

SIEGES AS A WEAPON OF WAR:

Encircle, starve, surrender, evacuate.



Photo: Mahroush Mazen

INDEPENDENT INTERNATIONAL COMMISSION OF INQUIRY ON THE
SYRIAN ARAB REPUBLIC

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Preface

Drawing from numerous first-hand accounts, this paper highlights the negative impact of sieges and “evacuation agreements” on the civilian population in the Syrian Arab Republic between November 2012 and April 2018. Its findings are based on over 400 interviews. The Commission continues to regret that its investigations remain curtailed by the denial of access to the country, and faces numerous challenges with regard to the security of interviewees. In all cases, the Commission was guided by the “do no harm” principle.

The standard of proof was considered met when the Commission obtained and corroborated a reliable body of information to conclude that there were reasonable grounds to believe that incidents occurred as described, and that violations were committed by the party identified. The findings which follow are emblematic examples documented by the Commission, and the incidents described are indicative of wider patterns.

I. Introduction

1. Over the past five and a half years, the Independent International Commission of Inquiry on the Syrian Arab Republic¹ has regularly documented the use of siege warfare and the devastating consequences its continued use poses to Syrian men, women, and children.² Syrian civilians in besieged areas countrywide have been encircled, trapped, and prevented from leaving; indiscriminately bombed and killed; starved, and routinely denied medical evacuations, the delivery of vital foodstuffs, health items, and other essential supplies – all in an effort to compel the surrender of those “governing” or in control of the areas in which they live. These sieges have mostly been carried out by the Syrian state and its affiliates, but also by armed opposition groups and terrorist organisations. Characterised by pervasive war crimes, sieges throughout Syria have remained the primary method of warfare employed by parties to the conflict, repeatedly laid with impunity and in clear breach of international human rights law and international humanitarian law (IHL).
2. Such sieges have lasted months and often years – the longest running of which was in eastern Ghouta, which lasted for over five years (2013-2018). In some instances, with increasing shortages of food, water, and medicine leading to moderate or severe acute malnutrition and deaths among vulnerable groups, including children, the elderly, and the infirm, besieged armed groups have confiscated or hid food items, distributing them preferentially to those within their ranks, their family members, and confidants over the civilian population at large.³ In other instances, those in control of besieged areas have prevented civilians from leaving, by using them as human shields. The intolerable aspects of living or dying under siege have also at times been further exacerbated by the use of prohibited chemical weapons, and cluster munitions in densely populated civilian areas, intended to sow terror and desperation among the besieged population.
3. As if it were not enough to endure collective punishment⁴ through the use of such prohibited methods, once the parties in charge finally capitulate and accept to enter a truce and “evacuation agreement”,⁵ the majority of civilians have faced the further punishment of being left with little option but leave their homes – to become internally displaced – often to a pre-determined destination, not of their own choosing, but set out within the “agreements”. To remain would otherwise risk incurring the wrath of the winner, which has most often been the Syrian state. For example, medical personnel and healthcare providers have become a primary target for providing assistance during sieges, and are often among the first to seek to evacuate.⁶ Up to 50,000 Syrian men, women, and children have been displaced under the framework of local truce agreements in 2018 alone.
4. While siege warfare is not in itself prohibited under IHL, the laying of sieges must be in conformity with all relevant IHL rules. The methods employed in Syria to carry out sieges, as documented by the Commission since 2012, however, have amounted to egregious violations of international human rights and humanitarian law and, in some

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² The Commission relies on the definition of siege as defined by the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), which notes that an area is besieged when it is “surrounded by armed actors with the sustained effect that humanitarian assistance cannot regularly enter, and civilians, the sick and wounded cannot regularly exit.”

³ See A/HRC/31/68, para. 120; A/HRC/37/72, para. 12 and Annex II, para. 32. The Commission notes that the deliberate starvation of civilians is a war crime. See International Committee of the Red Cross (ICRC), *Customary International Humanitarian Law*, 2005, Volume I: Rules [hereinafter “ICRC Rule”], at Rules 53 and 156. The Security Council has expressed grave concern at the “the use of starvation of civilians as a method of combat, including by the besiegement of populated areas” in Resolution 2258 (2015), and further recalled “that starvation of civilians as a method of combat is prohibited by international humanitarian law” in Resolution 2401 (2018).

⁴ ICRC Rule 103.

⁵ See Section III., *infra*.

