also states that "when a woman obtains a divorce, she is not allowed to remarry until three months from the date of divorce before she is allowed to do so, and after divorce, mothers may lose their right to custody of their children if they remarry." In addition, obedience is a duty of the wife, which unfortunately is a very vague idea that leaves its interpretation to lawmakers/members of those terrorist groups.

Some of the contents of the report are provided for in the Public Personal Status Law and are applied in practice. For example, women are not fully qualified human beings under the law, even if they reach the age of maturity, they would still need a guardian. (article 27), On Marriage Chapter 4 - Competence, "If a woman is married without the consent of her guardian, then her husband will have the right to hold the contract, otherwise the guardian may request the annulment of the marriage."

Discrimination against women and girls is stipulated in (article 16) in Chapter 2 - Eligibility of the Act: "The eligibility of marriage shall be completed at the age of eighteen for a boy, and at the age of seventeen for a girl." The law will allow for the marriage of younger children (under the ages of 17 and 18) with the permission of the judge (article 18-1): "If a male adolescent has reached puberty at fifteen years of age, and the female adolescent has reached puberty at the age of thirteen, then the request for marriage may be authorized by the judge if he finds it true, and if their bodies can endure."

Divorce in the Personal Status Law for Muslims as stipulated in (article 85-1) in the dissolution of marriage - part 1 – Divorce: "1- A man is fully qualified to divorce at the age of eighteen years" and in (article 87-2) "a husband may assign another (power of

attorney) to divorce, and may authorize the wife to divorce from him (file for divorce)." (article 91) states that "A divorce is considered valid with immediate effect the moment the husband utters that he is divorcing his wife three times."

(article 121) states: "The woman must go through three full menstruation cycles after she is divorced, before she is allowed to remarry." For those who menstruate and do not hear the woman's action before her divorce three months before divorce or annulment. In the case of her husband's death, as stipulated in (article 123): "A woman must wait four months and ten days before remarrying." Both these cases are referred to as the "idda" in Islam, or "the period of waiting."

While the law is extremely flexible with men, as (article 36-1) states: "A man may not remarry a woman whom he divorced three times, unless she marries another man, and their marriage is consummated. Should she divorce from the other man, only then is he allowed to remarry her." (article 37) states that "It is not permissible for a man to marry a fifth woman, until he divorces one of his four wives."

As for the issues of custody, (article 146) states: "The period of custody with the mother shall be terminated at thirteen years old for a boy, and fifteen years old for a girl." The mother is prohibited from traveling with her children during marriage without the permission of their father, as stipulated in (article 148): "1. A mother may not travel with her child during marriage without the permission of their father. 2. She may travel in-country to the town in which she resides or the town in which she works, provided that she has a guardian residing there." The mother has no custody over her children, as stated in (article 170-1): "The father retains full custody of his children, followed by the paternal grandfather. Both responsible for the child." This exacerbated the suffering of women during displacement and asylum.

This is just the tip of the iceberg. The legal system that administers the lives of women is discriminatory, violent and perceives women as inferior beings.

## Section Sixteen: Gender Gaps in Syrian organizations

**Respondents explain the gaps in the documentation of violations and crimes related to gender in Syrian human rights organizations, and the low representation of women's and feminist organizations in groups working on transitional justice**

- 1- Building future transitional justice in Syria should be participatory among all parties, including civil society organizations, in order to be successful or to lay the groundwork for the desired success; Syrian human rights organizations, activists, and organizations working on transitional justice, current or later to be formed. They must have representation in the drafting and approval of the Transitional Justice Law, possibly by forming reparation committees and truth commissions, and it is necessary to bridge the gaps of gender-based violence and their recognition to be reflected positively in the reports of humanitarian organizations and Syrian groups working on transitional justice.
- 2- Human rights organizations in Syria have had a fundamental role in documenting violations and crimes in Syria. The Syrian regime failed to allow international human rights organizations and independent human rights monitors, women and men, to provide the international human rights mechanisms with the majority of evidence and information about arbitrary detention and enforced disappearances, namely the International Independent Investigation Commission on the Syrian Arab Republic and the International Impartial and Independent Mechanism (IIIM). Activists in these organizations have direct contact with the victims, and have documented their crimes. Their important role, international connections and trust with a number of victims and their families will support gender-sensitive transitional justice.

In building future transitional justice, the role of civil society organizations, including both women and feminist organizations, will be instrumental in preparing reports on the transitional justice process and all its mechanisms. They must fill gaps, overcome challenges and find

multiple mechanisms that contribute to the mainstreaming of gender. They will also have an important role in lobbying in all stages of transitional justice.

For example, in Sierra Leone, the Lomé Convention in 1999 granted amnesty to all combatants in exchange for demobilization and peace, and the pressure of local and international human rights defenders led to the formation of a Truth and Reconciliation Commission.

In this context, Ibrahim Olabi<sup>287</sup> confirms that documentations that are free of the gender element will have its ramifications on many stages of transitional justice for the following reasons: "First, because the number of women in Syria would be more than men, and they will bear the burden the most post-war, so it is necessary to involve them from the beginning so there is attention to their problems. Secondly, transitional justice needs funding, whether internationally or nationally, and if from the beginning it does not to involve women, there will be a lack of funding going into those initiatives, as most donors require a gender element in most organization."

The majority of respondents to the research questions considered that the gender gap is currently present in the work of organizations working on the transitional justice file in general and organizations working to document violations in particular, with the exception of the work of women's rights organizations. As Habib Nassar and Rim El-Gantri<sup>288</sup> put it, "The role of women should be greater, otherwise it will be a half-hearted "checking the box" approach." El-Gantri added, "I focus on the presence of women in decision-making, and it is not at all sufficient for women to be present in our activities, but they must be at the center of decision-making in order to shape policies and activities."

As Diab Seriyeh put it, "Since the beginning of the conflict, and after Syrians learned about what transitional justice meant, and how to apply it, Syrian human rights organizations have

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<sup>287</sup> - Ibrahim Olabi (Executive Director of the Syrian Legal Development Program), interview with the researcher, on May 29, 2018.

<sup>288</sup> - Rim El-Gantri (Director of the Gender Program at Impunity Watch), interview with the researcher on June 06, 2018.

focused on justice and accountability of the perpetrators, and after four years of work, there has been a call for mainstreaming gender into programmes and reports, as well as highlighting gender-based violence and sexual violence against women in particular.” Oweis al-Dabash<sup>289</sup> agreed with Seriyeh that “women went on to document violations, and became more involved in transitional justice issues,” but disagreed with Seriyeh, who said that gender-sensitive transitional justice should be a priority for all, while Dabash believed it the road ahead will be difficult for women, and there must be a “neutral process, in which victims and survivors must be selected objectively, and not on the basis of gender, when selected to work at organizations.”

Despite Dabash and Seriyeh’s testimonies that women have only recently entered the sphere of human rights and the documentation of violations in Syria, it is not accurate, as Razan Zaitouneh, female activist and lawyer, founded the Violations Documentation Center (VDC)<sup>290</sup> in June 2011, along with husband Wael Hamada, Nazem Hammadi and Samira al-Khalil. They were all kidnapped by Jaysh al-Islam<sup>291</sup> on 12 September 2013, having been residents in Duma, which was then controlled by Jaysh al-Islam. It was then I believe, that the domino effect of women working on the documentation of violations and human rights had begun in Syria.

Maha Ghurair<sup>292</sup> said that regarding the role of Syrian feminists in pushing for gender mainstreaming and gender equality wherever they are, that there is still no work for gender-sensitive transition justice. "There is no work on the subject. Some women and feminists back in 2017 were attending a meeting on transitional justice, and one of the activists attended and

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<sup>289</sup> - Oweis al-Dabash (lawyer, director of the documentation team at the Syrian Center for Justice and Accountability), written interview with the researcher, July 07, 2018.

<sup>290</sup> - About the Center, The Violations Documentation Center in Syria VDC, seen on August 29, 2018, at: <https://goo.gl/VH8oqL>

<sup>291</sup> - Previous source.

<sup>292</sup> - Maha Ghurair (former Project Officer, "The Day After"), interview with researcher on May 24, 2018.

raised several points on the subject, including the registration of births and identity cards for refugee women. The attendees were all unfamiliar with the concept."

The question is: Is gender-sensitive transition justice a priority for women? Or is it a priority for all human rights workers? In practice, when women are present, gender-sensitive transitional justice is discussed, but when women are absent, organizations working on documentation are primarily concerned with documenting war crimes and crimes against humanity, including sexual violence—yet limited, without highlighting other forms of gender-based violence.

Most of the respondents stressed on the need for more women and feminist organizations to get involved in meetings and talks. Bassam Al-Ahmad,<sup>293</sup> one respondent, pointed out: "Some women are invited to meetings because they are invited by women. It is important for women to be invited by organizations to meetings and talks based on their expertise." However, Laila al-Odaat differs in opinion with Al-Ahmad, and says: "Not every woman who is invited to meetings must necessarily be an expert on gender issues, women should be present in meetings even if they are not experts. There should be room for women and women's issues. I will give you an example: when there are ten men and one woman at a meeting, the sentiment of the majority regarding women's issues will be overshadowed by the number of men in the room — unless it is a drastic incident, such as a woman getting raped in the street, then maybe we can get some attention. But what about the other issues? The job conditions of women? The systematic harassment of women in the workplace, the fact that there is no maternity leave, there is no one to take care of their children while they're at work. All these issues. There is misogyny, and hypocrisy that knows no bounds."

Ghurair focused on protecting the rights of women workers within human rights organizations: "First of all, organizations that want to work on transitional justice, must have rules and

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<sup>293</sup> - Bassam Al-Ahmad (Executive Director, "Syria for Justice and Truth"), interview with researcher, April 18, 2018.

regulations supporting women who work in those organizations, and those would include leave and maternity leave, a fair system of promotion, and protection against discrimination, etc. It is true that a number of organizations produce good work, but their internal policies are terrible. An organization that advocates for women's rights must have an internal system in place that provides support for its female employees. There should be a positive recognition of the development of the capacities of women workers and their participation in training. This policy must be sustainable, so that we have competencies in all fields and become equal with men in decision-making centers and at all levels. A personnel policy and code of conduct must be put in place for employees, and women in particular. It is important that everyone signs the code of conduct that would include protecting women from sexual harassment, so that even if the organization's hierarchy is misogynistic, women would still have a document to support them."

Habib Nassar attributes the lack of documentation of gender-based violence to "the lack of representation of women's and feminist organizations in groups working on transitional justice, including the Transitional Justice Coordination Group, its responses, backgrounds, causes and practices that have produced this weakness. Women in the leadership levels within these organizations are very few, if not non-existent. I always say, when there are women in decision-making positions, it is certainly a catalyst for change, and for the better!

The second reason Nassar gave is that the focus of human rights reports and media coverage is mainly on chemical attacks and sectarian massacres, but violence against women has been dimmed in the media, or has not been sufficiently covered. Only now the media has begun to cover it, perhaps because of the intensity of violence, and the higher frequency of receiving that kind of information."

Mutasem Syoufi adds, "We were the first organization to work on an initiative for female survivors inside Syria. As for the documentation of the crimes committed against those survivors, there are few institutions that are working in depth to deal with the effects of

detention. There is no work at this societal and human rights level, and is largely neglected. Here in southern Turkey, we encounter and hear many stories from people who are of a conservative background, and where there is a lack of civil society organizations to preserve their rights, and help raise awareness for such delicate issues. Women from these communities suffer greatly from their families, communities and religious circles. Sometimes the latter plays a positive role. One of my relatives went to a sheikh/imam, by the name of Karim Rajeh, and told him how some women have been sexually abused. In very conservative areas such as al-Midan and Nahr Eshe and its surroundings, people there are completely averse to the subject of women being sexually abused, as the issue is related to honor and reputation. The sheikh or notable was able to facilitate this issue with men from these communities to accept it. In situations like this, there is a need for a person of religious and prominent social status to tell them that this has nothing to do with honor or dignity. Women should not be oppressed because they have been sexually abused in detention and should not be beaten and should not be considered a disgrace."

Bassam Al-Ahmad summarized the reasons for the weak integration of gender-based violence in Syrian reports and in all initiatives working on transitional justice by saying: "The problem lies in the culture. The person who has no information, and does not realize the importance of the subject and does not have any strategic dimension, will not include the gender-based violence element in their plans or budget, and therefore cannot corner the donor into funding the project. Worst-case scenario, organizations send these cases to the UNIIC for documentation, as they have the resources and trained personnel to do so."

As for Mutasem Syoufi, he sees it being: "The issue of transitional justice is perceived by the international community as a non-priority on the path towards a political solution in Syria, and that is a very serious matter." For example, and particularly regarding UN envoy's de Mistura's policies, currently, there is a human rights specialist in his team, but he has done nothing. Secondly, the Special Envoy is talking about a victor and a defeated man. And the

balance of power, what does that mean? He said, "In Syria, there is a structural crisis, [and therefore] the solution must be a step towards solving its structural crisis. de Mistura obviously wants to reach a settlement that resonates well with all parties involved, and it is important for him to calm down the fighting and many issues are sacrificed for this purpose." Adding "In Astana, the dossier of detainees has been turned into a prisoner exchange file, and De-Mistura unfortunately, went in that direction. I have a sense of the whole international dealings with the Syrian issue, an old view I have heard since 2005 when we visited Europe as a group of activists—the human rights issue is deeper than the conflict with the ruling regimes. For many in the international community, human rights and democracy are issues that people of this region still do not understand. And the people need a regime that controls the situation, and the armed Islamist opposition that has now emerged is far worse for the international community than the regime. We may see that the regime is worse, but for the international community, the Islamists are worse than the regime and pose a much more direct threat to them. Therefore, the degree of eligibility of the Syrian people to be able to enjoy certain rights and freedoms, has certainly decreased in the eyes of many in the West. Even President Obama, dumbed it down on a news website, and stated that the conflict is a Shiite-Sunni one, rooted in history, despite the conflict being triggered by people who demanded rights and freedoms, against a regime that has been persecuting them for decades." He continued to talk about the mechanisms developed for Syria regarding accountability for crimes, "Two mechanisms have been developed for Syria, the Commission of Inquiry and the IIM, two institutions of the United Nations, which are ironically controlled by a Security Council with its permanent members that are party to the conflict. The work of those mechanisms is already affected by international resolutions, even if they issued reports. A recent example is The Special Commission of Inquiry's report on the last chemical attack in Duma last April that was mentioned in The New York Times article. Before the article's release, one of the doctors who deals with the Special Commission had informed me that the board wanted to change the

report, and to negate the responsibility of the regime and Russia for the use of chemical weapons, and rather waiting for the Organization for the Prohibition of Chemical Weapons to have the last say, and limit the report from three pages to one page. It was very clear evidence that an international commission of inquiry is supposed to be independent, but the international community was obviously supporting Moscow, as Russia does not want to be involved in the use of chemical weapons in Duma. Unfortunately, we are living in a terrible world at this level, and there is no international justice."