⁶ Laws 19, 20, and 21 of the Syrian Arab Republic contravene the customary international humanitarian law rule that under no circumstances shall any person be punished “for performing medical duties compatible with medical ethics”, regardless of the person benefiting therefrom. See A/HRC/24/CRP.2, para. 21; see also ICRC Rule 26.

instances, to war crimes. They have repeatedly been carried out in a deliberate, coordinated, and systematic manner, in further violation of prohibitions established under customary international law, and in flagrant disregard for human rights principles and in violation of international criminal law.

5. In this paper, the Commission is calling on the Syrian state and all parties to the conflict who have been using similar siege tactics to immediately desist from resorting to this medieval form of warfare. It seeks to remind the Syrian state and other parties to the conflict that they are bound by IHL, notably Common Article 3 of the Geneva Conventions of 1949, and relevant customary international law, which together set out clear prohibitions on conduct that has been repeatedly ignored in Syria. These include that:

- Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities is prohibited;
- Parties must at all times distinguish between combatants and civilians and that indiscriminate and disproportionate attacks are prohibited;
- The use of starvation of the civilian population as a method of warfare is prohibited. The repeated use of sieges that endanger the lives of the civilian population by depriving them of goods essential for their survival may amount to war crimes;
- There is an obligation to allow and facilitate rapid and unimpeded passage of humanitarian relief to those in need;
- Attacking, destroying, removing or rendering useless objects indispensable to the survival of the civilian population are prohibited;
- Besieging a civilian population in the manner documented by the Commission is tantamount to collective punishment, is prohibited under IHL and amounts to a war crime;
- Attacks on medical facilities, medical personnel and the wounded or sick are prohibited and that there is an obligation to collect and care for such individuals without discrimination; and
- That respect for such rules is not dependent on compliance by other parties subject to negotiations, truces, and “evacuation agreements”.

6. Throughout Syria, the use of siege warfare has also breached numerous tenets of international human rights law including the right to life; the absolute prohibition on torture and cruel, inhuman, and degrading treatment; the right to freedom of movement; the right to an adequate standard of living including adequate food, clothing, and housing; and the right to essential primary health care, including essential medicine. While in times of conflict it may be difficult for a state or other parties to fully protect these rights, they must not take any actions – deliberate or otherwise – which would undermine the enjoyment of these rights.

7. Lastly, the use of sieges in Syria has violated international criminal law, notwithstanding that, at present, the International Criminal Court (ICC) has no jurisdiction over most parties to the conflict. Many of the consequences of the deprivation and starvation policies of sieges may amount to war crimes, and, if conducted as part of a widespread or systematic attack against the civilian population, may amount to crimes against humanity.

8. The Commission also proposes steps which should be immediately implemented to address the humanitarian needs of Syrian civilians forcibly displaced after years of prolonged siege, as well as for those able to stay behind.

II. Siege warfare

Pro-Government forces

9. In 2012, pro-Government forces began laying sieges in a coordinated and planned manner, aimed at forcing populations, collectively, to starve or surrender. Government forces laid siege to the western Ghouta suburb of Daraya (Rif Damascus) in November 2012, and cut water lines to the suburb in 2013, forcing inhabitants to use unsanitary wells for both hygiene and consumption. Often, out of necessity, physicians in Daraya were forced to practice outside their areas of specialty. Residents described subsisting on harvest crops and living without electricity until a local truce was reached in August 2015, followed by a full “evacuation” of all residents.

10. Following Daraya, pro-Government forces encircled residents of eastern Ghouta in April 2013, al-Waer district (Homs) in mid-2014, Madaya and Zabadani (Rif Damascus) in June 2015, and eastern Aleppo city in July 2016. After imposing and maintaining stringent siege conditions over lengthy periods, pro-Government forces offered to evacuate suffering civilian residents from these locales only after armed groups surrendered. These local truce agreements, the terms of which are detailed in section III. below, often incorporate evacuation provisions. For example, after local truces were reached in eastern Ghouta in April this year, evacuations were carried out from the remaining, largest opposition held pocket of Douma, under the control of Jaish al-Islam. Over 40,000 of those displaced were relocated to severely overcrowded internally displaced person (IDP) sites in Rif Damascus. Up to 50,000 others were evacuated to Idlib and Aleppo governorates, where humanitarian response remains critically insufficient.

11. After hostilities cease and local truces are implemented, pro-Government forces require certain individuals from the previously besieged areas to undergo a reconciliation process as a condition to remain in their homes.⁷ In effect, the reconciliation process allows Government forces to categorise populations on the basis of allegiance. Not all civilians, however, have been offered the option to reconcile.