Diab Seriyeh adds his take on the participation of civil society organizations in the Geneva talks, "About a year ago, some civil society organizations issued a statement and boycotted participation in the civil society chamber.<sup>294</sup> After that, we excluded De-Mistura from everything. There was an exploitation of civil society organizations at the Geneva negotiations and the peace talks. Instead of engaging civil society organizations in the talks, de Mistura used them instead to put pressure on the opposition rather than pressure on the regime, just so he can be known for achieving something. There was no clear mechanism to show how the participating civil society organizations were selected to attend the talks. There was no clear mechanism for consultation, and the civil society organizations that participated could not modify the meetings' agenda or even add anything, but it was imposed on them."

Currently, women's representation of organizations working on documentation and transitional justice in public meetings is very weak, and the participation of women and feminist organizations in transitional justice groups, such as the Transitional Justice Coordination Group, is also limited. For example, at the meeting held in Lausanne on April 03, 2018,<sup>295</sup> in which a protocol of cooperation between 28 civil society organizations was signed with the International Impartial and Independent Mechanism, only four women

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<sup>294</sup> - For the statement: "Statement by the Syrian organizations for the convening of a Civil Society Chamber in Geneva," Violations Documentation Center in Syria, November 21, 2017, seen on September 15, 2018, at: <https://goo.gl/o5HuSu>

<sup>295</sup> - Human Rights Organization in Syria - MAF, "Signature of the Protocol of Cooperation with the IIM" April 03, 2018, seen May 10, 2018, at: <http://www.hro-maf.org/?p=2212>

represented their organizations, including two women's organizations, while 24 organizations, were all represented by men.

Discrimination in work against women, as I've previously described in this study, was reiterated by Joumana Seif,<sup>296</sup> who emphasized on the point that discrimination is deeply ingrained in the structure of organizations and in the inherent misogynistic mindset: "We are the product of our environment. I have witnessed who was present during the signing of a protocol of cooperation with the IIM! Only two organizations were represented by women. All other organizations were represented by men, and had cadres who were mostly men. Even for myself, being a female participant at that meeting, I wasn't 100% sure that I was chosen for my qualifications, but rather just to fill in for my male colleagues who weren't able to attend the meeting. If we do not confront them courageously and talk about these issues, we will not make progress, because we are the ones defending this issue." Adding "when we ask them to define the problem in order to address it, there is a slight disregard for the suggestion. In the end they either say that it is (a difference of views), or (there is an exaggeration of the issue), or it is (women's gossip)."

Sima Nassar adds: "The lack of legal frameworks related to the documentation of gender-based violations and crimes is one of the most difficult challenges we face, and sometimes we get lost in how to deliver them. In fact, we have no experience in this area, and I haven't yet attended any workshop on documenting gender-related violations. What we believed was a personal effort. We asked for specialized workshops on gender-based violence. We have heard a lot about gender workshops, and requested EuroMed to conduct one, but unfortunately they have not invited workers and activists that focus on issues of documenting violations. They have targeted people who are either experts in the field, or ordinary people who want to attend the workshops, but I personally did not attend a workshop on gender."

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<sup>296</sup> - Joumana Seif (Human Rights, working with the European Center for Constitutional Rights and Human Rights (ECCHR), interview with the researcher, August 12, 2018.

Nour al-Khatib further explains the challenges in documenting crimes and abuses against women related to sexual violence: "We find it very difficult to communicate with women. Any woman who wants to talk about the violations is seen as an enemy of society and is perceived as a nuisance. Unfortunately, few are able to overcome the psychological and social situation that they live in. We have documented several cases, but we kept them confidential and did not publish them at the survivors' request. We are hoping that their psychological well-being, and the scrutiny of their community to improve so we can publish those documentations. We occasionally mention numbers and some anonymous stories in our reports, but mostly, the women victims' families do not want them communicating with any party, especially human rights organizations, even if the women wish to testify, their security situation among their family and community is considered inappropriate to openly testify."

Diab Seriyeh speaks further of challenges: "The majority of the current documents do not constitute a starting point for building a dossier: From the beginning there was no jurisdiction in documentation, violations are taking place frequently, and still ongoing, and documentation in Syria needs to be at the level of the state and not only organizations with limited resources, and therefore frankly, the efforts were not enough. We, as an organization that specializes in documentation of violations, are somewhat professional. But when we spoke with the IIM, we found that what we did was hardly a starting point to form a dossier. For example, someone who was detained at Sednayah prison, we receive anecdotal information, like the name of the mother and father of the detainee, but there is follow-up, was he released from detention? How was he treated inside the prison? What forms of torture did he suffer from? What are the charges against him, and the courts that brought his case to attention? When we started working in our organization, we started from scratch. We met the survivors and documented their cases. All the phases of their arrest were documented, from the arbitrary detention of unfair trials, the failure to provide defense guarantees and the torture they were subjected to in all cases. Even names that were involved in their torture. Organizations that documented

sexual violence met the victims but did not dig deep into the cases and questions, and the background of the case. Was the detainee a hostage, and was she raped as a strategy to pressure her family and her relatives? There are many cases in which a woman is arrested, and sexually abused to put pressure on her husband, father or brother, who may be a battalion commander or a military officer. All of this is not well documented. And while working with TDA and interviewing survivors, women survivors' stories are very painful. When a man comes out of prison, he is a hero who fought the regime, but the woman is scrutinized by her community, and is treated as an inferior, especially if she was sexually abused."

All respondents agreed that there is certainly poor documentation of sexual violence against men in reports of human rights organizations, and all emphasized on the fact that it was more difficult to document than sexual violence against women. "Access to data on men is very complex and there is no leakage of information on this subject, and the collection of data on sexual violence against children is more possible than collecting data on sexual abuse against men," said one respondent.

Diab Seriyeh on the matter: "We have documented more than two hundred cases in our organization as of end of February of this year, about those who talked about being sexually abused has not exceeded thirty cases. Others have denied their exposure and do not want to talk about it. In fact, the thirty people who dared talk about sexual violence, they did because they know that we know about these violations, since we were detainees ourselves. This has certainly made it easier for them to speak up, particularly about beatings and shackling from the genitals. Only two talked about being raped. One of them is now in Turkey and still suffers greatly mentally and physically. Unfortunately, he was brutally raped and with metal tools. When he was calm, he said: I am prepared to give my testimony to a UN committee if there's one. This was of course, a rare occurrence, as men generally do not talk about sexual violence incited against them in detention centers."