12. Often, no reconciliation option is offered to healthcare personnel because of their medical work. Indeed, Syrian anti-terrorism laws issued on 2 July 2012 effectively criminalised medical aid to the opposition, and Government intelligence and law enforcement agencies have forcibly disappeared medical personnel providing treatment to perceived opposition supporters.⁸ Those not offered this option have further included members of the local council, relief workers, activists, and family members of fighters. Civilians in previously besieged localities have spoken of lists of individuals who were not offered reconciliation due to their sympathy with opposition groups. As such, the so-called “reconciliation process” has induced the displacement of fighters, groups of dissident civilians, and their families in the form of organised evacuations.

13. Civilians able to remain in their homes have been frequently required to fingerprint statements of loyalty to the Government. Others also underwent background checks, while those of military age have been ordered to report for conscription. The evacuation of civilians who are perceived to be sympathetic to opposition factions appears also to serve a Government strategy of punishing those individuals. Taken alongside other steps such as the recent enactment of Presidential Decree no. 10, such acts may fit into a wider

⁷Legislative Decree No. 15 of July 2016 served as the basis for reconciliation, though it has since lapsed. The decree included amnesty for all individuals who turn themselves in and lay down their weapons, including fugitives. These individuals have generally included fighters and civilians wanted for defecting or deserting.

⁸Laws 19, 20, and 21 contravene the customary international humanitarian law rule that under no circumstances shall any person be punished “for performing medical duties compatible with medical ethics”, regardless of the person benefiting therefrom. *See* A/HRC/24/CRP.2, para. 21; *see also* ICRC Rule 26.

plan to strip the displaced of their property rights with the aim of transferring populations or enriching the state and its closest allies.

Anti-Government armed groups

14. Armed groups too began laying sieges to Government held areas with predominantly Shi'a Muslim populations. As early as July 2012, multiple armed groups encircled the majority Shi'a towns of Nubl and Zahra (northern Aleppo), blocking the entry of food, fuel, and medical supplies to its residents. Liwa al-Tawheed, Liwa Ahrar Sourya, Liwa al-Fatih, and members of terrorist organisation Jabhat al-Nusra, among other groups enforced the siege using violence. Government forces periodically delivered aid to the towns by helicopter. As a result of a heightened offensive by Government forces, the siege was lifted in February 2016, and no evacuations were carried out.

15. In March 2015, armed groups primarily under the Jaish al-Fatah formation overtook Idlib city and laid siege to the predominantly Shi'a towns of Fu'ah and Kafraya, and immediately cut-off water and electricity to the besieged population. Though Government forces occasionally airdropped aid, armed groups only allowed humanitarian aid convoys to enter the enclaves sporadically over the previous three years, leaving tens of thousands of individuals in a perilous situation. Hospitals and clinics had no supplies, which led to some women dying while giving birth. Subject to a local truce with Government forces, around 5,000 civilians were evacuated from the besieged towns in April 2017.⁹

Islamic State in Iraq and the Levant (ISIL)

16. The Islamic State in Iraq and the Levant (ISIL) encircled Government-held neighbourhoods of Dayr al-Zawr city in June 2014 and, by July, had laid siege to al-Jabal, al-Joura, al-Ahrabish, and al-Qousour – all densely populated districts of the city. As ISIL denied all commercial and humanitarian access to the city, the primary source of aid and supplies to the beleaguered population was through the main airport, under Government control. For three years, more than 200,000 residents living in densely populated districts of Dayr al-Zawr city faced increasing hardship, as neither the Government nor World Food Programme humanitarian airdrops was able to provide enough aid to sustain all residents.

17. On 5 September 2017, Syrian state media declared that the three-year siege laid by ISIL terrorists on Dayr al-Zawr city had been broken by Government forces. Though not subject to an “evacuation agreement”, aerial and ground operations to combat and ultimately defeat ISIL in Dayr al-Zawr triggered one of the single largest waves of internally displaced persons since the inception of the conflict. Since July 2017, tens of thousands of Syrian men, women, and children from Dayr al-Zawr – including those previously besieged – relocated to desert camps administered by the Syrian Democratic Forces (SDF) in northern Raqqah and Hasakah governorates, where tens of thousands are being unlawfully interned in IDP camps.¹⁰ The total number of displaced persons who fled Dayr al-Zawr governorate since July stands at close to 230,000 individuals.

III. Truces and “evacuation agreements”

18. In order to draw an end to the crippling effects of these sieges, local truce have routinely been negotiated between parties to the conflict, sometimes with the assistance

⁹ A/HRC/36/55, Annex III, para. 5.