## Summary

Reasons for the gender dimension deficiency in Syrian organizations that are working on the transitional justice:

- 1- The weak representation of women organizations and women's rights organizations who work with organizations working on transitional justice.
- 2- Lack of individual initiatives of women to represent their organizations in meetings that focus on gender mainstreaming in organizations working on transitional justice.
- 3- Poor participation of women who are law experts within human rights organizations that are working on the transitional justice process and documentation.
- 4- Lack of women in decision-making positions in human rights organizations and organizations working on transitional justice, and should women work for such organizations, they are distant positions of decision-making and authority.
- 5- Human rights organizations lack of interest of in the rehabilitation and training of women cadres capable of mainstreaming the gender impact of crimes and violations into the transitional justice process.
- 6- Knowledge gaps in the legal frameworks for documenting violations and gender-related crimes in human rights organizations involved in documentation.
- 7- Not including female and male workers in documenting violations and crimes in activities related to gender issues carried out by women organizations.
- 8- There are knowledge gaps in the experience of some people working on transitional justice at state-level in this context, with the exception of the Bosnia and Herzegovina example. This experience did not involve women in the 1995 Dayton Peace Agreement, either as major negotiators, or as participants in negotiating teams, but was exclusive to "men supported by the armed forces, under the pretext of guaranteeing human rights, and the male elite succeeded in agreeing on ways to divide the country." The Dayton Agreement divides Bosnia into two entities, the Federation

of Bosnia and Herzegovina and the Republika Srpska (Bosnian Serb Republic). Today, Bosnia and Herzegovina is paralyzed by the dysfunction of the central state apparatus and national ethnic policies. Women were unable to incorporate a gender perspective into constitutional reform discussions and were treated as merely victims/survivors, mothers and/or wives of martyrs. After the war, some women organized themselves to find out the fate of family members, some of whom had hands-on experience in returning to their city/town of origin, via retrieving property (as was the main focus of the international community)."

- 9- Women are not represented in advocacy committees that meet with the international community, with the exception of women-led organizations. Representation is often restricted to men, although women's participation is often symbolic and for the purpose of claiming the diversity of the delegation and the desire to have a woman on the table.
- 10-Some men in these organizations consider that women's issues and the impact of violations and crimes on women is their own affair, except for crimes of sexual violence, including rape, which may be addressed in the absence of women on the table during meetings.
- 11-Women's issues are not current priority issues, but issues of the future.
- 12-The misogynistic mindset, and/or ignorance of women's rights and/or lack of awareness of the importance of integrating the gender impact of crime and violations, in reports, and going beyond the symbolic representation of women in meetings.
- 13-Lack of cooperation and coordination between human rights organizations and women-led organizations in preparing reports that integrate the gender impact of crime, and the impact of the conflict on them and the training of workers on gender.
- 14-Lack of cooperation and coordination among human rights organizations, due to competition between some on representation, seats and legitimacy.

- 15-The male monopolization of the public space makes the public space an oppressive environment for women. This monopolization would manifest in various direct or indirect forms of bullying, silencing, and mocking.
- 16-Women activists attacking human rights organizations, who do not include gender in their reports, has backfired and caused them much embarrassment, rather than adopting a method of cooperation to fill the knowledge gaps.

There is limited representation of women-led organizations that defend women's rights and issues in groups working on transitional justice. Women are absent from decision-making positions and power structures in organizations, and these organizations lack gender balance in their structure, policies and strategies.

Women's views, experiences and entitlements, and the response to their rights and needs, are overlooked, and to a large extent, it is only men's views that are taken into account. Men's priorities, although justified, are gender blind, and is evident in the following:

- 1- The unfair effect of violations and direct and indirect crimes on women, in other words, the absence of the gender impact of crime and violations, and its successive impact on generations.
- 2- Focusing solely on sexual violence against women, despite its extreme importance, but ignoring other forms of violence, will mask the political, societal, economic and legal violence that they are also suffering from.
- 3- The impact of socio-economic power structures that are based on gender inequality in direct and indirect violations and crimes on women and girls.
- 4- Analysis of the complex and multilevel impact of violence against women when it interferes with forms of discrimination against them, such as economic situation (poverty), level of education or illiteracy, political, national and religious affiliation, geographical location and customs.

- 5- The lack of a comprehensive view of all crimes and violations wherever and by whosoever committed.



## Section Seventeen: Recommendations

### Recommendations for organizations working on transitional justice

- 1- Regarding organizations' structures: Gender must be mainstreamed in all organizational structures to promote gender equality in their policies, activities and programs. The change in organizations requires an analysis of power structures, decision-making mechanisms, the engagement of women in policy formulation and access to equal opportunities for training and promotions. It is very difficult to mainstream the gender impact of crime and violations into policies if there are no women in decision-making positions. Despite some women being in decision-making positions, but the structures of power and the ultimate decisions are always made by men, and women are marginalized. As Dr. Mohamad Katoub had given an overview previously in this study, men are monopolizing the decision-making scene, and organization like that are certainly undemocratic. It is difficult to work or to convince anyone that it is working or seeking equality between women and men and building democracy.
- 2- In order to achieve this, organizations with the will to correct the current gap in reporting, research and programs are required to mainstream the gender impact of crime and violations, which requires a strategy that includes:
  - a- Appointing a gender expert and training a team of male and female workers, including those in the legal field, to document violations, write reports based on legal frameworks and international standards to quantify the gender impact of crime and violations, and build legal dossiers that are sustainable to present in the future.



with broader resources, and inculcating crimes and violations not yet visible in reports.

- 4- Establishing platforms to voice the plight of women survivors, in cooperation and coordination with women-led organizations, and include their testimonies in reports and research, and advocacy work before the international community. Focus on the justice they want, and the impact of conflict and related crimes and violations they have experienced before and during the conflict, in the political, sexual, legal, social and economic spheres.
- 5- Every crime and violation has a gender impact, and must be visible in reports, research and advocacy work. Otherwise, we will not start building a proper vision of gender-sensitive transitional justice. Women and girls in Syria will remain victims of structures of violence that are deeply incorporated in the constitution, in politics, and in society.
- 6- Bridging knowledge gaps in the international experiences of transitional justice, it is true that there is no successful transitional justice model in the international scene, but lessons learned from success and failures are important to us as Syrians, through which we can learn how to build our national path and by engaging everyone, without political, national, sectarian, regional or gender discrimination. We must also bear in mind that transitional justice is achieved based on analyzing the impact and multi-level violence against women, and its overlap with forms of discrimination against them, in cases such as the economic situation (poverty), level of education or illiteracy, political, national and religious affiliation, geographical location and customs and traditions.
- 7- Bridging the large knowledge gap on transitional justice, its objectives and its mechanisms for survivors (both men and women), through awareness campaigns, workshops and dialogue sessions.

- 8- Expanding the limited space for women-led organizations and women's rights organizations, for them to be able to participate in transitional justice groups, including the Transitional Justice Coordination Group, and build a strategic approach that seeks to incorporate them into the process, preferably by setting a timeline.
- 9- Strengthen cooperation between human rights organizations to issue joint reports and/or distribute work to cover all crimes, violations in all geographical areas in Syria, including gender-based violence. To restore the large gap in the documentation, patterns, hierarchies and the overlap of violations and economic crimes with all forms of violence, and how it constitutes serious and persistent harm to women and girls, such as property rights, tenure, employment, education and health. In short, to transition from the issuance of joint statements to broader cooperation.
- 10- There is a clear failure to involve human rights organizations and organizations working on transitional justice in the activities and programs of women-led organizations. Their cooperation must be strengthened, as they are the strongest allies for building gender equality in Syria.
- 11- While there are important reports from human rights organizations for advocacy purposes, the focus on building human rights dossiers that can be used in the future is crucial.
- 12- It is also important to direct advocacy work to activate the jurisdiction of the International Criminal Court in accordance with (article 13), paragraph (c), which states: "If Prosecutor has initiated an investigation in respect of such a crime in accordance with (article 15)."