¹⁰ A/HRC/37/72, Annex III, paras. 1-18.

of local council members or under the aegis of third states including, for example, the Russian Federation and Qatar. Such evacuations have been carried out in Damascus, Rif Damascus, Homs, and Aleppo governorates, among others, displacing tens of thousands of Syrian men, women, and children. Civilians interviewed by the Commission consistently echoed how their decision to evacuate previously besieged areas was involuntary in nature and that they had accepted to leave because they feared reprisals or “had no choice”.

19. All such truces have been finalised in either oral or written forms, and, while the terms of each have been unique to the besieged locality surrendering, details provided by interviewees reveal numerous similarities between them. Often, local truces have provided for the departure of fighters and an unspecified number of civilians; exchange of prisoners and/or corpses; and the release of detainees. Fighters have also been made to surrender heavy weapons, while tunnels leading to the besieged locales have either been destroyed or closed.

20. National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.¹¹ The authorities undertaking displacement must further ensure, to the greatest practicable extent, that proper accommodation is provided to the displaced persons, that such displacements are effected in satisfactory conditions of safety, nutrition, health and hygiene, and that members of the same family are not separated.¹²

21. Parties to a non-international armed conflict may not order the displacement of the civilian population for reasons related to the conflict, unless (i) the security of those civilians or (ii) imperative military reasons so demand.¹³ The exception based on the security of civilians would be justified, for example, to prevent civilians from being exposed to grave danger. Similarly, the evacuation of civilians based on military necessity may not be justified by political motives.¹⁴

22. Further, while there is a humanitarian obligation on all parties to evacuate wounded and sick individuals from conflict areas whenever circumstances permit, it is not limited to the period of evacuation under such agreements.¹⁵ Displacement for humanitarian reasons is not permissible where the humanitarian crisis causing the displacement, such as starvation, is the result of a warring party’s own unlawful conduct.¹⁶ For each civilian who was unable to freely decide on his or her movement or destination, there are reasonable grounds to believe that the agreement to evacuate him or her amounts to a severe and unreasonable order.

23. Often, local councils in opposition-held areas have entered into memoranda of understanding with armed groups in order to delineate responsibilities and affirm their capacities as elected officials of quasi-civil governance bodies. Despite this, neither political leaders, such as local council representatives, nor military commanders, such as pro-Government or armed group fighters, possess the requisite authority to consent to evacuation agreements on behalf of individual civilians.¹⁷ Moreover, although some humanitarian organisations have participated in facilitating evacuations in varying

¹¹ See Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission resolution 1997/39. Addendum: Guiding Principles on Internal Displacement, Annex, Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.2 [hereinafter “UN Guiding Principles”], at Principle 3.

¹² *Ibid.* at Principle 7(2).

¹³ ICRC Rule 129(b).

¹⁴ See ICRC, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (Geneva, 1987), para. 4854.

¹⁵ ICRC Rule 109.

¹⁶ See International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, *Prosecutor v. Milomir Stakić*, appeals judgment, IT-97-24-A, 22 March 2006, para. 287.

¹⁷ See International Tribunal for the Former Yugoslavia, *Prosecutor v. Mladen Naletilić, aka “Tuta” and Vinko Martinović, aka Štela*, trial judgment, IT-98-34-T, 31 March 2003, para. 523.

capacities, including the Syrian Arab Red Crescent, their participation does not render the underlying displacements lawful.¹⁸

24. Overall, the pattern of evacuations occurring countrywide appears intended to engineer changes to the political demographics of previously besieged enclaves, by redrawing and consolidating bases of political support. By entering into “evacuation agreements”, the Commission first documented that parties to the conflict forcibly displaced civilians from Daraya (Rif Damascus) in August 2015.¹⁹ Since then, there are reasonable grounds to believe that parties to the conflict committed the war crime of forced displacement of civilians from eastern Aleppo city in December 2016,²⁰ Madaya (Rif Damascus) in April 2017, Barza, Tishreen, and Qabun (eastern Damascus) in May 2017, and Fu’ah and Kafraya villages (Idlib) in May 2017.²¹

25. In no instance did the warring parties undertaking the evacuations provide accommodation to those displaced, nor were the displacements effected in satisfactory conditions of safety, nutrition, health, or hygiene. Rather, displaced civilians most often found themselves in overcrowded camps which lacked basic services and which were ill-prepared to receive them.