## **Chapter VI: Global Experiences**



## Global Experience

There are no ready solutions for transitional justice, there is not a single pattern of transitional justice in all trials, nor is there a complete or successful experience in dealing with all crimes and violations. There have been some experiments that have made progress in some mechanisms and programs. We, as Syrians, should develop a national model that corresponds to our political, cultural, social and economic background in Syria as a starting point for the design of gender-sensitive transitional justice, one of the tributaries of a democratic transition.

## Section Eighteen: Sierra Leone

The civil war broke out in March 1991 between RUF forces led by Foday Sankoh and government forces to overthrow the corrupt government of Joseph Sido Momo and the All People's Congress (APC), who ruled Sierra Leone as a single party since the late 1960s, while its people were living below the line of poverty. Libya and Burkina Faso supported the RUF with weapons and primary equipment to control the natural resources of the country, particularly diamond mines. The Lom̄ Peace Agreement between the Government and the Revolutionary Front was established on July 07, 1999 and provided amnesty for the perpetrators of the crimes, but the Special Representative of the Secretary-General, Francis Okelo had his reservations, and declared that it would be impossible to grant amnesty to the perpetrators of crimes. The Lom̄ Peace Agreement called for the establishment of a Justice and Reconciliation Commission that would function as a national institution, however, the commission had a more international direction, and was established by the Special Representative of the Secretary-General of the United Nations in Sierra Leone and the High Commissioner for Human Rights, whose task was to recommend the appointment of three members, who were not citizens of Sierra Leone.

The Justice and Reconciliation Commission was established in July 2002. The Special Court for Sierra Leone was established in coordination between the United Nations and the Government of Sierra Leone.<sup>297</sup> It was the first model in the Special and Mixed Courts. Thirteen persons, including former Liberian president, Charles Taylor,<sup>298</sup> were charged with "acts of terrorism, murder, crimes against humanity, rape, sexual slavery, cruel treatment and recruitment of children under the age of fifteen into armed forces and their exploitation by engaging in hostilities."<sup>299</sup> The Court charged forced marriage in the RUF case as inhumane and a crime against humanity under the Statute of the Court in 2000. The Court held that rape and forced marriage, was as equally accountable as forced marriage and sexual slavery, and was the first time a conviction like this was charged in an international tribunal.<sup>300</sup>

The Justice and Reconciliation Commission, through the hearings, was able to obtain thousands of official and documented confessions of the perpetrators who committed various crimes and violations. This is evidence of the need for an integrated methodology and vision in the course of transitional justice, because any unilateral path without the other path will not lead to the recovery of societies after conflict and the removal of the past's legacy. Criminal trials alone are insufficient without the use of transitional justice mechanisms, and the impunity of war criminals will not achieve peace and a foundation for the building of a state of law and democracy.<sup>301</sup> A report entitled "Reconsidering Truth and Reconciliation

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<sup>297</sup> - The Agreement for the Establishment of the Special Court for Sierra Leone between the United Nations and the Government of Sierra Leone was signed in January 2002.

<sup>298</sup> - International Center for Transitional Justice "Seeds of Justice: Sierra Leone" July 16, 2013, seen on May 13, 2018, at: <https://www.ictj.org/ar/news/seeds-of-justice>

<sup>299</sup> - United Nations News "UN-backed Special Tribunal for Sierra Leone issues historic verdict condemning ex-President of Liberia for assisting in war crimes" April 26, 2012, seen May 13, 2018, at: <https://news.un.org/ar/story/2012/04/158072>

<sup>300</sup> - Valji et al, page 08.

<sup>301</sup> - Samar Mohammed Hussein Abu Al-Saud "Role of the Special Court for Sierra Leone in the achievement of transitional justice, MA, Cairo University - Institute of African Research and Studies - Department of Politics and Economics, 2013, seen on May 12, 2018, at: <http://erepository.cu.edu.eg/index.php/cutheses/article/view/1884/1850>.

Commissions: Lessons from Sierra Leone,"<sup>302</sup> that the Justice and Reconciliation Commission did not receive much popular support at the time of its establishment, and the views of the people were polarized due to fear of government retaliation, and the retaliation of the perpetrators, and concern about the synchronization of the Commission's work with the Special Court for Sierra Leone; therefore, some communities decided not to make any statements. The majority of ex-combatants feared that their statements would be used in court, while other combatants went in hiding when the Commission held its sessions, and therefore could not meet any fighters in Port Loko. Due to that, perceptions of fighters and civilians were absent from a report issued by the commission in the year 2000.

The percentage of female judges in the Special Court for Sierra Leone was 33%, four female judges out of twelve judges,<sup>303</sup> and the Court also appointed 20% of its investigators to handle sexual and gender-based violence cases.<sup>304</sup> The Truth and Reconciliation Commission (2002) was 43% women, three women out of seven total number of commission members.<sup>305</sup> The percentage of women's testimonials to the Commission was 28%, including sexual violence and gender-based crimes and their experiences during the conflict.<sup>306</sup> In general, funding was and remains, one of the key challenges in gender-sensitive transitional justice work, but analysis of violations and crimes can be integrated through gender if there is a will and enough experience. In the case of Sierra Leone, the work of the Commission has strengthened the United Nations Development Program through several initiatives:

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<sup>302</sup> - Rosalinda Shaw, "Re-examining Truth and Reconciliation Commissions: Lessons from Sierra Leone," Report, American Institute of Peace, February 2005, pages 1-2-4-5, seen on May 17, 2018, at: [https://www.usip.org/sites/default/files/sr130\\_arabic.pdf](https://www.usip.org/sites/default/files/sr130_arabic.pdf)

<sup>303</sup> Valji et al, page 07.

<sup>304</sup> - Previous source.

<sup>305</sup> - Previous source.

<sup>306</sup> - Previous source.

Working with a task force on Women, a coalition of local and international civil society organizations that met regarding the participation of women in truth and reconciliation commissions and Special Courts to ensure that crimes against women are addressed.

Provide funding to women's groups for activities that have supported women who will appear before the committees and non-governmental organizations (e.g. transportation expenses) to document experiences by women, and to address some of the immediate medical needs of women survivors of rape.

Provide information technology support to the Commission to ensure that data is disaggregated by gender.

Train members of the Commission and its senior staff to help them respond to the needs and concerns of women. Members of the Commission therefore drafted special clauses to encourage the collection of testimonies on sexual violence, including the implementation of a Witness Protection Program and trauma counseling services."<sup>307</sup>

### **Lessons learned from the Sierra Leone Example**

- 1- The simultaneous work of both the Special Court for Sierra Leone and the Truth and Reconciliation Commission was complementary, but their working mechanisms must not overlap. The Truth and Reconciliation Commission worked to heal wounds and reconcile. There must be close supervision of the staff of both entities to avoid duplication in outcome.<sup>308</sup>

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<sup>307</sup> - Previous source.

<sup>308</sup> - "The concerns of ex-combatants about the transfer of information from the Commission of Inquiry to the Special Court are partly justified, not because of the intentional risk, but because of the likelihood of a leak when two forms of transitional justice are synchronized. The Truth and Reconciliation Commission became witnesses to the Special Court, while others found jobs in the Tribunal, and a former member of the Truth and Reconciliation Commission was caught moving to work in the Special Court when he left the home of a former fighter who had met him while he was on the Commission. Court for this incident, but there may be other unreported facts." Rosalinda Xu, "Re-examining Truth and Reconciliation Commissions: Lessons from Sierra Leone," Report, American Institute of Peace, February 2005, page 05, seen on May 17, 2018, at: [https://www.usip.org/sites/default/files/sr130\\_arabic.pdf](https://www.usip.org/sites/default/files/sr130_arabic.pdf)

- 2- Reports of success of the transitional justice process, coming from the United Nations, or the Truth and Reconciliation Commission, or civil society organizations, are fragmented and if the gaps, challenges and mechanisms used to address them are not met, then striving towards a successful transitional justice will be futile.
- 3- The need to obtain public support before establishing a Truth Commission.
- 4- The importance of protecting victims and witnesses from retaliatory violence of the perpetrators, and protecting survivors from community violence.
- 5- The United Nations Development Program (UNDP) has provided important resources that have supported the mainstreaming of gender into the transitional justice process. Survivors have also received significant support from the Truth and Reconciliation Commission, enabling them to talk about violations and crimes they have suffered from. The report identifying the links between pre-conflict inequalities and the gender impact of violations during conflict was the first of its kind.<sup>309</sup>
- 6- The Truth and Reconciliation Commission embraced human rights and international humanitarian law, and its work was not only limited to civil and political violations, but also included economic, social and cultural violations, and other patterns of violations that constituted grave harm, particularly with regard to property rights.<sup>310</sup> As General Prosecutor Solomon Berewa put it, the Commission was a form of psychological treatment, and its role in fact-finding, served as a credible forum to enable victims to regain their human values before anything else.<sup>311</sup>

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<sup>309</sup> - Previous source.

<sup>310</sup> - United Nations publication "Transitional Justice and Economic, Social and Cultural Rights", P / 5/13, 2014, seen on May 13, 2018, at: [http://www.ohchr.org/Documents/Publications/HR-PUB-13-05\\_AR.pdf](http://www.ohchr.org/Documents/Publications/HR-PUB-13-05_AR.pdf)

<sup>311</sup> - Qasi Fawzia "Experiences of transitional justice in the African continent (Truth and Reconciliation Commission in Sierra Leone model" African readings, June 13, 2016, seen on May 13, 2018, at: <https://goo.gl/T1VQ9p>

## Section Nineteen: Morocco

Transitional justice in Morocco was the first of its kind to be achieved in the Arab states, and was created by a continuous ruling regime— a transitional justice without political transition. King Mohammed VI issued an order establishing the Equity and Justice Commission in January 2004 as a transitional justice mechanism to address the human rights violations since the independence of Morocco in 1956. It was defined as restorative justice instead of criminal justice, historical truth instead of judicial fact, because the sphere of this kind of justice is not the court, but the public space, which expands to encompass all areas of social and cultural action.<sup>312</sup> However, attempts to reconcile with the past's dossier began since King Hassan II called for the establishment of the National Advisory Council for Human Rights in 1990 to deal with cases of enforced disappearance, arbitrary detention and compensation for victims and their families. After the death of the King on 23 July 1999, the Council announced the establishment of an arbitration in April 1999 to address enforced disappearance and arbitrary detention, and during the course of four years of its work, distributed compensation of one million dollars to about 3,700 cases, but the Council was unable to access the files of the security services or the Ministry of the Interior.<sup>313</sup>

The council was criticized for its work because of its lack of transparency in compensation policy, and in investigations, its neglect of moral compensation such as memorials and remembrance of victims, lack of health and psychological care for families of victims, lack of attention to other human rights violations such as extrajudicial executions, which led to the

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<sup>312</sup> - Equity and Reconciliation Commission, Final Report of the Equity and Reconciliation Commission, Report of the Consultative Council for Human Rights, National Council for Human Rights, November 30, 2005, page 108, seen on May 16, 2018, at: <http://www.cndh.ma/ar/tqyr-hyy-lnsf-wlmslh/lktb-lwl-lhqyq-wlnsf-wlmslh>

<sup>313</sup> - "Annual Report 2003/2004" ICTJ, January 01, 2004, page 07, seen on May 15, 2018, at: <https://www.ictj.org/sites/default/files/ICTJ-Global-Annual-Report-2004-Arabic.pdf>

exclusion of more than six thousand requests,<sup>314</sup> demanding justice, truth and compensation. The National Advisory Council for Human Rights recommended the establishment of a Truth Commission, and on January 07, 2004, King Mohammed VI ordered the establishment of the Equity and Reconciliation Commission to uncover the truth between 1956 and 2001. The Commission also adopted an approach to truth commissions in South Africa: amnesty for offenders and non-criminal or judicial prosecution in exchange for recognition by the Moroccan government of its responsibility for such violations and reparation for individuals and collective harm.

Although some viewed the role of the Commission and its work as a unique experience in the Arab world, it had its shortcomings, and they were manifested in: The perpetrators of gross human rights violations were not identified, so there was no criminal prosecution of the perpetrators, and the Commission did not even recommend that they be held accountable, as well as "the return of most decision-makers to their positions, despite their direct or indirect involvement in past violations."<sup>315</sup> The issue of Mehdi Ben Barka and Abdellatif Zeroual was ignored, and "Morocco saw the exclusion and marginalization of the victims in political life, especially the Moroccan left."<sup>316</sup> The Commission was only presenting partial facts, the facts as seen and lived by the victims and their families, excluding in its work perspectives of the perpetrators responsible for human rights violations. Perhaps the reason for this fear of telling the whole truth that it would lead to unacceptable conclusions from the Moroccan authorities, both for the monarchy and people still in power, and thus undermine the foundations of the country's political structure.<sup>317</sup>

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<sup>314</sup> - Transitional Justice and National Reconciliation - Towards Building an Applied Model in Egypt", Report, Ibn Khaldon Center for Humanities and Social Sciences, 2013, page 41, seen on May 15, 2018.

<sup>315</sup> - Previous source, page 43.

<sup>316</sup> - Previous source, page 43.

<sup>317</sup> - Amnesty International, "The Promised Promise (The Equity and Reconciliation Commission) and its follow-up", Document No. 2010/001/29 / MDE January 2010, page 06, seen on May 15, 2018, at: <https://www.amnesty.org/ar/documents/mde29/001/2010/ar/>

There were no public hearings in Western Sahara like other regions, and Western Sahara was excluded from collective reparation programs for the affected areas.<sup>318</sup>

The Commission was concerned about violations against women, including politicians, methods of intimidation and rape, and other numerous violations they were subjected to during detention.<sup>319</sup>

One woman was appointed as director in the Truth and Justice Commission out of sixteen senior members,<sup>320</sup> which meant that women's participation in decision-making within the commission was limited, while there were 163 female staff working for the commission, out of 319 staff in total.<sup>321</sup>

In its final report, the Commission recommended "supporting the constitutional consolidation of human rights as it is internationally recognized by clearly establishing the principle of the universality of relevant international conventions and international law and humanitarian law."<sup>322</sup> And "strengthening constitutional guarantees of equality by providing for equality between men and women in political, economic, social and cultural rights."<sup>323</sup> It also recommended the "criminalization of enforced disappearances, arbitrary detention, racial genocide, other crimes against humanity, torture and all forms of cruel, inhumane and degrading treatment and punishment; the prevention of all forms of internationally condemned discrimination, xenophobia, violence and hatred at the level of high constitutional norms."<sup>324</sup> It also recommended the ratification of the Optional Protocol to the Convention on the

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<sup>318</sup> - Previous source, page 06.