IV. Recommendations

26. As a matter of priority, the Commission urges the Syrian Arab Republic and other parties to the conflict to desist from resorting to the use of sieges as a method of warfare (entailing collective punishment through denial of freedom of movement, indiscriminate bombardment, denial of access to humanitarian aid, food, water, and medicine, prevention of leaving, and forced displacement). Specifically, and in order to alleviate the suffering of the civilian population who remain in besieged areas in the Syrian Arab Republic, the Commission calls for the following actions:

- Comply with international humanitarian law and Security Council resolution 2147 (2018), which denounces the starvation of civilians as a method of warfare and the unlawful denial of humanitarian access to those in need;
- Immediately lift all remaining sieges;
- Comply with international humanitarian law and Security Council resolution 2328 (2016), which require that any evacuations of civilians be voluntary and to final destinations of their choice, and protect all civilians evacuated, including by treating them with dignity and preventing fear of harm; and
- Refrain from any actions that can lead to forced or involuntary displacement of the population including so-called “evacuation agreements”.

27. Second, in order to address the protection concerns and needs of those displaced due either to local truces or fear of reprisals:

- Ensure adequate protection for all internally displaced persons and their access to basic services, including medical care and education, in line with the United Nations Guiding Principles on Internal Displacement, and safeguard the right to return for internally displaced persons and refugees, including by guaranteeing their safety and property rights; and

¹⁸ See *Prosecutor v. Milomir Stakić*, appeals judgment, para. 286; see also *Prosecutor v. Milomir Stakić*, trial judgment, IT-97-24-T, 31 July 2003, para. 683.

¹⁹ Independent International Commission of Inquiry on the Syrian Arab Republic, *Statement by Mr. Paulo Sérgio Pinheiro, Chair of the Independent International Commission of Inquiry on the Syrian Arab Republic to the Human Rights Council*, 19 September 2016, available at <http://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=20522&LangID=E>.

²⁰ A/HRC/34/64, para. 93.

²¹ A/HRC/36/55, para. 35.

- Enable the registration of births and provide access to all concerned to gain or regain their legal identity through simplified registration mechanisms at the local and community levels, bearing in mind that an officially recognised identity, substantiated by a recognised birth certificate or other identity documents, is crucial for the realisation of the most fundamental rights.

28. Third, the protection of the civilians able to remain in previously besieged areas should similarly be prioritised. Those who stay must be provided with guarantees concerning their safety, and under no circumstances be subject to arbitrary arrests or forced conscription.²² Further, parties must urgently ensure those civilians are impartially provided access to basic services, including medical care, education, and the restoration of basic infrastructure and reconstruction.

29. Any changes to the existing legal framework of the Syrian Arab Republic must respect the property rights of all Syrians. Any laws which are discriminatory in intent or application or that otherwise violate fundamental human rights must be repealed promptly, and any administrative measures, and revisions or reforms to current laws, must guarantee rights to ownership, possession, and security of tenure of all civilians who left their homes.

30. Eventually, a mechanism should be established to ensure that housing, land, and property rights of refugees and internally displaced persons are respected, including rebuilding cadastral offices damaged by hostilities and re-issuing property records damaged therefrom.

31. Finally, in the context of serious negotiations underway or once a cessation of hostilities has been achieved, the Commission urges that following issues be given priority with the assistance of relevant UN agencies:

- Ensure in any future political agreement that there is immediate and timely access and provision of humanitarian assistance to all areas to which civilians have been forcibly displaced, including camps and managed sites, in close collaboration with United Nations agencies present in the Syrian Arab Republic; and
- Upon a cessation of hostilities, facilitate the process for displaced Syrians and those who sought refuge outside the country to return in safety and dignity, working closely with relevant United Nations agencies.

²² The Constitution of the Syrian Arab Republic in its article 46 states that “[c]ompulsory military service shall be a sacred duty and is regulated by a law” for all men over the age of 18 years. Syrian women are not required to perform compulsory service, though they may volunteer to serve. Conscientious objection to military service is based on the right to freedom of thought, conscience and religion, set out in the Universal Declaration of Human Rights and the ICCPR. *See* Universal Declaration of Human Rights, 10 December 1948, 217 A (III), at art. 18; *see also* ICCPR at. art. 18. The right to conscientious objection to military service is a right implicitly derived from an interpretation of the right to freedom of thought, conscience and religion, and the Human Rights Committee has interpreted the right to freedom of thought, conscience, and religion and its application to in relation to conscientious objection to military service. In General Comment No. 22 (1993), at para. 11, the Human Rights Committee stated “[t]he Covenant does not explicitly refer to a right to conscientious objection, but the Committee believes that such a right can be derived from article 18, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one’s religion or belief”. Forced conscription may therefore violate this right.