<sup>319</sup> - Previous source, page 21.

<sup>320</sup> - Valji et al, page 07.

<sup>321</sup> - Al-Mustapha Bugabout "Compensation of Truth and Reconciliation Committees in Light of the Gender Approach: Disagreement of Violence Based on a Gender Perspective" Research Study, Journal of Political Science and Law, Arab Democratic Center for Strategic, Political and Economic Studies, January 2018, page 412, seen on May 15, 2018, at: <http://democraticac.de/?p=51033>

<sup>322</sup> - Equity and Reconciliation Commission, Final Report of the Equity and Reconciliation Commission, Report of the Consultative Council for Human Rights, National Council for Human Rights, November 30, 2005, page 119, seen on May 16, 2018, at: <http://www.cndh.ma/ar/tqryr-hyy-lnsf-wlmslh/lktb-lwl-lhqyq-wlnsf-wlmslh>

<sup>323</sup> - Previous source, page 119.

<sup>324</sup> - Previous source, page 119.

Elimination of All Forms of Discrimination against Women and the lifting of Morocco's reservations regarding the Convention.

### **Lessons learned from the Morocco Example**

The example of Morocco shows that the path of transitional justice and gender mainstreaming was a national path, but that the regime's control of the process, and the failure to investigate the perpetrators of crimes and violations led to partial and incomplete transitional justice. It also points to the political violence instigated by the state during the years of what was known as "Bullets against Politicians."

Truth Commissions:

- The unilateral approach of hearing the victim only, without listening to the perpetrators and publicly apologizing, leads to the suggestion that the perpetrators are officially protected by the state.
- Transparency in the work of truth commissions, and feedback from stakeholders based on scientific research conducted by credible impartial institutions, and rebuilding confidence between society and state institutions.
- The importance of representation of women and organizations working on women's issues by at least 30% in all transitional justice processes, and the need for gender mainstreaming.

## **Section Twenty: The opinion of some respondents on transitional justice in global examples**

For a broader understanding, I asked Habib Nassar and Rim El Gantri, who are both well versed in some examples of transitional justice globally, about the role of the United Nations Fund in securing resources for the integration of gender-based violence and whether a representative of the Office of the High Commissioner for Human Rights is instrumental in implementing transitional justice, as was the case with Sierra Leone. Habib Nassar replied: "Yes and no. Their role is not always constructive, especially on gender. I will give an example of my two experiences in Morocco and Tunisia when drafting the law. In Morocco, the role of the international community was very limited, and Moroccans had not only faced sexual violence and gender-based abuses, but also faced political violence and were politically resistant. Ultimately, the problem is that the international community and international institutions, including UNDP, have always focused on sexual violence or gender-based violence. Gender, of course, is important and essential and requires a special approach, but we must not turn women into victims of sexual violence only, as Syrian women have resisted and are still fighting and this has manifested into a huge political movement in resisting.

In the Morocco, only one woman Latifa Jbabdi, a former political prisoner, had a pivotal role in introducing gender into the transitional justice process. In the Tunisia similarly, one woman helped drafting the transitional justice law, Ola Ben Najma, despite not being an activist. The moral here, is that it's important for the process to be nationally designed at the grassroots level, and for women to participate in all phases of transitional justice. Regarding Truth Commissions, women's participation in the courts dealing with transitional justice issues and other institutions responsible for reparations, will lead to a significant positive change. Of course, women who have an understanding of these issues, are more important in voicing

those concerns than the United Nations, and the integration of gender must be done by pressure from within the community and civil societies. In Morocco, the mainstreaming of gender has taken a major feminist course to amend the law of personal affairs to make it more equal."

Al-Qantari agreed with Nassar on the importance of civil society in pushing for the mainstreaming of gender in transitional justice, as was the case in Tunisia. "It is true that Ola Ben Najma was not a feminist, but what facilitated the process, was the fact that men in the commission unanimously agreed to mainstream gender into the process. We have encountered some difficulties in using the word gender. We have not succeeded in establishing a (gender committee), but rather a (women's committee), and the reason we're opting for a (gender committee) is because the words 'gender' is not exclusive to women, and despite this, there is no person within the committee that is well-versed on gender."

What about success stories, which of them succeeded in integrating gender?

"The transitional justice process in South Africa was not successful despite its coverage in the media. Even in Tunisia, there was much hope that it would be successful," al-Qantari said, "but it has deviated from the path that could have brought it to success and is in its final stages now. In Morocco on the other hand, the process was gender-sensitive, especially in the area of reparation, because they gave priority to the victim and indirect victim, or in other words, the victim's mother, sister, friend etc. That was the first approach of its kind in the Arab world. In Tunisia, gender was mainstreamed into the Transitional Justice Law. It stipulated that the members of the Commission on Truth and Dignity must be one-third women, in addition to establishing a women's committee, and even within the committee that drafted the law, there was finally a fair approach to women. Other examples were gender-sensitive only in reparation. In Sierra Leone, there was reparation for victims who had been sexually abused, and a clinic or hospital for victims of sexual violence were established, and women were treated free of charge."

Nassar believes that it is "absolutely difficult to judge whether a transitional justice process is successful or not. It could be successful from an international community perspective, but the citizens of the country won't be satisfied with it. As was the case with South Africa, which was heavily covered by the media. They knew how to use the media, reached the largest number of people, and because it was the first time an experience like this was used in public hearings. In Argentina or other countries there were no public hearings. Therefore, in South Africa, voicing the victims' suffering to the public was considered extremely crucial to the process. However, and on the darker side, blacks in South Africa consider that the experience only looked at individual violations and disregarded the apartheid, nor did it consider economic and social problems, where blacks were excluded not only politically but economically. On another front, the process in Morocco had some advantages, such as the individual reparation program, which was very organized, and reached a large number of direct and indirect victims.

They have developed the idea of collective reparation, which had worked in Tunisia, and considered that there are, of course, individuals affected. However, there were communities that have been affected in their entirety and areas that have been marginalized by direct government policy aimed at retaliating against a particular area for political, racial or cultural reasons. In Morocco, the countryside in the north has always been an area opposed to the king and the central authority, an area that suffered greatly from King Hassan II's economic and social marginalization and was deprived of development. A region that was marginalized directly as a policy considered by the government, and was not considered deficient, but was still targeted by the government. Morocco's example was limited due to: 1) King Hassan II died, and his son took on the monarchy after him, so there was a transitional justice without actual transition, and even mentioning the role of the former king in violations was considered taboo, so people weren't able to name names, and neither was the law. Those violations that were carried out directly/indirectly by the King weren't addressed even though they were a

central theme in Morocco's modern history. It was only addressed in half a page in the report of the Commission on Equity and Truth.

While public hearings were held in South Africa and Peru, the same could not be achieved in the Sahara, even the Saharawi opposition and the parties in the Sahara calling for independence were opposed to organizing the session in Laayoune, the capital of Western Sahara because it would have acknowledged Morocco's authority over the region. The Peruvian experience was successful in many ways, especially in mainstreaming gender, and in integrating the indigenous peoples who did not speak Spanish, and lived in the mountains and were targeted by brutal policies. The process was not ideal. There were many shortcomings, but it did take into account the assimilation of peoples as their suffering was not individual, but was rather a collective suffering of a cultural group. The integration of the indigenous peoples in Canada is also another similar example. Sometimes there are economic and financial shortfalls that do not allow for the path of transitional justice to go beyond it, or there are taboos such as the case of Morocco. Ultimately, the transitional authority in each country has a role in the composition of this path."

Hossam al-Qatlabi<sup>325</sup> adds, "I think that the two most significant models of transitional justice success are: 1) Tunisia: despite its many flaws and shortcomings, but it has been successful, perhaps because the issues it addressed were not as deep and complex as the issues of gross violations of human rights. Of course, this is not to say that the issues it dealt with weren't serious and real. 2) The Yugoslav experience also draws my attention, which I feel is the most similar to ours as Syrians. It was successful in drawing accountability for the victims in trials, but the trials were not local, they were international. In Germany, and following the fall of the Nazi regime, it took work for decades on the recovery of society, and work to condemn what happened over the course of generations. While experts on transitional justice believe that the

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<sup>325</sup> - Hossam al-Qatlabi: Executive Director of the Violations Documentation Center (VDC), interview with the researcher, April 26, 2018.

South Africa example was successful, but I see it as a distorted experience with many shortcomings. The consequences of talking about the crimes publicly, overshadowed the fact that the victims did not come to terms with themselves and with the community, on the contrary, perhaps their public appearance exacerbated the scale of the pain of the violations that were committed against them."

As for Kahhaleh, she believes that the South Africa example, in part, has been successful in recognizing and developing a narrative of the conflict, but the problem has not been followed by institution-building and law-making and dealing with the structure of economic inequality. This has also affected the credibility of the conflict's narrative. The Bosnian example was quite successful, and we can learn lessons from Germany, regarding its postwar narrative and commemoration. But the rise of the far right in Europe indicates that there is something wrong. We can also look at the Spanish example. Following the civil war, a dictatorship prevailed and then they achieved democracy, and that may be similar to the Syrian narrative, as they have dealt with violations in both periods, but the violations of Franco have not yet been addressed.

## Annex I

### Names of respondents and participants in the study

**Ibrahim Olabi:** Executive Director of the Syrian Legal Development Program.

**Bassam Al-Ahmad:** Executive Director of Syria for Justice and Truth.

**Joumana Seif:** Human Rights, working with the European Center for Constitutional Rights and Human Rights (ECCHR).

**Habib Nassar:** Director of Policy and Research at Impunity Watch.

**Hossam al-Qatlabi:** Former Executive Director of the VDC.

**Khaled El Helou:** Judge, Chairman of the Board of the Syrian Judicial Council.

**Diab Seriyeh:** General Coordinator of the Association of Prisoners and Missing Persons of Sednaya Prison.

**Roula al-Rukby:** Director of Women Now in Lebanon.

**Rim El Gantri:** Director of the Gender Program at Impunity Watch.

**Sima Nassar:** Program Director, Ornamo.

**Salma Kahhaleh:** Executive Director of "Dawlati"

**Omar Abdul Aziz Al-Hallaj:** Expert in development.

**Laila al-Odaat:** Syrian lawyer.

**Lina:** Pseudonym, member of a feminist organization.

**Dr. Mohamad Katoub:** Director of advocacy at the Turkey office of the Syrian American Medical Association SAMS.

**Mutasem Syoufi:** Executive Director of "The Day After."

**Maha Ghureir:** Former Project Officer, "The Day After."

**Nour Al-Khatib:** Director of the Department of Detainees and Disappeared Persons and supervisor of reports of violations against women - Syrian Network for Human Rights.

**Yara Badr:** Human rights activist

## Annex 2

### Gender sensitive transitional justice questions in Syria

#### Questions related to gender-sensitive transitional justice design

- 1- In general, what transitional justice examples do you believe were a success globally, and in particular what successful experiences have built gender-sensitive transitional justice?
- 2- There are wide-ranging challenges in obtaining identification documents for IDPs and refugees, what are the mechanisms to address them?
- 3- In Syria, do you think that the human rights track is moving in a clear direction to develop gender-sensitive transitional justice?
- 4- How do you evaluate the participation of organizations working on documentation, accountability and transitional justice in the negotiation process (civil society), and the cooperation between civil society organizations and the mandate of the International Impartial and Independent Mechanism to assist in the investigation and prosecution of those responsible for the most serious crimes, especially that the talks/negotiations, so far, have not included accountability and transitional justice in their agenda?
- 5- According to your knowledge, how can you design a mechanism to find out what justice means to women affected by conflict?
- 6- How can a transitional justice be designed to respond to the impact of direct and indirect crimes and abuses against women during conflict?
- 7- In your opinion, how have structures of socio-economic power that are based on gender inequality affected the violations and crimes against women?
- 8- What violations and crimes do you think will be targeted in gender-sensitive transitional justice in Syria in the future?

- 9- According to your knowledge, are there any Syrian organizations that work adequately to document sexual violence against women, girls and boys, and are they provided with health care?
- 10-The conflict over property is one of the most important challenges of the transitional justice process, in light of the illegal occupation of some of them, the seizure of official documents, the new laws issued (e.g. law 10), the inheritance of women and men, in your opinion, how will this be handled?
- 11-How does building and reforming institutions and laws play a role in correcting unequal power dynamics between the sexes in society?
- 12-How can we design a comprehensive integrated approach to gender-sensitive transitional justice that women fully can participate in?

**Questions related to the work of human rights organizations and initiatives to build the transitional justice process**

1. Do you think that the presence of women-led organizations, and women's rights organizations, along with organizations working on transitional justice contributes to the mainstreaming of gender analysis, and understanding of patterns of violations and crimes and their impact on women and girls?
2. In your opinion, what are the reasons on why gender-related violations have not yet been adequately integrated as part of transitional justice initiatives in Syria, and how can they be integrated now?
3. What are the current challenges and gaps in documenting gender-related violations?
4. In your opinion, is the role of Syrian human rights organizations limited to issuing reports on violations and crimes against women on specific occasions, and in recruiting women to these organizations, or do they have other roles?

5. Do you now think that women are contributing to building the transitional justice process, and what is the impact of women's participation in organizations working on documentation and transitional justice initiatives?
6. What are the barriers to a broader and better participation of women's organizations and women's rights organizations in organizations that specialize in documentation and promote transitional justice in Syria?
7. What is the number of women working in your organization, the types of work assigned to them, and do you think that their presence contributes to the integration of gender analysis and understanding patterns of gender-sensitive violations and crimes?
8. In your organization, how do you mainstream gender-related violations and crimes?
9. Are there issues that the research questions do not address and you think are important?



A big thanks to all respondents, and to each of the following organizations "Damma Hug," "Gharsah team," and "Women Now."

Thank you to all the resilient women survivors for their testimonies; bearing in mind they are not merely individual testimonies, but a whole history of communities and cities that have witnessed collective punishment and deliberate destruction of all livelihoods, by their own state, only because these communities and cities demanded freedom.



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